

CHAPTER 516—S.F.No. 789

An act relating to commerce; renaming the securities division of the department of commerce; registering and regulating continuing care facilities; providing a lien; providing for disclosure; providing a penalty; amending Minnesota Statutes 1978, Sections 45.01; and 82.18.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Section 45.01, is amended to read:

45.01 **DEPARTMENT ESTABLISHED; COMMISSION.** The department of commerce shall be under the supervision and control of a commission composed of a commissioner of banks, a commissioner of insurance, and a commissioner of securities and real estate. The commission shall be organized in three divisions: a banking division in charge of the commissioner of banks; an insurance division in charge of the commissioner of insurance; and a securities and real estate division in charge of the commissioner of securities and real estate. The commission shall adopt a seal with the words "Department of Commerce of Minnesota" and such design as the commission shall prescribe engraved thereon, by which seal the commission shall authenticate its signatures and proceedings.

Sec. 2. **REVISOR OF STATUTES.** In the next and subsequent editions of the Minnesota Statutes, the revisor of statutes shall make the changes in terminology as may be necessary to effect the changes in the name of the division of securities by section 1.

Sec. 3. **[80D.01] SHORT TITLE.** Sections 3 to 18 may be cited as the Continuing Care Facility Registration Act.

Sec. 4. **[80D.02] DEFINITIONS.** Subdivision 1. As used in sections 3 to 18, the terms defined in this section have the meanings given them.

Subd. 2. "Continuing care" means the furnishing to an individual, other than an individual related by blood or marriage to the person furnishing the care, of board and lodging together with nursing service, medical service or other health related service, regardless of whether or not the lodging and service are provided at the same location, pursuant to a written agreement effective for the life of the individual or for a period in excess of one year but does not include care furnished in a nursing home licensed pursuant to chapter 144A.

Subd. 3. "Commissioner" means the commissioner of securities.

Subd. 4. "Entrance fee" means the total of any initial or deferred transfer to or for the benefit of a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance or maintenance of a specified individual as a resident in a facility.

Subd. 5. "Facility" means the place in which a person undertakes to provide continuing care to an individual.

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Subd. 6. "Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one or more identified individuals.

Subd. 7. "Provider" means a person undertaking to provide continuing care in a facility.

Subd. 8. "Resident" means an individual entitled to receive continuing care in a facility.

Subd. 9. "Minimum deposit" means a deposit equal to or greater than five percent of the entrance fee.

Subd. 10. "Person" means any individual, corporation, business trust, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest or any legal or commercial entity.

Subd. 11. "Affiliate of another person" means any person directly or indirectly controlling, controlled by or under common control with such other person.

Subd. 12. "Offer" includes every inducement, solicitation or attempt to encourage a person to enter into a subscription or residency agreement.

Sec. 5. [80D.03] REGISTRATION. Subdivision 1. A provider shall not enter into a contract that requires or permits the payment of an entrance fee in consideration for a promise to provide continuing care in the facility, if the facility is or will be located in this state, or if the provider or a person acting on the provider's behalf solicits the contract within this state and the person to be provided with continuing care under the contract resides within this state at the time of the solicitation, unless the facility is registered under this section.

Subd. 2. A contract to provide continuing care is solicited in this state if, during the 12 month period preceding the date the contract is signed or accepted by either party, information concerning the facility or availability of the contract is given:

(a) By personal, telephone or mail contact or other communication directed to and received by a person at a location in this state; or

(b) In a paid advertisement published or broadcast from within this state other than in a periodical more than two-thirds of the circulation of which is outside this state.

Subd. 3. An application for registration shall be filed with the commissioner by the provider on forms containing information prescribed by the commissioner, including:

(a) The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider, and a description of the person's interest in or occupation with the provider;

(b) With respect to the provider, any person named pursuant to paragraph (a), and the proposed manager if the facility will be managed on a day to day basis by a person other than an individual directly employed by the provider, the information shall include:

(1) A description of the business experience of the person, if any, in the operation or management of similar facilities;

(2) The name and address of any professional service, firm, association, trust, partnership or corporation in which the person has, or which has in the person, a ten percent or greater interest and that will or may provide goods, leases or services to the facility of a value of \$500 within any year, including a description of the goods, leases or services and the probable or anticipated cost thereof to the facility or provider or a statement that the cost cannot presently be estimated; and

(3) A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including without limitation actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this section or a similar act in another state; and

(c) A proposed disclosure statement meeting the requirements of section 6.

Subd. 4. Upon receipt of an application for registration in proper form, the commissioner shall issue an acknowledgement of application to the applicant. Within 30 days after the date of the acknowledgment, unless the applicant has consented in writing to a delay, the commissioner shall register the facility or shall notify the applicant of specific deficiencies in the application or conditions that will be imposed on registration of the facility and that the facility will be registered upon correction of the deficiencies and compliance with the conditions. Registration shall be by entry in a book called Register of Continuing Care Facilities, which entry shall show the care facility registered, for whom registered, and shall specify the conditions, limitations, and restrictions upon the registration, if any, or shall make proper reference to a formal order of the commissioner on file showing the conditions, limitations, and restrictions.

Sec. 6. [80D.04] DISCLOSURE STATEMENT. Subdivision 1. Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person with whom the contract is to be entered into or, the person's legal representative, the text of which shall contain, to the extent not clearly and completely set forth in the contract for continuing care attached as an exhibit thereto, at least the following information:

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(a) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity;

(b) The names of the officers, directors, trustees, or managing or general partners of the provider;

(c) A description of the business experience of the provider, and of the manager of the facility if the facility will be managed on a day to day basis by an organization other than the provider, in the operation or management of similar facilities;

(d) A statement as to whether or not the provider is, or is affiliated with, a religious, charitable or other nonprofit organization; the extent of the affiliation, if any; the extent to which the affiliate organization is responsible for the financial and contract obligations of the provider; and the provision of the federal internal revenue code under which the provider or affiliate is exempt from the payment of income tax;

(e) The location and description of the physical property of the facility, existing or proposed; and to the extent proposed, the estimated completion date or dates, whether or not construction has begun and the contingencies subject to which construction may be deferred;

(f) The goods and services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which goods and services are included in basic contracts for continuing care and which goods and services are made available at or by the facility at extra charge and whether they are provided by an affiliate;

(g) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:

(1) A statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirement for entry;

(2) The circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

(3) The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident; and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

(4) The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the original resident; and

(5) The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any. If the facility is already in operation, or if the provider or manager operates one or more similar facilities within this state, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or for whatever period that the provider or manager has operated the facility if this period is less than five years;

(h) The health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person;

(i) The provisions that have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions;

(j) Financial statements of the provider which shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant who shall express an opinion thereon and shall include a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years of the provider or for whatever period the provider has operated the facility if this period is less than three years. If the provider's fiscal year ended more than 90 days prior to the date the application is filed, interim financial statements as of a date not more than 90 days prior to the filing shall be included, but need not be certified;

(k) If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(1) An estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs that the provider expects to incur or become obligated for prior to the commencement of operations;

(2) A description of any mortgage loan or other long term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing;

(3) An estimate of the total entrance fees to be received from residents at or prior to commencement of operation of the facility; and

(4) An estimate of the funds, if any, that are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

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

(1) A beginning cash balance consistent with the certified income statement required by clause (j) or, if operation of the facility has not commenced, consistent with the statement of anticipated source and application of funds required by clause (k);

(2) Anticipated earnings on cash reserves, if any;

(3) Estimates of net receipts from entrance fees, other than entrance fees included in the statement of source and application of funds required by clause (k), less estimated entrance fee refunds, if any. A description of the actuarial basis and method of calculation for the projection of entrance fee receipts shall be included;

(4) An estimate of gifts or bequests to be relied on to meet operating expenses and the basis therefor;

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the criteria used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services to be provided pursuant to the contracts for continuing care;

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses, and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(7) An estimate of annual payments of principal and interest required by any mortgage loan or other long term financing; and

(m) Other material information concerning the facility or the provider that is required by the commissioner or that the provider wishes to include.

Subd. 2. The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement and that registration of the facility does not constitute approval, recommendation or endorsement of the facility by the commissioner, nor does the registration evidence the accuracy or completeness of the information set out in the disclosure statement.

Subd. 3. A copy of the standard form or forms of contract for continuing care used by the provider shall be attached as an exhibit to each disclosure statement. Each contract shall provide that:

(a) The party contracting with the provider may rescind the contract within ten days following the later of the execution of the contract or the receipt of the disclosure statement, in which event any money or property transferred to the provider shall be returned in full. The resident to whom the contract pertains is

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not required to move into the facility before the expiration of the ten day period; and

(b) If a resident dies before occupying a living unit in the facility, or if on account of illness, injury or incapacity would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled and the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (a) those costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident; and (b) a reasonable service charge, if set out in the contract, not to exceed the greater of \$350 or two percent of the entrance fee.

Subd. 4. With the prior approval of the commissioner, in lieu of the disclosure statement required by this section a provider may deliver a disclosure statement or similar document containing substantially the information required by this section and prepared in compliance with laws of another state or of the United States;

Subd. 5. (a) The disclosure statement required by this section shall be in a form approved by the commissioner.

(b) The statement shall be written in language easily readable and understandable by a person of average intelligence and education.

In determining whether a statement is readable, the commissioner shall consider at least the following factors:

(1) The simplicity of the sentence structure and the shortness of the sentences used;

(2) The extent to which commonly used and understood words are employed;

(3) The extent to which legal terms are avoided;

(4) The extent to which references to other sections or provisions of the statement are minimized;

(5) The extent to which definitional provisions are incorporated in the text of the statement; and

(6) Any additional factors relevant to the readability or understandability of the statement that the commissioner prescribes by rule.

(c) The statement shall disclose the names of any affiliates who may provide goods or services.

Sec. 7. [80D.05] ENTRANCE FEE ESCROW. Subdivision 1. As a condition of registration under section 5, the commissioner shall require that the provider establish an escrow account with a bank, trust company or other escrow agent approved by the commissioner, and that any entrance fees received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in the escrow account, subject to release as follows:

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(a) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider at the time the living unit becomes available for occupancy by the new resident, or shall be returned to the resident or the resident's personal representative under the conditions described in section 6, subdivision 3;

(b) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be returned to the resident or the resident's legal representative under the conditions described in section 6, subdivision 3, or shall be released to the provider at the time the commissioner is satisfied that:

(1) The facility has 65 percent of its units reserved as determined by signed written agreements and minimum deposits received; or if the written agreement requires a minimum deposit of more than one-third of the entrance fee, then the facility may have 50 percent of the units reserved and 50 percent of the facility must be completely constructed; and

(2) The sum of entrance fees received or receivable by the provider pursuant to binding contracts for continuing care, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, plus funds from other sources in the actual possession of the provider, equals or exceeds the sum of 90 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus 90 percent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as part of its permit application, to be necessary to fund start-up losses of the facility plus 90 percent of the amount of the reserve fund escrow, if any, required to be maintained by the provider pursuant to section 8; and

(3) A commitment has been received by the provider for any permanent mortgage loan or other long term financing described in the statement of anticipated source and application of funds submitted by the provider as part of its registration application, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, have been substantially satisfied; and

(4) If construction of the facility has not been substantially completed, all governmental permits or approvals necessary prior to the commencement of construction have been obtained; and a maximum price contract has been entered into between the provider and a general contractor responsible for construction of the facility; a bond covering the faithful performance of the construction contract by the general contractor and the payment of all obligations arising thereunder has been issued by an insurer authorized to do business in this state with the provider as obligee; a loan agreement has been entered into by the provider for an interim construction loan in an amount which, when combined with the amount of entrance fees then held in escrow under the provisions of this section plus the amount of funds from other sources then in the actual possession of the provider, will equal or exceed the estimated cost of constructing, equipping and furnishing the facility; not less than ten percent of the amount of the construction loan has been disbursed by the lender for physical construction or site preparation

work completed; and orders at firm prices have been placed by the provider for not less than 50 percent in value, including installation charges if applicable, of items necessary for equipping and furnishing the facility in accordance with the description set forth in the disclosure statement required by section 6; or

If construction or purchase of the facility has been substantially completed, an occupancy permit covering the living unit has been issued by the local government having authority to issue these permits.

Subd. 2. The aggregate amount of entrance fees which may be released to the provider pursuant to subdivision 1, clause (b) prior to the date on which any reserve fund escrow under section 8 is established shall not exceed the aggregate amount of entrance fees then received or receivable by the provider pursuant to binding contracts for continuing care less the amount of the entrance fees received or receivable which will be required to be initially maintained in the reserve fund escrow;

Subd. 3. If the funds in an escrow account to which subdivision 1, clause (b) applies are not released pursuant thereto within a period of 36 months or a greater time that has been specified by the provider with the consent of the commissioner, or any extensions thereof approved by the commissioner in writing, then the funds shall be returned by the escrow agent to the persons who had paid them to the provider.

Subd. 4. Nothing in this section requires the escrow of any nonrefundable application fee that does not exceed two percent of the entrance fee and is clearly designated as such in the contract for continuing care.

Subd. 5. In lieu of any escrow which is required by the commissioner under this section, a provider may post a bond issued by an insurer authorized to do business in this state. The bond shall be filed with the commissioner with the state as obligee, conditioned for the prompt payment to persons who are entitled to a refund of entrance fees from the provider.

Subd. 6. Interest accrued on entrance fees or deposits held in escrow is the property of the provider.

Sec. 8. [80D.06] RESERVE FUND ESCROW. Subdivision 1. As a condition of initial or continuing registration under section 5, the commissioner shall require the provider to establish at the time the facility is first occupied by any resident and thereafter, to maintain on a current basis, in escrow with a bank, trust company or other escrow agent approved by the commissioner, a portion of all entrance fees received by the provider in an aggregate amount of up to the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long term financing of the facility. The funds in the escrow account may be invested with the earnings thereon payable to the provider. If the provider requests in writing, the escrow agent shall release up to 1/12 of the original principal balance of the escrow account. A release of funds shall not be made more than once during any calendar month, and then only after the escrow agent has given written notice to the commissioner at least ten days prior to the release.

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The provider shall notify the commissioner ten days prior to any withdrawal from the reserve fund and the reasons therefor. Any person or affiliate of any person that controls any reserve fund comprised in part or totally of funds removed from the provider's resources, is liable for the debts of the provider up to the amount of the provider's contribution to the fund plus any prorated interest the fund may earn.

Subd. 2. In those instances where a provider has been offering continuing care in a facility since prior to January 1, 1975, the following shall apply. The provider shall establish a reserve escrow fund and shall contribute to it a portion of each new entrance fee in a percentage to be determined by the commissioner. The funds thereby received shall be permitted to accumulate until there is in the reserve fund an amount equal to the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long term financing obligation of the facility. The commissioner may by rule or order require of any facility subject to the lower escrow requirements of subdivision 2, the posting of a surety bond in an amount sufficient to protect the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long term financing obligation of the facility. A copy of the bond is to be filed with the commissioner.

Sec. 9. [80D.07] ENTRANCE FEE REIMBURSEMENT AFTER OCCUPANCY. Any resident may terminate his residency agreement at any time after he has assumed residency. A residency agreement may not require more than 120 days written notice by any resident desiring to terminate; nor require any additional fees for termination of residency.

The termination terms and provisions for reimbursement shall be stated in the residency agreement.

Sec. 10. [80D.08] LIEN ON BEHALF OF RESIDENTS. The provider shall notify the commissioner at the time the facility is ready for occupancy. Upon receiving this notification the commissioner shall file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section is effective for a period of ten years following the filing and may be extended by the commissioner upon a finding that the extension is advisable for the protection of residents of the facility. The lien may be foreclosed upon the liquidation of the facility or the insolvency or bankruptcy of the provider, and in that event the proceeds shall be used in full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care then in effect. The lien provided for in this section is subordinate to the lien of any first mortgage on the real property of the facility and may be subordinated with the written consent of the commissioner to the claims of other persons if the commissioner determines the subordination to be advisable for the efficient operation of the facility.

Sec. 11. [80D.09] ANNUAL REPORT. The registration of a facility under section 5 remains effective until withdrawn by the provider or revoked or suspended by the commissioner under section 14. Annually within 120 days

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following the end of the provider's fiscal year, unless the time is extended with the written consent of the commissioner, the provider shall file with the commissioner an annual report that includes a revised disclosure statement setting forth, as of the end of the fiscal year, information meeting the requirements of section 6. The annual report shall be accompanied by a narrative describing any material differences between (a) the pro forma income statements filed in response to section 6, subdivision 1, clause (l) as a part of the most immediately preceding registration application or annual report and (b) the actual results of operations during the fiscal year together with the revised pro forma income statements being filed as a part of the current annual report. A provider may amend its disclosure statement on file with the commissioner at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement from containing a material misstatement of fact or omitting to state a material fact required to be stated therein.

Sec. 12. [80D.10] FEES. Subdivision 1. The fee for filing an application for registration of a facility under section 5 is \$250. The fee for filing an annual report or amendment to a disclosure statement for a facility that has been registered is \$50.

Subd. 2. A person with a registration in effect shall, within 30 days after the occurrence of any material change in the information on file with the commissioner, notify the commissioner in writing of the change by an application to amend the registration accompanied by a fee of \$50. The commissioner may by rule define what shall be considered a material change for such purposes, and may determine the circumstances under which a revised disclosure statement must accompany the application. If the amendment is approved by the commissioner, it shall become effective upon the issuance by the commissioner of an order amending the registration.

Subd. 3. Every request for a written opinion from the commissioner shall be accompanied by a fee of \$50.

Subd. 4. The commissioner shall furnish upon reasonable request to any person photostatic or other copies of documents filed with the commissioner at a charge of fifty cents per page or fraction thereof.

Subd. 5. A document is filed when it is received by the commissioner. No filing for which a fee is required shall be deemed to be filed or given any effect until the proper fee is paid.

Sec. 13. [80D.11] REHABILITATION OR LIQUIDATION. Subdivision 1. If the commissioner determines, after notice and an opportunity for the provider to be heard, that (a) a portion of a reserve fund escrow required under section 8 has been or is proposed to be released, or (b) a provider has been or will be unable, in a manner as may endanger the ability of the provider to fully perform its obligations pursuant to contracts for continuing care or to meet the pro forma income or cash flow projections previously filed by the provider, or (c) a provider is bankrupt or insolvent or in imminent danger of becoming bankrupt or insolvent, then the commissioner may apply to a district court of this state, or to

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the federal bankruptcy court which may have previously taken jurisdiction over the provider or facility for an order directing the commissioner, or authorizing the commissioner to appoint a trustee, to rehabilitate or liquidate a facility.

Subd. 2. An order to rehabilitate a facility shall direct the commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the commissioner or trustee may deem necessary, and to take steps as the court may direct toward removal of the causes and conditions which have made rehabilitation necessary.

Subd. 3. If the court finds, upon petition of the commissioner, trustee or the provider, or on its own motion, that the objectives of an order to rehabilitate a provider have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, creditors, owners of the facility, or to the public, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and by order return the facility and its assets and affairs to the provider's management.

Subd. 4. If, at any time, the commissioner determines that further efforts to rehabilitate the provider would be useless, it may apply to the court for an order of liquidation.

Subd. 5. An order to liquidate a facility may be issued upon application of the commissioner whether or not there has been issued a prior order to rehabilitate the facility. The order shall act as a revocation of the registration of the facility under section 5, and shall order the commissioner or a trustee to marshal and liquidate all of the provider's assets located within this state.

Subd. 6. In applying for an order to rehabilitate or liquidate a facility, the commissioner shall give due consideration to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien obtained by the commissioner pursuant to section 10 may be used in full or partial payment of entrance fees, on behalf of residents of a facility being liquidated, to other facilities registered under section 5.

Subd. 7. An order for rehabilitation under this section shall be refused or vacated if the provider posts a bond issued by an insurer authorized to do business in this state. The bond shall be filed with the commissioner, with the state as obligee, conditioned for the prompt payment to persons who are entitled to a refund of entrance fees from the provider or for the prompt payment of other damages, in the event the provider is unable to fulfill its contracts to provide continuing care at the facility. The bond shall be in an amount determined by the court to be equal to the reserve funding which would otherwise be needed to fulfill the obligations.

Sec. 14. [80D.12] REVOCATION OF REGISTRATION. A registration of a facility under section 5 shall be revoked or suspended by the commissioner if the provider fails to file an annual report as required by section 11 or if, after notice to the provider and an opportunity for all interested parties to be heard, the commissioner determines that (a) the provider has established a pattern of failure to deliver the disclosure statement as required by section 6, or (b) has delivered a disclosure statement that contains a material misstatement of fact or that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, if the provider, at the time of delivery, had actual knowledge of the misstatement or omission.

Sec. 15. [80D.13] CIVIL LIABILITY. Subdivision 1. Any person who, as or on behalf of a provider, enters into a contract for continuing care at a facility that is not registered under section 5, or enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of section 6 to the person contracting for the continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, is liable to the person contracting for the continuing care for damages and repayment of all fees paid to the provider, facility or person violating sections 3 to 14, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgements, and court costs and reasonable attorney fees.

Subd. 2. Liability under this section for any violation, misstatement or omission exists only if the provider or person liable knew or should have known of the violation, the misstatement or omission.

Subd. 3. Nothing contained in sections 3 to 18 shall be construed to limit the remedies a person has under any other law.

Sec. 16. [80D.14] INVESTIGATIONS AND SUBPOENAS. Subdivision 1. The commissioner may make public or private investigations within or outside of this state as necessary to determine whether any person has violated or is about to violate any provision of sections 5 to 18 or any rule hereunder or to verify statements contained in the application for registration, or the disclosure statement, or to aid in the enforcement of sections 5 to 18 or in the prescribing of rules and forms hereunder, and may publish information concerning any violation of sections 5 to 18 or any rule hereunder.

Subd. 2. For the purpose of any investigation or proceeding under sections 5 to 18, the commissioner may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to any of the facts and circumstances concerning the matter to be investigated.

Subd. 3. For the purpose of any investigation or proceeding under sections 5 to 18, the commissioner or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records that the commissioner deems relevant or material to the inquiry, all of which may be enforced in any court of this state that has appropriate jurisdiction.

Sec. 17. [80D.15] CEASE AND DESIST ORDERS, INJUNCTIONS. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of sections 5 to 18 or any rule hereunder, the commissioner may:

(a) Issue an order directed at any person requiring the person to cease and desist from engaging in the act or practice; or

(b) Bring an action in any court that has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with sections 5 to 18 or any rule hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner is not required to post a bond.

Sec. 18. [80D.16] CRIMINAL PENALTIES. Any person who willfully and knowingly violates any provision of sections 5 to 18, or any rule hereunder, shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both.

The commissioner may refer evidence concerning violations of sections 5 to 18 or of any rule hereunder to the attorney general or the proper county attorney who may, with or without the reference, institute the appropriate criminal proceedings.

Nothing in sections 5 to 18 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Sec. 19. [80D.17] FILING OF SALES LITERATURE. The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form, letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective residents. Any such sales or advertising literature shall be filed with the commissioner at least five days prior to the first publication thereof unless such advertisement has been exempted by rule of the commissioner.

Sec. 20. Minnesota Statutes 1978, Section 82.18, is amended to read:

82.18 **EXCEPTIONS.** Unless a person is licensed or otherwise required to be licensed under this chapter, the term real estate broker does not include:

(a) A licensed practicing attorney acting solely as an incident to the practice of law, provided, however, that the attorney complies in all respects with the trust account provisions of this chapter;

Changes or additions indicated by underline deletions by ~~strikeout~~

(b) A receiver, trustee, administrator, guardian, executor, or other person appointed by or acting under the judgment or order of any court;

(c) Any person owning and operating a cemetery and selling lots therein solely for use as burial plots;

(d) Any custodian, janitor, or employee of the owner or manager of a residential building who leases residential units in such building;

(e) Any bank, trust company, savings and loan association, public utility, or any land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law;

(f) Public officers while performing their official duties;

(g) Employees of persons enumerated in clauses (b), (e) and (f), when engaged in the specific performance of their duties;

(h) Any person who acts as an auctioneer bonded in conformity with section 330.02, when he is engaged in the specific performance of his duties as an auctioneer;

(i) Any person who acquires such real estate for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial or industrial buildings for the purpose of resale, provided that no more than 25 such transactions occur in any 12 month period and that the person complies with section 82.24;

(j) Any person who offers to sell or sells an interest or estate in real estate which is a security registered pursuant to chapter 80A, when acting solely as an incident to the sale of such securities;

(k) Any person who offers to sell or sells a business opportunity which is a franchise registered pursuant to chapter 80C, when acting solely to sell the franchise;

(l) Any person who contracts with or solicits on behalf of a provider a contract with a resident or prospective resident to provide continuing care in a facility that is registered pursuant to the continuing care facility registration act, when acting solely as incident to the contract.

Sec. 21. **[80D.18] RULES.** The commissioner shall promulgate rules to implement sections 5 to 19.

Sec. 22. **EFFECTIVE DATE.** This act is effective November 1, 1980.

Approved April 7, 1980

Changes or additions indicated by underline deletions by ~~strikeout~~