

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 582
HOUSE BILL 1193

AN ACT TO PROVIDE FOR MORE EFFECTIVE FINANCIAL SUPERVISION, REHABILITATION, AND LIQUIDATION PROCEDURES FOR CONTINUING CARE RETIREMENT CENTERS AND TO PROVIDE THAT CONTINUING CARE AGREEMENTS ARE SUBORDINATE TO THE COST OF ADMINISTRATION IN LIQUIDATION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-30-5(5) reads as rewritten:

"(5) All persons subject to Articles ~~65 through 67~~ 64, 65 and 66, or 67 of this Chapter; except to the extent there is a conflict between the provisions of this Article and the provisions of those Articles, in which case those Articles will govern."

Sec. 2. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement centers licensed under Article 64 of this Chapter."

Sec. 3. G.S. 58-64-45 reads as rewritten:

"§ 58-64-45. ~~Rehabilitation or~~ Supervision, rehabilitation, and liquidation.

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

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

the Commissioner may commence a supervision proceeding pursuant to Article 30 of this Chapter or may apply to the Superior Court of Wake County or to the federal bankruptcy court that 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 to liquidate a facility. facility in accordance with Article 30 of this Chapter.

(b) ~~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 such steps as the Court may direct toward removal of the causes and conditions which have made rehabilitation necessary. The definition of 'insolvency' or 'insolvent' in G.S. 58-30-10(13) shall not apply to facilities under this Article. Rules adopted by the Commissioner shall define and describe 'insolvency' or 'hazardous financial condition' for facilities under this Article. G.S. 58-30-12 shall not apply to facilities under this Article.~~

(c) If, at any time, the Court finds, upon petition of the ~~Commissioner, trustee~~ Commissioner or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, 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.

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

(e) ~~An order to liquidate a facility:~~

- ~~(1) May be issued upon application of the Commissioner whether or not there has been issued a prior order to rehabilitate the facility.~~
- ~~(2) Shall act as a revocation of the license of the facility under this Article.~~
- ~~(3) Shall include an order directing the Commissioner or a trustee to marshal and liquidate all of the provider's assets located within this State.~~

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

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

Sec. 4. G.S. 58-64-60 reads as rewritten:

"§ 58-64-60. Agreements as preferred claims on liquidation.

In the event of liquidation of a provider, all continuing care agreements executed by the provider shall be deemed preferred claims against all assets owned by the provider; provided, however, such claims shall be subordinate to the liquidator's cost of administration or any secured claim."

Sec. 5. This act becomes effective October 1, 1996, and applies to continuing care retirement centers that are determined by the Commissioner of Insurance to be financially impaired on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives