

CHAPTER 726

H.B. No. 677

AN ACT

relating to the regulation of certain continuing care facilities; providing a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. SHORT TITLE. This Act may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

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SECTION 2. DEFINITIONS. In this Act:

- (1) "Board" means the State Board of Insurance.
- (2) "Continuing care" means the furnishing, to an individual who is not related to the individual by consanguinity or affinity to the person furnishing the care, of board and lodging, together with personal care services, and nursing services, medical services, or other health-related services, regardless of whether or not the services and the lodging are provided at the same location, under an agreement that requires the payment of an entrance fee and that is effective either for the life of the individual or for a period of more than one year.
- (3) "Entrance fee" means an initial or deferred transfer of money, or other property valued at an amount in excess of three months' rent, made, or promised to be made as full or partial consideration for acceptance by a provider of a specified individual as a resident in a facility.
- (4) "Facility" means a place in which a person undertakes to provide continuing care to an individual.
- (5) "Living unit" means a room, apartment, cottage, or other area within a facility that is set aside for the exclusive use or control of one or more specified individuals.
- (6) "Provider" means a person who undertakes to provide continuing care in a facility.
- (7) "Resident" means an individual entitled to receive continuing care in a facility.
- (8) "Person" means all corporations, associations, partnerships, or individuals, including fraternal or benevolent orders or societies.

SECTION 3. BOARD POWERS AND DUTIES. The State Board of Insurance shall regulate continuing care providers as provided by this Act. The board may adopt rules and take other action as necessary to administer and enforce this Act.

SECTION 4. CERTIFICATES OF AUTHORITY. (a) After September 1, 1987, no provider shall offer to the public a contract for continuing care, or construct or acquire a facility for the purpose of providing continuing care, without obtaining a certificate of authority from the board.

(b) The commissioner shall promulgate rules and regulations setting forth the information to be submitted by an applicant for a certificate of authority.

(c) The commissioner, upon receipt of an application for a certificate of authority, shall conduct a hearing on the application in accordance with the Administrative Procedure Act, Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commissioner shall grant the application if he finds that the applicant or the facility is financially sound; that the competence, experience, and integrity of the applicant, its board of directors, its officers or its management is such that it would be in the interest of the public to issue a certificate of authority; and that the applicant is capable of complying with the provisions of this Act. The commissioner may limit issuance of certificates of authority to incorporated entities. The commissioner shall issue an order approving or disapproving the application within 180 days of filing.

(d) No certificate of authority issued by the commissioner shall be transferred to a third party except upon approval by the commissioner.

(e) No holder of a certificate of authority shall enter into a contract with a third party for management of the facility unless the commissioner is notified of such contract.

(f) If a provider: (1) draws upon its entrance fee escrow in an amount greater than provided for in Section 8 of this Act; (2) draws upon its reserve fund escrow in an amount greater than provided for in Section 9 of this Act; or (3) engages in a wilful and intentional violation of this Act, the commissioner, after notice and hearing, may suspend or revoke the provider's certificate of authority, in addition to any other remedies provided for in this Act.

(g) The commissioner shall issue a certificate of authority to any facility which is occupied by one or more residents on September 1, 1987, which is under construction on September 1, 1987, or which, prior to September 1, 1987, had incurred substantial financial obligations related to the development of a facility. Such certificates shall be subject to revocation or suspension as provided for in this section.

SECTION 5. PRECONTRACTUAL RECORDING REQUIREMENTS. (a) Before a provider contracts to provide continuing care in a facility located or to be located in this state, or extends the term of an existing contract to provide continuing care, whether or not the extended contract requires an entrance fee, in such a facility that requires or permits the payment of an entrance fee to any person, or before a provider or a person acting on a provider's behalf solicits a continuing care contract in this state for an individual who resides in this state at the time of the solicitation, the provider must file with the board:

(1) a current disclosure statement that meets the requirements of Section 6 of this Act; and

(2) copies of the agreements establishing the escrows described in Sections 8 and 9 of this Act or a verified statement of why an escrow is not required.

(b) A contract to provide continuing care is solicited in this state if, during the 12-month period preceding the date on which the contract is signed or accepted by either party, information concerning the facility or the availability of the contract is given:

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

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

SECTION 6. DISCLOSURE STATEMENT. (a) Before the execution of a contract to provide continuing care, or before the transfer of the entrance fee to a provider by, or on behalf of, a prospective resident, whichever occurs first, the provider must deliver a current disclosure statement to the person with whom the contract is to be made. The text of the disclosure statement must include the information required under this section.

(b) The disclosure statement must include 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. If the provider is not an individual, it must include the names and business addresses of each officer, director, trustee, managing or general partner, and any person who has at least a 10 percent interest in the provider, together with a description of that person's interest in or occupation with the provider.

(c) 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 disclosure statement must include:

(1) a description of any business experience in the operation or management of similar facilities that the person possesses;

(2) the name and address of any professional service, firm, association, trust, partnership, or corporation in which the person has, or which has in that person, at least a 10 percent interest and that proposes to provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of at least \$500 in any one year, including a description of the goods, leases, or services, and their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot presently be estimated; and

(3) a description of any matter in which the person:

(A) has been convicted of a felony or pleaded nolo contendere to a felony charge, or has 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

(B) is subject to an injunction or restrictive order of a court of record, or has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to any business activity in a health care field, including actions affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this Act or to a similar Act in another state.

(d) The disclosure statement must state whether or not the provider is affiliated with a religious, charitable, or other nonprofit organization and must describe the extent of that affiliation, if any. If the provider is affiliated with such an organization, the disclosure

statement must explain the extent to which the organization is responsible for the financial and contractual obligations of the provider, and must cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax.

(e) The disclosure statement must provide the location and a description of the physical property of the facility, either existing or proposed. If proposed, the disclosure statement must list the estimated completion date, whether or not construction was begun, and any contingencies under which construction may be deferred.

(f) The disclosure statement must describe the services provided at the facility under a contract for continuing care, including the extent to which medical care is furnished, and must clearly describe which services are included for specified basic fees for continuing care and which are made available at extra charge. The disclosure statement must include a description of all fees required of residents, including the entrance fee and any periodic charges.

(g) The disclosure statement must state:

(1) the policy of the facility regarding changes in the number of people residing in the living unit, either because of marriage or other relationships, and a statement of the terms relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(2) the policy of the facility regarding the circumstances under which a resident is permitted to remain in the facility in the event of any financial difficulties of that resident;

(3) the conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident;

(4) the conditions, if any, under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or by the resident, or in the event of the death of the resident before or during occupancy of a living unit;

(5) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(6) the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on those adjustments.

(h) The disclosure statement must describe the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the contract for continuing care and the date of initial occupancy of a living unit by that individual.

(i) The disclosure statement must describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a contract to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which those funds will be invested, and the name and experience of any individual in the direct employment of the provider who will make the investment decisions.

(j) The disclosure statement must provide financial statements of the provider, including a balance sheet as of the end of the most recent fiscal year, and the provider's income statements for the three most recent fiscal years or, if the provider has not been in existence for that long, for the period that the provider has been in existence.

(k) If operation of the facility has not yet begun, the disclosure statement must include a statement of the anticipated source and application of the funds 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 costs such as financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;

(2) a description of any mortgage loan or other long-term financing arrangement used for the financing of the facility, including the anticipated terms and costs of that financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a contract for the provision of continuing care.

(l) The disclosure statement must contain estimated 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 income statement required under Subsection (j) of this section or, if operation of the facility has not begun, consistent with the statement of anticipated source and application of funds required under Subsection (k) of this section;

(2) anticipated earnings on any cash reserves;

(3) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Subsection (k) of this section, less estimated entrance fee refunds, including a description of the actuarial basis and method of calculation for the projection of entrance fee receipts;

(4) an estimate of gifts or bequests, if any are relied on to meet operating expenses;

(5) a projection of estimated income from fees and charges other than entrance fees that states individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the contract for continuing care;

(6) a projection of the facility's estimated operating expenses, including a description of the assumptions used in calculating the expenses, and any separate allowances 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 arrangement relating to the facility.

(m) The provider may include in the disclosure statement any other material information concerning the facility or the provider that the provider wishes to include.

(n) The cover page of the disclosure statement must state, in a prominent location and in boldfaced type, the date of the disclosure statement, and must include a statement that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this Act but that the disclosure statement has not been approved by any government agency or representative to ensure accuracy of the enclosed information.

(o) A copy of the standard contract form used by the provider must be attached as an exhibit to each disclosure statement. Each contract must include the following statement in boldfaced type providing that the person who contracts with the provider may rescind the contract not later than the seventh day after the date on which the contract is executed or a disclosure statement that meets the requirements of this section is received, whichever occurs later: "You may cancel this contract at any time prior to midnight of the seventh day after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit." The contract must also include a statement in boldfaced type as follows: "This document, if executed, constitutes a legal and binding contract between you and _____ . You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding." If the contract is rescinded pursuant to this subsection, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a

living unit was actually occupied by the resident, must be returned in full within 30 days. The resident to whom the contract applies may not be required to move into the facility before the expiration of the seven-day period.

(p) If a resident dies before occupying a living unit in the facility, or if, because of illness, injury, or incapacity, a resident 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 is entitled to a refund of all money or property transferred to the provider, less any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident, and a reasonable service charge, if set out in the contract, not to exceed the greater of \$1,000 or two percent of the entrance fee.

(q) No provider shall engage in any type of advertisement for a continuing care contract or facility which contains any statements or representations in conflict with the disclosures required under this section.

SECTION 7. ANNUAL DISCLOSURE STATEMENT REVISION. (a) Not later than the 120th day after the end of the provider's fiscal year, the provider must file a revised disclosure statement with the board that revises, as of the end of the fiscal year, the information required under Section 6 of this Act. The revised disclosure statement must include a statement describing any material differences between:

- (1) the estimated income statements filed under Section 6(k) of this Act as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and
- (2) the actual result of operations during that fiscal year together with the revised estimated income statements filed as a part of the revised disclosure statement.

(b) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the opinion of the provider, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement. Only the most recently filed disclosure statement is current for purposes of this Act or may be delivered under Section 6 of this Act.

(c) The commissioner shall review the disclosure statement for completeness but shall not be required to review the disclosure statement for accuracy.

SECTION 8. ENTRANCE FEE ESCROW. (a) Before making a contract for the provision of continuing care, the provider must establish an entrance fee escrow account. The escrow account must be established with a bank or trust company that is located in this state as escrow agent. The provider shall deposit with the escrow agent each entrance fee and each portion of an entrance fee received by the provider from or on behalf of a resident not later than 72 hours after the fee is received by the provider.

(b) Unless the escrow agent has received a prior written request for the return of an entrance fee under Section 6(o) of this Act, from or on behalf of a payee, resident, or a resident's personal representative, the fee shall be released to the provider, placed in a reserve fund escrow, or returned to the payee as provided by this section.

(c) Except as provided by Subsection (d) of this section, any entrance fee held in escrow shall be released to the provider when:

- (1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by uncanceled executed contracts for the provision of continuing care to those residents, and the receipt by the escrow agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each contract;

(2) aggregate entrance fees received or receivable by the provider under binding contracts for continuing care, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3) of this subsection, plus funds from other sources in the actual possession of the provider, are equal to not less than 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility, plus not less than 90 percent of the funds estimated, in the

statement of anticipated source and application of funds included in the current disclosure statement on file under Section 5 of this Act, to be necessary to cover initial losses of the facility plus not less than 90 percent of the amount of any reserve fund escrow required to be maintained by the provider under Section 9 of this Act; 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 included in the current disclosure statement on file under Section 5 of this Act, and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility and either:

(A) if construction of the facility has not been substantially completed:

(i) all necessary governmental permits or approvals have been obtained;

(ii) a maximum price contract has been entered between the provider and the general contractor responsible for construction of the facility;

(iii) a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations arising under the contract has been executed in favor of the provider by a recognized surety authorized to do business in this state;

(iv) a loan agreement has been entered by the provider for an interim construction loan in an amount which, when combined with the amount of entrance fees in escrow under the provisions of this section plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) not less than 10 percent of the amount of the construction loan has been disbursed by the lender for physical construction or completed site preparation work; and

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

(B) 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 that has authority to issue those permits and, if the entrance fee applies to a living unit which has been previously occupied, the living unit is available for occupancy by the new resident.

(d) The aggregate amount of entrance fees that may be released to the provider under Subsection (c) of this section before the date on which the reserve fund escrow required by Section 9 of this Act is first established may not exceed an amount equal to the aggregate number of entrance fees received or receivable by the provider under binding contracts for continuing care less the amount of entrance fees received or receivable that are required to be maintained initially in the reserve fund escrow.

(e) If an entrance fee to which this section applies is not released to the provider or placed in the reserve fund escrow not later than 36 months after the date on which any portion of the entrance fee is received by the provider, or within a greater time specified by the provider in the disclosure statement delivered to the persons with whom the contract for continuing care to which the entrance fee pertains was made, the escrow agent shall return the fee to the person who paid it to the provider.

(f) This section does not require the escrow of any nonrefundable application fee that does not exceed an amount equal to two percent of the entrance fee, and that is clearly designated as nonrefundable in the contract for continuing care.

(g) Unless otherwise provided in the contract for continuing care, interest accrued on entrance fee funds held in escrow is the property of the provider.

SECTION 9. RESERVE FUND ESCROW. At the time a facility is first occupied by a resident, the provider shall establish and maintain, in escrow with a bank or trust company that is located in this state as escrow agent, a portion of all entrance fees received by the provider in an aggregate amount equal to the total of all principal and

interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The reserve fund escrow amount required under this section at the option of the facility may be computed to exclude the portion of principal and interest payments applicable to any licensed nursing home portion of the facility. The funds in the escrow account may be invested, with earnings payable to the provider. If the provider requests a release in writing, the escrow agent may release an amount equal to not more than one-twelfth of the original principal balance of the escrow account. Such a release of funds may not be made more than once during any calendar year, and may be made only after the escrow agent has given written notice to the board at least 10 days before the release.

SECTION 10. LIEN. (a) To secure the obligations of the provider under existing and future contracts for continuing care, a lien attaches on the date a facility is first occupied by a resident. The lien covers the real and personal property of the provider located at that facility. The commissioner may remove the lien upon request of the provider for the purposes of secondary financing or refinancing of the facility, provided that the facility is financially sound and removal of the lien will not adversely affect the residents.

(b) The lien is subordinate to the lien of any first mortgage on the real property of the facility if the proceeds of the loan secured by the first mortgage were used in whole or in part to construct or acquire the facility, or to refinance an earlier loan used for the construction or acquisition of the facility.

(c) A lien under this section is effective for 10 years.

(d) The lien may be foreclosed on application of the board on the liquidation of the facility, or on the insolvency or bankruptcy of the provider. In the event of foreclosure, the proceeds shall be used for full or partial satisfaction of the provider's obligations under contracts for continuing care in effect on the foreclosure date.

SECTION 11. SUPERVISION. If a provider requests release of more than one-twelfth of the reserve fund escrow required by Section 9 of this Act or requests release of that reserve fund more than once in a 12-month period; or the commissioner determines, on complaint and investigation, that a provider is unable to meet the income or available cash projections previously filed by the provider, in such a manner as endangers the ability of the provider fully to perform its obligations under contracts for continuing care; or the provider is bankrupt or insolvent or has filed for protection from creditors under any federal or state reorganization, bankruptcy, or insolvency law, the commissioner may place the provider or facility into supervision. The supervisor shall be appointed by the commissioner. The commissioner may provide that the facility shall not do any or all of the following things during the period of supervision, without the prior approval of the commissioner or his supervisor:

- (1) dispose of, convey, or encumber any of its assets;
- (2) withdraw any of its bank accounts;
- (3) lend any of its funds;
- (4) invest any of its funds;
- (5) transfer any of its property;
- (6) incur any debt, obligation, or liability; or
- (7) merge or consolidate with another facility.

Upon a determination that the facility placed under supervision is capable of meeting its financial obligations, the commissioner shall terminate the supervision and restore to the provider the authority to manage the affairs of the facility. The costs of the supervisor shall be borne by the facility or provider.

SECTION 12. REHABILITATION OR LIQUIDATION. (a) If the commissioner elects not to place a facility into supervision, the commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if:

(1) the provider requests release of more than one-twelfth of the reserve fund escrow required by Section 9 of this Act or requests release of that reserve fund more than once in a 12-month period;

(2) the board determines, on complaint and investigation, that a provider is unable to meet the income or available cash projections previously filed by the provider, in such a manner as endangers the ability of the provider fully to perform its obligations under contracts for continuing care; or

(3) the provider is bankrupt or insolvent or has filed for protection from creditors under any federal or state reorganization, bankruptcy, or insolvency law.

(b) An order to rehabilitate a facility shall direct the trustee to take possession of the property of the provider to conduct the business, including employing any managers or agents the trustee considers necessary, and take action as directed by the court for elimination of the causes and conditions that made rehabilitation necessary.

(c) If the court finds, on petition of the trustee or the 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, creditors, owners of the facility, or the public, the court may terminate the rehabilitation and by order return the facility and its assets and affairs to the provider's management. The court may enter the order after a full report and accounting of the conduct of the facility's affairs during the rehabilitation, and after a report on the facility's financial condition.

(d) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court for an order of liquidation.

(e) On application of the board, an order to liquidate the facility may be issued by a court that has jurisdiction, whether or not there is a prior order to rehabilitate the facility. The court shall appoint a trustee to collect and liquidate all of the provider's assets located within this state. On the entry of an order to liquidate a facility, additional contracts for the provision of continuing care at that facility may not be made by any person.

(f) In connection with any application for an order to rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted with the provider for continuing care at the facility may be best served. In furtherance of this objective, the proceeds of any lien imposed by Section 10 of this Act may be used in full or partial payment of entrance fees to other facilities in compliance with the provisions of this Act, on behalf of residents of the facility being liquidated.

(g) An order for rehabilitation under this section may be refused or vacated if the provider posts a bond issued by a recognized surety authorized to do business in this state and executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider, or to other damages, if the provider is unable to fulfill its contracts to provide continuing care at the facility. The bond must be in an amount determined by the court to be equal to the reserve funding otherwise needed to fulfill those obligations.

(h) The reasonable costs, expenses, and fees of the trustee shall be paid out of the assets of the facility.

SECTION 13. RESIDENTS' RIGHTS. Each resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care is entitled to all statutory rights provided to nursing home, personal care, or custodial care residents.

SECTION 14. FACILITY REGULATION. A facility regulated under this Act is licensed for purposes of Section 151.314, Tax Code.

SECTION 15. CIVIL LIABILITY. (a) Any provider who contracts to provide continuing care without complying with the disclosure statement requirements of Section 6 of this Act, or who contracts to provide continuing care with a person who has relied on a disclosure statement that omits a material fact required to be stated in the disclosure statement or necessary in order to make the statement accurate, is liable to the person

contracting for the continuing care for actual damages and repayment of all fees paid to the provider, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered before discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments, court costs, and reasonable attorney's fees.

(b) Liability under this section exists whether or not the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer or a refund of all amounts paid to the provider, facility, or person violating this Act together with reasonable interest from the date of payment, less the reasonable value of care and lodging provided before the receipt of the offer, if the offer recited the provisions of this section and the recipient of the offer failed to accept the offer not later than the 30th day after the date the offer was received.

(d) An action may not be maintained to enforce a liability created under this Act unless brought not later than three years after the date on which the contract for continuing care was entered or three years after the violation, misstatement, or omission is discovered or reasonably should have been discovered.

(e) Except as expressly provided in this Act, civil liability in favor of a private party does not arise against a person by implication from or as a result of the violation of this Act or a rule or order adopted under this Act. This Act does not limit a liability that would exist under any other statute or under common law if this Act were not in effect. The provisions of this Act are not exclusive. The remedies provided in this Act are in addition to any other procedures or remedies provided for in any other law.

SECTION 16. INVESTIGATION AND SUBPOENAS. (a) The commissioner may conduct examinations or investigations as necessary to determine whether any person has violated or is about to violate any provision of this Act to aid in the enforcement of this Act, to determine the financial solvency of a facility, or to verify statements contained in any disclosure statement filed or delivered under this Act.

(b) For the purpose of any investigation or proceeding under this Act, the board may require or permit any person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated.

(c) For the purpose of any investigation or proceeding under this Act, the board may administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant or material to the inquiry. If the person to whom a subpoena is directed fails to comply, the board may bring suit in district court to enforce the subpoena.

(d) If a facility's contracts offer future guarantees of long-term nursing care which develop current actuarial liabilities, such facility within 12 months of the effective date of this Act shall file with the commissioner its most recent actuarial review. Subsequent actuarial reviews shall be filed at five-year intervals from the date of completion of the initial actuarial review required to be filed under this section. If such a facility does not have an actuarial review which has been performed within five years prior to the effective date of this Act, such facility within 12 months of the effective date of this Act shall complete and file such an actuarial review. Subsequent actuarial reviews shall be filed at five-year intervals from the date of the filing of the initial actuarial review required pursuant to this section.

SECTION 17. CEASE AND DESIST ORDERS AND INJUNCTIONS. If the board determines, on complaint or otherwise, that any person is engaging in any act or practice that constitutes a violation of this Act or any order made under this Act, the board may request that the attorney general bring an action to prohibit those acts or practices and to order compliance with this Act. An injunction or restraining order may be granted on a proper showing and shall be issued without bond. An action may be commenced in the district court of a county in which the defendant resides, has his principal place of business or has done business, or in the county in which the transaction occurred.

SECTION 18. PENALTY. A person who wilfully and knowingly violates this Act commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 19. REPEAL. Chapter 104, Human Resources Code, is repealed.

SECTION 20. TRANSITION. (a) A provider who operates a continuing care facility that is in existence on the effective date of this Act must comply with the disclosure and escrow requirements imposed under this Act as provided by this section.

(b) A provider subject to Subsection (a) of this section must file annual revised disclosure statements with the board as provided by Section 7 of this Act beginning with a statement that covers the provider's most recent fiscal year that begins on or after September 1, 1987.

(c) A provider subject to Subsection (a) of this section must comply with the escrow requirements imposed under Sections 8 and 9 of this Act not later than September 1, 1990. If the commissioner determines that a provider subject to Subsection (a) of this section is unable to comply with this section after making a good faith effort to do so, the commissioner may extend the time for compliance for a reasonable period of time.

(d) Failure to comply with the requirements of this section constitutes a criminal offense under Section 18 of this Act.

SECTION 21. LIMITATION ON JURISDICTION OF THE BOARD. The commissioner shall have no jurisdiction, authority, or duty to regulate or in any manner inquire into the quality of care provided in a facility.

SECTION 22. FEES. Each facility filing an application for a certificate of authority other than an application filed pursuant to Section 4(g) of this Act shall pay to the commissioner a fee of \$10,000. Each facility filing an application for a certificate of authority pursuant to Section 4(g) shall pay to the commissioner a fee of \$500 plus a fee of \$2 per living unit in the facility, excluding any units devoted to a licensed nursing home portion. Each facility filing an annual disclosure statement shall pay to the commissioner a filing fee of \$500 plus a fee of no more than \$2 per living unit in the facility, excluding any units devoted to a licensed nursing home portion. The commissioner shall reduce the annual filing fees if the cumulative amount of such fees exceeds the actual cost of regulation.

SECTION 23. EFFECTIVE DATE. Except as provided by Section 20 of this Act, this Act takes effect September 1, 1987, and applies to a contract for continuing care that is entered on or after that date.

SECTION 24. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 28, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 677 on May 22, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 20, 1987, by a viva-voce vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.