House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 91

HOUSE BILL 2331

AN ACT

AMENDING SECTIONS 20-1801, 20-1802, 20-1803, 20-1804, 20-1805, 20-1807 AND 20-1808, ARIZONA REVISED STATUTES; RELATING TO LIFE CARE CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

20-1801. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

~~8.~~ 9. "Manager" means a corporation, partnership, association, joint stock company, trust, or any other unincorporated organization which is contracted with to manage the residential section or health related section, or both, of a life care facility.

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

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

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

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

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

20-1802. Permit required; application; definition

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

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

1. The name and business address of the applicant.

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

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

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

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

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

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

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

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

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

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

12. A statement of any periodic rates to be initially paid by residents AND CONTRACT HOLDERS, the method by which the rates are determined and the manner by which the provider may adjust the rates in the future. If the facility is already in operation, or if the provider operates one or more similar facilities within this state, the statement must include tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or any shorter period as the facility may have been operated by the provider. IF A PROVIDER IS PROVIDING SERVICES TO A CONTRACT HOLDER IN THE PERSON'S RESIDENCE, THE STATEMENT MUST INCLUDE THE FREQUENCY AND AVERAGE DOLLAR AMOUNT OF EACH INCREASE IN PERIODIC RATES FOR CONTRACT HOLDERS FOR THE PREVIOUS FIVE YEARS OR ANY SHORTER PERIOD AS THE PROVIDER HAS BEEN PROVIDING SERVICES TO CONTRACT HOLDERS IN THEIR PRIVATE RESIDENCES.

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

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

(a) An estimate of the cost of purchasing or constructing and equipping the facility including 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 before the commencement of operations.

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

(c) 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.

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

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

16. A feasibility study that shall include a financial forecast of the life care facility estimating the most probable financial position, results of operations and changes in financial position for the immediately succeeding five year period. The feasibility study must set forth the actuarial assumptions for determining that the project has sufficient revenues and funds, including reserves, for the project to continue as a viable operating concern. The study must include all of the following:

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

(b) Anticipated earnings on cash reserves.

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

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

(e) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged,

including a description of the assumptions used for calculating the effect on the income of the facility of subsidized health services to be provided pursuant to the life care contracts.

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

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

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

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

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

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

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

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

G. Nothing in this article requires the director to determine the actual financial condition of any life care contract provider. The approval

of a permit indicates only that the entity appears to be financially viable based on the information provided to the director.

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

Sec. 3. Section 20-1803, Arizona Revised Statutes, is amended to read:

20-1803. Issuance of permit

A. The director shall review applications for completeness and issue a report of deficiencies to the applicant within sixty days of receipt of the application. The director shall issue a permit to the provider within thirty days of the receipt of a completed application and exhibits and payment of the fee by the applicant, and proof of compliance by the applicant with the provisions of sections 20-1804 and 20-1806. If the applicant has already paid the fee as a part of the process to receive a provisional permit under subsection E of this section, this subsection does not establish an additional fee. The director shall issue an order refusing the permit if the applicant does not meet the requirements therefor. The permit shall be subject to the conditions imposed pursuant to sections 20-1804 through 20-1806 allowing the provider to enter into life care contracts with respect to the number of living units and facility AND THE NUMBER OF CONTRACT HOLDERS TO BE PROVIDED SERVICES IN THEIR PRIVATE RESIDENCES described in the application.

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

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

D. All permits shall be nontransferable.

E. The director shall review an application for a provisional permit for completeness and issue a report of deficiencies to the applicant within sixty days of receipt of the application. The director may grant an applicant a provisional permit within thirty days of the receipt of a completed application and exhibits and payment of the fee by the applicant if the applicant has submitted an application containing the information required in ~~paragraphs 1 through 15 of subsection B of~~ section 20-1802, SUBSECTION B, PARAGRAPHS 1 THROUGH 15. Under the provisional permit, the applicant may solicit reservations for residences in the facility AND RESERVATIONS FOR THE PROVISION OF SERVICES IN PRIVATE RESIDENCES and collect deposits therefor. The applicant shall establish a trust account in which all reservation deposits shall be placed. The person entering into the contract for a reservation may rescind the agreement at any time prior to

entering into the life care contract. In the event the reservation agreement is rescinded, all money or property, including accrued interest thereon, shall be returned to the person.

Sec. 4. Section 20-1804, Arizona Revised Statutes, is amended to read:

20-1804. Entrance fee escrow

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

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

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

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

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

(b) 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 permit application, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied.

(c) Aggregate entrance fees received or receivable by the provider pursuant to binding life care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety per cent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than ninety per cent 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 and assure full performance of the obligations of the provider pursuant to life care contracts.

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

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

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

Sec. 5. Section 20-1805, Arizona Revised Statutes, is amended to read:

20-1805. Recording of lien by director

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

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

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

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

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

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

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

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

F. In a civil action filed pursuant to this section, the judgment shall be given in favor of each resident AND CONTRACT HOLDER having a lien who has joined in the foreclosure action for the amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident AND CONTRACT HOLDER. The court shall order the sheriff to sell any property subject to the lien at the time judgment is given, in the same manner as real and personal property is sold on execution. The lien for the reasonable value of services to be performed under a life care contract shall be on equal footing with claims of other residents AND CONTRACT HOLDERS. If a sale is ordered and the property sold and the proceeds of the sale are not sufficient to discharge all liens of residents AND CONTRACT HOLDERS against the property, the proceeds shall be prorated among the respective residents AND CONTRACT HOLDERS.

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

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

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

Sec. 6. Section 20-1807, Arizona Revised Statutes, is amended to read:

20-1807. Annual report; civil penalty

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

B. A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the annual report from containing a

material misstatement of fact or omitting to state a material fact required to be stated.

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

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

(a) Immediately on the substitution or installation of a member of the board of directors or an officer, trustee or managing partner different from the information disclosed in the provider's application or submission pursuant to subdivision (b).

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

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

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

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

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

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

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

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

A. The provider shall possess assets in the first year of operation equal to at least seventy-five per cent of the unamortized endowment fees plus all other liabilities including long-term debt. The unamortized endowment fees shall be based on life expectancy of purchasers. Thereafter, the provider shall at all times possess assets in an amount sufficient to

assure full performance of the obligations of the provider pursuant to life care contracts including any reserve fund escrow required by the director pursuant to section 20-1806.

B. If revenues or funds including reserves are inadequate or projected to be inadequate pursuant to the annual report or an actuarial report or if the provider does not meet the requirements of subsection A of this section, the director may employ an independent management consultant experienced in the operation of life care facilities, at the expense of the provider, who shall examine the financial structure and operations of the provider and make recommendations on remedial action to the director. The director shall not be bound by such recommendations.

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

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

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

1. Take possession of and preserve, protect and recover any assets, books and records or property of the provider, including claims or causes of action belonging to or which may be asserted by the provider and to deal with such property in his own name in the capacity as director, and purchase at

any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which it may have an interest.

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

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

4. Pay all expenses of the rehabilitation.

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

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

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

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

9. Perform all duties of the provider.

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

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

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

G. The director, or any interested person upon due notice to the director, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceeding have been fully 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, and to the public. An order terminating the rehabilitation proceeding shall be based upon a full report and accounting by the director of the conduct of the provider's officers during the rehabilitation and of the provider's current financial condition.

H. If at any time the director deems that further efforts to rehabilitate the provider would be useless, he may report to the court and apply for an order of liquidation and dissolution pursuant to title 10, chapter 14, article 3, if a corporation, or may apply for other appropriate relief for dissolving the provider and winding up its affairs. An order directing the liquidation or dissolution of the provider shall act as a revocation of the provider's permit issued pursuant to section 20-1803.

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

APPROVED BY THE GOVERNOR APRIL 17, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2014.

Passed the House March 5, 2014

by the following vote: 57 Ayes,

0 Nays, 2 Not Voting

1 excused

Speaker of the House

Chief Clerk of the House

Passed the Senate April 15, 2014

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

16 day of April, 2014

at 11:50 o'clock A M.

Secretary to the Governor

Approved this 17th day of

April

at 10:54 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 18th day of April, 2014

at 8:10 o'clock A M.

Secretary of State

H.B. 2331