

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Malone**

# A Bill

**SENATE BILL 512**

## For An Act To Be Entitled

8 "AN ACT TO REQUIRE LIFE CARE PROVIDERS TO OBTAIN A  
9 LICENSE; TO ESTABLISH REQUIREMENTS FOR APPLICATION; AND  
10 FOR OTHER PURPOSES."

## Subtitle

13 "AN ACT TO REQUIRE LIFE CARE PROVIDERS TO OBTAIN A  
14 LICENSE."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. As used in this act:

19 (1) "Commissioner" means the Insurance Commissioner of this state;

20 (2) "Life care" means continuing care as defined in Arkansas Code §23-  
21 93-103(2) except that no additional charges are made for nursing care or  
22 personal care services beyond those charged all residents of the facility who  
23 are not receiving nursing care or personal care services;

24 (3) "Department" means the Insurance Department of this state;

25 (4) "Entrance fee" means a payment that assures a resident a place in a  
26 facility for a term of years or for life;

27 (5) "Facility" means a place which provides life care;

28 (6) "Living unit" means a room, apartment, cottage, or other area  
29 within a facility set aside for the exclusive use or control of one (1) or  
30 more identified individuals;

31 (7) "Nursing care" means those services pertaining to the curative,  
32 restorative, and preventive aspects of nursing services that are performed by  
33 or under the supervision of a registered or licensed nurse. Nursing care does  
34 not include general health service such as nutritional counseling, exercise  
35 programs, or other preventive medicine techniques;

1           (8) "Personal care services" means assistance with meals, dressing,  
2 movement, bathing, or other personal needs of maintenance or other direct  
3 supervision and oversight of the physical and mental well being of a person.  
4 Personal care services does not include general health services such as  
5 nutritional counseling, exercise programs, or other preventive medicine  
6 techniques;

7           (9) "Provider" means the owner or operator, whether a natural person,  
8 partnership, or other incorporated association, trust, or corporation whose  
9 owner or operator undertakes to provide life care for a fee, whether fixed or  
10 variable, for the period of care. The fee may be payable in lump sum, or lump  
11 sum and monthly maintenance charges, or in installments;

12           (10) "Refund reserve" means the actuarially determined annual refund  
13 amount required to be maintained by a life care provider for service of its  
14 refund amounts during the next fiscal year of the facility;

15           (11) "Resident" means an individual entitled to receive life care in a  
16 facility;

17           (12) "Solicit" means all actions of a provider in seeking to have  
18 individuals residing in this state pay an application fee and enter into a  
19 life care agreement by any means such as, but not limited to, personal,  
20 telephone, or mail communication or any other communication directed to and  
21 received by any individual in this state and any advertisements in any media  
22 distributed or communicated by any means to individuals in this state.

23           (13) "Hazardous financial condition" means a provider is insolvent or  
24 in eminent danger of becoming insolvent.

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26           SECTION 2. In addition to the provisions of this act, life care  
27 providers shall be subject to the provisions of the "Continuing Care Provider  
28 Regulation Act," Arkansas Code §§23-93-101, et seq.

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30           SECTION 3. No life care provider shall be established, conducted or  
31 maintained in this state without obtaining a license from the commissioner,  
32 except life care providers established prior to the effective date of this act  
33 shall be licensed without application or payment of a fee.

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35           SECTION 4. No license is transferable, and no license issued pursuant

1 to this act has value for sale or exchange as property. No provider or other  
2 owning entity shall sell or transfer ownership of the facility, or enter into  
3 a contract with a third party provider for management of the facility, unless  
4 the department approves such transfer or contract.

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6 SECTION 5. (a) An application for a license shall consist of a  
7 statement containing the items set forth in this act together with a filing  
8 fee in the amount of four hundred dollars (\$400) plus forty dollars (\$40.00)  
9 per living unit made payable to the State Treasurer. In the event living  
10 units are added during the application process, an additional fee of forty  
11 dollars (\$40.00) per living unit shall be paid.

12 (b) Upon receipt of the complete application for a license, the  
13 department shall within ten (10) business days, issue a notice of filing to  
14 the applicant. Within ninety (90) days of the notice of filing, the  
15 department shall enter an order issuing the license or rejecting the  
16 application.

17 (c) If the commissioner determines that any of the application  
18 requirements have not been met, the commissioner shall notify the applicant  
19 that the application must be corrected within thirty (30) days in those  
20 particulars designated by the commissioner. If the requirements are not met  
21 within the time allowed, the commissioner may enter an order rejecting the  
22 application, which order shall include the finding of fact upon which the  
23 order is based and which shall not become effective until twenty (20) days  
24 after the end of the thirty (30) day period. During the twenty (20) day  
25 period the applicant may petition for reconsideration and is entitled to a  
26 hearing.

27 (d) If a facility is accredited by a process approved by the  
28 commissioner as substantially equivalent to the requirements of this act, then  
29 the facility shall be deemed to have met the requirements of this act and the  
30 commissioner shall issue a license to the facility.

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32 SECTION 6. (a) The application for a license shall contain the  
33 following documents and information:

34 (1) An irrevocable appointment of the Department to receive  
35 service of any lawful process in any proceeding arising under this act

1 against the provider or his agents;

2           (2) The states or other jurisdictions, including the federal  
3 government, in which an application for certification or similar documents for  
4 the subject facility have been or will be filed and any order, judgment or  
5 decree entered in connection therewith by the regulatory authorities in each  
6 of the jurisdictions or by any court or administrative body thereof;

7           (3) The names and business addresses of the officers, directors,  
8 trustees, managing or general partners and any person having a ten percent  
9 (10%) or greater equity or beneficial interest in the provider and a  
10 description of that person's interest in or occupation with the provider;

11           (4) Copies of the articles of incorporation, with all amendments  
12 thereto, if the provider is a corporation; copies of all instruments by which  
13 the trust is created or declared, if the provider is a trust; copies of the  
14 articles of partnership or association and all other organization papers, if  
15 the provider is organized under another form. In the event the provider is  
16 not the legal title holder to the property upon which the facility is or is to  
17 be constructed, the above documents shall be submitted for both the provider  
18 and the legal title holder;

19           (5) A legal description by metes and bounds or other acceptable  
20 means of the lands to be certified, and the relationship of such lands to  
21 existing streets, roads and other improvements, together with a map showing  
22 the proposed or actual facility and showing the dimensions of the living units  
23 as available, except for living units that are completed and available for  
24 inspection. The map shall be drawn to scale, signed and sealed by a licensed  
25 professional engineer or land surveyor;

26           (6) Copies of the deed or other instrument establishing title of  
27 the provider and a title search, title report or title certificate or binder  
28 or policy issued by a licensed title insurance company;

29           (7) A statement concerning any litigation, orders, judgments or  
30 decrees which might affect the offering;

31           (8) A statement that the life care agreements will be offered to  
32 the public and entered into without regard to marital status, sex, race, creed  
33 or national origin or, if not, any legally permissible restrictions on  
34 purchase that will apply;

35           (9) A statement of the present conditions of physical access to

1 the facility, and the existence of any material adverse conditions that affect  
2 the facility, that are known, should be known or are readily ascertainable;

3 (10) Copies of all contracts and agreements which the resident may  
4 be required to execute;

5 (11) In the event there is or will be a blanket encumbrance  
6 affecting the facility or a portion thereof, a copy of the document creating  
7 it and a statement of the consequences upon a resident of a failure of the  
8 person bound to fulfill the obligations under which the instrument and the  
9 manner in which the interest of the resident is to be protected in the event  
10 of such eventuality;

11 (12) One (1) copy of the proposed disclosure statement required  
12 under Arkansas Code §23-93-106;

13 (13) A current financial statement of the provider and any related  
14 predecessor, parent or subsidiary company, including but not limited to a  
15 current profit and loss statement and balance sheet audited by an independent  
16 public accountant;

17 (14) A statement concerning any adjudication of bankruptcy during  
18 the last five (5) years against the provider, its predecessor, parent or  
19 subsidiary company and any principal owning more than ten percent (10%) of the  
20 interests in the facility at the time of the filing of the application for  
21 certification. This requirement shall not extend to limited partners or those  
22 whose interests are solely those of investors;

23 (15) Copies of all easements and restrictions, whether of record  
24 or not;

25 (16) A statement as to the status of compliance with all the  
26 requirements of all laws, ordinances and regulations of governmental agencies  
27 having jurisdiction over the construction, permitting and licensing of the  
28 facility together with copies of all necessary federal, state, county and  
29 municipal approvals;

30 (17) A statement that neither the provider nor any of its officers  
31 or principals have ever been convicted of a crime in this state or a foreign  
32 jurisdiction, and that the provider has never been subject to any permanent  
33 injunction or final administrative order restraining a false or misleading  
34 promotional plan involving continuing care facility disposition or if so,  
35 copies of all pleadings and orders in regard thereto;

1           (18) A projected annual budget for the facility for the next five  
2 (5) years or such lesser time as the department allows;

3           (19) Copies of market studies, if any, prepared on behalf of the  
4 provider, concerning the feasibility of the project;

5           (20) An affidavit, signed by the provider, that the contents of  
6 the application are true and accurate and made in good faith; and

7           (21) Such other additional information as the department may  
8 require in individual cases after review of an application for certification  
9 to assure full and fair disclosure.

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11           SECTION 7. The department shall issue a license upon its affirmative  
12 determination that all of the following requirements have been met:

13           (1) The provider can fulfill its obligation under the life care  
14 contract if the resident complies with the terms of the offer;

15           (2) There is reasonable assurance that all proposed improvements can be  
16 completed as represented;

17           (3) The provider, its officers and/or principals have not been  
18 convicted of a crime in the state, the United States or any other state or  
19 foreign country within the past ten (10) years, the seriousness of which in  
20 the opinion of the department warrants the denial of a permit;

21           (4) The provider, its officers and/or principals have not been subject  
22 to any permanent injunction or final administrative order restraining a false  
23 or misleading plan involving a facility disposition, the seriousness of which  
24 in the opinion of the department warrants the denial of a permit; and

25           (5) The disclosure statement requirements of Arkansas Code §§ 23-93-  
26 101, et seq. have been satisfied.

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28           SECTION 8. (a) The license of a provider shall remain in effect until  
29 revoked after notice and hearing, upon written finding of fact by the  
30 department, that the provider has:

31           (1) Willfully violated any provision of this act, or any  
32 regulation promulgated thereunder;

33           (2) Failed to file an annual disclosure statement or standard  
34 form of contract as required by Arkansas Code §§ 23-93-101, et seq.;

35           (3) Delivered to a prospective resident a disclosure statement

1 that makes an untrue statement or omits a material fact and the provider, at  
2 the time of the delivery of the disclosure statement, had actual knowledge of  
3 the misstatement or omission;

4           (4) Failed to comply with the terms of a cease and desist order  
5 issued pursuant to Arkansas Code § 23-93-104;

6           (5) Has been determined by the department to be in a hazardous  
7 financial condition.

8           (b) Findings of fact in support of revocation shall be accompanied by  
9 an explicit statement of the underlying facts supporting the finding.

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11           SECTION 9. All provisions of this act of a general and permanent nature  
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
13 Revision Commission shall incorporate the same in the Code.

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15           SECTION 10. If any provision of this act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 act are declared to be severable.

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21           SECTION 11. All laws and parts of laws in conflict with this act are  
22 hereby repealed.

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*/s/Senator Malone*

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