

## **LIVING CARE DISCLOSURE ACT**

### **Act 440 of 1976**

AN ACT to regulate the offer and sale of life estates, life leases, and long-term leases in nursing homes, retirement homes, homes for the aged, and foster care facilities; to prohibit fraudulent practices in relation to the offer and sale of those estates and leases; to impose regulatory duties upon the corporation and securities bureau of the department of commerce; and to provide penalties.

**History:** 1976, Act 440, Eff. July 1, 1977.

*The People of the State of Michigan enact:*

#### **554.801 Short title.**

Sec. 1. This act shall be known and may be cited as the “living care disclosure act”.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of powers and duties of the corporation and securities bureau from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.802 Meanings of words and phrases.**

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 and 4 shall have the meanings respectively ascribed to them in those sections.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.803 Definitions.**

Sec. 3. (1) “Bureau” means the corporation and securities bureau of the department of commerce.

(2) “Care” means furnishing shelter, food, clothing, medical attention, entertainment, or other personal advantage or attention, except to an individual related by consanguinity or affinity.

(3) “Entrance fee” means an initial or deferred payment of a sum of money or property which assures the member a place in a facility for 1 or more years or for life.

(4) “Facility” means an adult foster care facility, nursing home, retirement home, home for the aged, or a place that undertakes to provide care to an individual for more than 1 year.

(5) “Life interest” means a life lease, life membership, life estate, or other similar agreement between a purchaser and a facility by which the purchaser pays a fee for the right to occupy a space in the facility for life.

(6) “Long-term lease” means an agreement between a purchaser and a facility whereby the purchaser pays a fee for the right to occupy a space in the facility for at least 1 year, but for less than the life of the purchaser.

(7) “Member” means a purchaser of, nominee of, or a subscriber to, a life interest or long-term lease in a facility, which shall not be construed to give that individual a part ownership of the facility or voting rights in the operation of the facility.

(8) “Per capita cost” means the pro rata distribution of a facility's operating expenses as determined under rules promulgated by the bureau pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.804 Additional definitions.**

Sec. 4. (1) “Offer” or “offer to sell” includes an attempt to offer to dispose of or solicitation of an offer to buy for value a life interest or long-term lease.

(2) “Order” means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the bureau.

(3) “Person” means an individual, corporation, partnership, joint venture, association, joint stock company, trust, or unincorporated organization.

(4) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(5) "Rule" means a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(6) "Sale" or "sell" includes a contract or agreement of sale of, contract to sell, or disposition of, a life interest or long-term lease in a facility.

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, or Puerto Rico.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.805 Applicability of act; offer or sale of life interest or long-term lease; making offer to sell; accepting offer to sell; facility offering long-term lease or life interest as profit or nonprofit corporation; compliance with federal law; limitation on purposes of corporations.**

Sec. 5. (1) This act applies to all written or oral arrangements between a facility and a member in connection with the offer or sale of a life interest or long-term lease.

(2) An offer or sale of a life interest or long-term lease is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the purchase is made in this state or the facility is or will be operated in this state.

(3) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and is received at the place to which the offer is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. An acceptance is communicated to the offeror in this state when the offeree directs the acceptance to the offeror in this state reasonably believing the offeror to be in this state and the acceptance is received at the place to which it is directed.

(4) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on behalf of the publisher in this state a bona fide newspaper or other publication of general, regular, and paid circulation which has had more than 2/3 of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

(5) A facility offering a long-term lease or life interest may be organized and operated by either a profit or nonprofit corporation. However, a nonprofit corporation shall comply with the requirements of section 501(c)(3) or section 501(c)(4) of the internal revenue code. The purposes of these corporations shall be limited to ownership, organization, and operation of a facility or facilities as defined in section 3(4).

**History:** 1976, Act 440, Eff. July 1, 1977;—Am. 1980, Act 343, Imd. Eff. Dec. 23, 1980.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.806 Fraud and deceit.**

Sec. 6. (1) A person shall not, in connection with the offer or sale of a life interest or long-term lease, directly or indirectly:

(a) Employ a device, scheme, or artifice to defraud.

(b) Make an untrue statement of a material fact or fail to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(c) Engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(2) As used in this section, "fraud" and "deceit" are not limited to the common law definitions of fraud and deceit, but include the provisions of section 6(1).

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.807 Registration required.**

Sec. 7. Beginning 90 days after the effective date of this act, a person shall not offer to sell or sell a life interest or long-term lease in this state unless the facility is registered under this act.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.808 Application for registration; form; contents of disclosure statement; financial statement; signing and verification of application; type and spacing of contracts; untrue statement or omission of material fact; notice of filing; order of registration or rejection; notice of deficiencies.**

Sec. 8. (1) A facility shall file an application for registration on a form prescribed by the bureau and shall include with the application 3 copies of the proposed disclosure statement which statement shall contain the following:

(a) The name and address of the facility and the name and address of an affiliated parent or subsidiary corporation or partnership.

(b) Information concerning incorporation as prescribed by the bureau.

(c) A statement of whether or not the facility of an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization.

(d) Information concerning the identity and experience of persons affiliated with the facility as the bureau shall prescribe.

(e) A statement of whether a person identified in the application for registration:

(i) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(ii) Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a foster care facility, nursing home, retirement home, or home for the aged. The statement shall set forth the court or agency, date of conviction or judgment, the penalty imposed or damages assessed, or the date, nature, and issuer of the order.

(f) Financial information, updated at least annually, including the following:

(i) A summary balance sheet.

(ii) A narrative explaining material facts relating to the balance sheet.

(iii) A statement of use of proceeds.

(iv) A pro forma balance sheet where the bureau considers it appropriate.

(g) A feasibility study unless waived by the bureau.

(h) The level of participation in medicare or medicaid programs or both.

(i) A statement of all fees required of members, including a statement of the entrance fee charged, the monthly service charges, and the proposed application of the proceeds of the entrance fee by the facility, and the plan by which the amount of the initial fee is determined if the initial fee is not the same in all cases.

(j) Changes or increases in fees. When a facility changes either the scope of or the rates for care or services regardless of whether the change involves the basic rate or only those services available at additional costs to the resident, except those changes mandated by state or federal assistance programs. The facility shall give advance notice of not less than 60 days to the members before the change may be effective. The clause in the agreement which provides for monthly service fee increases by the facility shall be based upon economic necessity, the reasonable cost of operating the facility, and the cost of care.

(k) The location and description of physical property or properties essential for and proposed to be used or being used in connection with the facility's agreements to furnish care.

(l) A statement describing the services provided and the extent to which medical care is furnished.

(m) A statement describing the health and financial conditions required for a person to continue as a member.

(n) A statement setting forth the conditions upon which the facility may relet a member's room.

(o) A statement of the terms under which a life interest or long-term lease may be canceled by the member or the facility during the first 6 months of residence, and the basis for establishing the amount of refund of the entrance fee.

(p) A statement of the terms under which a life interest or long-term lease may be canceled by the member subsequent to the first 6 months of residency and the basis for establishing the amount of refund of the entrance fee.

(q) A statement describing the circumstances under which the member will be permitted to remain in the facility in the event of possible financial difficulties of the member.

(r) A statement of the fees that will be charged if the resident marries while at the facility, and a statement

of terms concerning the entry of a spouse to the facility and the consequences if the spouse doesn't meet the requirements for entry.

(s) A statement of the terms under which a life interest or long-term lease is canceled by the death of the member and the basis for establishing the amount of refund, if any, of the entrance fee.

(t) Other material information as required by the bureau.

(u) Other material information as the applicant wishes to include.

(v) A copy of the lease or membership agreement proposed to be used and all amendments to that agreement.

(w) A statement in bold type of not less than 12-point that registration does not constitute approval, recommendation, or indorsement by the bureau.

(2) The application for registration shall include a recent financial statement of the facility together with a statement of material changes in the financial condition of the facility from the date of the statement. The bureau may prescribe the form and content of the financial statements required under this act, the circumstances under which consolidated financial statements shall be filed, and the circumstances under which financial statements shall be audited by independent certified public accountants.

(3) An application for registration shall be signed and verified by the chief operating officer of the facility.

(4) The bureau may require that the applicant set forth in its disclosure statement potential adverse information in designated positions and in a type size acceptable to the bureau.

(5) The bureau shall specify the size of type and spacing in life interest or long-term lease contracts.

(6) A person shall not make an untrue statement of a material fact in an application, notice, or report filed with the bureau under this act, or omit to state in an application, notice, or report a material fact which is required to be stated therein or fail to notify the bureau of a material change as required by this act.

(7) Upon receipt of the application for registration in proper form, the bureau shall issue a notice of filing to the applicant. Within 30 days after the date of the notice of filing, the bureau shall enter an order registering the facility or rejecting the registration with notice of specific deficiencies therein. If an order of rejection is not entered within 30 days after the date of notice of filing, the facility shall be considered registered unless the applicant has consented in writing to a delay.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.809 Alternative disclosure statement.**

Sec. 9. The bureau may accept, in place of the disclosure statement meeting the requirements set forth in section 8, a disclosure statement form required by a federal government agency or a government agency of another state which the bureau has determined by rule or order to meet the requirements of section 8.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.810 Lease or membership agreement; minimum provisions; termination of member; refund; providing access to adequate alternative facility.**

Sec. 10. (1) The lease or membership agreement at a minimum shall include the following provisions:

(a) If a member dies before occupying the facility, or through illness, injury, or incapacity would be precluded from being a resident under the terms of the lease, membership is automatically canceled and the member or a legal representative of the member shall receive a full refund of all money paid to the facility except those costs specifically incurred by the facility at the request of the member and set forth in writing in a separate addendum to the agreement and signed by both parties.

(b) If a resident places funds with a facility for future care before occupancy, the funds shall be placed in an escrow or trust account unless this requirement is waived or modified by the bureau. Any interest or other income from the investment of the funds shall accrue to the benefit of the resident. The bureau may by rule or order determine the conditions of any escrow or trust account. A petition for waiver or for discontinuance or other modification of the escrow requirement shall be submitted by the chief operating officer of a facility or facilities together with, unless previously provided in the registration application, a pro forma financial plan and documentation evidencing availability of adequate resources to fund the facility's capital expenditures, debt service, refund of unearned portion of entrance fees, operating costs, facility maintenance, and other costs and expenses projected for not less than 5 years. Documentation shall include the following, if applicable:

(i) Audited financial statements for the facility's most recent 4 fiscal years and financial statements for any portion of the current fiscal year ending within 90 days after the date of filing. The bureau may by order waive or modify this requirement.

(ii) Commitments for construction and permanent loan financing together with a copy of an adequate construction bond.

(iii) Irrevocable lines or letters of credit, other irrevocable instruments of credit, confirmations of deposits or proceeds of sales of securities, leases, or evidences of any other valid commitments or income.

(iv) Assumptions and the basis of schedules for attrition rates; occupancy rates; refund of unearned portion of entrance fees; debt service; operating expenses; and operating income.

(v) A commitment to notify the bureau promptly in writing of a change in the information submitted under this subdivision.

(c) During the first 6 months of residency, a resident, upon 30 days' written notice, may cancel his or her membership and shall receive a refund of the entrance fee, as provided for in subdivision (e)(i) or (ii), if the resident vacates the facility not more than 30 days after giving notice. If the required notice is given within the first 30 days, the resident shall receive a refund of all but the actual cost of care and the actual cost of refurbishing the unit for resale. If the required notice is given after the first 30 days, the facility may deduct the per capita costs or the actual cost of care, a sales expense not to exceed 10% of the entrance fee up to the first \$15,000.00, as indicated in the disclosure statement, and the actual cost of refurbishing the unit for resale.

(d) After the first 6 months of residency, a resident may cancel the residency, upon 90 days' written notice, or upon less than 90 days' written notice if by written agreement of the parties. The resident shall be refunded an amount equal to the difference between all amounts paid in by the resident and the cost of caring for the resident based upon the facility's per capita cost and the sales cost in conjunction with the original lease and the cost of refurbishing.

(e) Refunds shall be made as follows:

(i) If the required notice is given during the first 5 months of residency, the refund shall be made within 30 days after the notice is given.

(ii) If the required notice is given during the sixth month of residency, the refund shall be made within 30 days after the member leaves the facility or upon resale, whichever occurs first.

(iii) If the required notice is given after the initial 6 months of residency, the refund shall be made within 45 days after notice or upon resale of the unit, whichever occurs first.

(2) If the facility terminates a member without good cause, the member is entitled to an immediate refund, upon vacating the unit, of an amount set forth in the agreement which was approved by the bureau. The facility may provide access to an adequate alternative facility which will provide care for the member, in place of or in mitigation of any damages.

(3) A facility shall not terminate a member without 30 days' notice unless the facility provides access to an adequate alternative facility. A member terminated by the facility for cause shall receive a refund in the same manner as if the member had provided notice pursuant to subsection (1).

**History:** 1976, Act 440, Eff. July 1, 1977;—Am. 1980, Act 343, Imd. Eff. Dec. 23, 1980.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.811 Arbitration of dispute, claim, or grievance; waiver.**

Sec. 11. (1) A dispute, claim, or grievance arising between a resident and the facility, except as provided below, shall upon election and written consent of the parties be submitted to arbitration and the parties shall accept the arbitrator's decision as final and binding. The rules of the American arbitration association, as amended, and in effect at the time of the dispute, claim, or grievance, shall be applicable to the arbitration.

(2) A condition, stipulation, or provision binding a resident to waive compliance with any provision of this act, a rule promulgated, or an order issued under this act is void. In those cases neither a resident nor the facility shall be precluded from petitioning the courts to resolve any other dispute, claim, or grievance.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.812 Resident as advisory member of board of directors.**

Sec. 12. Each facility shall appoint at least 1 resident, elected by the other residents, to the board of directors as an advisory member who shall be notified in advance of all board meetings and invited to attend.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.813 Conservators or guardians.**

Sec. 13. If a resident becomes mentally or physically incapacitated and is unable to handle his own personal or financial affairs, the facility may petition a court of competent jurisdiction to appoint an independent conservator or guardian.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.814 Order temporarily suspending repayment of entrance fee.**

Sec. 14. The registrant may temporarily suspend repayment of an entrance fee under an order of a court or the bureau for not more than 180 days, upon a showing of good cause by the registrant and proof that further payment would jeopardize the care to members in the facility. The order may be extended upon a showing of substantial progress in resolving the financial difficulties of the registrant.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.815 Exemptions from registration requirements.**

Sec. 15. The bureau by rule or order may exempt from registration requirements, in whole or in part, a transaction or person, firm, corporation, or industry. In determining whether an exemption shall issue, the bureau shall consider whether information which would be required to be disclosed in a registration would be material in determining whether the facility has a reasonable chance of success and whether the exemption is in the public interest.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.816 Pro forma financial plan; filing; deposit with escrow agent; surety bond or guaranty; temporary suspension of sales; entrance fees as capital in calculating solvency.**

Sec. 16. The applicant shall file a pro forma financial plan with the bureau, subject to the approval of the bureau. If the bureau finds that the financial condition of the facility may jeopardize the care of members, or the facility is insolvent as it is unable to meet its obligations as they accrue or its liabilities exceed its assets, or that the facility appears in jeopardy of becoming insolvent, or if the facility is not meeting its pro forma financial plan, the bureau may require a reasonable deposit with an escrow agent acceptable to the bureau of an amount deemed necessary for the facility to fulfill its obligation, or, at the option of the facility, the furnishing of a surety bond or guaranty as approved by the bureau, if it finds that the requirement is necessary and appropriate to protect prospective members. The bureau may summarily order the temporary suspension of life interest and long-term lease sales, pending a hearing in accordance with section 18. For purposes of calculating solvency under this section, entrance fees may be considered as capital of the facility to the extent that the entrance fees have been earned or based on the formula set forth in the contract that the reasonable expectancy is that they will be earned based on a continuation of the present plan of operation of the facility.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.817 Notice of intent to issue stop order denying, suspending, or revoking registration; grounds.**

Sec. 17. The bureau may enter a notice of intent to issue a stop order denying, suspending, or revoking the effectiveness of a registration if it finds that the order is in the public interest and finds at least 1 of the following:

(a) The application for registration or the effective registration statement is incomplete in a material respect

or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact.

(b) The applicant, or its agent, or employee has violated this act or an order or rule of the bureau.

(c) The offering is not fair, just, and equitable or has worked or tended to work a fraud or imposition or would so operate, or the terms of the offering would create an unreasonable risk to members as defined by rules.

(d) The applicant's method of business includes or would include activities which are violations of law where performed.

(e) A person identified in the application who has engaged in conduct described in section 8(1)(e), involving the illegal offering of life interests, long-term leases, franchises, or securities and the bureau determines that the involvement of the person in the sale of leases or management of the facility creates an unreasonable risk to members.

(f) The applicant is the subject of a permanent or temporary injunction entered under a federal or state act which injunction is applicable to the offering.

(g) The applicant has failed to pay the proper fee.

(h) The applicant has failed to diligently process its registration application with the bureau.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.818 Notifying applicant of stop order; hearing; vacating or modifying stop order.**

Sec. 18. (1) Upon the entry of a notice of intent to issue a stop order, the bureau shall promptly notify the applicant by registered or certified mail that it has been entered, the reasons for the stop order, and that, upon receipt of written request, the matter will be set down for hearing to commence within 45 days after the receipt unless the applicant consents to a later date. If a hearing is not requested within 15 days and none is ordered by the bureau, a stop order shall issue and remain in effect until it is modified or vacated by the bureau. If a hearing is requested or ordered, the bureau, after notice and hearing, may enter a stop order or modify or vacate the order or extend it until its final determination.

(2) The bureau may vacate or modify a stop order if it finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.819 Right to rescind purchase of life lease or long-term lease; retention of funds in separate escrow account; moving into facility.**

Sec. 19. A purchaser of a life interest or a long-term lease which is subject to registration under this act shall have the right to rescind the purchase of a life lease or long-term lease within 7 days, without penalty, after making an initial deposit or executing the agreement, and after receipt of a copy of the disclosure statement. During the 7-day period a purchaser's funds shall be retained in a separate escrow account under terms approved by the bureau. A person shall not be required to move into the facility before the expiration of the 7-day period.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.820 Registration of life interest or long-term lease offering.**

Sec. 20. A life interest or a long-term lease offering shall be registered for a period of 1 year after the effective date of the registration unless the bureau specifies a different period.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.821 Registration renewal statement; form and content; automatic renewal.**

Sec. 21. (1) A registration may be renewed for additional periods of 1 year each, unless the bureau by rule or order specifies a different period, by submitting to the bureau a registration renewal statement not later than

30 business days before the expiration of the registration unless the period is waived by order of the bureau. If a stop order or other order is not in effect, or the registrant has not requested and been granted a waiver, registration of the facility automatically becomes renewed effective at 12 noon of the date on which the prior registration is due to expire, or at an earlier time as the bureau determines.

(2) The registration renewal statement shall be in the form and content prescribed by the bureau. Each registration renewal statement shall be accompanied by the fee prescribed by this act and the changes made in the disclosure statement.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.822 Material change in information; application to amend registration; revised disclosure statement; effective date of amendment; semiannual financial statements; financial information or reports.**

Sec. 22. (1) A registrant shall notify the bureau promptly in writing by an application to amend the registration, of a material change in the information contained in the application as originally submitted, amended, or renewed. The bureau may further define by rule what is a material change for the purposes and circumstances under which a revised disclosure statement shall accompany the application.

(2) An amendment to an application filed after the effective date of the registration if the amendment is approved by the bureau, shall become effective on the date the bureau may determine, having due regard for the public interest and the protection of prospective members.

(3) A registrant shall file with the bureau semiannual financial statements, and other financial information or reports as the bureau may reasonably require.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.823 Account of sales; reports and records; examination; opinions, appraisals, and reports of experts on questions affecting interests proposed to be offered or sold; failure to furnish information; investigation; expenses; disposition of fees.**

Sec. 23. (1) A facility offering life interests, long-term leases, or both, for sale in this state shall keep and maintain accounts of the sales in accordance with generally accepted accounting principles and shall make and file with the bureau reports as the bureau may by rule or order prescribe, including an annual report setting forth the life interests or long-term leases sold by it and the proceeds derived from those sales. These records are subject to reasonable periodic, special, or other examinations by a representative of the bureau, within or without this state, as the bureau deems necessary or appropriate in the public interest or for the protection of prospective members.

(2) The bureau may consider the opinions, appraisals, and reports of engineers, appraisers, or other experts which may be presented by an applicant or an interested party, on a question of fact concerning or affecting the interests proposed to be offered and sold. If information that the bureau considers necessary relating to the facility is requested by the bureau and is not furnished by the applicant, or the bureau considers information submitted to be unreliable or substantially incomplete, the bureau may have any or all matters concerning or affecting those interests investigated, appraised, passed upon, and certified to it by engineers, appraisers, or other experts selected by it.

(3) If information that the bureau considers necessary relating to a life interest or long-term lease is requested by the bureau and is not furnished by the applicant, or the bureau considers information submitted to be unreliable or substantially incomplete, the bureau may investigate any or all matters concerning or affecting the life interest or long-term lease. The cost of reasonable actual travel and lodging expenses relating to investigations outside of this state shall be borne by the applicant and shall be paid to this state before the applicant's registration becomes effective. The fees received under this section shall be deposited in the state treasury to a special fund to be used by the corporation and securities bureau in carrying out the duties required by this subsection.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.824 Effect of application for registration being filed or becoming effective.**

Sec. 24. (1) The fact that an application for registration under this act has been filed or has become effective does not constitute a finding by the bureau that a document filed under the act is true, complete, or not misleading. That a registration has been filed or has become effective does not mean that the bureau has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person, life interest, long-term lease, transaction, or facility.

(2) A person shall not make or cause to be made to a prospective member or offeree a representation inconsistent with this section.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.825 Service of process generally.**

Sec. 25. An applicant for registration under this act, other than a domestic corporation, shall file with the bureau, in the form as the bureau prescribes an irrevocable consent appointing the bureau to be its attorney to receive service of lawful process in a noncriminal action or proceeding against it or its successor, executor, or administrator, which arises under this act or a rule or order promulgated or issued under this act after the consent has been filed, with the same force and validity as if served personally on the person filing consent. Service may be made by leaving a copy of the process in the office of the bureau but it is not effective unless the plaintiff, who may be the bureau in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last address on file with the bureau and the plaintiff's affidavit of compliance is filed in the action, on or before the return day of the process, if any, or within that further time as the court may allow.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.826 Requirements before use of disclosure statement, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication; requirements for publication of advertisement; liability of publisher.**

Sec. 26. (1) The bureau by rule or order may require the filing and approval before use of a disclosure statement, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective members. Within 10 business days after the date of receipt of the documents listed in this section, the bureau shall enter an order approving or rejecting the documents. If an order or rejection is not entered within 10 days after the date of receipt, the documents shall be deemed approved unless the applicant has consented in writing to a delay.

(2) A person shall not publish an advertisement offering a life interest or long-term lease subject to the registration requirements of this act unless a true copy of the advertisement has been filed with the bureau at least 10 business days before the first publication or a shorter period as the bureau may allow or unless the advertisement has been exempted by rule of the bureau. The bureau may require, by rule, that the advertising be registered and that the advertising display a registration number.

(3) This act shall not impose liability, civil or criminal, upon a person or publisher regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station, and acting solely in his official capacity, who publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of this act.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.827 Conduct and qualifications of agents; rules.**

Sec. 27. The bureau shall not license, but may promulgate rules relating to the conduct and qualifications of life interest and long-term lease sales agents.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.828 Notice of intent to issue cease and desist order; issuance; hearing; order of censure; violation; penalty; separate offenses.**

Sec. 28. (1) If, in the opinion of the bureau, a life interest or long-term lease is being or has been offered for sale without complying with this act or an order of the bureau issued pursuant to this act or a rule promulgated under this act, the bureau may issue to the facility or offeror of the interest a notice of intent to issue an order of cease and desist from the further offer or sale of the life interest or long-term lease unless and until the offer is made in compliance with this act. If, after the notice of intent has been made, a written request for a hearing is filed by the person to whom the notice was directed, a hearing shall be held under the procedures prescribed in Act No. 306 of the Public Acts of 1969, as amended. After the hearing, or in the event that respondent fails to appear at the hearing, after notice and personal service, the bureau may issue a cease and desist order with appropriate conditions or may enter an order of censure or find that a violation of the law has not occurred. The date for hearing shall be set within 15 business days after receipt of the request for hearing, and the designated hearing date shall be not more than 45 days after the date of request for hearing unless the person affected consents to a later date.

(2) A facility or agent of a facility who knowingly authorizes, directs, or aids in violation of a final cease and desist order, or who knowingly fails to comply with the terms of a final cease and desist order, and may be fined not more than \$5,000.00. Each violation constitutes a separate offense.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.829 Liability to person purchasing life interest or lease; rescission as bar to action.**

Sec. 29. (1) A person who offers or sells a life interest or long-term lease in violation of sections 6(1), 7, or 17 is liable to the person purchasing the life interest or lease for damages and repayment of all fees paid to the facility less the reasonable cost of rental and care provided until discovery or until the violation should reasonably have been discovered and with interest at 6% from the date of purchase and reasonable attorney fees and court costs.

(2) A person may not file or maintain an action under this section if the person received an offer approved by the bureau before filing the action to refund the entrance fee together with interest at 6% per year from the date of purchase less the reasonable cost of rental and care provided until discovery, and the member failed to accept the offer within 30 days of its receipt. At the time a facility makes written offer of rescission, the facility shall file a copy with the bureau. The rescission offer shall recite the provisions of this section.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.830 Joint and several liability.**

Sec. 30. A person who directly controls a person liable under this act, a partner in a firm liable under this act, a principal executive officer or paid director or trustee of a corporation liable under this act, a person occupying a similar status as an executive officer or director performing similar functions, or an employee of a person liable under this act who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the person who violates this act, unless the person did not have knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.831 Limitations.**

Sec. 31. An action shall not be maintained to enforce a liability created under this act unless brought before the expiration of 3 years after the date of the act or transaction constituting the violation.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.832 Civil liability by implication; common law or other statutory liability not limited.**

Sec. 32. Except as explicitly provided in this act, civil liability in favor of a private party shall not arise against a person by implication from or as a result of the violation of this act or a rule or order promulgated or issued under this act. This act shall not limit a liability which may exist by virtue of any other statute or under common law if this act were not in effect.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.833 Powers of bureau; circuit court orders; contempt.**

Sec. 33. (1) The bureau may:

(a) Make public or private investigations within or without this state it considers necessary to determine if a person has violated or is about to violate this act or a rule or order promulgated or issued under this act, or to aid in the enforcement of this act or in the prescribing of rules and forms under this act, and may publish information concerning the violation of this act or a rule or order.

(b) Require or permit a person to file a statement under oath or otherwise as the bureau requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to reply with all required information to a letter from the bureau within 15 days after receipt of the letter shall be the basis for issuance of a cease and desist order.

(2) For the purpose of an investigation or proceeding under this act, the bureau or an officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the bureau considers relevant or material to the inquiry. Before any of the requirements of subsection (2) become operative, the bureau must obtain an order of the circuit court for said information by a showing that there is good cause that a violation has taken place or is about to take place and all of the subpoenas or orders must issue from said circuit court.

(3) In case of contumacy by, or refusal to obey a subpoena issued to a person, the circuit court, upon application by the bureau, may issue to the person an order requiring him to appear before the bureau, or an officer designated by it, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or question. Failure to obey the order of the court may be punished by the court as a contempt.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.834 Injunction, restraining order, or writ of mandamus; appointment of receiver or conservator; bond.**

Sec. 34. When it appears to the bureau that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule or order promulgated or issued under this act, the attorney general may bring an action in the name of the people in the circuit court to enjoin the acts or practices or to enforce compliance with this act or the rule or order. Upon a proper showing a preliminary or permanent injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the bureau to post a bond.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.835 Proceedings by attorney general or prosecuting attorney.**

Sec. 35. The bureau may refer information relating to the violation of this act or a rule or order promulgated or issued under this act to the attorney general or to the prosecuting attorney of the county in which the violation occurred, who may, with or without the reference, institute appropriate proceedings.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.836 Violation; penalty; conduct constituting crime under other statute.**

Sec. 36. A person who knowingly violates this act shall be fined not more than \$10,000.00, or imprisoned for not more than 7 years, or both. This act shall not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.837 Service of process where conduct prohibited or made actionable by act or rule.**

Sec. 37. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule or order promulgated or issued under this act, whether or not a consent to service of process has been filed and personal jurisdiction cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment of the bureau to be the attorney to receive service of a lawful process in a noncriminal action or proceeding against the person or a successor, executor, or administrator which action or proceeding grows out of that conduct and which is brought under this act or any rule or order promulgated or issued under this act, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the bureau, but it is not effective unless the plaintiff, which may be the bureau in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within further time as the court allows.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.838 Fees.**

Sec. 38. (1) The bureau shall charge and collect the fees fixed by this section. Fees and charges collected under this section shall be transmitted to the state treasurer at least weekly, accompanied by a detailed statement of those fees and charges and shall be credited to the general fund.

(2) The fee for filing an application for registration of the offer or sale of life interests and long-term leases shall be \$250.00. When an application for registration is withdrawn before the effective date or a stop order is issued before the effective date of a registration, the bureau shall retain a fee of \$25.00 if the initial review has not been commenced and the full filing fee after review has commenced. The renewal registration fee shall be \$100.00.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.839 Rules.**

Sec. 39. The bureau shall promulgate rules to implement this act.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **554.840 Public inspection of documents; disclosure of information.**

Sec. 40. Applications, reports, and other papers and documents filed by applicants or registrants or experts or appraisers with the bureau under this act shall be open to public inspection, except that the bureau may withhold from public inspection information the disclosure of which is not necessary in the public interest or for the protection of purchasers. The bureau may publish information filed with it or obtained by it, if the action is in the public interest. The bureau or its examiners, investigators, assistants, clerks, or deputies shall not disclose information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this act or to other federal or state regulatory agencies.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.841 Reproduction of public records; certified copy of document as prima facie evidence.**

Sec. 41. (1) Upon request and at reasonable charges as it prescribes, the bureau shall furnish to a person a reproduction pursuant to the records media act, certified under the seal of office if requested, of a document that is retained as a matter of public record, except that it shall not charge or collect a fee for a reproduction of a document furnished to a public officer for use in his or her official capacity.

(2) In a judicial proceeding or prosecution, a certified copy is prima facie evidence of the contents of the document certified and may be used for all purposes in place of the original.

**History:** 1976, Act 440, Eff. July 1, 1977;—Am. 1992, Act 193, Imd. Eff. Oct. 5, 1992.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.842 Destruction of applications, orders, files, and folders as useless or obsolete; permanent record of disciplinary action; retention of reproductions.**

Sec. 42. (1) The bureau may destroy an application or order, together with the files and folders, as useless or obsolete, not less than 6 years after the date of filing or issuance, with the approval of the department of management and budget. The bureau shall maintain a permanent record of any disciplinary action taken by the bureau.

(2) A reproduction, retained by the bureau in a medium pursuant to the records media act, of a record destroyed under this section or a reproduction consisting of a printout or other output readable by sight from such a medium shall be accepted for all purposes as equivalent to the original if certified by the bureau.

**History:** 1976, Act 440, Eff. July 1, 1977;—Am. 1992, Act 193, Imd. Eff. Oct. 5, 1992.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.843 Submitting information in compliance with MCL 554.808.**

Sec. 43. A facility may submit information prepared in compliance with section 8 on the effective date of this section.

**History:** 1976, Act 440, Eff. Apr. 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**554.844 Effective dates.**

Sec. 44. This act, except section 43, shall take effect July 1, 1977. Section 43 shall take effect April 1, 1977.

**History:** 1976, Act 440, Eff. July 1, 1977.

**Compiler's note:** For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.