

SENATE No. 2459

Text of amendment (Senator Montigny) to the Senate Bill making appropriations for the fiscal year 2022 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (Senate, No. 3).

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

1 by inserting after section ___ the following section:-

2 “SECTION ___. Chapter 111 of the General Laws, as so appearing, is hereby amended
3 by striking out section 71 and inserting in place thereof the following section:-

4 Section 71. For purposes of this section and sections 71A ½ to 73, the following terms
5 shall have the following meanings unless the context or subject matter clearly requires otherwise:

6 “Applicant”, any person who applies to the department for a license to establish or
7 maintain and operate a long-term care facility.

8 “Charitable home for the aged”, any institution, however named, conducted for charitable
9 purposes and maintained for the purpose of providing a retirement home for elderly persons and
10 which may provide nursing care within the home for its residents.

11 “Convalescent or nursing home or skilled nursing facility”, any institution, however
12 named, whether conducted for charity or profit, which is advertised, announced or maintained for

13 the express or implied purpose of caring for four or more persons admitted thereto for the
14 purpose of nursing or convalescent care.

15 “Infirmery maintained in a town”, an infirmery which hitherto the department of public
16 welfare has been directed to visit by section 7 of chapter 121.

17 “Intermediate care facility for persons with an intellectual disability”, any institution,
18 however named, whether conducted for charity or profit, which is advertised, announced or
19 maintained for the purpose of providing rehabilitative services and active treatment to persons
20 with an intellectual disability or persons with related conditions, as defined in regulations
21 promulgated pursuant to Title XIX of the federal Social Security Act (P.L. 89–97); which is not
22 both owned and operated by a state agency; and which makes application to the department for a
23 license for the purpose of participating in the federal program established by said Title XIX.

24 “License”, an initial or renewal license to establish or maintain and operate a long-term
25 care facility issued by the department.

26 “Licensee”, a person to whom a license to establish or maintain and operate a long-term
27 care facility has been issued by the department.

28 “Long-term care facility”, a charitable home for the aged, a convalescent or nursing
29 home, an infirmery maintained in a town, an intermediate care facility for persons with an
30 intellectual disability or a rest home.

31 “Owner”, any person owning 5 per cent or more of, with an ownership interest of 5 per
32 cent or more of, or with a controlling interest in an applicant, potential transferee or the real
33 property on which a long-term care facility is located.

34 “Person”, an individual, a trust, estate, partnership, association, company or corporation.

35 “Potential transferee”, a person who submits to the department a “notice of intent to
36 acquire” the facility operations of a currently operating long-term care facility.

37 “Rest home”, any institution, however named, which is advertised, announced or
38 maintained for the express or implied purpose of providing care incident to old age to four or
39 more persons who are ambulatory and who need supervision.

40 “Transfer of facility operations”, a transfer of the operations of a currently operating
41 long-term care facility from the current licensee of the long-term care facility to a potential
42 transferee, pending licensure, pursuant to a written “transfer of operations” agreement.

43 To each applicant it deems suitable and responsible to establish or maintain and operate
44 a long-term care facility and which meets all other requirements for long-term care facility
45 licensure, the department shall issue for a term of two years, and shall renew for like terms, a
46 license, subject to the restrictions set forth in this section or revocation by it for cause; provided,
47 however, that each convalescent or nursing home and each intermediate care facility for persons
48 with an intellectual disability shall be inspected at least once a year.

49 No license shall be issued to establish or maintain an intermediate care facility for
50 persons with an intellectual disability, unless there is a determination by the department that
51 there is a need for such facility at the designated location; provided, however, that in the case of
52 a facility previously licensed as an intermediate care facility for persons with an intellectual
53 disability in which there is a change in ownership, no such determination shall be required and in
54 the case of a facility previously licensed as an intermediate care facility for persons with an

55 intellectual disability in which there is a change in location, such determination shall be limited
56 to consideration of the suitability of the new location.

57 In the case of the transfer of facility operations of a long-term care facility, a potential
58 transferee shall submit a “notice of intent to acquire” to the department at least 90 days prior to
59 the proposed transfer date. The notice of intent to acquire shall be on a form supplied by the
60 department and shall be deemed complete upon submission of all information which the
61 department requires on the notice of intent form and is reasonably necessary to carry out the
62 purposes of this section.

63 No license shall be issued to an applicant and no potential transferee may submit an
64 application for a license unless the department makes a determination that the applicant or
65 potential transferee is responsible and suitable for licensure.

66 For purposes of this section, the department's determination of responsibility and
67 suitability shall be limited to the following factors:

68 (i) the criminal or civil history of the applicant or the potential transferee, including their
69 respective owners, which shall include certification by the department of criminal justice
70 information services and which may include a review of any pending or settled litigation or other
71 court proceedings in the commonwealth and in other states;

72 (ii) the financial capacity of the applicant or potential transferee, including their
73 respective owners, to establish or maintain and operate a long-term care facility, which may
74 include any recorded liens and unpaid fees or taxes in the commonwealth and in other states;

75 (iii) the history of the applicant or potential transferee, including their respective owners,
76 in providing long-term care in the commonwealth, measured by compliance with applicable
77 statutes and regulations governing the operation of long-term care facilities; and

78 (iv) the history of the applicant or potential transferee, including their respective owners,
79 in providing long-term care in states other than the commonwealth, if any, measured by
80 compliance with the applicable statutes and regulations governing the operation of long term
81 care facilities in said states.

82 With respect to potential transferees, upon determination by the department that a
83 potential transferee is responsible and suitable for licensure, the potential transferee may file an
84 application for a license. In the case of a potential transfer of facility operations, the filing of an
85 application for a license shall have the effect of a license until the department takes final action
86 on such application.

87 If the department determines that an applicant or potential transferee is not suitable and
88 responsible, the department's determination shall take effect on the date of the department's
89 notice. In such cases, the applicant or potential transferee shall upon the filing of a written
90 request with the department be afforded an adjudicatory hearing pursuant to chapter 30A. During
91 the pendency of such appeal, the applicant or potential transferee shall not operate the facility as
92 a licensee, or, without prior approval of the department, manage such facility.

93 Each applicant, potential transferee and licensee shall keep all information provided to
94 the department current. Promptly after the applicant, potential transferee or licensee becomes
95 aware of any change to information related to information it provided or is required to provide to
96 the department, such person shall submit to the department written notice of the changes.

97 Changes include, but are not limited to, changes in financial status, such as filing for bankruptcy,
98 any default under a lending agreement or lease, the appointment of a receiver or the recording of
99 any lien.

100 An applicant, potential transferee or licensee and their respective owners shall be in
101 compliance with all applicable federal, state and local laws, rules and regulations.

102 Prior to engaging a company to manage the long-term care facility a licensee shall notify
103 the department in writing of the name of and provide contact information for the proposed
104 management company and any other information on the management company and its personnel
105 that may be reasonably requested by the department. Any such engagement must be pursuant to a
106 written agreement between the licensee and the management company. Such written agreement
107 shall include a requirement that the management company and its personnel shall comply with
108 all applicable federal, state and local laws, regulations and rules. Promptly after the effective date
109 of any such agreement, the licensee shall provide to the department a copy of the valid, fully
110 executed agreement.

111 With respect to a license issued as a result of a transfer of operations, the department
112 shall not reduce the number of beds that were on the license held by the former licensee, unless
113 the public safety requires it.

114 No license shall be issued hereunder unless there shall be first submitted to the
115 department by the authorities in charge of the long-term care facility with respect to each
116 building occupied by residents (1) a certificate of inspection of the egresses, the means of
117 preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the
118 office of public safety and inspections of the division of professional licensure; provided,

119 however, that with respect to convalescent or nursing homes only, the division of health care
120 quality of the department of public health shall have sole authority to inspect for and issue such
121 certificate, and (2) a certificate of inspection issued by the head of the local fire department
122 certifying compliance with the local ordinances.

123 Any applicant who is aggrieved, on the basis of a written disapproval of a certificate of
124 inspection by the head of the local fire department or by the office of public safety and
125 inspections of the division of professional licensure, may, within 30 days from such disapproval,
126 appeal in writing to the division of professional licensure. With respect to certificates of
127 inspection that the division of health care quality of the department of public health has the sole
128 authority to issue, an applicant may, within 30 days from disapproval of a certificate of
129 inspection, appeal in writing to the department of public health only. Failure to either approve or
130 disapprove within 30 days, after a written request by an applicant, shall be deemed a disapproval.

131 If the division of professional licensure or, where applicable, the department of public
132 health approves the issuance of a certificate of inspection, it shall forthwith be issued by the
133 agency that failed to approve. If said department disapproves, the applicant may appeal
134 therefrom to the superior court. Failure of said department to either approve or disapprove the
135 issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a
136 disapproval. No license shall be issued by the department until issuance of an approved
137 certificate of inspection, as required in this section.

138 Nothing in this section or in section 72 or 73 of this chapter shall be construed to revoke,
139 supersede or otherwise affect any laws, ordinances, by-laws, rules or regulations relating to
140 building, zoning, registration or maintenance of a long-term care facility.

141 For cause, the department may limit, restrict, suspend or revoke the license. Grounds for
142 cause on which the department may take such action shall include failure or inability to provide
143 adequate care to residents, failure to maintain substantial compliance with applicable statutes,
144 rules and regulations or lack of financial capacity to maintain and operate a long-term care
145 facility. Limits or restrictions include requiring a facility to limit new admissions. Suspension of
146 a license includes suspending the license during a pending license revocation action or
147 suspending the license to permit the licensee a period of time, not shorter than 60 days, to wind
148 down operations, and discharge and transfer, if applicable, all residents.

149 The department may, when public necessity and convenience require, or to prevent undue
150 hardship to an applicant or licensee, under such rules and regulations as it may adopt, grant a
151 temporary provisional or probationary license under this section; provided, however, that no such
152 license shall be for a term exceeding one year.

153 With respect to an order to limit, restrict or suspend a license, within 7 days of receipt of
154 the written order, the licensee may file a written request with the department for administrative
155 reconsideration of the order or any portion thereof. Failure of the department to grant, deny or
156 otherwise act upon any such written request within seven days of its receipt of such a request
157 shall be deemed a denial of the request.

158 Upon a written request by a licensee who is aggrieved by the revocation of a license or by
159 an applicant who is aggrieved by the refusal of the department to renew a license, the
160 commissioner and the council shall hold a public hearing, after due notice, and thereafter they
161 may modify, affirm or reverse the action of the department; provided, however, that the
162 department may not refuse to renew and may not revoke the license of a long-term care facility

163 until after a hearing before a hearings officer, and any such applicant so aggrieved shall have all
164 the rights provided in chapter 30A with respect to adjudicatory proceedings.

165 In no case shall the revocation of such a license take effect in less than 30 days after
166 written notification by the department to the licensee.

167 The fee for a license to establish or maintain or operate a long-term care facility shall be
168 determined annually by the commissioner of administration under the provision of section 3B of
169 chapter 7, and the license shall not be transferable or assignable and shall be issued only for the
170 premises named in the application.

171 Nursing institutions licensed by the department of mental health, or the department of
172 developmental services for persons with intellectual disabilities shall not be licensed or inspected
173 by the department of public health. The inspections herein provided shall be in addition to any
174 other inspections required by law.

175 In the case of new construction, or major addition, alteration, or repair with respect to any
176 facility subject to this section, preliminary architectural plans and specifications and final
177 architectural plans and specifications shall be submitted to a qualified person designated by the
178 commissioner. Written approval of the final architectural plans and specifications shall be
179 obtained from said person prior to said new construction, or major addition, alteration, or repair.

180 Notwithstanding any of the foregoing provisions of this section, no license to establish or
181 maintain and operate a long-term care facility shall be issued by the department unless the
182 applicant for such license submits to the department a certificate that each building to be
183 occupied by patients of such convalescent or nursing home or skilled nursing facility meets the
184 construction standards of the state building code, and is of at least type 1-B fireproof

185 construction; provided, however, that this paragraph shall not apply in the instance of a transfer
186 of facility operations of a convalescent or nursing home or skilled nursing facility whose license
187 had not been revoked as of the time of such transfer; and provided, further, that a public medical
188 institution as defined under section 2 of chapter 118E, which meets the construction standards as
189 defined herein, shall not be denied a license as a nursing home under this section because it was
190 not of new construction and designed for the purpose of operating a convalescent or nursing
191 home or skilled nursing facility at the time of application for a license to operate a nursing home.
192 An intermediate care facility for persons with an intellectual disability shall be required to meet
193 the construction standards established for such facilities by Title XIX of the Social Security Act
194 (P.L. 89-97) and any regulations promulgated pursuant thereto, and by regulations promulgated
195 by the department.

196 Every applicant for a license and every potential transferee shall provide on or with its
197 application or notice of intent to acquire a sworn statement of the names and addresses of any
198 person who owns or has an ownership or control interest in the applicant or potential transferee
199 or in the real property on which the long-term care facility is located. As used herein, the phrase
200 "person with an ownership or control interest" shall have the definition set forth in 42 USC Sec.
201 1320a-3 of the Social Security Act and in regulations promulgated hereunder by the department.

202 The department shall notify the secretary of elder affairs forthwith of the pendency of any
203 proceeding of any public hearing or of any action to be taken under this section relating to any
204 convalescent or nursing home, rest home, infirmary maintained in a town, or charitable home for
205 the aged. The department shall notify the commissioner of mental health forthwith of the
206 pendency of any proceeding, public hearing or of any action to be taken under this section
207 relating to any intermediate care facility for persons with an intellectual disability.”; and

208 by inserting after section ___ the following section:-

209 “SECTION ___. Said chapter 111, as so appearing, is hereby further amended by striking
210 out section 72E and inserting in place thereof the following section:-

211 Section 72E. The department shall, after every inspection by its agent made under
212 authority of section 72 of this chapter, give the licensee of the inspected long-term care facility
213 notice in writing of every violation of the applicable statutes, rules and regulations of the
214 department found upon said inspection. With respect to the date by which the licensee shall
215 remedy or correct each violation, hereinafter the “correct by date”, the department in such notice
216 shall specify a reasonable time, not more than 60 days after receipt thereof, by which time the
217 licensee shall remedy or correct each violation cited therein or, in the case of any violation which
218 in the opinion of the department is not reasonably capable of correction within 60 days, the
219 department shall require only that the licensee submit a written plan for the timely correction of
220 the violation in a reasonable manner. The department may modify any nonconforming plan upon
221 notice in writing to the licensee.

222 Absent good faith efforts to remedy or correct, failure to remedy or correct a cited
223 violation by the agreed upon correct by date shall be cause to pursue or impose the remedies or
224 sanctions available to it under sections 71 through 73 of this chapter unless the licensee shall
225 demonstrate to the satisfaction of the department or the court, as the case may be, that such
226 failure was not due to any neglect of its duty and occurred despite an attempt in good faith to
227 make correction by the agreed upon correct by date. The department may pursue or impose any
228 remedy or sanction or combination of remedies or sanctions available to it under said sections 71
229 through 73. An aggrieved licensee may pursue the remedies available to it under such sections.

230 In addition, if the licensee fails to maintain substantial compliance with applicable
231 statutes, rules and regulations, in addition to imposing any of the other remedies or sanctions
232 available to it, the department may require the licensee to engage, at the licensee's own expense,
233 a temporary manager to assist the licensee with bringing the facility into substantial compliance
234 and with sustaining such compliance. Such manager is subject to the department's approval, such
235 approval not to be unreasonably withheld. Any such engagement of a temporary manager would
236 be for a period of not less than 6 months and shall be pursuant to a written agreement between
237 the licensee and the management company. A copy of such agreement shall be provided by the
238 licensee to the department promptly after execution.

239 Nothing in this section shall be construed to prohibit the department from enforcing a
240 statute, rule or regulation, administratively or in court, without first affording formal opportunity
241 to make correction under this section, where, in the opinion of the department, the violation of
242 such statute, rule or regulation jeopardizes the health or safety of residents or the public or
243 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such
244 statute, rule or regulation is the second such violation occurring during a period of 12 full
245 months.”; and

246 by inserting after section ___ the following section:-

247 “SECTION ___. Said chapter 111, as so appearing, is hereby further amended by striking
248 out section 73 and inserting in place thereof the following section:-

249 Section 73. Whoever advertises, announces, establishes or maintains, or is concerned in
250 establishing or maintaining a long-term care facility, or is engaged in any such business, without
251 a license granted under section 71 of this chapter, or whoever being licensed under said section

252 violates any provision of sections 71 to 73, inclusive, shall for a first offense be punished by a
253 fine of not more than \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or
254 by imprisonment for not more than two years.

255 Notwithstanding the above paragraph, whoever violates any rule or regulation made
256 pursuant to sections 71, 71C, 72, or 72C shall be punished by such fine not to exceed \$22,320,
257 unless the department determines a higher amount is permitted pursuant to 42 CFR 488.438. If
258 any person violates any such rule or regulation by allowing a condition to exist which may be
259 corrected or remedied, the department shall order him, in writing, to correct or remedy such
260 condition, and if such person fails or refuses to comply with such order by the agreed upon
261 correct by date as defined in section 72E, each day after the agreed upon correct by date during
262 which such failure or refusal to comply continues shall constitute a separate offense. Fines
263 collected pursuant to this paragraph shall be deposited into the Long-Term Care Facility Quality
264 Improvement Fund established pursuant to section 2UUUU of chapter 29 and shall not revert to
265 the General Fund. A failure to pay the fine imposed by this section shall be a violation of this
266 section."