

1 SENATE BILL NO. 1153  
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 3 (Proposed by the Senate Committee on Rehabilitation and Social Services  
 4 on \_\_\_\_\_)  
 5 (Patron Prior to Substitute—Senator Obenshain)

6 *A BILL to amend and reenact § 63.2-1709 of the Code of Virginia, relating to Department of Social Services;*  
 7 *assisted living facilities; appointment of receiver.*

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That § 63.2-1709 of the Code of Virginia is amended and reenacted as follows:**

10 **§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day centers; interim**  
 11 **administration; receivership, revocation, denial, summary suspension.**

12 A. Upon receipt and verification by the Commissioner of information from any source indicating an  
 13 imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility  
 14 to contract with an individual licensed by the Board of Long-Term Care Administrators, to be ~~either selected~~  
 15 ~~from a list created and maintained by the Department of Medical Assistance Services~~ or selected from a pool  
 16 of appropriately licensed administrators recommended by the owner of the assisted living facility, to  
 17 administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the  
 18 facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved  
 19 by the Commissioner. Such contract shall require the interim administrator to comply with any and all  
 20 requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to  
 21 or upon conclusion of the period of interim administration, management, or operation, an inspection shall be  
 22 conducted to determine whether operation of the assisted living facility shall be permitted to continue or  
 23 should cease. Such interim administration, management, or operation shall not be permitted when defects in  
 24 the conditions of the premises of the assisted living facility (i) present immediate and substantial risks to the  
 25 health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any  
 26 decision by the Commissioner to require the employment of a person to administer, manage, or operate an  
 27 assisted living facility shall be subject to the rights of judicial review and appeal as provided in the  
 28 Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim administration  
 29 shall be the responsibility of and shall be borne by the owner of the assisted living facility.

30 B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of

31 administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to  
32 ensure prompt correction of violations in assisted living facilities and adult day centers involving  
33 noncompliance with state law or regulation as discovered through any inspection or investigation conducted  
34 by the Departments of Social Services, Health, or Behavioral Health and Developmental Services. The  
35 Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the  
36 provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects  
37 the health, safety or welfare of an assisted living facility resident or an adult day center participant. Such  
38 sanctions or actions may include (i) petitioning the court to appoint a receiver for any (a) assisted living  
39 facility *pursuant to subsection E* or (b) adult day center and (ii) revoking or denying renewal of the license  
40 for the assisted living facility or adult day center for violation of any of the provisions of this subtitle, §  
41 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an immediate  
42 and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding  
43 or abetting the commission of any illegal act in an assisted living facility or adult day center.

44 C. The Commissioner may issue a notice of summary suspension of the license to operate the assisted  
45 living facility pursuant to (i) for assisted living facilities operated by agencies of the Commonwealth, the  
46 procedures set forth in § 63.2-1710.1 or (ii) for all other assisted living facilities, the procedures hereinafter  
47 set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or  
48 practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents.  
49 The notice of summary suspension shall set forth (a) the summary suspension procedures, (b) hearing and  
50 appeal rights as provided under this subsection, (c) facts and evidence that formed the basis for which the  
51 summary suspension is sought, and (d) the time, date, and location of the hearing to determine whether the  
52 suspension is appropriate. Such notice shall be served on the assisted living facility or its designee as soon as  
53 practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of  
54 the assisted living facility.

55 The summary suspension hearing shall be presided over by a hearing officer selected by the  
56 Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be  
57 held as soon as practicable, but in no event later than 15 business days following service of the notice of  
58 hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an  
59 additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing

60 officer shall provide to the Commissioner written findings and conclusions, together with a recommendation  
61 as to whether the license should be summarily suspended.

62 Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation,  
63 the Commissioner may issue a final order of summary suspension or an order that such summary suspension  
64 is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's  
65 recommended decision unless to do so would be an error of law or Department policy. In the event that the  
66 Commissioner rejects a hearing officer's findings, conclusions, or recommended decision, the Commissioner  
67 shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the  
68 Commissioner may suspend the license of the assisted living facility or suspend only certain authority of the  
69 assisted living facility to provide certain services or perform certain functions that the Commissioner  
70 determines should be restricted or modified in order to protect the health, safety, and welfare of the residents  
71 receiving care. A final order of summary suspension shall include notice that the assisted living facility may  
72 appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of  
73 the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at  
74 each public entrance of the facility, or in lieu thereof, the provider may display a written statement  
75 summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface,  
76 and identifying the location within the facility where the final order of summary suspension may be reviewed.

77 Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to  
78 require the assisted living facility to cease operations during the pendency of the concurrent revocation,  
79 denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by  
80 the outcome of any hearing on the appropriateness of the summary suspension. The willful and material  
81 failure to comply with the final order of summary suspension shall constitute an offense under subdivision 3  
82 of § 63.2-1712. At the request of the Commissioner, all agencies and subdivisions of the Commonwealth  
83 shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose  
84 license has been summarily suspended pursuant to this section and in any other actions necessary to reduce  
85 the risk of further harm to residents.

86 D. Notice of the Commissioner's intent to revoke or deny renewal of the license for an assisted living  
87 facility or to summarily suspend the license of an assisted living facility shall be provided by the Department  
88 and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed

89 premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or  
90 summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only  
91 certain authority of the assisted living facility to operate and may restrict or modify the assisted living  
92 facility's authority to provide certain services or perform certain functions that the Commissioner determines  
93 should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such  
94 proposed denial, revocation, or summary suspension of certain services or functions may be appealed (i) if  
95 the assisted living facility is operated by an agency of the Commonwealth in accordance with the provisions  
96 of § 63.2-1710.2 and (ii) for all other assisted living facilities as otherwise provided in this subtitle for any  
97 denial, revocation, or summary suspension.

98 *E. In addition to the enforcements, sanctions, and civil penalties provided in this section, the*  
99 *Commissioner may petition the circuit court for the jurisdiction in which any assisted living facility, as*  
100 *defined in § 63.2-100, is located for the appointment of a receiver in accordance with the provisions of this*  
101 *section whenever such assisted living facility shall (i) receive official notice from the Commissioner that its*  
102 *license has been or will be denied, revoked, or suspended or (ii) operate at any time under conditions that*  
103 *present a major and continuing threat to the health, safety, security, rights, or welfare of the residents,*  
104 *including the threat of imminent abandonment by the owner or operator or a pattern of failure to meet*  
105 *ongoing financial obligations such as the inability to pay for essential food, pharmaceuticals, personnel, or*  
106 *required insurance; and (iii) the assisted living facility is unable to make adequate and timely arrangements*  
107 *for all residents to relocate in order to ensure their continued health, safety, and welfare.*

108 *Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within 10 days,*  
109 *at which time the Department and the owner or operator of the facility may participate and present evidence.*  
110 *The court may grant the petition if it finds any one of the conditions identified in clause (i) or (ii) to exist in*  
111 *combination with the condition identified in clause (iii) and the court further finds that such conditions will*  
112 *not be remedied and that the residents will not be protected unless the petition is granted.*

113 *No receivership established under this subsection shall continue in effect for more than 180 days without*  
114 *further order of the court, nor shall the receivership continue in effect following the revocation or denial of*  
115 *the assisted living facility's license, except to enforce any post-termination duties of the assisted living facility*  
116 *as required by the law.*

117 *The appointed receiver shall be a person licensed as an assisted living facility administrator in the*

118 *Commonwealth pursuant to Title 54.1 or, if not so licensed, shall employ and supervise a person so licensed*  
119 *to administer the day-to-day business of the assisted living facility.*

120 *The appointed receiver shall have (a) such powers and duties to manage the assisted living facility as the*  
121 *court may grant and direct, including to accomplish the orderly relocation of all residents and the right to*  
122 *refuse to admit new residents during the receivership; (b) the power to receive, conserve, protect, and*  
123 *disburse funds on behalf of the owner or operator of the assisted living facility; (c) the power to execute and*  
124 *avoid executory contracts; (d) the power to hire and discharge employees; and (e) the power to do all other*  
125 *acts, including the filing of such reports as the court may direct, subject to accounting to the court therefor*  
126 *and otherwise consistent with state and federal laws, necessary to protect the residents from the threat or*  
127 *threats set forth in the original petitions, as well as such other threats arising thereafter or out of the same*  
128 *conditions.*

129 *The court may grant injunctive relief as it deems appropriate to the Department or to the appointed*  
130 *receiver either in conjunction with or subsequent to the granting of a petition for appointment of a receiver*  
131 *under this subsection.*

132 *The court may terminate the receivership on the motion of the Department, the receiver, or the owner or*  
133 *operator, upon finding, after a hearing, that either (1) the conditions described in the petition have been*  
134 *substantially eliminated or remedied or (2) all residents in the assisted living facility have been relocated.*  
135 *Within 30 days after such termination, the receiver shall file a complete report of his activities with the court,*  
136 *including an accounting for all property of which he has taken possession and all funds collected.*

137 *All costs of administration of a receivership hereunder shall be paid by the receiver out of resident fees.*  
138 *The court, after terminating such receivership, shall enter appropriate orders to ensure such payments upon*  
139 *its approval of the receiver's reports.*

140 *A receiver appointed under this subsection shall be an officer of the court, shall not be liable for*  
141 *conditions at the assisted living facility that existed or originated prior to his appointment, and shall not be*  
142 *personally liable, except for his own gross negligence and intentional acts that result in injuries to persons or*  
143 *damage to property at the assisted living facility during his receivership.*

144 *The provisions of this subsection shall not be construed to relieve any owner, operator, or other party of*  
145 *any duty imposed by law or of any civil or criminal liability incurred by reason of any act or omission of such*  
146 *owner, operator, or other party.*