

**SUBSTITUTE FOR
SENATE BILL NO. 809**

A bill to create the office of the Michigan veterans' facility ombudsman; and to prescribe the powers and duties of the office, the ombudsman, the legislative council, and the department of military and veterans affairs.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Administrative act" includes an action, omission,
3 decision, recommendation, practice, or other procedure of the
4 department.

5 (b) "Complainant" means a resident veteran, family member of a
6 resident veteran, legal guardian or individual with power of
7 attorney for a resident veteran, or legislator who files a
8 complaint under section 4.

1 (c) "Council" means the legislative council established under
2 section 15 of article IV of the state constitution of 1963.

3 (d) "Department" means the department of military and veterans
4 affairs.

5 (e) "Legislator" means a member of the senate or the house of
6 representatives of this state.

7 (f) "Michigan veterans' facility" or "facility" means a
8 Michigan veterans' facility established under 1885 PA 152, MCL 36.1
9 to 36.12.

10 (g) "Office" means the office of the Michigan veterans'
11 facility ombudsman created under this act.

12 (h) "Ombudsman" means the Michigan veterans' facility
13 ombudsman.

14 (i) "Resident veteran" means a veteran who is a resident of a
15 Michigan veterans' facility.

16 (j) "Veteran" means that term as defined in section 2a of 1885
17 PA 152, MCL 36.2a.

18 Sec. 2. (1) The office of the Michigan veterans' facility
19 ombudsman is created within the legislative council.

20 (2) The principal executive officer of the office is the
21 Michigan veterans' facility ombudsman, who shall be appointed by
22 and serve at the pleasure of the council.

23 Sec. 3. The council shall establish procedures for approving
24 the budget of the office, for expending funds of the office, and
25 for the employment of personnel for the office.

26 Sec. 4. (1) The ombudsman may commence an investigation upon
27 his or her own initiative or upon receipt of a complaint from a

1 complainant concerning an administrative act, medical treatment of
2 a resident veteran, or a condition existing at a facility that
3 poses a significant health or safety issue for which there is no
4 effective administrative remedy or is alleged to be contrary to law
5 or departmental policy. The ombudsman may interview any of the
6 following individuals whom the ombudsman considers necessary in an
7 investigation:

8 (a) An individual employed by or retained under contract by
9 the department.

10 (b) An individual employed by or retained under contract by a
11 private contractor that operates a facility that houses resident
12 veterans.

13 (2) Subject to approval of the council, the ombudsman shall
14 establish procedures for receiving and processing complaints,
15 conducting investigations, holding hearings, and reporting the
16 findings resulting from the investigations.

17 Sec. 5. (1) Upon request and without the requirement of any
18 release, the facility shall provide access to all information, and
19 the ombudsman shall be given access to all information, records,
20 and documents in the possession of the department or a facility
21 that the ombudsman deems necessary in an investigation, including,
22 but not limited to, resident veteran medical health records,
23 resident veteran mental health records, and resident veteran
24 mortality and morbidity records.

25 (2) Upon request and without notice, the ombudsman shall be
26 granted entrance to inspect at any time any Michigan veterans'
27 facility.

1 (3) The ombudsman may hold informal hearings and may request
2 that any person appear before the ombudsman or at a hearing and
3 give testimony or produce documentary or other evidence that the
4 ombudsman deems relevant to an investigation.

5 Sec. 6. (1) The ombudsman shall advise a complainant to pursue
6 all administrative remedies available to the complainant. The
7 ombudsman may request and shall receive from the department or from
8 a facility a progress report concerning the administrative
9 processing of a complaint. After administrative action on a
10 complaint, the ombudsman may conduct further investigation on the
11 request of a complainant or on his or her own initiative.

12 (2) The ombudsman is not required to conduct an investigation
13 on a complaint brought before the ombudsman. A complainant is not
14 entitled as a right to be heard by the ombudsman.

15 Sec. 7. Upon receiving a complaint under section 4 and
16 deciding to investigate the complaint, within 10 business days the
17 ombudsman shall notify the complainant, the resident veteran or
18 resident veterans affected, and the department. If the ombudsman
19 declines to investigate, the ombudsman shall notify the complainant
20 within 10 business days, in writing, and inform the resident
21 veteran or resident veterans affected of the reasons for the
22 ombudsman's decision.

23 Sec. 8. Upon request of the ombudsman, the council may hold a
24 hearing. The council may administer oaths, subpoena witnesses, and
25 examine the books and records of the department or of a facility in
26 a matter that is or was a proper subject of investigation by the
27 ombudsman.

1 Sec. 9. (1) Correspondence between the ombudsman and a
2 complainant is confidential and is privileged communication.

3 (2) A report prepared and recommendations made by the
4 ombudsman and submitted to the council under section 10 and any
5 record of the ombudsman are exempt from disclosure under the
6 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

7 Sec. 10. (1) The ombudsman shall prepare and submit a report
8 of the findings of an investigation and make recommendations to the
9 council within 10 business days after completing the investigation
10 if the ombudsman finds any of the following:

11 (a) A matter that should be considered by the department.

12 (b) An administrative act that should be modified or canceled.

13 (c) A statute or rule that should be altered.

14 (d) Administrative acts for which justification is necessary.

15 (e) Significant resident veteran health and safety issues.

16 (f) Any other significant concerns.

17 (2) Subject to section 11, the council shall forward the
18 report prepared and submitted under this section to the department,
19 the resident veteran or resident veterans affected, and to the
20 complainant who requested the report.

21 Sec. 11. Before submitting a report with a conclusion or
22 recommendation that expressly or by implication criticizes a person
23 or facility or the department, the ombudsman shall consult with
24 that person or facility or the department. When publishing an
25 opinion adverse to a person or facility or the department, the
26 ombudsman shall include in that publication a statement of
27 reasonable length made to the ombudsman by that person or facility

1 or the department in defense or mitigation of the finding if that
2 statement is provided within a reasonable period of time as
3 determined by the council. The ombudsman may request to be notified
4 by a person or facility or the department, within a specified time,
5 of any action taken on any recommendation presented. The ombudsman
6 shall notify the complainant of the actions taken by the person or
7 facility or by the department.

8 Sec. 12. The ombudsman shall submit to the council, the board
9 of managers, and the legislature a semiannual report on the conduct
10 of the office. A report under this section shall include all of the
11 following information for each Michigan veterans' facility during
12 the preceding 6 months, at a minimum:

13 (a) The number of complaints received.

14 (b) The number of complaints concerning each of the following
15 categories:

16 (i) The modification or cancellation of, or justification for,
17 an administrative act.

18 (ii) A statute or rule.

19 (iii) Significant veteran health issues.

20 (iv) Significant veteran safety issues.

21 (c) The number of complaints resulting in the initiation of an
22 investigation.

23 (d) The number of investigations initiated by the ombudsman.

24 (e) The number of hearings.

25 (f) The number of reports of findings issued.

26 Sec. 13. (1) A resident veteran shall not be penalized in any
27 way by a person or facility or the department as a result of filing

1 a complaint, communicating a complaint to a legislator, or
2 cooperating with the ombudsman in investigating a complaint.

3 (2) A person or facility or the department shall not hinder
4 the lawful actions of the ombudsman or employees of the office or
5 willfully refuse to comply with any lawful demand of the office.

6 Sec. 14. The authority granted the ombudsman under this act is
7 in addition to the authority granted under any other act or rule
8 under which a remedy or right of appeal or objection is provided
9 for a complainant, or any procedure provided for the inquiry into
10 or investigation of any matter concerning a facility. The authority
11 granted the ombudsman under this act shall not be construed to
12 limit or affect any other remedy or right of appeal or objection
13 and shall not be deemed to be exclusionary.

14 Enacting section 1. This act takes effect 90 days after the
15 date it is enacted into law.