

**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 or an individual who is a resident of a
16 Michigan veterans' facility by virtue of the individual's
17 relationship with a veteran.

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

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

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

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

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

10 (a) An individual employed by or retained under contract by
11 the department.

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

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

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

27 (2) Upon request and without notice, the ombudsman shall be

1 granted entrance to inspect at any time any Michigan veterans'
2 facility.

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

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

14 (2) The ombudsman is not required to conduct an investigation
15 or hold a hearing on a complaint brought before the ombudsman.

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

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

1 ombudsman.

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

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

8 (3) All records, reports, and communications relied upon,
9 referenced, or prepared are subject to the privacy provisions of
10 the health insurance portability and accountability act of 1996,
11 Public Law 104-191, and regulations promulgated under that act, 45
12 CFR parts 160 and 164.

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

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

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

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

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

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

22 (f) Any other significant concerns.

23 (2) Subject to section 11, the council shall forward the
24 report prepared and submitted under this section to the department,
25 the resident veteran or resident veterans affected, and to the
26 complainant who requested the report.

27 Sec. 11. Before submitting a report with a conclusion or

1 recommendation that expressly or by implication criticizes a person
2 or facility or the department, the ombudsman shall consult with
3 that person or facility or the department. When publishing an
4 opinion adverse to a person or facility or the department, the
5 ombudsman shall include in that publication a statement of
6 reasonable length made to the ombudsman by that person or facility
7 or the department in defense or mitigation of the finding if that
8 statement is provided within a reasonable period of time as
9 determined by the council. The ombudsman may request to be notified
10 by a person or facility or the department, within a specified time,
11 of any action taken on any recommendation presented. The ombudsman
12 shall notify the complainant of the actions taken by the person or
13 facility or by the department.

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

19 (a) The number of complaints received.

20 (b) The number of complaints concerning each of the following
21 categories:

22 (i) The modification or cancellation of, or justification for,
23 an administrative act.

24 (ii) A statute or rule.

25 (iii) Significant veteran health issues.

26 (iv) Significant veteran safety issues.

27 (c) The number of complaints resulting in the initiation of an

1 investigation.

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

3 (e) The number of hearings.

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

5 Sec. 13. (1) A resident veteran shall not be penalized in any
6 way by a person or facility or the department as a result of filing
7 a complaint, communicating a complaint to a legislator, or
8 cooperating with the ombudsman in investigating a complaint.

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

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

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