

HOUSE BILL No. 4124

January 29, 2013, Introduced by Reps. MacGregor, Pscholka, Zorn, Price, Lori, Foster, Cotter, Jenkins, Shirkey, Rendon, Poleski, VerHeulen, Potvin, Kesto, Kowall, Forlini, Farrington, Daley, Jacobsen, Yonker, Outman, Glardon, Lyons, Dillon, McCann, Brinks, Victory, MacMaster, Kurtz, Santana, Kosowski, Schor, Knezek, Hooker, Franz, Crawford, O'Brien, Leonard and Genetski and referred to the Committee on Government Operations.

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, or legislator who files a complaint under section
7 4.

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

1 (d) "Department" means the department of military and veterans
2 affairs.

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

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

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

10 (h) "Ombudsman" means the Michigan veterans' facility
11 ombudsman.

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

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

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

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

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

24 Sec. 4. (1) The ombudsman may commence an investigation upon
25 his or her own initiative or upon receipt of a complaint from a
26 complainant concerning an administrative act or a condition
27 existing at a facility that is alleged to be contrary to law or

1 departmental policy or that poses a significant health or safety
2 issue for which there is no effective administrative remedy.

3 (2) Subject to approval of the council, the ombudsman shall
4 establish procedures for receiving and processing complaints,
5 conducting investigations, holding hearings, and reporting the
6 findings resulting from the investigations.

7 Sec. 5. (1) Upon request and without the requirement of any
8 release, the ombudsman shall be given access to all information,
9 records, and documents in the possession of the department or a
10 facility that the ombudsman deems necessary in an investigation,
11 including, but not limited to, resident veteran medical health
12 records, resident veteran mental health records, and resident
13 veteran mortality and morbidity records.

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

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

21 Sec. 6. (1) The ombudsman shall advise a complainant to pursue
22 all administrative remedies open to the complainant. The ombudsman
23 may request and shall receive from the department or from a
24 facility a progress report concerning the administrative processing
25 of a complaint. After administrative action on a complaint, the
26 ombudsman may conduct further investigation on the request of a
27 complainant or on his or her own initiative.

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

4 Sec. 7. Upon receiving a complaint under section 4 and
5 deciding to investigate the complaint, the ombudsman shall notify
6 the complainant, the resident veteran or resident veterans
7 affected, and the department. If the ombudsman declines to
8 investigate, the ombudsman shall notify the complainant, in
9 writing, and inform the resident veteran or resident veterans
10 affected of the reasons for the ombudsman's decision.

11 Sec. 8. Upon request of the ombudsman, the council may hold a
12 hearing. The council may administer oaths, subpoena witnesses, and
13 examine the books and records of the department or of a facility in
14 a matter that is or was a proper subject of investigation by the
15 ombudsman.

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

18 (2) The ombudsman shall maintain confidentiality regarding all
19 matters under investigation and the identities of the complainants
20 or persons from whom information is acquired, except so far as
21 disclosure is necessary to enable the ombudsman to perform the
22 duties of the office and to support any recommendations resulting
23 from an investigation.

24 (3) A report prepared and recommendations made by the
25 ombudsman and submitted to the council under section 10 are exempt
26 from disclosure under the freedom of information act, 1976 PA 442,
27 MCL 15.231 to 15.246.

1 Sec. 10. (1) The ombudsman shall prepare and submit a report
2 of the findings of an investigation and make recommendations to the
3 council within 30 days after completing the investigation if the
4 ombudsman finds any of the following:

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

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

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

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

9 (e) Significant resident veteran health and safety issues as
10 determined by the council.

11 (f) Any other significant concerns as determined by the
12 council.

13 (2) Subject to section 11, the council may forward the report
14 prepared and submitted under this section to the department, the
15 resident veteran or resident veterans affected, or the complainant
16 who requested the report.

17 Sec. 11. Before announcing a conclusion or recommendation that
18 expressly or by implication criticizes a person or facility or the
19 department, the ombudsman shall consult with that person or
20 facility or the department. When publishing an opinion adverse to a
21 person or facility or the department, the ombudsman shall include
22 in that publication a statement of reasonable length made to the
23 ombudsman by that person or facility or the department in defense
24 or mitigation of the finding if that statement is provided within a
25 reasonable period of time as determined by the council. The
26 ombudsman may request to be notified by a person or facility or the
27 department, within a specified time, of any action taken on any

1 recommendation presented. The ombudsman shall notify the
2 complainant of the actions taken by the person or facility or by
3 the department.

4 Sec. 12. The ombudsman shall submit to the council and the
5 legislature an annual report on the conduct of the office.

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

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

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