

HOUSE BILL No. 5617

February 20, 2018, Introduced by Rep. Kosowski and referred to the Committee on Military and Veterans Affairs.

A bill to amend 2016 PA 198, entitled

"An act 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,"

by amending sections 1, 4, 6, 7, 10, 12, and 13 (MCL 4.771, 4.774, 4.776, 4.777, 4.780, 4.782, and 4.783).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

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

(b) "Complainant" means a resident veteran, family member of a

1 resident veteran, legal guardian or individual with power of
2 attorney for a resident veteran, or legislator who files a
3 complaint under section ~~4-4~~(1) OR A REPORT OF ABUSE, NEGLECT, OR
4 EXPLOITATION UNDER SECTION 4(2). COMPLAINANT INCLUDES AN INDIVIDUAL
5 WHO MAKES A REPORT OF ABUSE TO THE DEPARTMENT OF HEALTH AND HUMAN
6 SERVICES UNDER SECTION 11A OF THE SOCIAL WELFARE ACT, 1939 PA 280,
7 MCL 400.11A.

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

10 (d) "Department" means the department of military and veterans
11 affairs.

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

14 (f) "Michigan veterans' facility", "**VETERANS' FACILITY**", or
15 "facility" means a Michigan veterans' facility established under
16 1885 PA 152, MCL 36.1 to 36.12 **OR A VETERANS' FACILITY AS THAT TERM**
17 **IS DEFINED IN SECTION 2 OF THE MICHIGAN VETERANS' FACILITY**
18 **AUTHORITY ACT, 2016 PA 560, MCL 36.102.**

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

21 (h) "Ombudsman" means the Michigan veterans' facility
22 ombudsman.

23 **(I) "REPORT OF ABUSE" MEANS A REPORT RECEIVED BY THE OMBUDSMAN**
24 **FROM A COMPLAINANT OR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
25 **CONCERNING ABUSE, NEGLECT, OR EXPLOITATION, AS THOSE TERMS ARE**
26 **DEFINED IN SECTION 11 OF THE SOCIAL WELFARE ACT, 1939 PA 280, MCL**
27 **400.11, OF AN ADULT RESIDING IN A VETERANS' FACILITY.**

1 **(J)** ~~(i)~~ "Resident veteran" means a veteran who is a resident
 2 of a Michigan veterans' facility or an individual who is a resident
 3 of a Michigan veterans' facility by virtue of the individual's
 4 relationship with a veteran.

5 **(K)** ~~(j)~~ "Veteran" means that term as defined in section 2a of
 6 1885 PA 152, MCL 36.2a.

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

16 ~~—— (a) An individual employed by or retained under contract by~~
 17 ~~the department.~~

18 ~~—— (b) An individual employed by or retained under contract by a~~
 19 ~~private contractor that operates a facility that houses resident~~
 20 ~~veterans.~~

21 **(2) THE OMBUDSMAN SHALL IMMEDIATELY COMMENCE AN INVESTIGATION**
 22 **UPON RECEIPT OF A REPORT OF ABUSE FROM A COMPLAINANT OR THE**
 23 **DEPARTMENT OF HEALTH AND HUMAN SERVICES. IF THE REPORT OF ABUSE IS**
 24 **RECEIVED FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE**
 25 **OMBUDSMAN SHALL COORDINATE HIS OR HER INVESTIGATION WITH AN**
 26 **INVESTIGATION UNDERTAKEN BY THE DEPARTMENT OF HEALTH AND HUMAN**
 27 **SERVICES CONCERNING THAT REPORT.**

1 (3) THE OMBUDSMAN MAY INTERVIEW ANY OF THE FOLLOWING
2 INDIVIDUALS WHOM THE OMBUDSMAN CONSIDERS NECESSARY IN AN
3 INVESTIGATION:

4 (A) AN INDIVIDUAL EMPLOYED BY OR RETAINED UNDER CONTRACT BY
5 THE DEPARTMENT.

6 (B) AN INDIVIDUAL EMPLOYED BY OR RETAINED UNDER CONTRACT BY A
7 PRIVATE CONTRACTOR THAT OPERATES A FACILITY THAT HOUSES RESIDENT
8 VETERANS.

9 (4) ~~(2)~~—Subject to approval of the council, the ombudsman
10 shall establish procedures for receiving and processing complaints
11 UNDER SUBSECTION (1) OR A REPORT OF ABUSE UNDER SUBSECTION (2),
12 conducting investigations, holding hearings, and reporting the
13 findings resulting from the investigations.

14 (5) A REPRESENTATIVE FROM THE OFFICE OF THE MICHIGAN VETERANS'
15 FACILITY OMBUDSMAN SHALL MEET WITH A REPRESENTATIVE FROM THE
16 DEPARTMENT AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO
17 DEVELOP A MODEL PROTOCOL THAT IS BASED ON THE STATE MODEL PROTOCOL
18 DEVELOPED UNDER SECTION 11B(9) OF THE SOCIAL WELFARE ACT, 1939 PA
19 280, MCL 400.11B, FOR THE INVESTIGATION OF A REPORT OF ABUSE. THIS
20 MODEL PROTOCOL SHALL BE DEVELOPED NOT MORE THAN 1 YEAR AFTER THE
21 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

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

1 request of a complainant or on his or her own initiative.

2 (2) ~~The~~ **EXCEPT IN THE CASE OF A REPORT OF ABUSE, THE** ombudsman
3 is not required to conduct an investigation or hold a hearing on a
4 complaint brought before the ombudsman.

5 Sec. 7. **(1)** Upon receiving a complaint under section ~~4~~**4(1)**
6 and deciding to investigate the complaint, within 10 business days
7 the ombudsman shall notify the complainant, the resident veteran or
8 resident veterans affected, and the department. If the ombudsman
9 declines to investigate, the ombudsman shall notify the complainant
10 within 10 business days, in writing, and inform the resident
11 veteran or resident veterans affected of the reasons for the
12 ombudsman's decision.

13 **(2) UPON RECEIVING A REPORT OF ABUSE AND COMMENCING AN**
14 **INVESTIGATION UNDER SECTION 4(2), THE OMBUDSMAN SHALL NOTIFY THE**
15 **COMPLAINANT, THE RESIDENT VETERAN OR RESIDENT VETERANS AFFECTED,**
16 **THE DEPARTMENT, AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
17 **WITHIN 24 HOURS THAT HE OR SHE HAS COMMENCED AN INVESTIGATION.**

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

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

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

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

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

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

27 **(F) A REPORT OF ABUSE THAT HAS MERIT.**

1 (G) ~~(f)~~ Any other significant concerns.

2 (2) Subject to section 11, the council shall forward the
3 report prepared and submitted under this section to the department,
4 the resident veteran or resident veterans affected, and to the
5 complainant who requested the report. **IF THE REPORT CONCERNS A
6 REPORT OF ABUSE RECEIVED FROM THE DEPARTMENT OF HEALTH AND HUMAN
7 SERVICES, THE COUNCIL SHALL FORWARD THE REPORT TO THAT DEPARTMENT
8 IN ADDITION TO THE PARTIES LISTED IN THIS SUBSECTION.**

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

14 (a) The number of complaints received.

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

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

19 (ii) A statute or rule.

20 (iii) Significant veteran health issues.

21 (iv) Significant veteran safety issues.

22 (v) **A REPORT OF ABUSE.**

23 (c) The number of complaints resulting in the initiation of an
24 investigation.

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

26 (e) The number of hearings.

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

1 Sec. 13. (1) A resident veteran shall not be penalized in any
2 way by a person or facility or the department as a result of filing
3 a complaint **OR SUBMITTING A REPORT OF ABUSE**, communicating a
4 complaint **OR A REPORT OF ABUSE** to a legislator, or cooperating with
5 the ombudsman in investigating a complaint **OR A REPORT OF ABUSE**.

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

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect
12 unless Senate Bill No. _____ or House Bill No. 5616 (request no.
13 05024'17) of the 99th Legislature is enacted into law.