

1-1 By: Klick (Senate Sponsor - Perry) H.B. No. 3564
 1-2 (In the Senate - Received from the House May 10, 2017;
 1-3 May 12, 2017, read first time and referred to Committee on Health &
 1-4 Human Services; May 19, 2017, reported favorably by the following
 1-5 vote: Yeas 8, Nays 0; May 19, 2017, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | X | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | | | X | |
| 1-15 | X | | | |
| 1-16 | X | | | |

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the office of the state long-term care ombudsman;
 1-20 affecting the prosecution of a criminal offense.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subchapter F, Chapter 101A, Human Resources
 1-23 Code, is amended to read as follows:

1-24 SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

1-25 Sec. 101A.251. DEFINITIONS. In this subchapter:

1-26 (1) "Commission" means the Health and Human Services
 1-27 Commission [~~"Elderly resident" means a resident of a long-term care~~
 1-28 ~~facility who is 60 years of age or older~~].

1-29 (1-a) "Local ombudsman entity" means a distinct unit
 1-30 or entity, consisting of representatives, designated by the state
 1-31 long-term care ombudsman to carry out the ombudsman program in a
 1-32 service area of the state.

1-33 (2) "Long-term care facility" means a facility that
 1-34 [~~serves persons who are 60 years of age or older and that~~] is
 1-35 licensed or regulated or that is required to be licensed or
 1-36 regulated by the commission [~~department~~] under Chapter 242 or 247,
 1-37 Health and Safety Code.

1-38 (3) "Office" means the office of the state long-term
 1-39 care ombudsman, consisting of the state long-term care ombudsman
 1-40 and representatives who are employed by the commission.

1-41 (3-a) "Ombudsman program" means the program through
 1-42 which the functions and duties of the office are carried out,
 1-43 consisting of the office and all representatives.

1-44 (4) "Representative" means an employee or volunteer
 1-45 specifically designated by the office as a representative of the
 1-46 office.

1-47 (4-a) "Resident" means a resident of a long-term care
 1-48 facility.

1-49 (5) "State long-term care ombudsman" means the chief
 1-50 administrator of the office.

1-51 Sec. 101A.252. OPERATION OF OFFICE. (a) The office
 1-52 [~~department~~] shall operate and is subject to the commission's
 1-53 oversight in accordance with federal and state statute [~~the office~~
 1-54 ~~of the state long-term care ombudsman~~].

1-55 (b) The commission [~~department~~] may operate the office
 1-56 directly or by contract or memorandum of agreement with a public
 1-57 agency or other appropriate private nonprofit organization. The
 1-58 commission, agency, or organization may not implement a policy that
 1-59 prohibits the office from performing its duties under this
 1-60 subchapter. The commission [~~department~~] may not use an agency or
 1-61 organization that [~~is~~]:

2-1 (1) is responsible for licensing or certifying
2-2 long-term care services; ~~[or]~~

2-3 (2) is an association of long-term care facilities or
2-4 of any other residential facility that serves persons with
2-5 disabilities or who are 60 years of age or older, or that is an
2-6 affiliate of such an association; or

2-7 (3) has an ownership, operational, or investment
2-8 interest in a long-term care facility.

2-9 (c) The commission ~~[department]~~ shall consider the views of
2-10 residents ~~[elderly persons]~~, provider organizations, advocacy
2-11 groups, and area agencies on aging in planning and operating the
2-12 office.

2-13 (d) The commission ~~[department]~~ shall ensure that a person
2-14 involved in designating the state long-term care ombudsman or in
2-15 designating a ~~[an employee or]~~ representative ~~[of the office]~~ does
2-16 not have a conflict of interest.

2-17 Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman
2-18 program shall operate in cooperation with any regulatory agency
2-19 funded and mandated by federal ~~[the Older Americans Act of 1965 (42~~
2-20 ~~U.S.C. Section 3001 et seq.)]~~ and state statute.

2-21 Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE
2-22 OMBUDSMAN AND OFFICE. (a) The ~~[state ombudsman and the]~~ office has
2-23 ~~[have]~~ the powers and duties authorized and required by state and
2-24 federal law.

2-25 (b) The office may use appropriate administrative, legal,
2-26 and other remedies to assist ~~[elderly]~~ residents as provided by
2-27 commission ~~[department]~~ rules.

2-28 (c) The office acts independently of the commission in the
2-29 performance of its powers and duties under this subchapter.

2-30 (d) The state long-term care ombudsman has the authority to
2-31 designate a local ombudsman entity or representative and to suspend
2-32 or revoke that designation.

2-33 Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit
2-34 volunteers and citizen organizations to participate in the
2-35 ombudsman program. A paid staff member of an area agency on aging
2-36 network or a nonprofit social service agency may be an ombudsman.
2-37 An ombudsman is a representative ~~[of the office]~~.

2-38 (b) The office shall provide training to ombudsmen as
2-39 required by this subchapter and federal law.

2-40 (c) The office shall coordinate ombudsman services with the
2-41 protection and advocacy systems that exist for persons with
2-42 developmental disabilities or mental illness.

2-43 (d) The office shall coordinate ombudsman services with
2-44 state and local law enforcement agencies and courts of competent
2-45 jurisdiction. The office is not authorized to compel those law
2-46 enforcement agencies or courts to coordinate ombudsman services or
2-47 other activities with the office.

2-48 Sec. 101A.256. LEGAL COUNSEL ~~[ASSISTANCE]~~. The commission
2-49 ~~[department]~~ shall ensure that the office receives adequate legal
2-50 advice and representation without conflict of interest as defined
2-51 by the Texas Disciplinary Rules of Professional Conduct. The
2-52 attorney general shall represent the state long-term care ombudsman
2-53 and ~~[or]~~ a representative if a suit or other legal action is brought
2-54 or threatened to be brought against that person in connection with
2-55 the person's performance of the official duties of the ombudsman
2-56 program ~~[office]~~.

2-57 Sec. 101A.257. INVESTIGATIONS. (a) The office shall have
2-58 access to ~~[elderly]~~ residents and shall, in accordance with
2-59 commission rules, investigate and resolve complaints made by or on
2-60 behalf of ~~[elderly]~~ residents.

2-61 (b) The state long-term care ombudsman ~~[department]~~ shall
2-62 ensure that each ombudsman designated under Section 101A.255 who
2-63 investigates complaints has received proper training and has been
2-64 approved by the office as qualified to investigate complaints.

2-65 (c) The office shall investigate a grievance made against a
2-66 representative in accordance with commission rules and inform the
2-67 person who made the grievance of the outcome of the investigation
2-68 when the investigation is concluded.

2-69 (d) A long-term care facility shall cooperate with an

3-1 investigation conducted by the state long-term care ombudsman or a
 3-2 representative, including an ombudsman designated under Section
 3-3 101A.255.

3-4 Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a)
 3-5 The state long-term care ombudsman and representatives [~~or the~~
 3-6 ~~state ombudsman's designee, specifically identified by the~~
 3-7 ~~commissioner,~~] shall have access to patient care records of
 3-8 [~~elderly~~] residents as provided by commission rules. Except as
 3-9 provided by Subsection (b), all [~~of long-term care facilities as~~
 3-10 ~~provided by Subsection (a-1). The executive commissioner by rule~~
 3-11 ~~shall establish procedures for obtaining access to the records.~~
 3-12 ~~All~~] records and information created or obtained by [~~to which~~] the
 3-13 state long-term care ombudsman or a representative [~~the state~~
 3-14 ~~ombudsman's designee obtains access]~~ remain confidential.

3-15 (a-1) The state long-term care ombudsman and
 3-16 representatives [~~or the state ombudsman's designee, specifically~~
 3-17 ~~identified by the commissioner,~~] shall have access to patient care
 3-18 records of a resident [~~elderly residents of long-term care~~
 3-19 ~~facilities]~~ if:

3-20 (1) the resident or the resident's legal
 3-21 representative consents to the access;

3-22 (2) the resident is unable to consent to the access and
 3-23 the resident has no legal representative; or

3-24 (3) access to the records is necessary to investigate
 3-25 a complaint and:

3-26 (A) a legal representative [~~guardian~~] of the
 3-27 resident refuses to consent to the access;

3-28 (B) the state long-term care ombudsman or
 3-29 representative [~~the state ombudsman's designee~~] has reasonable
 3-30 cause to believe that the legal representative of the resident
 3-31 [~~guardian~~] is not acting in the best interests of the resident; and

3-32 (C) the state long-term care ombudsman approves
 3-33 the access.

3-34 (b) The office shall ensure that the identity of a
 3-35 complainant or any [~~facility~~] resident may be disclosed only with
 3-36 the [~~written~~] consent of the person or the person's legal
 3-37 representative or on court order.

3-38 (c) Files, records, and other information maintained as
 3-39 part of the ombudsman program may be disclosed only at the
 3-40 discretion of the state long-term care ombudsman. [~~The information~~
 3-41 ~~in files maintained by the office may be disclosed only by the~~
 3-42 ~~ombudsman who has authority over the disposition of the files.~~]

3-43 Sec. 101A.259. REPORTING SYSTEM. The office shall maintain
 3-44 a statewide ombudsman uniform reporting system to collect and
 3-45 analyze information relating to complaints and conditions in
 3-46 long-term care facilities as long as such system does not duplicate
 3-47 other state reporting systems. The office shall provide the
 3-48 information to the commission in accordance with federal law
 3-49 [~~department and the Health and Human Services Commission].~~

3-50 Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall
 3-51 analyze and monitor the development and implementation of federal,
 3-52 state, and local laws, rules, regulations, and policies relating to
 3-53 long-term care facilities and services and shall recommend any
 3-54 changes the office considers necessary.

3-55 (b) To the extent necessary to perform any duties under this
 3-56 subchapter, Section 556.006(a), Government Code, and Section
 3-57 391.0116, Local Government Code, do not apply to the state
 3-58 long-term care ombudsman or a representative.

3-59 Sec. 101A.261. PUBLIC INFORMATION. The office shall
 3-60 provide information and make recommendations to public agencies,
 3-61 legislators, and other persons about [~~others that relates to~~] the
 3-62 problems and concerns of [~~elderly~~] residents.

3-63 Sec. 101A.262. [ANNUAL] REPORT. (a) The office shall
 3-64 prepare a [~~an annual~~] report that contains:

3-65 (1) information and findings relating to the problems
 3-66 and concerns [~~complaints~~] of [~~elderly~~] residents; and

3-67 (2) policy, regulatory, and legislative
 3-68 recommendations to solve the problems, resolve the concerns
 3-69 [~~complaints~~], and improve the quality of the [~~elderly~~] residents'

4-1 care and lives.

4-2 (b) The report must be submitted to the governor and the
4-3 presiding officer of each house of the legislature not later than
4-4 November 1 of each even-numbered year.

4-5 Sec. 101A.263. LIMITATION OF LIABILITY. The state
4-6 long-term care [~~An~~] ombudsman or a representative is not liable for
4-7 civil damages or subject to criminal prosecution for performing
4-8 official duties unless the state long-term care ombudsman or
4-9 representative acts in bad faith or with a malicious purpose.

4-10 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
4-11 offense if the person:

4-12 (1) by act or omission, wilfully [~~intentionally~~]
4-13 interferes or attempts to interfere with the state long-term care
4-14 [~~an~~] ombudsman or a representative attempting to perform official
4-15 duties; or

4-16 (2) commits or attempts to commit an act of
4-17 retaliation or reprisal against any resident or employee of a
4-18 long-term care facility for filing a complaint or providing
4-19 information to the state long-term care [~~an~~] ombudsman or a
4-20 representative.

4-21 (b) An offense under this section is a Class B misdemeanor.

4-22 (c) The commission [~~department~~] shall ensure [~~assure~~] that
4-23 criminal sanctions will be initiated only after all administrative
4-24 procedures are exhausted.

4-25 SECTION 2. Section 101A.264, Human Resources Code, as
4-26 amended by this Act, applies only to an offense committed on or
4-27 after the effective date of this Act. An offense committed before
4-28 the effective date of this Act is governed by the law in effect on
4-29 the date the offense was committed, and the former law is continued
4-30 in effect for that purpose. For purposes of this section, an
4-31 offense was committed before the effective date of this Act if any
4-32 element of the offense occurred before that date.

4-33 SECTION 3. This Act takes effect September 1, 2017.

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