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1 IN THE SENATE

BY UEHLING, KERTTULA
AND SZYMANSKI

2

SENATE BILL NO. 442

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Older Alaskans Commission and
7 the protection of elderly persons; and establishing
8 the office of the older Alaskans ombudsman."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 44.21.230(b) is amended to read:

11 (b) To accomplish its duties, the commission may

12 (1) review, evaluate, and comment upon state programs
13 concerned with the problems and the needs of older Alaskans;

14 (2) collect facts and statistics, and make studies of
15 conditions and problems pertaining to the employment, health, finan-
16 cial security, social welfare, and other concerns that bear upon the
17 well-being of older Alaskans;

18 (3) provide information about public programs that would be
19 of interest or benefit to older Alaskans;

20 (4) appoint special committees, which may include persons
21 who are not members of the commission, to complete necessary studies;

22 (5) promote community education efforts regarding the
23 problems and concerns of older Alaskans;

24 (6) contract for necessary services;

25 (7) consult and cooperate with persons, organizations, and
26 groups interested in or concerned with programs of assistance to older
27 Alaskans;

28 (8) advocate improved programs of benefit to older
29 Alaskans; and

1 (9) set standards for levels of services for older Alaskans
2 for programs administered by the commission; and

3 (10) adopt regulations necessary for the administration of
4 AS 44.21.200 - 44.21.240 and to comply with federal law.

5 * Sec. 2. AS 44.21 is amended by adding new sections to read:

6 Sec. 44.21.231. OFFICE OF THE OLDER ALASKANS OMBUDSMAN. (a)
7 The office of the older Alaskans ombudsman is established in the
8 commission.

9 (b) The ombudsman shall be appointed by the commission for a
10 term of four years and may be reappointed. A member of the commission
11 who has a financial interest in a nursing home in the state, or who
12 has any other conflict of interest, may not participate in the ap-
13 pointment of the ombudsman. The ombudsman is a full-time position,
14 with compensation and conditions of employment determined by the
15 commission.

16 (c) The ombudsman may not have a financial interest in a nursing
17 home in the state. The commission shall adopt regulations to assure
18 that the ombudsman, and employees and volunteers of the office, do not
19 have a conflict of interest or an appearance of a conflict of inter-
20 est.

21 Sec. 44.21.232. DUTIES AND POWERS OF THE OMBUDSMAN. (a) The
22 ombudsman shall investigate and resolve a complaint made by or on
23 behalf of an older Alaskan who resides in a nursing home in the state
24 if the complaint relates to administrative action that may adversely
25 affect the health, safety, welfare, or rights of the older Alaskan;

26 (b) The ombudsman may

27 (1) subpoena witnesses, compel their attendance, require
28 the production of evidence, administer oaths, and examine any person
29 under oath in connection with a complaint described under (a) of this

1 section; the powers described in this paragraph shall be enforced by
2 the superior court;

3 (2) pursue administrative, legal, or other appropriate
4 remedies on behalf of an older Alaskan who resides in a nursing home
5 in the state.

6 Sec. 44.21.233. TRAINING AND CERTIFICATION OF OMBUDSMAN'S STAFF.

7 (a) The ombudsman shall provide for the training and certification of
8 office staff, including volunteers and other representatives of the
9 office. Training must include instruction in federal, state, and
10 local laws and policies relating to nursing homes in the state, and in
11 investigative techniques. The ombudsman may require other appropriate
12 training.

13 (b) An employee, volunteer, or other representative of the
14 office may not investigate a complaint under AS 44.21.232(a) unless
15 certified as having completed training under this section and approved
16 by the ombudsman as qualified to investigate the complaint.

17 Sec. 44.21.234. OMBUDSMAN'S ACCESS TO NURSING HOMES AND PATIENT
18 RECORDS. (a) A person may not deny access to a nursing home or to an
19 older Alaskan by the ombudsman or an employee, volunteer, or other
20 representative of the office.

21 (b) Notwithstanding the provisions of AS 44.21.232(b)(1), the
22 ombudsman may obtain medical or other records of an older Alaskan who
23 resides in a nursing home in the state only with the consent of the
24 older Alaskan or the older Alaskan's legal guardian or, if the older
25 Alaskan is unable or incompetent to consent and does not have a legal
26 guardian, only with a court order.

27 Sec. 44.21.235. CONFIDENTIALITY. (a) Records obtained or
28 maintained by the ombudsman are confidential, are not subject to
29 inspection or copying under AS 09.25.110 - 09.25.120 and, except as

1 provided in (b) of this section, may be disclosed only at the dis-
2 cretion of the ombudsman.

3 (b) The identity of a complainant or an older Alaskan who re-
4 sides in a nursing home in the state may not be disclosed without the
5 consent of the identified person or the person's legal guardian,
6 unless required by court order.

7 Sec. 44.21.236. IMMUNITY FROM LIABILITY. (a) A person who, in
8 good faith, makes a complaint described in AS 44.21.232(a) is immune
9 from civil or criminal liability that might otherwise exist for making
10 the complaint.

11 (b) The ombudsman, or an employee, volunteer, or other represen-
12 tative of the office, is immune from civil or criminal liability for
13 the good faith performance of official duties.

14 Sec. 44.21.237. INTERFERENCE WITH OMBUDSMAN AND RETALIATION
15 PROHIBITED. (a) It is unlawful to intentionally interfere with the
16 ombudsman, or an employee, volunteer, or representative of the office,
17 in the performance of official duties.

18 (b) An employer or supervisor of a person who, in good faith,
19 makes a complaint described in AS 44.21.232(a) may not discharge,
20 demote, transfer, reduce the pay or benefits or work privileges of,
21 prepare a negative work performance evaluation of, or take other
22 detrimental action against the person because of the complaint. The
23 person making the complaint may bring a civil action for compensatory
24 and punitive damages against an employer or supervisor who violates
25 this subsection. In the civil action there is a rebuttable presump-
26 tion that the detrimental action by the employer or supervisor was
27 retaliatory if it was taken within 90 days after the complaint was
28 made.

29 (c) A person who violates this section is guilty of a class B

1 misdemeanor.

2 Sec. 44.21.238. LEGAL COUNSEL FOR OMBUDSMAN. The Attorney
3 General shall provide legal advice and representation in connection
4 with any matter relating to the powers, duties, and operation of the
5 office, and in any legal action brought against the ombudsman or an
6 employee, volunteer, or other representative of the office. If the
7 Attorney General cannot provide legal advice or representation because
8 of a conflict of interest, the ombudsman may employ private legal
9 counsel.

10 * Sec. 3. AS 44.21.240 is amended to read:

11 Sec. 44.21.240. DEFINITIONS. In AS 44.21.200 - 44.21.240,

12 (1) "commission" means the Older Alaskans Commission;

13 (2) "nursing home" has the meaning given in AS 08.70.180;

14 (3) "office" means the office of the older Alaskans ombuds-
15 man;

16 (4) "older Alaskan" means a resident who is 60 years of age
17 or older;

18 (5) "ombudsman" means the older Alaskans ombudsman appoint-
19 ed under AS 44.21.231.

20 * Sec. 4. AS 47.24.010 is amended by adding a new subsection to read:

21 (h) An employer or supervisor of a person who, in good faith,
22 makes a report of harm under this section may not discharge, demote,
23 transfer, reduce pay or benefits or work privileges of, prepare a
24 negative work performance evaluation of, or take other detrimental
25 action against the person because of the report. The person making
26 the report may bring a civil action for compensatory and punitive
27 damages against an employer or supervisor who violates this subsec-
28 tion. In the civil action there is a rebuttable presumption that the
29 detrimental action by the employer or supervisor was retaliatory if it

1 was taken within 90 days after the report of harm was made.