

Offered: 3/23/88  
Referred: Finance

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Original sponsors: Uehling, Kerttula  
and Szymanski

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

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CS FOR SENATE BILL NO. 442 (State Affairs)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the Older Alaskans Commission and  
the protection of elderly persons; and establishing  
the office of the long term care ombudsman."

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

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

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(b) To accomplish its duties, the commission may

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

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

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

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

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

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(6) contract for necessary services;

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

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(8) advocate improved programs of benefit to older Alas-  
kans; and

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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 LONG TERM CARE OMBUDSMAN. (a)  
7 The office of the long term care ombudsman is established in the  
8 commission.

9 (b) The ombudsman shall be hired by the commission. A member of  
10 the commission who has a financial interest in a long term care facil-  
11 ity in the state, or who has any other conflict of interest, may not  
12 participate in the hiring of the ombudsman. The ombudsman is a  
13 full-time position in the classified service.

14 (c) The ombudsman may not have a financial interest in a long  
15 term care facility in the state. The commission shall adopt regula-  
16 tions to ensure that the ombudsman, and employees and volunteers of  
17 the office, do not have a conflict of interest or an appearance of a  
18 conflict of interest.

19 Sec. 44.21.232. DUTIES AND POWERS OF THE LONG TERM CARE OMBUDS-  
20 MAN. (a) The ombudsman shall investigate and resolve a complaint  
21 made by or on behalf of an older Alaskan who resides in a long term  
22 care facility in the state if the complaint relates to a decision,  
23 action, or failure to act by a provider or a representative of a  
24 provider of long term care services, or by a public agency or social  
25 services agency, that may adversely affect the health, safety, wel-  
26 fare, or rights of the older Alaskan.

27 (b) The ombudsman may investigate and resolve a complaint made  
28 by or on behalf of an older Alaskan relating to the long term care or  
29 residential circumstances of the older Alaskan. Complaints under this

1 subsection may relate to any issue not covered under (a) of this  
2 section, including the older Alaskan's landlord, senior citizen hous-  
3 ing, a public assistance program, a public grant program for services  
4 to older Alaskans, public utilities, health care facilities, and  
5 health care providers.

6 (c) The ombudsman may

7 (1) subpoena witnesses, compel their attendance, require  
8 the production of evidence, administer oaths, and examine any person  
9 under oath in connection with a complaint described under (a) of this  
10 section; the powers described in this paragraph shall be enforced by  
11 the superior court;

12 (2) pursue administrative, legal, or other appropriate  
13 remedies on behalf of an older Alaskan who resides in a long term care  
14 facility in the state.

15 Sec. 44.21.233. TRAINING AND CERTIFICATION OF STAFF. (a) The  
16 ombudsman shall provide for the training and certification of office  
17 staff, including volunteers and other representatives of the office.  
18 Training must include instruction in federal, state, and local laws  
19 and policies relating to long term care facilities in the state, and  
20 in investigative techniques. The ombudsman may require other appro-  
21 priate training. The ombudsman may decertify a person under this  
22 section for good cause in accordance with regulations adopted by the  
23 commission.

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

28 Sec. 44.21.234. ACCESS TO LONG TERM CARE FACILITIES, OLDER  
29 ALASKANS, AND RECORDS. (a) A person may not deny access to a long

1 term care facility or to an older Alaskan by the ombudsman or an  
2 employee, volunteer, or other representative of the office.

3 (b) Notwithstanding the provisions of AS 44.21.232(c)(1), the  
4 ombudsman may obtain medical or other records of an older Alaskan who  
5 resides in a long term care facility in the state only with the con-  
6 sent of the older Alaskan or the older Alaskan's legal guardian or, if  
7 the older Alaskan is unable or incompetent to consent and does not  
8 have a legal guardian, only with a court order.

9 Sec. 44.21.235. CONFIDENTIALITY. (a) Records obtained or  
10 maintained by the ombudsman are confidential, are not subject to  
11 inspection or copying under AS 09.25.110 - 09.25.120 and, except as  
12 provided in (b) of this section, may be disclosed only at the dis-  
13 cretion of the ombudsman.

14 (b) The identity of a complainant or an older Alaskan on whose  
15 behalf a complaint is made may not be disclosed without the consent of  
16 the identified person or the person's legal guardian, unless required  
17 by court order.

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

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

25 Sec. 44.21.237. INTERFERENCE WITH THE LONG TERM CARE OMBUDSMAN  
26 AND RETALIATION PROHIBITED. (a) A person may not intentionally  
27 interfere with the ombudsman, or an employee, volunteer, or represen-  
28 tative of the office, in the performance of official duties under  
29 AS 44.21.232.

1 (b) If a person makes a good faith complaint described in  
2 AS 44.21.232, an employer or supervisor of the person, or a public or  
3 private agency or entity that provides benefits, services, or housing  
4 to the person, may not discharge, demote, transfer, reduce the pay or  
5 benefits or work privileges of, prepare a negative work performance  
6 evaluation of, deny or withhold benefits or services, evict, or take  
7 other detrimental action against the person because of the complaint.  
8 The person making the complaint may bring a civil action for compensa-  
9 tory and punitive damages against an employer, supervisor, agency, or  
10 entity that violates this subsection. In the civil action there is a  
11 rebuttable presumption that the detrimental action was retaliatory if  
12 it was taken within 90 days after the complaint was made.

13 (c) A person who violates this section is guilty of a class B  
14 misdemeanor.

15 Sec. 44.21.238. LEGAL COUNSEL FOR THE LONG TERM CARE OMBUDSMAN.  
16 The attorney general shall provide legal advice and representation in  
17 connection with any matter relating to the powers, duties, and opera-  
18 tion of the office, and in any legal action brought against the om-  
19 budsman or an employee, volunteer, or other representative of the  
20 office. If the attorney general cannot provide legal advice or repre-  
21 sentation because of a conflict of interest, the ombudsman may employ  
22 private legal counsel.

23 Sec. 44.21.239. COOPERATIVE AGREEMENTS. The commission shall  
24 enter into cooperative agreements concerning the operations of the  
25 office, including protocols for investigations, with state and local  
26 agencies that have jurisdiction over long term care facilities or over  
27 the abuse and neglect of older Alaskans.

28 \* Sec. 3. AS 44.21.240 is amended to read:

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

- 1                   (1) "commission" means the Older Alaskans Commission;
- 2                   (2) "long term care facility" means a foster home or other
- 3 residential facility for dependent adults that is required to be
- 4 licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;
- 5                   (3) "office" means the office of the long term care ombuds-
- 6 man;
- 7                   (4) "older Alaskan" means a resident who is 60 years of age
- 8 or older;
- 9                   (5) "ombudsman" means the long term care ombudsman hired
- 10 under AS 44.21.231;
- 11                   (6) "senior citizen housing" has the meaning given in
- 12 AS 44.47.620(e).

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

14                   (h) If a person makes a good faith report of harm under this

15 section, an employer or supervisor of the person, or a public or

16 private agency or entity that provides benefits, services, or housing

17 to the person, may not discharge, demote, transfer, reduce the pay or

18 benefits or work privileges of, prepare a negative work performance

19 evaluation of, deny or withhold benefits or services, evict, or take

20 other detrimental action against the person because of the report.

21 The person making the report may bring a civil action for compensatory

22 and punitive damages against an employer, supervisor, agency, or

23 entity that violates this subsection. In the civil action there is a

24 rebuttable presumption that the detrimental action was retaliatory if

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