

By Senator Sobel

31-00802-12

20121054

1                   A bill to be entitled  
2           An act relating to the State Long-Term Care Ombudsman  
3           Program; amending s. 400.0060, F.S.; revising  
4           definitions; defining the term "autonomy"; amending s.  
5           400.0063, F.S.; providing for the ombudsman program to  
6           be operated by a private not-for-profit organization;  
7           revising how the ombudsman is selected; requiring that  
8           the ombudsman and the legal advocate be registered as  
9           lobbyists; revising the duties of the legal advocate;  
10          amending s. 400.0065, F.S.; revising the purpose of  
11          the Office of the State Long-Term Care Ombudsman;  
12          revising the duties and authority of the office;  
13          amending s. 400.0067, F.S.; revising the procedure for  
14          appointing members to the State Long-Term Care  
15          Ombudsman Council; amending s. 400.0069, F.S.;  
16          revising the procedure for selecting members of local  
17          councils; amending s. 400.0074, F.S.; revising  
18          requirements for carrying out investigations and  
19          assessments of long-term care facilities; amending s.  
20          400.0075, F.S.; revising provisions relating to the  
21          resolution of complaints or problems verified at a  
22          long-term care facility; amending s. 400.0078, F.S.;  
23          requiring that a licensed long-term care facility  
24          display the ombudsman program poster at conspicuous  
25          places in the facility; amending s. 400.0081, F.S.;  
26          requiring that facility records be made available at  
27          no cost to the ombudsman program; amending s.  
28          400.0083, F.S.; providing civil penalties for certain  
29          violations; authorizing the legal advocate to pursue

31-00802-12

20121054

30 legal and civil remedies for violations; amending s.  
 31 400.0087, F.S.; revising provisions relating to  
 32 program funding; deleting a provision that requires  
 33 the Department of Elderly Affairs to monitor the state  
 34 council and local councils for specified purposes;  
 35 amending s. 400.0091, F.S.; revising training and  
 36 continuing education requirements for ombudsman  
 37 employees and state and local council members;  
 38 providing an effective date.

40 Be It Enacted by the Legislature of the State of Florida:

42 Section 1. Subsection (8) of section 400.0060, Florida  
 43 Statutes, is amended, present subsections (3) through (10) of  
 44 that section are renumbered as subsections (4) through (11),  
 45 respectively, and a new subsection (3) is added to that section,  
 46 to read:

47 400.0060 Definitions.—When used in this part, unless the  
 48 context clearly dictates otherwise, the term:

49 (3) "Autonomy" means that designated representatives of the  
 50 Office of State Long-Term Care Ombudsman are able to determine  
 51 and implement all advocacy activities deemed necessary to  
 52 enhance the quality of life and care for residents without being  
 53 threatened by interference, coercion, retaliation, or  
 54 intimidation, and for the purpose of advocating on behalf of  
 55 residents.

56 (9)-(8) "Resident" means an individual ~~60 years of age or~~  
 57 ~~elder~~ who resides in a long-term care facility.

58 Section 2. Section 400.0063, Florida Statutes, is amended

31-00802-12

20121054

59 to read:

60 400.0063 Establishment of Office of State Long-Term Care  
61 Ombudsman; designation of ombudsman and legal advocate.—

62 (1) The ~~There is created an~~ Office of State Long-Term Care  
63 Ombudsman is established under and shall be administered by in  
64 the Department of Elderly Affairs through a contract with or  
65 grant to a private not-for-profit organization. However, such  
66 organization may not be made responsible for licensing and  
67 certification of long-term care facilities or otherwise have any  
68 relationship with long-term care facilities or associations.

69 (2) ~~(a) The office of State Long-Term Care Ombudsman shall~~  
70 ~~be headed by the State Long-Term Care Ombudsman, who shall serve~~  
71 ~~on a full-time basis and shall personally, or through~~  
72 ~~representatives of the office, carry out the purposes and~~  
73 ~~functions of the office in accordance with state and federal~~  
74 ~~law. The ombudsman must be registered as a lobbyist.~~

75 ~~(a) (b) The ombudsman shall be appointed by a five-member~~  
76 ~~panel that is appointed by and shall serve at the pleasure of~~  
77 ~~the Secretary of Elderly Affairs. The panel's membership must~~  
78 ~~include one resident, two family members, a consumer advocate,~~  
79 ~~and the chair of the state council.~~

80 (b) The ombudsman must have at least 5 years of secretary  
81 ~~shall appoint a person who has~~ expertise and experience in the  
82 fields of long-term care resident and advocacy and in the  
83 successful operation of a nonprofit organization and must be  
84 free of conflicts of interest pursuant to federal and state law  
85 and rule governing the office and the regulation of long-term  
86 care facilities to serve as ombudsman.

87 (3) ~~(a) There is created in the office~~ The position of legal

31-00802-12

20121054\_\_

88 advocate shall be established in the office. The legal advocate,  
 89 ~~who~~ shall be selected by and serve at the pleasure of the  
 90 ombudsman and must shall be a member in good standing of The  
 91 Florida Bar and registered as a lobbyist.

92 ~~(b)~~ The duties of the legal advocate ~~shall~~ include, but are  
 93 not ~~be~~ limited to:

94 (a)1. Assisting the ombudsman in carrying out the duties of  
 95 the office with respect to the abuse, neglect, or violation of  
 96 rights of residents ~~of long-term care facilities.~~

97 (b)2. Assisting the state and local councils in carrying  
 98 out their responsibilities under this part.

99 (c)3. Pursuing administrative, legal, and other appropriate  
 100 remedies on behalf of residents.

101 (d)4. Serving as legal counsel to the state and local  
 102 councils, or individual members thereof, against whom any suit  
 103 or other legal action is initiated in connection with the  
 104 performance of the official duties of the councils or an  
 105 individual member.

106 (e) Assisting the ombudsman in ensuring that the ombudsman  
 107 program operates with autonomy and without any conflict of  
 108 interests. Violations of this paragraph are subject to legal  
 109 recourse under s. 400.0083.

110 Section 3. Paragraphs (f) and (g) of subsection (1) and  
 111 paragraphs (c) and (i) of subsection (2) of section 400.0065,  
 112 Florida Statutes, are amended to read:

113 400.0065 State Long-Term Care Ombudsman; duties and  
 114 responsibilities.-

115 (1) The purpose of the Office of State Long-Term Care  
 116 Ombudsman shall be to:

31-00802-12

20121054

117 (f) Support ~~Administer~~ the state and local councils.

118 (g) Autonomously analyze, comment on, and monitor the  
119 development and implementation of federal, state, and local  
120 laws, rules, and regulations, and other governmental policies  
121 and actions, that pertain to the health, safety, welfare, and  
122 rights of the residents, with respect to the adequacy of long-  
123 term care facilities and services in the state, and recommend  
124 any changes in such laws, rules, regulations, policies, and  
125 actions as the office determines to be appropriate and  
126 necessary.

127 (2) The State Long-Term Care Ombudsman shall have the duty  
128 and authority to:

129 (c) Within the limits of appropriated federal and state  
130 funding, employ such personnel as are necessary to ~~perform~~  
131 adequately perform the functions of the office and provide or  
132 contract for legal services to assist the state and local  
133 councils in the performance of their duties. Staff positions  
134 established for the purpose of coordinating the activities of  
135 each local council and assisting its members may be filled by  
136 the ombudsman or designee ~~after approval by the secretary~~.  
137 Notwithstanding any other provision of this part, upon  
138 certification by the ombudsman that the staff member hired to  
139 fill any such position has completed the initial training  
140 required under s. 400.0091, the staff member is ~~such person~~  
141 ~~shall be~~ considered a representative of the State Long-Term Care  
142 Ombudsman Program for purposes of this part.

143 (i) Prepare an annual report describing the activities  
144 carried out by the office, the state council, and the local  
145 councils in the year for which the report is prepared. The

31-00802-12

20121054

146 ombudsman shall submit the report to the secretary at least 30  
147 days before the convening of the regular session of the  
148 Legislature. The secretary shall in turn submit the report to  
149 the United States Assistant Secretary for Aging, the Governor,  
150 the President of the Senate, the Speaker of the House of  
151 Representatives, the Secretary of Children and Family Services,  
152 and the Secretary of Health Care Administration. The report must  
153 ~~shall~~, at a minimum:

154 1. Contain and analyze data collected concerning complaints  
155 about and conditions in long-term care facilities and the  
156 disposition of such complaints.

157 2. Evaluate the problems experienced by residents.

158 3. Analyze the successes of the ombudsman program during  
159 the preceding year, including an assessment of how successfully  
160 the program has carried out its responsibilities under the Older  
161 Americans Act and state law.

162 4. Provide recommendations for policy, regulatory, and  
163 statutory changes designed to solve identified problems; resolve  
164 residents' complaints; improve residents' lives and quality of  
165 care; protect residents' rights, health, safety, and welfare;  
166 and remove any barrier ~~barriers~~ to the optimal operation of the  
167 State Long-Term Care Ombudsman Program.

168 5. Contain recommendations from the state ~~Long-Term Care~~  
169 ~~Ombudsman~~ council regarding program functions and activities and  
170 recommendations for policy, regulatory, and statutory changes  
171 designed to protect residents' rights, health, safety, and  
172 welfare.

173 6. Contain any relevant recommendations from ~~the~~ local  
174 councils, resident and family councils, and consumer advocacy

31-00802-12

20121054

175 groups regarding program functions and activities and resident  
176 rights.

177 Section 4. Subsection (3) of section 400.0067, Florida  
178 Statutes, is amended to read:

179 400.0067 State Long-Term Care Ombudsman Council; duties;  
180 membership.—

181 (3) The State Long-Term Care Ombudsman Council shall be  
182 composed of one active local council member elected by each  
183 local council plus one resident, one family member, and one  
184 consumer advocate, each of whom is appointed by the ombudsman  
185 ~~three at-large members appointed by the Governor.~~

186 (a) Each local council shall elect by majority vote a  
187 representative from among the council members to represent the  
188 interests of the local council on the state council. A local  
189 council chair may not also serve as the representative of the  
190 local council on the state council.

191 ~~(b)1. The secretary, after consulting with the ombudsman,~~  
192 ~~shall submit to the Governor a list of persons recommended for~~  
193 ~~appointment to the at-large positions on the state council. The~~  
194 ~~list shall not include the name of any person who is currently~~  
195 ~~serving on a local council.~~

196 ~~2. The Governor shall appoint three at-large members chosen~~  
197 ~~from the list.~~

198 ~~3. If the Governor does not appoint an at-large member to~~  
199 ~~fill a vacant position within 60 days after the list is~~  
200 ~~submitted, the secretary, after consulting with the ombudsman,~~  
201 ~~shall appoint an at-large member to fill that vacant position.~~

202 (b)(e)1. All state council members shall be appointed for  
203 serve 3-year terms.

31-00802-12

20121054

204 ~~2. A member of the state council may not serve more than~~  
205 ~~two consecutive terms.~~

206 ~~3. A local council may recommend removal of its elected~~  
207 ~~representative from the state council by a majority vote. If the~~  
208 ~~council votes to remove its representative, the local council~~  
209 ~~chair shall immediately notify the ombudsman. The secretary~~  
210 ~~shall advise the Governor of the local council's vote upon~~  
211 ~~receiving notice from the ombudsman.~~

212 (c)4. The position of a ~~any~~ member missing three state  
213 council meetings within a 1-year period without cause may be  
214 declared vacant by the ombudsman. The findings of the ombudsman  
215 regarding cause are ~~shall be~~ final and binding.

216 (d)5. Any vacancy on the state council shall be filled in  
217 the same manner as the original appointment.

218 (e)(d)1. The state council shall elect a chair to serve for  
219 a term of 1 year. A chair may not serve more than three ~~two~~  
220 consecutive terms.

221 1.2. The chair shall select a vice chair from among the  
222 members. The vice chair shall preside over the state council in  
223 the absence of the chair.

224 2.3. The chair may create additional executive positions as  
225 necessary to carry out the duties of the state council. Any  
226 person appointed to an executive position serves ~~shall serve~~ at  
227 the pleasure of the chair, and his or her term expires ~~shall~~  
228 ~~expire~~ on the same day as the term of the chair.

229 ~~4. A chair may be immediately removed from office prior to~~  
230 ~~the expiration of his or her term by a vote of two-thirds of all~~  
231 ~~state council members present at any meeting at which a quorum~~  
232 ~~is present. If a chair is removed from office prior to the~~



31-00802-12

20121054

233 ~~expiration of his or her term, a replacement chair shall be~~  
 234 ~~chosen during the same meeting in the same manner as described~~  
 235 ~~in this paragraph, and the term of the replacement chair shall~~  
 236 ~~begin immediately. The replacement chair shall serve for the~~  
 237 ~~remainder of the term and is eligible to serve two subsequent~~  
 238 ~~consecutive terms.~~

239 ~~(f)(e)1.~~ The state council shall meet upon the call of the  
 240 chair or upon the call of the ombudsman. The council shall meet  
 241 at least quarterly but may meet more frequently as needed.

242 ~~1.2.~~ A quorum is ~~shall be considered~~ present if more than  
 243 50 percent of all active state council members are in attendance  
 244 at the same meeting.

245 ~~2.3.~~ The state council may not vote on or otherwise make  
 246 any decision ~~decisions~~ resulting in a recommendation that will  
 247 directly impact the state council or any local council, ~~outside~~  
 248 ~~of~~ a publicly noticed meeting at which a quorum is present.

249 ~~(g)(f)~~ Members shall serve without ~~receive no~~ compensation  
 250 but ~~shall~~, with approval from the ombudsman, are entitled to  
 251 reimbursement ~~be reimbursed~~ for per diem and travel expenses as  
 252 provided under ~~in~~ s. 112.061.

253 Section 5. Paragraph (b) of subsection (1) and subsections  
 254 (4), (5), and (6) of section 400.0069, Florida Statutes, are  
 255 amended to read:

256 400.0069 Local long-term care ombudsman councils; duties;  
 257 membership.—

258 (1)

259 (b) The ombudsman shall ensure that there is at least one  
 260 local council operating in each of the department's planning and  
 261 service areas. The ombudsman may create additional local

31-00802-12

20121054

262 councils as necessary to ensure that residents throughout the  
263 state have adequate access to State Long-Term Care Ombudsman  
264 Program services. The ombudsman, ~~after approval from the~~  
265 ~~secretary,~~ shall designate the jurisdictional boundaries of each  
266 local council.

267 (4) ~~Each local council shall be composed of members whose~~  
268 ~~primary residence is located within the boundaries of the local~~  
269 ~~council's jurisdiction.~~

270 ~~(a)~~ The ombudsman shall strive to ensure that each local  
271 council include the following persons as members:

272 (a)1. At least one medical or osteopathic physician whose  
273 practice includes or has included a substantial number of  
274 geriatric patients and who may practice in a long-term care  
275 facility;

276 (b)2. At least one registered nurse who has geriatric  
277 experience;

278 (c)3. At least one licensed pharmacist;

279 (d)4. At least one registered dietitian;

280 (e)5. At least six nursing home residents or representative  
281 consumer advocates for nursing home residents;

282 (f)6. At least three residents of assisted living  
283 facilities or adult family-care homes or three representative  
284 consumer advocates for alternative long-term care facility  
285 residents;

286 (g)7. At least one attorney; and

287 (h)8. At least one professional social worker.

288  
289 ~~(b)~~ An employee or contracted worker ~~In no case shall the~~  
290 ~~medical director~~ of a long-term care facility or an employee of

31-00802-12

20121054\_\_

291 the agency, the department, the Department of Children and  
292 Family Services, or the Agency for Persons with Disabilities may  
293 not serve as a member or as an ex officio member of a council.

294 (5)(a) An individual ~~Individuals~~ wishing to join a local  
295 council shall submit an application to the ombudsman and undergo  
296 a level 2 background screening pursuant to s. 435.04. The  
297 ombudsman, or his or her designee, shall review and approve or  
298 disapprove the individual's application for and advise the  
299 ~~secretary of his or her recommendation for approval or~~  
300 ~~disapproval of the candidate's membership on the local council.~~  
301 ~~If the secretary approves of the individual's membership, the~~  
302 ~~individual shall be appointed as a member of the local council.~~

303 (b) ~~The secretary may rescind the ombudsman's approval of a~~  
304 ~~member on a local council at any time. If the secretary rescinds~~  
305 ~~the approval of a member on a local council, the ombudsman shall~~  
306 ~~ensure that the individual is immediately removed from the local~~  
307 ~~council on which he or she serves and the individual may no~~  
308 ~~longer represent the State Long-Term Care Ombudsman Program~~  
309 ~~until the secretary provides his or her approval.~~

310 (c) ~~A local council may recommend the removal of one or~~  
311 ~~more of its members by submitting to the ombudsman a resolution~~  
312 ~~adopted by a two-thirds vote of the members of the council~~  
313 ~~stating the name of the member or members recommended for~~  
314 ~~removal and the reasons for the recommendation. If such a~~  
315 ~~recommendation is adopted by a local council, the local council~~  
316 ~~chair or district coordinator shall immediately report the~~  
317 ~~council's recommendation to the ombudsman. The ombudsman shall~~  
318 ~~review the recommendation of the local council and advise the~~  
319 ~~secretary of his or her recommendation regarding removal of the~~

31-00802-12

20121054

320 ~~council member or members.~~

321 (6) ~~(a)~~ Each local council shall elect a chair for a term of  
322 1 year. The chair may serve for up to three consecutive terms.  
323 ~~There shall be no limitation on the number of terms that an~~  
324 ~~approved member of a local council may serve as chair.~~

325 (a) ~~(b)~~ The chair shall select a vice chair from among the  
326 members of the council. The vice chair shall preside over the  
327 council in the absence of the chair.

328 (b) ~~(c)~~ The chair may create additional executive positions  
329 as necessary to carry out the duties of the local council. Any  
330 person appointed to an executive position serves ~~shall serve~~ at  
331 the pleasure of the chair, and his or her term expires ~~shall~~  
332 ~~expire~~ on the same day as the term of the chair.

333 ~~(d) A chair may be immediately removed from office prior to~~  
334 ~~the expiration of his or her term by a vote of two-thirds of the~~  
335 ~~members of the local council. If any chair is removed from~~  
336 ~~office prior to the expiration of his or her term, a replacement~~  
337 ~~chair shall be elected during the same meeting, and the term of~~  
338 ~~the replacement chair shall begin immediately. The replacement~~  
339 ~~chair shall serve for the remainder of the term of the person he~~  
340 ~~or she replaced.~~

341 Section 6. Section 400.0074, Florida Statutes, is amended  
342 to read:

343 400.0074 Local ombudsman council onsite administrative  
344 assessments.-

345 (1) In addition to any specific investigation conducted  
346 pursuant to a complaint, the local council, through its members,  
347 shall conduct, at least annually, an onsite administrative  
348 assessment of each nursing home, assisted living facility, and

31-00802-12

20121054

349 adult family-care home within its jurisdiction. The ~~This~~  
350 ~~administrative~~ assessment must ~~shall~~ focus on factors affecting  
351 the rights, health, safety, and welfare of the residents. Each  
352 local council is encouraged to conduct a similar onsite  
353 administrative assessment of each additional long-term care  
354 facility within its jurisdiction.

355 (2) An onsite administrative assessment of a long-term care  
356 facility is ~~conducted by a local council shall be~~ subject to the  
357 following conditions:

358 (a) To the extent possible and reasonable, the assessment  
359 may ~~administrative assessments shall~~ not duplicate the efforts  
360 of ~~the~~ agency surveys and inspections conducted under part II of  
361 this chapter and parts I and II of chapter 429.

362 (b) The ~~An administrative~~ assessment must ~~shall~~ be  
363 conducted at a time and for a duration necessary to produce the  
364 information required to carry out the duties of the local  
365 council.

366 (c) Advance notice of an ~~administrative~~ assessment may not  
367 be provided to a long-term care facility, ~~except that notice of~~  
368 ~~followup assessments on specific problems may be provided.~~

369 (d) A local council member physically present for the  
370 ~~administrative~~ assessment must ~~shall~~ identify himself or herself  
371 upon entry into the facility and cite the specific statutory  
372 ~~authority for his or her assessment of the facility.~~

373 (e) An administrative assessment may not unreasonably  
374 interfere with the programs and activities of residents.

375 (f) A local council member may not enter a single-family  
376 residential unit within a ~~long-term care~~ facility during an  
377 administrative assessment without the permission of the resident

31-00802-12

20121054

378 or the representative of the resident.

379 (g) An administrative assessment must be conducted in a  
380 manner that will impose no unreasonable burden on a ~~long-term~~  
381 ~~care~~ facility.

382 (3) ~~Regardless of jurisdiction,~~ The ombudsman may authorize  
383 a state or local council member to assist another local council  
384 to perform the administrative assessments described in this  
385 section.

386 (4) An onsite administrative assessment may not be  
387 accomplished by forcible entry. However, if the ombudsman or a  
388 state or local council member is not allowed to enter a long-  
389 term care facility, the administrator of the facility shall be  
390 considered to have interfered with a representative of the  
391 office, the state council, or the local council in the  
392 performance of official duties as described in s. 400.0083(1)  
393 and to have committed a violation of this part. The ombudsman  
394 shall report the refusal by a facility to allow entry to the  
395 agency, and the agency shall record the report and take it into  
396 consideration when determining actions allowable under s.  
397 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
398 429.71.

399 Section 7. Section 400.0075, Florida Statutes, is amended  
400 to read:

401 400.0075 Complaint notification and resolution procedures.—

402 (1)(a) Any complaint or problem verified by ~~an ombudsman~~  
403 ~~council as a result of~~ an investigation or onsite administrative  
404 assessment of a long-term care facility, which ~~complaint or~~  
405 ~~problem~~ is determined to require resolution by the facility  
406 ~~remedial action by the local council~~, must ~~shall~~ be identified

31-00802-12

20121054

407 and brought to the attention of the ~~long-term care~~ facility  
408 administrator in writing. Upon receipt of such document, the  
409 administrator, with the concurrence of the local council member  
410 ~~chair~~, shall establish target dates for resolving the complaint  
411 or problem ~~taking appropriate remedial action~~. If, by the target  
412 date, resolution by the facility ~~the remedial action~~ is not  
413 completed or forthcoming, the local council member ~~chair~~ may,  
414 ~~after obtaining approval from the ombudsman and a majority of~~  
415 ~~the members of the local council~~:

416 (a)1. Extend the target date if the council member ~~chair~~  
417 has reason to believe that such action would facilitate the  
418 resolution of the complaint or problem.

419 (b)2. In accordance with s. 400.0077, publicize the  
420 complaint or assessment, the recommendations of the council, and  
421 the response of the long-term care facility.

422 (c)3. Through the local council, refer the complaint to the  
423 state council.

424 ~~(b) If the local council chair believes that the health,~~  
425 ~~safety, welfare, or rights of the resident are in imminent~~  
426 ~~danger, the chair shall notify the ombudsman or legal advocate,~~  
427 ~~who, after verifying that such imminent danger exists, shall~~  
428 ~~seek immediate legal or administrative remedies to protect the~~  
429 ~~resident.~~

430 ~~(c) If the ombudsman has reason to believe that the long-~~  
431 ~~term care facility or an employee of the facility has committed~~  
432 ~~a criminal act, the ombudsman shall provide the local law~~  
433 ~~enforcement agency with the relevant information to initiate an~~  
434 ~~investigation of the case.~~

435 (2) ~~(a)~~ Upon referral from a local council, the state

31-00802-12

20121054

436 council shall assume ~~the~~ responsibility for the disposition of  
437 the complaint or assessment. If the a long-term care facility  
438 fails to take action on a complaint or assessment by the state  
439 council, the state council may, after obtaining approval from  
440 the ombudsman and a majority of the state council members:

441 (a)1. In accordance with s. 400.0077, publicize the  
442 complaint or assessment, the recommendations of the local or  
443 state council, and the response of the ~~long-term care~~ facility.

444 (b)2. Recommend to the department and the agency a series  
445 of facility reviews pursuant to s. 400.19, s. 429.34, or s.  
446 429.67 to ensure correction and nonrecurrence of conditions that  
447 give rise to complaints against the a ~~long-term care~~ facility.

448 (c)3. Recommend to the department and the agency that the  
449 ~~long-term care~~ facility no longer receive payments under any  
450 state assistance program, including Medicaid.

451 (d)4. Recommend to the department and the agency that  
452 procedures be initiated for revocation of the ~~long-term care~~  
453 facility's license in accordance with chapter 120.

454 ~~(b) If the state council chair believes that the health,~~  
455 ~~safety, welfare, or rights of the resident are in imminent~~  
456 ~~danger, the chair shall notify the ombudsman or legal advocate,~~  
457 ~~who, after verifying that such imminent danger exists, shall~~  
458 ~~seek immediate legal or administrative remedies to protect the~~  
459 ~~resident.~~

460 ~~(c) If the ombudsman has reason to believe that the long-~~  
461 ~~term care facility or an employee of the facility has committed~~  
462 ~~a criminal act, the ombudsman shall provide local law~~  
463 ~~enforcement with the relevant information to initiate an~~  
464 ~~investigation of the case.~~



31-00802-12

20121054

465 Section 8. Subsection (3) is added to section 400.0078,  
466 Florida Statutes, to read:

467 400.0078 Citizen access to State Long-Term Care Ombudsman  
468 Program services.—

469 (3) Each licensed long-term care facility must display the  
470 State Long-Term Care Ombudsman Program's poster in multiple,  
471 conspicuous places and include the statewide toll-free telephone  
472 number, other relevant contact information for submitting  
473 complaints, and a summary of residents' rights.

474 Section 9. Present subsection (2) of section 400.0081,  
475 Florida Statutes, is renumbered as subsection (3), and a new  
476 subsection (2) is added to that section, to read:

477 400.0081 Access to facilities, residents, and records.—

478 (2) Any copy of records requested by a designated  
479 representative of the ombudsman program to complete an  
480 investigation or assessment must be made readily available by  
481 the facility at no expense to the program.

482 Section 10. Section 400.0083, Florida Statutes, is amended  
483 to read:

484 400.0083 Interference; retaliation; penalties.—

485 (1) It is ~~shall be~~ unlawful for any person, long-term care  
486 facility, or other entity to willfully interfere with a  
487 representative of the office, the state council, or a local  
488 council in the performance of official duties.

489 (2) It is ~~shall be~~ unlawful for any person, long-term care  
490 facility, or other entity to knowingly or willfully take action  
491 or retaliate against any resident, employee, or other person for  
492 filing a complaint with, providing information to, or otherwise  
493 cooperating with a ~~any~~ representative of the office, the state

31-00802-12

20121054

494 council, or a local council.

495 (3) Any person, long-term care facility, or other entity  
496 that violates this section:

497 (a) Is ~~shall be~~ liable for damages and equitable relief as  
498 determined by law;~~;~~

499 (b) Commits a misdemeanor of the first ~~second~~ degree,  
500 punishable as provided in s. 775.083; ~~and~~.

501 (c) Is subject to a civil fine of up to \$5,000 per  
502 occurrence for violations of subsection (1) and a civil fine of  
503 up to \$10,000 per occurrence for violations of subsection (2).  
504 Any fine imposed under this paragraph shall be paid to the  
505 agency and deposited into the Quality of Long-Term Care Facility  
506 Improvement Trust Fund and used for the creation and support of  
507 a statewide resident council.

508 (4) The legal advocate may pursue legal and civil remedies  
509 for violations of this section.

510 Section 11. Section 400.0087, Florida Statutes, is amended  
511 to read:

512 400.0087 Department oversight; funding.—

513 (1) ~~The department shall meet the costs associated with the~~  
514 ~~State Long-Term Care Ombudsman Program from~~ Funds appropriated  
515 to the department by the Legislature to meet the costs of the  
516 State Long-Term Care Ombudsman Program must be expended by the  
517 department for that purpose ~~it~~.

518 (a) The nonprofit organization administering the ombudsman  
519 program shall develop and submit a budget to the department  
520 which includes ~~shall include~~ the costs associated with the  
521 administrative support of the State Long-Term Care Ombudsman  
522 Program. The department shall submit the organization's budget

31-00802-12

20121054

523 when developing its budget requests for consideration by the  
524 Governor and submittal to the Legislature.

525 (b) The department may divert from the federal ombudsman  
526 appropriation an amount equal to the department's administrative  
527 cost ratio to cover the costs associated with administering the  
528 program, which may not exceed 5 percent of the federal  
529 appropriation. The remaining allotment from the Older Americans  
530 Act program shall be expended on direct ombudsman activities.

531 (2) The department shall monitor the office, ~~the state~~  
532 ~~council, and the local councils~~ to ensure that it carries each  
533 ~~is carrying~~ out the duties delegated to it by state and federal  
534 law.

535 (3) The department is responsible for ensuring that the  
536 office:

537 (a) Has the objectivity and independence required to  
538 qualify it for funding under the federal Older Americans Act.

539 (b) Provides information to public and private agencies,  
540 legislators, and others.

541 (c) Provides appropriate training to representatives of the  
542 office or of the state or local councils.

543 ~~(d) Coordinates ombudsman services with the Advocacy Center~~  
544 ~~for Persons with Disabilities and with providers of legal~~  
545 ~~services to residents of long term care facilities in compliance~~  
546 ~~with state and federal laws.~~

547 (4) The department shall also:

548 (a) Receive and disburse state and federal funds for  
549 purposes that the ombudsman has formulated in accordance with  
550 the Older Americans Act.

551 (b) Whenever the ombudsman deems appropriate necessary, act

31-00802-12

20121054

552 as liaison between agencies and branches of the federal and  
553 state governments and the State Long-Term Care Ombudsman  
554 Program.

555 Section 12. Subsections (1) and (2) of section 400.0091,  
556 Florida Statutes, are amended to read:

557 400.0091 Training.—The ombudsman shall ensure that  
558 appropriate training is provided to all employees of the office  
559 and to the members of the state and local councils.

560 (1) All state and local council members and employees of  
561 the office shall be given a minimum of 30 ~~20~~ hours of training  
562 upon employment with the office or approval as a state or local  
563 council member and 12 ~~10~~ hours of continuing education annually  
564 thereafter.

565 (2) The ombudsman shall approve the curriculum for the  
566 initial and continuing education training, which must, at a  
567 minimum, address:

568 (a) Resident confidentiality.

569 (b) Guardianships and powers of attorney.

570 (c) Medication administration.

571 (d) Care and medication of residents with dementia and  
572 Alzheimer's disease.

573 (e) Accounting for residents' funds.

574 (f) Discharge rights and responsibilities.

575 (g) Cultural sensitivity.

576 (h) Person-centered care initiatives.

577 (i) ~~(h)~~ Any other topic recommended by the ombudsman  
578 ~~secretary~~.

579 Section 13. This act shall take effect July 1, 2012.