H.B. NO. <sup>807</sup> H.D. 1 S.D. 2 C.D. 1

# A BILL FOR AN ACT

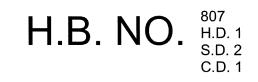
RELATING TO CAREGIVING.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The executive office on aging's long-term care ombudsman program is mandated by the United States 2 3 Administration on Aging through the Older Americans Act. The 4 state long-term care ombudsman currently advocates for and 5 protects the rights of residents of nursing homes, adult residential care homes, assisted living facilities, and other 6 7 long-term care facilities. However, there is no statutory 8 provision for the establishment of an office of the long-term 9 care ombudsman.

The long-term care ombudsman investigates and resolves 10 11 problems or complaints about the caregiving or services provided 12 in long-term care facilities. The long-term care ombudsman also 13 works with long-term care facilities, community organizations, 14 residents, family councils, and other interested parties to 15 improve the quality of caregiving and quality of life of long-16 term care residents. In addition, the long-term care ombudsman 17 provides information, referrals, and consultations to families,





1 service providers, and the general public on long-term caregiving issues. The program is staffed by the long-term care 2 3 ombudsman, one long-term care ombudsman specialist, and one 4 volunteer coordinator. The long-term care ombudsman program 5 serves over eight thousand residents in approximately seven hundred thirty-one licensed facilities statewide. 6 7 The purpose of this Act is to formally establish an office 8 of the long-term care ombudsman within the executive office on 9 aging. SECTION 2. Chapter 349, Hawaii Revised Statutes, is 10 amended by adding two new sections to part II to be 11 12 appropriately designated and to read as follows: 13 "§349- Wilful interference; prohibited. Any individual, 14 including any long-term care facility or long-term care facility 15 employee, who wilfully interferes with or impedes the long-term 16 care ombudsman or designee in the performance of the long-term 17 care ombudsman's or designee's duties pursuant to this part 18 shall be quilty of a misdemeanor. Each separate act of wilful 19 interference and each day during which any wilful interference 20 continues shall constitute a separate offense. 21 Posting and distribution of information. (a) §349-The

22 long-term care ombudsman shall provide each long-term care



H.B. NO. <sup>807</sup> H.D. 1 S.D. 2 C.D. 1

## 19 "PART II. OFFICE OF THE LONG-TERM CARE OMBUDSMAN"

20 SECTION 5. Section 349-12, Hawaii Revised Statutes, is
21 amended to read as follows:

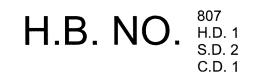


### H.B. NO. <sup>807</sup> H.D. 1 S.D. 2 C.D. 1

| 1  | "§349-12 [Long-term care facilities. (a) For purposes of        |
|----|---|
| 2  | this chapter, the term "long-term care facilities" means any    |
| 3  | skilled nursing facility as defined in section 1861(j) of the   |
| 4  | Social Security Act, as amended, any intermediate care facility |
| 5  | as defined in section 1905(c) of the Social Security Act, as    |
| 6  | amended, any nursing home as defined in section 1908(e) of the  |
| 7  | Social Security Act, as amended, and any other similar adult    |
| 8  | care facility licensed by the State serving elders.             |
| 9  | (b) The executive office on aging shall have the                |
| 10 | responsibility to represent] Office of the long-term care       |
| 11 | ombudsman. (a) There is established the office of the           |
| 12 | long-term care ombudsman in the executive office on aging to    |
| 13 | protect the health, safety, welfare, and rights of residents of |
| 14 | long-term care facilities in accordance with state and federal  |
| 15 | law. The office of the long-term care ombudsman shall be headed |
| 16 | by the long-term care ombudsman.                                |
| 17 | (b) The long-term care ombudsman shall:                         |
| 18 | (1) Be hired pursuant to chapter 76;                            |
| 19 | (2) Be free of conflict of interest;                            |
| 20 | (3) Have expertise and experience in the fields of              |
| 21 | long-term care and advocacy;                                    |
| 22 | (4) Serve on a full-time basis; and                             |



Page 5



| 1  | (5)            | Prepare an annual report in accordance with the   |
|----|----------------|---|
| 2  |                | federal Older Americans Act, as amended.  |
| 3  | (c)            | The long-term care ombudsman, personally or through a                                   |
| 4  | designee,      | shall:  |
| 5  | (1)            | <u>Represent</u> the interests of residents of long-term care                           |
| 6  |                | facilities, individually and as a class, [ <del>and</del> ] to                          |
| 7  |                | [promote]:  |
| 8  |                | (A) Protect their health, safety, welfare, and  |
| 9  |                | rights; and   |
| 10 |                | (B) Promote improvement in the quality of care  |
| 11 |                | [ <del>received</del> ] <u>they receive</u> and [ <del>the</del> ] <u>their</u> quality |
| 12 |                | of life [ <del>experienced by residents of long-term</del>                              |
| 13 |                | care facilities within the State. In meeting  |
| 14 |                | this responsibility, the executive office on  |
| 15 |                | aging shall:  |
| 16 | <del>(1)</del> | Perform its duties and functions either directly or by                                  |
| 17 |                | other arrangement executed by the director with any                                     |
| 18 |                | public or private nonprofit organization, except with                                   |
| 19 |                | any organization responsible for licensing or   |
| 20 |                | certifying long-term care facilities in the State or                                    |
| 21 |                | which is engaged in offering long-term care services                                    |



807 H.D. 1 S.D. 2 C.D. 1 H.B. NO.

| 1  |     | or which is an association (or an affiliate of such an                                      |
|----|-----|---|
| 2  |     | association) of long-term care facilities];   |
| 3  | (2) | [ <del>Investigate</del> ] <u>Identify, investigate,</u> and resolve                        |
| 4  |     | complaints, including complaints against providers of                                       |
| 5  |     | long-term care services and their representatives,  |
| 6  |     | made by or on behalf of residents of long-term care   |
| 7  |     | facilities relating to [acts which] actions, inactions                                      |
| 8  |     | or decisions that may adversely affect the health,  |
| 9  |     | safety, welfare, [ <del>and</del> ] <u>or</u> rights of residents[ <del>;</del> ] <u>of</u> |
| 10 |     | long-term care facilities, including the appointment  |
| 11 |     | and activities of guardians and representative payees;                                      |
| 12 | (3) | Monitor and comment on the development and  |
| 13 |     | implementation of federal, state, and local laws,   |
| 14 |     | regulations, [ <del>and</del> ] policies [ <del>affecting</del> ] <u>, and actions</u>      |
| 15 |     | that pertain to the health, safety, welfare, or rights                                      |
| 16 |     | of residents of long-term care facilities, including  |
| 17 |     | the adequacy of long-term care facilities and services                                      |
| 18 |     | in the [ <del>State</del> ] state, and recommend changes as                                 |
| 19 |     | necessary;  |
| 20 | (4) | Provide information as appropriate to public agencies                                       |
| 21 |     | regarding the problems of [ <del>older persons residing in</del> ]                          |
| 22 |     | residents of long-term care facilities;   |



Page 7

| Page 7 |                     | H.B. NO. <sup>807</sup><br>H.D. 1<br>S.D. 2<br>C.D. 1                         |
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|        |                     |   |
| 1      | (5)                 | Train volunteers [ <del>or</del> ] <u>and</u> employees [ <del>to serve</del> |
| 2      |                     | institutionalized elders and to promote];                                     |
| 3      | (6)                 | Promote the development of citizen organizations to                           |
| 4      |                     | participate in the advocacy program;  |
| 5      | [ <del>(6)</del> ]  | (7) Establish procedures for appropriate access by                            |
| 6      |                     | the [ <del>executive office on aging</del> ] <u>long-term care</u>            |
| 7      |                     | ombudsman to long-term care facilities $[+]$ and to                           |
| 8      |                     | residents of long-term care facilities;                                       |
| 9      | [ <del>-(7)</del> ] | (8) Establish procedures for appropriate access by                            |
| 10     |                     | the [ <del>executive office on aging</del> ] long-term care                   |
| 11     |                     | ombudsman to all [ <del>patient</del> ] <u>resident</u> records or            |
| 12     |                     | portions thereof necessary for the [ <del>executive office</del>              |
| 13     |                     | on aging] long-term care ombudsman to evaluate the                            |
| 14     |                     | merits of a specific complaint or complaints; provided                        |
| 15     |                     | that [patient] resident records shall be divulged only                        |
| 16     |                     | with the written consent of the [ <del>patient</del> ] <u>resident</u> or     |
| 17     |                     | the [ <del>patient's</del> ] <u>resident's</u> legal representative;          |
| 18     | [ <del>(8)</del> ]  | (9) Establish procedures for appropriate access to                            |
| 19     |                     | files maintained by the [ <del>executive office on aging,</del> ]             |
| 20     |                     | long-term care ombudsman, except that the identity of                         |
| 21     |                     | any complainant or resident of a long-term care                               |
| 22     |                     | facility shall not be disclosed unless:                                       |



#### H.B. NO. <sup>807</sup> H.D. 1 S.D. 2 C.D. 1

| 1  |      | (A)  | [ <del>Such</del> ] <u>The</u> complainant or resident, or the    |
|----|------|------|---|
| 2  |      |      | complainant's or resident's legal representative,                 |
| 3  |      |      | consents in writing to [ <del>such</del> ] <u>the</u> disclosure; |
| 4  |      |      | [ <del>or</del> ]   |
| 5  |      | (B)  | [ <del>Such</del> ] The complainant or resident consents          |
| 6  |      |      | orally and the consent is documented                              |
| 7  |      |      | contemporaneously in writing by the long-term                     |
| 8  |      |      | care ombudsman or designee; or                                    |
| 9  |      | (C)  | The disclosure is required by court order $[-]_{j}$               |
| 10 | (10) | Prov | ide technical support for the development of                      |
| 11 |      | resi | dent and family councils to help protect the                      |
| 12 |      | heal | th, safety, welfare, and rights of residents of                   |
| 13 |      | long | -term care facilities;  |
| 14 | (11) | Prov | ide residents of long-term care facilities with:                  |
| 15 |      | (A)  | Information regarding how to obtain necessary                     |
| 16 |      |      | services;   |
| 17 |      | (B)  | Regular access to the office of the long-term                     |
| 18 |      |      | care ombudsman at times deemed reasonable and                     |
| 19 |      |      | necessary by the long-term care ombudsman; and                    |
| 20 |      | (C)  | Regular and timely responses to their complaints;                 |
| 21 | (12) | Seek | administrative, legal, or other remedies to carry                 |
| 22 |      | out  | this part; and  |
|    |      |      |   |



| H.B. | NO. | S.D. 2 |
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|      |     | C.D. 1 |

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| 1  | (13)        | Carry out all other responsibilities as provided by   |
|----|-------------|---|
| 2  |             | state or federal law.                                 |
| 3  | (d)         | The long-term care ombudsman shall establish          |
| 4  | procedure   | s to ensure that all designees, employees, and        |
| 5  | volunteer   | s are free of conflict of interest.                   |
| 6  | (e)         | The long-term care ombudsman shall adopt rules        |
| 7  | pursuant    | to chapter 91 for the purposes of administering and   |
| 8  | implement   | ing this part.  |
| 9  | (f)         | For the purposes of this part:                        |
| 10 | <u>"Con</u> | flict of interest" includes:                          |
| 11 | (1)         | Any direct involvement in the licensing or            |
| 12 |             | certification of a long-term care facility or of a    |
| 13 |             | provider of a long-term care service;                 |
| 14 | (2)         | An ownership or investment interest in a long-term    |
| 15 |             | care facility or a long-term care service;            |
| 16 | (3)         | Employment by, or participation in the management of, |
| 17 |             | a long-term care facility; and                        |
| 18 | (4)         | Receipt of, or the right to receive, directly or      |
| 19 |             | indirectly, remuneration under a compensation         |
| 20 |             | arrangement with an owner or operator of a long-term  |
| 21 |             | care facility.  |

22 "Long-term care facility" means any:



| H.B. | NO. | 807<br>H.D. 1<br>S.D. 2<br>C.D. 1 |
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|      |     | 0.0.1                             |

| 1  | (1)                           | Skilled nursing facility as defined in section 1819(a)                     |
|----|-------------------------------|--|
| 2  |                               | of the Social Security Act, as amended;                                    |
| 3  | (2)                           | Nursing facility, as defined in section 1919(a) of the                     |
| 4  |                               | Social Security Act, as amended;   |
| 5  | (3)                           | Adult residential care home, including any expanded                        |
| 6  |                               | adult residential care home;   |
| 7  | (4)                           | Assisted living facility;  |
| 8  | (5)                           | Intermediate care facility as defined in section                           |
| 9  |                               | 1905(c) of the Social Security Act, as amended; and                        |
| 10 | (6)                           | Other similar facility licensed by the State serving                       |
| 11 |                               | elders."   |
| 12 | SECT                          | ION 6. Section 349-13, Hawaii Revised Statutes, is                         |
| 13 | amended t                     | o read as follows:   |
| 14 | " [+]                         | §349-13[] Access to long-term care facilities. (a)                         |
| 15 | [ <del>Any</del> ] <u>A</u> l | ong-term care facility [ <del>which receives public funds</del> ]          |
| 16 | shall per                     | mit <u>immediate</u> access to the <u>long-term</u> facility <u>and to</u> |
| 17 | the resid                     | ents of the long-term care facility to the [ <del>executive</del>          |
| 18 | office on                     | aging in] long-term care ombudsman or designee at any                      |
| 19 | time deem                     | ed necessary and reasonable by the long-term care                          |
| 20 | ombudsman                     | for the performance of [its] the duties and functions                      |
| 21 | under thi                     | s [ <del>chapter.</del> ] <u>part.</u>                                     |



Page 11

| 1  | (b) Access to the residents of the long-term care facility          |
|----|---|
| 2  | shall include the provision of privacy.                             |
| 3  | (c) A long-term care facility shall permit access by the            |
| 4  | long-term care ombudsman or designee to all resident records or     |
| 5  | portions thereof necessary for the long-term care ombudsman to      |
| 6  | evaluate the merits of any complaint; provided that resident        |
| 7  | records shall be divulged only with the written consent of the      |
| 8  | resident or the resident's legal representative.                    |
| 9  | (d) The long-term care ombudsman shall report violations            |
| 10 | of this section to the department of health.                        |
| 11 | (e) The department of health shall adopt rules, including           |
| 12 | the establishment of administrative fines or other penalties,       |
| 13 | pursuant to chapter 91 for the violation of this section."          |
| 14 | SECTION 7. Section 349-14, Hawaii Revised Statutes, is              |
| 15 | amended to read as follows:   |
| 16 | "§349-14 Retaliatory acts by facilities or facility                 |
| 17 | employees prohibited. (a) No resident of a long-term care           |
| 18 | facility seeking advocacy assistance as provided for in section     |
| 19 | 349-12 or making a complaint concerning a long-term care            |
| 20 | facility or any of its employees shall be subject to any            |
| 21 | retaliatory act by the <u>long-term care</u> facility or any of its |
|    |   |



1 employees for seeking advocacy assistance or making a complaint [; provided that for]. 2 (b) No person seeking advocacy assistance as provided for 3 in section 349-12 or making a complaint concerning a long-term 4 5 care facility or any of its employees on behalf of a resident of a long-term care facility shall be subject to any retaliatory 6 7 act by the long-term care facility or any of its employees for seeking advocacy assistance or making a complaint. 8 9 (c) For the purposes of this [chapter,] section, the term "retaliatory act" [shall include, but not be limited to,] 10 includes actual or threatened physical injury, psychological 11 abuse or neglect, sexual abuse, negligent treatment, 12 13 maltreatment, or any form of discrimination as reprisal for seeking advocacy assistance or making a complaint. 14 (d) A violation of this section shall be reported by the 15 [executive office on aging] the long-term care ombudsman to the 16 17 appropriate police department or prosecuting attorney. [(b)] (e) Any long-term care facility or long-term care 18 facility employee who violates [the provisions of] this section 19 shall be quilty of a misdemeanor. Each separate retaliatory act 20 21 and each day during which any retaliatory act continues shall constitute a separate offense." 22

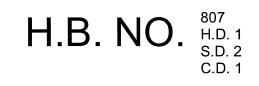
807 H.D. 1

CD 1

12

H.B. NO.

HB807 CD1 HMS 2007-4179



| 1  | SECTION 8. Chapter 349, Hawaii Revised Statutes, is              |
|----|--|
| 2  | amended by designating section 349-15, Hawaii Revised Statutes,  |
| 3  | as part III and adding a title before section 349-15, Hawaii     |
| 4  | Revised Statutes, to read as follows:                            |
| 5  | "PART III. CAREGIVER SUPPORT SERVICES"                           |
| 6  | SECTION 9. This Act does not affect rights and duties that       |
| 7  | matured, penalties that were incurred, and proceedings that were |
| 8  | begun, before its effective date.                                |
| 9  | SECTION 10. Statutory material to be repealed is bracketed       |
| 10 | and stricken. New statutory material is underscored.             |
| 11 | SECTION 11. This Act shall take effect upon its approval;        |
| 12 | provided that section 2 shall take effect on January 1, 2008.    |



H.B. NO. 807 H.D. 1 S.D. 2 C.D. 1

Report Title:

Office of the Long-Term Care Ombudsman

#### Description:

Formally establishes an office of the long-term care ombudsman and its duties within the executive office on aging in the Hawaii Revised Statutes. (HB807 CD1)

