
A BILL FOR AN ACT

RELATING TO AGING.

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

1 SECTION 1. The legislature finds that in 1980, older
2 adults comprised twelve per cent of the State's total
3 population. In 2000, the population nearly doubled, with over
4 two hundred and seven thousand older adults comprising seventeen
5 per cent of Hawaii's total population. This growth trend is
6 expected to continue. According to a May 2006 report prepared
7 by the executive office on aging, *Profile of Hawaii's Older*
8 *Adults and Their Caregivers*, by the year 2020, persons of age
9 sixty and older will constitute nearly one-third, or thirty per
10 cent, of Hawaii's adult population. Moreover, the number of
11 persons who are eighty-five years of age and older is projected
12 to continue to increase dramatically, from 5,561 in 1980 to
13 33,800 in 2020.

14 The legislature further finds that the array of publicly-
15 funded programs and services that serve the older population in
16 the areas of health care, disability services, insurance, long-
17 term care, caregiver support, medicaid, medicare, and
18 institutional and community-based adult care, for example, are



1 scattered among state departments. These programs and services
2 help to meet the multi-faceted needs of older adults and are
3 provided by various county, state, federal, private, and not-
4 for-profit entities but can be challenging for care recipients,
5 caregivers, and families to navigate. As a central agency, the
6 executive office on aging currently coordinates some of the
7 programs and services available to Hawaii's older population;
8 however, the scope and magnitude of overlapping issues facing
9 the elderly may necessitate department-level attention. A
10 departmental agency could better focus resources and personnel
11 by directly addressing with top-level policy makers the multi-
12 faceted needs of Hawaii's older population.

13 The purpose of this Act is to establish a department of
14 aging and consolidate publicly-funded programs and services that
15 would appropriately fall within the jurisdiction of a new
16 department of aging.

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20 "CHAPTER

21 DEPARTMENT OF AGING



1 § -1 **Definitions.** The following definitions, whenever
2 used in this chapter, shall have the following respective
3 meanings, unless a different meaning clearly appears in the
4 context:

5 "Board" means the policy advisory board for elder affairs.

6 "Department" means the department of aging.

7 "Director" means the director of aging.

8 "Long-term care facility" means any:

9 (1) Skilled nursing facility as defined in section 1819(a)
10 of the Social Security Act, as amended;

11 (2) Nursing facility, as defined in section 1919(a) of the
12 Social Security Act, as amended;

13 (3) Adult residential care home, including any expanded
14 adult residential care home;

15 (4) Assisted living facility;

16 (5) Intermediate care facility as defined in section
17 1905(c) of the Social Security Act, as amended; and

18 (6) Other similar facility licensed by the State serving
19 elders.

20 § -2 **General powers and duties of the department.** (a)

21 The department shall have the following principal functions,
22 duties, and powers:



- 1 (1) Serve as the principal department in state government
2 responsible for the performance, development, and
3 implementation of programs, policies, and activities
4 on behalf of elders;
- 5 (2) Oversee, supervise, and direct the planning,
6 evaluation, and coordination of elder programs and
7 development of a statewide service delivery network;
- 8 (3) Assess the policies and practices of other agencies
9 impacting elders and conduct advocacy efforts for
10 elders;
- 11 (4) Advise the governor on new legislation, programs, and
12 policy initiatives, and requirements for their
13 implementation;
- 14 (5) Serve as a member of advisory boards and regulatory
15 panels of state agencies in areas such as income
16 maintenance, public employment, retirement systems,
17 certification of health care facilities and programs,
18 social service and medical assistance, and housing and
19 employment;
- 20 (6) Administer funds allocated for the department; and
21 apply for, receive, and disburse grants and donations
22 from all sources for elder programs and services;



- 1 (7) Establish a clearinghouse for complaints of persons
2 regarding services to elders or operations of state
3 and county agencies affecting elders, investigate the
4 complaints, and refer the complaints and the
5 director's findings to the appropriate agency for
6 corrective action;
- 7 (8) Adopt, amend, and repeal rules pursuant to chapter 91
8 for the purposes of this chapter;
- 9 (9) Employ and retain staff as may be necessary for the
10 purposes of this chapter, in conformity with chapter
11 76; and
- 12 (10) Contract for or grant services as may be necessary for
13 the purposes of this chapter, including master
14 contracts with other state agencies receiving federal
15 and state funds for programs and services for the
16 aging, and purchase of service agreements with
17 appropriate agencies.

18 § -3 Administrative and program support for the
19 department of aging. (a) Administrative and program support
20 for the department shall be accomplished through two principal
21 organizational divisions: the planning and administrative



1 services division and the community assistance and program
2 management division.

3 (b) The planning and administrative services division
4 shall be responsible for:

- 5 (1) Preparation and submission of programs and budgets;
- 6 (2) Preparation of an annual evaluation report on elder
7 programs to be submitted to the governor and
8 legislature;
- 9 (3) Preparation of studies and analyses;
- 10 (4) Maintenance of personnel records;
- 11 (5) Management of contracts and agreements entered into by
12 the department of aging with public and private
13 vendors, consultants, and suppliers;
- 14 (6) Monitoring of the purchase of service agreements with
15 public and private agencies and rendering of technical
16 assistance to elder program service providers; and
- 17 (7) Establishment and maintenance of reimbursement systems
18 for services provided by agreement with federal,
19 state, and county agencies, as well as private groups.

20 (c) The community assistance and program management
21 division shall be responsible for:



- 1 (1) Legislative research and development as well as
2 serving as a liaison on state and federal legislative
3 matters;
- 4 (2) Conducting of public affairs programs on elder affairs
5 programs, projects, and needs;
- 6 (3) Development and implementation of educational,
7 recreational, and cultural programs for elders;
- 8 (4) Provision of technical assistance and serving as a
9 liaison with community groups, organizations, and
10 independent programs of benefit to elders;
- 11 (5) Development and implementation of active programs of
12 consumer protection and pre-retirement counseling;
- 13 (6) Establishment of a statewide information and referral
14 system, and an annual inventory of elder programs and
15 service agencies;
- 16 (7) Technical assistance and serving as a liaison for
17 establishing elder-controlled local service delivery
18 systems providing comprehensive services and
19 employment opportunities for elders throughout the
20 State; and
- 21 (8) Development and management of federally-funded
22 programs and special projects under the federal Older



1 Americans Act of 1965, as amended, and other federal
2 sources.

3 § -4 Policy advisory board for elder affairs. (a)

4 There shall be a policy advisory board for elder affairs,
5 appointed by the governor under section 26-34. The board shall
6 advise the director in the following areas:

7 (1) The identification of issues and alternative
8 approaches to solutions;

9 (2) The development of position statements and papers;

10 (3) Advocacy and legislative actions; and

11 (4) Program development and operations.

12 (b) The board shall consist of not less than twenty-one
13 nor more than twenty-nine members, a majority of whom are over
14 sixty years of age, who shall be selected on the basis of their
15 interests and knowledge in and their ability to make
16 contributions to the solution of problems relating to aging, and
17 shall include at least one member from the county of Hawaii, one
18 member from the county of Maui, one member from the county of
19 Kauai, and one member from the city and county of Honolulu.

20 There shall be nine members who shall serve as ex officio
21 members and shall be chosen from among the heads of the
22 following state agencies which provide services or programs



1 affecting elders: the departments of health, human services,
2 education, labor and industrial relations, and transportation;
3 the University of Hawaii; the state employees' retirement
4 system; the office of consumer protection; and, by invitation,
5 the Hawaii representative of the United States Department of
6 Health and Human Services. Of the non ex officio members, one-
7 third of the members shall be appointed for an initial term of
8 four years, one-third for an initial term of three years, and
9 one-third for an initial term of two years; and thereafter the
10 terms of office of each member shall be four years.

11 (c) The members shall serve without compensation, but
12 shall be paid for necessary travel expenses in attending
13 meetings and carrying out the responsibilities of the board.
14 The chairperson shall be elected annually from the
15 nongovernmental members of the board. There shall be not less
16 than twelve meetings of the board each year.

17 § -5 State master plan for elders. The department shall
18 be responsible for the continued development, implementation,
19 and continuous updating of a comprehensive master plan for
20 elders which shall include the following:

21 (1) Compilation of basic demographic data on elders in the
22 State;



- 1 (2) Identification of the physical, sociological,
2 psychological, and economic needs of elders in the
3 State;
- 4 (3) Establishment of immediate and long-range goals
5 pursuant to programs and services for elders in the
6 State;
- 7 (4) Establishment of priorities for program implementation
8 and of alternatives for program implementation; and
- 9 (5) Organization of administrative and program structure,
10 including the use of facilities and personnel.

11 The state master plan for elders shall be developed in
12 accordance with the requirements of the executive budget act.

13 § -6 **State policy for senior centers.** The department
14 shall be responsible for establishing state policy for senior
15 centers, which shall include the following:

- 16 (1) Establishment of comprehensive long range and
17 immediate goals and objectives;
- 18 (2) Establishment of state standards for the operation and
19 maintenance of senior centers;
- 20 (3) Establishment of priorities for program implementation
21 and of alternatives for program implementation;



- 1 (4) Delineation of the separate and mutual roles,
2 responsibilities, and authorities of the State and of
3 the several counties relative to the development and
4 administration of senior centers and senior center
5 programs; and
- 6 (5) Establishment of a mechanism to provide for the
7 effective monitoring of senior centers and senior
8 center programs.

9 § -7 **Coordination and development of caregiver support**
10 **services.** The department shall coordinate a statewide system of
11 caregiver support services by, among other things:

- 12 (1) Integrating family caregiver support with the aging
13 and disability resource center demonstration project;
- 14 (2) Analyzing the long-term care needs of older adults and
15 the capacity of family and informal caregivers to help
16 them remain safely at home;
- 17 (3) Advocating, mobilizing, and coordinating employer and
18 community resources to enable and augment family
19 caregiver support;
- 20 (4) Establishing and maintaining protocols and standards
21 for federal and state caregiver services administered
22 by state, county, or other local agencies on aging;



- 1 (5) Establishing and supervising the alignment of
2 long-term care advocacy assistance staff caregiver
3 support objectives with the planning, resource
4 development, grants management, data management, and
5 evaluation functions of the department; and
- 6 (6) Coordinating statewide support for grandparents and
7 other aging relative caregivers of children eighteen
8 and under.

9 § -8 Office of the long-term care ombudsman. (a) There
10 is established the office of the long-term care ombudsman in the
11 department to protect the health, safety, welfare, and rights of
12 residents of long-term care facilities in accordance with state
13 and federal law. The office of the long-term care ombudsman
14 shall be headed by the long-term care ombudsman.

15 (b) The long-term care ombudsman shall:

- 16 (1) Be hired pursuant to chapter 76;
17 (2) Be free of conflict of interest;
18 (3) Have expertise and experience in the fields of long-
19 term care and advocacy;
20 (4) Serve on a full-time basis; and
21 (5) Prepare an annual report in accordance with the
22 federal Older Americans Act of 1965, as amended.



1 (c) The long-term care ombudsman, personally or through a
2 designee, shall:

3 (1) Represent the interests of residents of long-term care
4 facilities, individually and as a class, to:

5 (A) Protect their health, safety, welfare, and
6 rights; and

7 (B) Promote improvement in the quality of care they
8 receive and their quality of life;

9 (2) Identify, investigate, and resolve complaints,
10 including complaints against providers of long-term
11 care services and their representatives, made by or on
12 behalf of residents of long-term care facilities
13 relating to actions, inactions, or decisions that may
14 adversely affect the health, safety, welfare, or
15 rights of residents of long-term care facilities,
16 including the appointment and activities of guardians
17 and representative payees;

18 (3) Monitor and comment on the development and
19 implementation of federal, state, and local laws,
20 regulations, policies, and actions that pertain to the
21 health, safety, welfare, or rights of residents of
22 long-term care facilities, including the adequacy of



- 1 long-term care facilities and services in the State,
2 and recommend changes as necessary;
- 3 (4) Provide information as appropriate to public agencies
4 regarding the problems of residents of long-term care
5 facilities;
- 6 (5) Train volunteers and employees;
- 7 (6) Promote the development of citizen organizations to
8 participate in the advocacy program;
- 9 (7) Establish procedures for appropriate access by the
10 long-term care ombudsman to long-term care facilities
11 and to residents of long-term care facilities;
- 12 (8) Establish procedures for appropriate access by the
13 long-term care ombudsman to all resident records or
14 portions thereof necessary for the long-term care
15 ombudsman to evaluate the merits of a specific
16 complaint or complaints; provided that resident
17 records shall be divulged only with the written
18 consent of the resident or the resident's legal
19 representative;
- 20 (9) Establish procedures for appropriate access to files
21 maintained by the long-term care ombudsman, except



- 1 that the identity of any complainant or resident of a
2 long-term care facility shall not be disclosed unless:
- 3 (A) The complainant or resident, or the complainant's
4 or resident's legal representative, consents in
5 writing to the disclosure;
- 6 (B) The complainant or resident consents orally and
7 the consent is documented contemporaneously in
8 writing by the long-term care ombudsman or
9 designee; or
- 10 (C) The disclosure is required by court order;
- 11 (10) Provide technical support for the development of
12 resident and family councils to help protect the
13 health, safety, welfare, and rights of residents of
14 long-term care facilities;
- 15 (11) Provide residents of long-term care facilities with:
- 16 (A) Information regarding how to obtain necessary
17 services;
- 18 (B) Regular access to the office of the long-term
19 care ombudsman at times deemed reasonable and
20 necessary by the long-term care ombudsman; and
21 (C) Regular and timely responses to their complaints;



1 (12) Seek administrative, legal, or other remedies to carry
2 out the relevant sections of this chapter; and

3 (13) Carry out all other responsibilities as provided by
4 state or federal law.

5 (d) The long-term care ombudsman shall establish
6 procedures to ensure that all designees, employees, and
7 volunteers are free of conflict of interest.

8 (e) The long-term care ombudsman shall adopt rules
9 pursuant to chapter 91 for the purposes of administering and
10 implementing the relevant sections of this chapter..

11 (f) For the purposes of this section:

12 "Conflict of interest" includes:

13 (1) Any direct involvement in the licensing or
14 certification of a long-term care facility or of a
15 provider of a long-term care service;

16 (2) An ownership or investment interest in a long-term
17 care facility or a long-term care service;

18 (3) Employment by, or participation in the management of,
19 a long-term care facility; and

20 (4) Receipt of, or the right to receive, directly or
21 indirectly, remuneration under a compensation



1 arrangement with an owner or operator of a long-term
2 care facility.

3 § -9 Access to long-term care facilities. (a) A
4 long-term care facility shall permit immediate access to the
5 long-term facility and to the residents of the long-term care
6 facility to the long-term care ombudsman or designee at any time
7 deemed necessary and reasonable by the long-term care ombudsman
8 for the performance of the duties and functions under this
9 chapter.

10 (b) Access to the residents of the long-term care facility
11 shall include the provision of privacy.

12 (c) A long-term care facility shall permit access by the
13 long-term care ombudsman or designee to all resident records or
14 portions thereof necessary for the long-term care ombudsman to
15 evaluate the merits of any complaint; provided that resident
16 records shall be divulged only with the written consent of the
17 resident or the resident's legal representative.

18 (d) The long-term care ombudsman shall report violations
19 of this section to the department of aging.

20 (e) The department of aging shall adopt rules, including
21 the establishment of administrative fines or other penalties,
22 pursuant to chapter 91 for the violation of this section.



1 § -10 Retaliatory acts by facilities or facility
2 employees prohibited. (a) No resident of a long-term care
3 facility seeking advocacy assistance as provided for in section
4 -7 or making a complaint concerning a long-term care facility
5 or any of its employees shall be subject to any retaliatory act
6 by the long-term care facility or any of its employees for
7 seeking advocacy assistance or making a complaint.

8 (b) No person seeking advocacy assistance as provided for
9 in section -7 or making a complaint concerning a long-term
10 care facility or any of its employees on behalf of a resident of
11 a long-term care facility shall be subject to any retaliatory
12 act by the long-term care facility or any of its employees for
13 seeking advocacy assistance or making a complaint.

14 (c) For the purposes of this section, the term
15 "retaliatory act" includes actual or threatened physical injury,
16 psychological abuse or neglect, sexual abuse, negligent
17 treatment, maltreatment, or any form of discrimination as
18 reprisal for seeking advocacy assistance or making a complaint.

19 (d) A violation of this section shall be reported by the
20 long-term care ombudsman to the appropriate police department or
21 prosecuting attorney.



1 (e) Any long-term care facility or long-term care facility
2 employee who violates this section shall be guilty of a
3 misdemeanor. Each separate retaliatory act and each day during
4 which any retaliatory act continues shall constitute a separate
5 offense.

6 § -11 **Wilful interference; prohibited.** Any individual,
7 including any long-term care facility or long-term care facility
8 employee, who wilfully interferes with or impedes the long-term
9 care ombudsman or designee in the performance of the long-term
10 care ombudsman's or designee's duties pursuant to this chapter
11 shall be guilty of a misdemeanor. Each separate act of wilful
12 interference and each day during which any wilful interference
13 continues shall constitute a separate offense.

14 § -12 **Posting and distribution of information.** (a) The
15 long-term care ombudsman shall provide each long-term care
16 facility with brochures and a poster with information regarding
17 the office of the long-term care ombudsman, including the name,
18 address, and telephone number of the office of the long-term
19 care ombudsman, and a brief description of the services provided
20 by the office of the long-term care ombudsman.

21 (b) A long-term care facility shall provide each resident
22 of the long-term facility with a copy of the brochure and shall



1 post the poster in a conspicuous location that is accessible to
2 all residents of the long-term care facility."

3 SECTION 3. Chapter 26, Hawaii Revised Statutes, is amended
4 by adding a new section to be appropriately designated and to
5 read as follows:

6 "§26- Department of aging. The department of aging
7 shall be headed by a single executive to be known as the
8 director of aging. The department of aging shall have primary
9 jurisdiction over all matters relating to the administration of
10 the State's aging programs, except as otherwise provided by
11 law."

12 SECTION 4. Section 26-4, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§26-4 Structure of government.** Under the supervision of
15 the governor, all executive and administrative offices,
16 departments, and instrumentalities of the state government and
17 their respective functions, powers, and duties shall be
18 allocated among and within the following principal departments
19 that are hereby established:

20 (1) Department of human resources development (Section
21 26-5)



- 1 (2) Department of accounting and general services (Section
- 2 26-6)
- 3 (3) Department of the attorney general (Section 26-7)
- 4 (4) Department of budget and finance (Section 26-8)
- 5 (5) Department of commerce and consumer affairs (Section
- 6 26-9)
- 7 (6) Department of taxation (Section 26-10)
- 8 (7) University of Hawaii (Section 26-11)
- 9 (8) Department of education (Section 26-12)
- 10 (9) Department of health (Section 26-13)
- 11 (10) Department of human services (Section 26-14)
- 12 (11) Department of land and natural resources (Section
- 13 26-15)
- 14 (12) Department of agriculture (Section 26-16)
- 15 (13) Department of Hawaiian home lands (Section 26-17)
- 16 (14) Department of business, economic development, and
- 17 tourism (Section 26-18)
- 18 (15) Department of transportation (Section 26-19)
- 19 (16) Department of labor and industrial relations (Section
- 20 26-20)
- 21 (17) Department of defense (Section 26-21)
- 22 (18) Department of public safety (Section 26-14.6) [-]



1 (19) Department of aging (Section 26-) ."

2 SECTION 5. Section 26-52, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§26-52 Department heads and executive officers.** The
5 salaries of the following state officers shall be as follows:

6 (1) The salary of the superintendent of education shall be
7 set by the board of education at a rate no greater
8 than \$150,000 a year;

9 (2) The salary of the president of the University of
10 Hawaii shall be set by the board of regents;

11 (3) Effective July 1, 2004, the salaries of all department
12 heads or executive officers of the departments of
13 accounting and general services, aging, agriculture,
14 attorney general, budget and finance, business,
15 economic development, and tourism, commerce and
16 consumer affairs, Hawaiian home lands, health, human
17 resources development, human services, labor and
18 industrial relations, land and natural resources,
19 public safety, taxation, and transportation shall be
20 as last recommended by the executive salary
21 commission. Effective July 1, 2007, and every six
22 years thereafter, the salaries shall be as last



1 recommended by the commission on salaries pursuant to
2 section 26-56, unless rejected by the legislature; and
3 (4) The salary of the adjutant general shall be \$85,302 a
4 year. Effective July 1, 2007, and every six years
5 thereafter, the salary of the adjutant general shall
6 be as last recommended by the commission on salaries
7 pursuant to section 26-56, unless rejected by the
8 legislature, except that if the state salary is in
9 conflict with the pay and allowance fixed by the
10 tables of the regular army or air force of the United
11 States, the latter shall prevail."

12 SECTION 6. Chapter 349, Hawaii Revised Statutes, is
13 repealed.

14 SECTION 7. All rights, powers, functions, and duties
15 pertaining to elder affairs in existing state programs, as they
16 apply in this Act, are transferred to the department of aging.

17 All officers and employees whose functions are transferred
18 by this Act shall be transferred with their functions and shall
19 continue to perform their regular duties upon their transfer,
20 subject to the state personnel laws and this Act.

21 No officer or employee of the State having tenure shall
22 suffer any loss of salary, seniority, prior service credit,



1 vacation, sick leave, or other employee benefit or privilege as
2 a consequence of this Act, and such officer or employee may be
3 transferred or appointed to a civil service position without the
4 necessity of examination; provided that the officer or employee
5 possesses the minimum qualifications for the position to which
6 transferred or appointed; and provided that subsequent changes
7 in status may be made pursuant to applicable civil service and
8 compensation laws.

9 An officer or employee of the State who does not have
10 tenure and who may be transferred or appointed to a civil
11 service position as a consequence of this Act shall become a
12 civil service employee without the loss of salary, seniority,
13 prior service credit, vacation, sick leave, or other employee
14 benefits or privileges and without the necessity of examination;
15 provided that such officer or employee possesses the minimum
16 qualifications for the position to which transferred or
17 appointed.

18 If an office or position held by an officer or employee
19 having tenure is abolished, the officer or employee shall not
20 thereby be separated from public employment, but shall remain in
21 the employment of the State with the same pay and classification
22 and shall be transferred to some other office or position for



1 which the officer or employee is eligible under the personnel
2 laws of the State as determined by the head of the department or
3 the governor.

4 SECTION 8. All appropriations, records, equipment,
5 machines, files, supplies, contracts, books, papers, documents,
6 maps, and other personal property heretofore made, used,
7 acquired, or held relating to the functions transferred to the
8 department of aging shall be transferred with the functions to
9 which they relate.

10 SECTION 9. (a) The governor shall convene a working group
11 on interagency relations to develop a comprehensive plan for
12 transferring certain rights, powers, functions, duties, and
13 resources to the newly established department of aging.

14 (b) The comprehensive plan shall identify:

15 (1) All state programs for the elderly, by department,
16 division, and program identification;

17 (2) Each position to be transferred by position number;
18 and

19 (3) All moneys budgeted in support of each position to be
20 transferred, including moneys for direct and indirect
21 employee benefits, at the lowest level on the state
22 program structure.



1 (c) The working group shall include the following
2 individuals or their designees:

3 (1) Three members appointed by the president of the
4 senate;

5 (2) Three members appointed by the speaker of the house of
6 representatives;

7 (3) Three members appointed by the governor;

8 (4) The attorney general or the attorney general's
9 designee;

10 (5) The director of health;

11 (6) The director of human services;

12 (7) The director of the executive office on aging; and

13 (8) Private organizations providing elder services,
14 including Na Tutu, Grandparents Raising Grandchildren.

15 SECTION 10. The working group on interagency relations
16 shall cease to exist on June 30, 2014.

17 SECTION 11. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 12. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 13. This Act shall take effect on July 1, 2014;
 2 provided that section 9 shall take effect upon the approval of
 3 this Act.

4

INTRODUCED BY:

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JAN 21 2011



Report Title:

Elderly; Department of Aging; Establishment

Description:

Establishes a department of aging to consolidate publicly-funded programs and services that would appropriately fall within the jurisdiction of a new department of aging.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

