

---

---

# 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 the State's long-  
2 term care ombudsman, currently based within the executive office  
3 on aging, plays a vital role in protecting the health, safety,  
4 welfare, and rights of older residents in long-term care  
5 facilities and the community. The purpose and intent of the  
6 office of the long-term care ombudsman is to serve as a quasi-  
7 autonomous office to identify, investigate, and seek solutions  
8 to complaints and issues of vulnerable older residents.  
9 Although the initial focus of the office of the long-term care  
10 ombudsman has been on long-term care facilities, the scope of  
11 the office's duties has broadened as the landscape of care  
12 services and settings has evolved.

13           The legislature further finds that the changing regulatory  
14 and practical environment in which the long-term care ombudsman  
15 carries out its duties requires revisions to the long-term care  
16 ombudsman law to ensure that the long-term care ombudsman has



1 the autonomy, support, and broader parameters to meet the  
2 changing needs of Hawaii's long-term care consumers.

3 The legislature further finds that the State's office of  
4 the long-term care ombudsman, established by the Older Americans  
5 Act, was intended to have a degree of autonomy, to allow it to  
6 effectively and impartially carry out its functions, including  
7 serving as an advocate for systemic policy issues. According to  
8 the national long-term care ombudsman resource center, the  
9 primary role of long-term care ombudsmen is to advocate for  
10 long-term care consumers in response to individual complaints  
11 and to advocate for the broader concerns of consumers relating  
12 to the need for changes to the care delivery system on a  
13 systemic level. This means recommending top-down changes to  
14 long-term care facilities, governmental agencies, organizations,  
15 and corporations as well as to policies, regulations, and laws  
16 to benefit long-term care consumers.

17 The purpose of this Act is to ensure that the office of the  
18 long-term care ombudsman remains able to address the needs of  
19 vulnerable individuals, regardless of their care setting, by:

20 (1) Decoupling the office of the long-term care ombudsman  
21 from the executive office on aging, which has an



1 increasing role and workload in crafting and  
 2 implementing long-term care policies and programs, and  
 3 instead attaching it administratively to the state  
 4 health planning and development agency, which also has  
 5 administrative autonomy;

6 (2) Broadening the authority of the long-term care  
 7 ombudsman to encompass long-term care facilities and  
 8 other care settings; and

9 (3) Ensuring that the office of the long-term care  
 10 ombudsman has appropriate access to all care settings  
 11 subject to its jurisdiction.

12 SECTION 2. Chapter 323D, Hawaii Revised Statutes, is  
 13 amended by adding a new part to be appropriately designated and  
 14 to read as follows:

15 "PART . OFFICE OF THE LONG-TERM CARE OMBUDSMAN

16 §323D-A Definitions. For the purposes of this part:

17 "Administrator" means the administrator of the state health  
 18 planning and development agency established in section 323D-11.

19 "Conflict of interest" includes:



- 1           (1) Any direct involvement in the licensing or  
2           certification of a long-term care facility or of a  
3           provider of a long-term care service;
- 4           (2) An ownership or investment interest in a long-term  
5           care facility or a long-term care service or an aging  
6           in place facility or an aging in place service;
- 7           (3) Employment by, or participation in the management of,  
8           a long-term care facility, long-term care service,  
9           aging in place facility, or aging in place service;  
10          and
- 11          (4) Receipt of, or the right to receive, directly or  
12          indirectly, remuneration under a compensation  
13          arrangement with an owner or operator of a long-term  
14          care facility, long-term care service, aging in place  
15          facility, or aging in place service.
- 16          "Long-term care facility" means any:
- 17          (1) Skilled nursing facility as defined in section 1819(a)  
18          of the Social Security Act, as amended;
- 19          (2) Nursing facility, as defined in section 1919(a) of the  
20          Social Security Act, as amended;



- 1 (3) Adult residential care home, including any expanded
- 2 adult residential care home;
- 3 (4) Assisted living facility;
- 4 (5) Intermediate care facility as defined in section
- 5 1905(c) of the Social Security Act, as amended; and
- 6 (6) Other similar facility licensed or unlicensed by the
- 7 State serving elders.

8 "State agency" means the state health planning and  
 9 development agency established in section 323D-11.

10 **§323D-B Office of the long-term care ombudsman. (a)**

11 There is established the office of the long-term care ombudsman  
 12 that shall be administratively attached effective July 1, 2019,  
 13 to the state agency to protect the health, safety, welfare, and  
 14 rights of residents of long-term care facilities and aging in  
 15 place facilities in accordance with state and federal law. The  
 16 office of the long-term care ombudsman shall be headed by the  
 17 long-term care ombudsman.

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

- 19 (1) Be hired pursuant to chapter 76;
- 20 (2) Be free of conflict of interest;



1 (3) Have expertise and experience in the fields of long-  
2 term care and advocacy;

3 (4) Serve on a full-time basis; and

4 (5) Prepare an annual report in accordance with the  
5 federal Older Americans Act, as amended.

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

8 (1) Represent the interests of residents of long-term care  
9 facilities and aging in place facilities, individually  
10 and as a class, to:

11 (A) Protect their health, safety, welfare, and  
12 rights; and

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

15 (2) In accordance with priorities developed by the long-  
16 term care ombudsman, identify, investigate, and  
17 resolve complaints and quality of life issues,  
18 including complaints against providers of long-term  
19 care services and their representatives, made by or on  
20 behalf of residents of long-term care facilities and  
21 aging in place facilities relating to actions,



- 1           inactions, or decisions that may adversely affect the  
2           health, safety, welfare, or rights of residents of  
3           long-term care facilities and aging in place  
4           facilities, including the appointment and activities  
5           of guardians and representative payees;
- 6           (3) Monitor and comment on the development and  
7           implementation of federal, state, and local laws,  
8           regulations, policies, and actions that pertain to the  
9           health, safety, welfare, or rights of residents of  
10          long-term care facilities and aging in place  
11          facilities, including the adequacy of long-term care  
12          facilities and services and aging in place facilities  
13          and services in the State, and recommend changes as  
14          necessary;
- 15          (4) Provide information as appropriate to public agencies  
16          regarding the problems of residents of long-term care  
17          facilities and aging in place facilities;
- 18          (5) Train volunteers and employees;
- 19          (6) Promote the development of citizen organizations to  
20          participate in the advocacy program;



1           (7)   Establish procedures for appropriate access by the  
2                   long-term care ombudsman to long-term care facilities  
3                   and aging in place facilities and to residents of  
4                   long-term care facilities and aging in place  
5                   facilities;

6           (8)   Establish procedures for appropriate access by the  
7                   long-term care ombudsman to all resident records or  
8                   portions thereof necessary for the long-term care  
9                   ombudsman to evaluate the merits of a specific  
10                  complaint or complaints; provided that resident  
11                  records shall be divulged only with the written  
12                  consent of the resident or the resident's legal  
13                  representative;

14          (9)   Establish procedures for appropriate access to files  
15                  maintained by the long-term care ombudsman, except  
16                  that the identity of any complainant or resident of a  
17                  long-term care facility or an aging in place facility  
18                  shall not be disclosed unless:

19                (A)   The complainant or resident, or the complainant's  
20                        or resident's legal representative, consents in  
21                        writing to the disclosure;





1 (B) The complainant or resident consents orally and  
2 the consent is documented contemporaneously in  
3 writing by the long-term care ombudsman or  
4 designee; or

5 (C) The disclosure is required by court order;  
6 (10) Provide technical support for the development of  
7 resident and family councils to help protect the  
8 health, safety, welfare, and rights of residents of  
9 long-term care facilities and aging in place  
10 facilities;

11 (11) Provide residents of long-term care facilities and  
12 aging in place facilities with:

13 (A) Information regarding how to obtain necessary  
14 services;

15 (B) Regular access to the office of the long-term  
16 care ombudsman at times deemed reasonable and  
17 necessary by the long-term care ombudsman; and

18 (C) Regular and timely responses to their complaints;

19 (12) Seek administrative, legal, or other remedies to carry  
20 out this part; and



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 procedures to ensure that all designees, employees, and  
5 volunteers 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 implementing this part.

9 **§323D-C Access to long-term care facilities and aging in**  
10 **place facilities.** (a) A long-term care facility or aging in  
11 place facility shall permit immediate access to the long-term  
12 facility or aging in place facility, and to the residents of the  
13 long-term care facility or aging in place facility, to the long-  
14 term care ombudsman or ombudsman's designee at any time deemed  
15 necessary and reasonable by the long-term care ombudsman for the  
16 performance of the duties and functions under this part.

17 (b) Access to the residents of the long-term care facility  
18 or aging in place facility shall include the provision of  
19 privacy.

20 (c) A long-term care facility or aging in place facility  
21 shall permit access by the long-term care ombudsman or



1 ombudsman's designee to all resident records or portions thereof  
2 necessary for the long-term care ombudsman to evaluate the  
3 merits of any complaint; provided that resident records shall be  
4 divulged only with the written consent of the resident or the  
5 resident's legal representative.

6 (d) The long-term care ombudsman shall report violations  
7 of this section to the department of health.

8 (e) The department of health shall adopt rules, including  
9 the establishment of administrative fines or other penalties,  
10 pursuant to chapter 91 for the violation of this section.

11 **§323D-D Retaliatory acts by facilities or facility**  
12 **employees prohibited.** (a) No resident of a long-term care  
13 facility or aging in place facility seeking advocacy assistance  
14 as provided for in section 323D-B or making a complaint  
15 concerning a long-term care facility or aging in place facility  
16 or any of its employees shall be subject to any retaliatory act  
17 by the long-term care facility or aging in place facility or any  
18 of its employees for seeking advocacy assistance or making a  
19 complaint.

20 (b) No person seeking advocacy assistance as provided for  
21 in section 323D-B or making a complaint concerning a long-term



1 care facility or aging in place facility or any of its employees  
2 on behalf of a resident of a long-term care facility or aging in  
3 place facility shall be subject to any retaliatory act by the  
4 long-term care facility or aging in place facility or any of its  
5 employees for seeking advocacy assistance or making a complaint.

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

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

14 (e) Any long-term care facility or long-term care facility  
15 employee or aging in place facility or aging in place facility  
16 employee who violates this section shall be guilty of a  
17 misdemeanor. Each separate retaliatory act and each day during  
18 which any retaliatory act continues shall constitute a separate  
19 offense.

20 **§323D-E Wilful interference; prohibited.** Any individual,  
21 including any long-term care facility or long-term care facility



1 employee or aging in place facility or aging in place facility  
 2 employee, who wilfully interferes with or impedes the long-term  
 3 care ombudsman or ombudsman's designee in the performance of the  
 4 long-term care ombudsman's or ombudsman's designee's duties  
 5 pursuant to this part shall be guilty of a misdemeanor. Each  
 6 separate act of wilful interference and each day during which  
 7 any wilful interference continues shall constitute a separate  
 8 offense.

9       **§323D-F Posting and distribution of information.** (a) The  
 10 long-term care ombudsman shall provide each long-term care  
 11 facility and aging in place facility with brochures and a poster  
 12 with information regarding the office of the long-term care  
 13 ombudsman, including the name, address, and telephone number of  
 14 the office of the long-term care ombudsman and a brief  
 15 description of the services provided by the office of the long-  
 16 term care ombudsman.

17       (b) A long-term care facility or an aging in place  
 18 facility shall provide each resident of the long-term facility  
 19 or aging in place facility, respectively, with a copy of the  
 20 brochure and shall post the poster in a conspicuous location



1 that is accessible to all residents of the long-term care  
2 facility or aging in place facility."

3 SECTION 3. Section 457B-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§457B-6 Powers and duties of director. In addition to  
6 any other powers and duties authorized by law, the director  
7 shall:

- 8 (1) Develop, impose, and enforce standards which shall be  
9 met by individuals in order to receive a license as a  
10 nursing home administrator, which standards shall be  
11 designed to insure that nursing home administrators  
12 shall be individuals who by training or experience in  
13 the field of institutional administration, are  
14 qualified to serve as nursing home administrators;
- 15 (2) Develop and apply appropriate techniques, including  
16 examinations and investigations, for determining  
17 whether an individual meets the standards of this  
18 chapter or the rules adopted pursuant thereto;
- 19 (3) Issue licenses to individuals determined, after the  
20 application of appropriate techniques, to meet the  
21 required standards, and revoke or suspend licenses in



1           any case where the individual holding a license is  
2           determined substantially to have failed to conform to  
3           the required standards of this chapter or the rules  
4           adopted pursuant thereto;

5           (4) Establish and carry out procedures designed to insure  
6           that individuals licensed as nursing home  
7           administrators shall, during any period that they  
8           serve as such, comply with the required standards.  
9           The director shall also initiate and maintain  
10          cooperative arrangements with the long-term care  
11          ombudsman, state health planning and development  
12          agency, department of human services, and the  
13          department of health for the sharing of information on  
14          the performance of administrators;

15          (5) Receive, investigate, and take appropriate action with  
16          respect to any charge or complaint filed with the  
17          department to the effect that any individual licensed  
18          as a nursing home administrator has failed to comply  
19          with the requirements of this chapter or the rules  
20          adopted pursuant thereto;



- 1 (6) Adopt in accordance with chapter 91 rules as may be
- 2 necessary for the purposes of this chapter; and
- 3 (7) Maintain a record of all proceedings."

4 SECTION 4. Part III of chapter 349, Hawaii Revised  
5 Statutes, is repealed.

6 SECTION 5. All rights, powers, functions, and duties of  
7 the office of the long-term care ombudsman of the executive  
8 office on aging are transferred to the state health planning and  
9 development agency.

10 All employees who occupy civil service positions and whose  
11 functions are transferred to the state health planning and  
12 development agency by this Act shall retain their civil service  
13 status, whether permanent or temporary. Employees shall be  
14 transferred without loss of salary, seniority (except as  
15 prescribed by applicable collective bargaining agreements),  
16 retention points, prior service credit, any vacation and sick  
17 leave credits previously earned, and other rights, benefits, and  
18 privileges, in accordance with state personnel laws and this  
19 Act; provided that the employees possess the minimum  
20 qualifications and public employment requirements for the class  
21 or position to which transferred or appointed, as applicable;





1 provided further that subsequent changes in status may be made  
2 pursuant to applicable civil service and compensation laws.

3 Any employee who, prior to this Act, is exempt from civil  
4 service and is transferred as a consequence of this Act may  
5 retain the employee's exempt status, but shall not be appointed  
6 to a civil service position as a consequence of this Act. An  
7 exempt employee who is transferred by this Act shall not suffer  
8 any loss of prior service credit, vacation or sick leave credits  
9 previously earned, or other employee benefits or privileges as a  
10 consequence of this Act; provided that the employees possess  
11 legal and public employment requirements for the position to  
12 which transferred or appointed, as applicable; provided further  
13 that subsequent changes in status may be made pursuant to  
14 applicable employment and compensation laws. The administrator  
15 may prescribe the duties and qualifications of these employees  
16 and fix their salaries without regard to chapter 76, Hawaii  
17 Revised Statutes.

18 SECTION 6. All appropriations, records, equipment,  
19 machines, files, supplies, contracts, books, papers, documents,  
20 maps, and other personal property heretofore made, used,  
21 acquired, or held by the executive office on aging relating to



1 the functions transferred to the state health planning and  
2 development agency shall be transferred with the functions to  
3 which they relate.

4 SECTION 7. All rules, policies, procedures, guidelines,  
5 and other material adopted or developed by the executive office  
6 on aging to implement provisions of the Hawaii Revised Statutes  
7 and that are reenacted or made applicable to the state health  
8 planning and development agency by this Act shall remain in full  
9 force and effect until amended or repealed by the administrator  
10 of the state health planning and development agency pursuant to  
11 chapter 91, Hawaii Revised Statutes. In the interim, every  
12 reference to the executive office on aging or the director of  
13 the executive office on aging in those rules, policies,  
14 procedures, guidelines, and other material is amended to refer  
15 to the state health planning and development agency or the  
16 administrator of the state health planning and development  
17 agency, as appropriate.

18 SECTION 8. All deeds, leases, contracts, loans,  
19 agreements, permits, or other documents executed or entered into  
20 by or on behalf of the executive office on aging pursuant to the  
21 provisions of the Hawaii Revised Statutes that are reenacted or



1 made applicable to the state health planning and development  
2 agency in the department of health by this Act, shall remain in  
3 full force and effect. From July 1, 2014, every reference to  
4 the department of human services or the director of human  
5 services therein shall be construed as a reference to the  
6 department of health or the director of health, as appropriate.

7 SECTION 9. If any part of this Act is found to be in  
8 conflict with federal requirements that are a prescribed  
9 condition for the allocation of federal funds to the State, the  
10 conflicting part of this Act is inoperative solely to the extent  
11 of the conflict and with respect to the agencies directly  
12 affected, and this finding does not affect the operation of the  
13 remainder of this Act in its application to the agencies  
14 concerned. The rules in effect as a result of this Act shall  
15 meet federal requirements that are a necessary condition to the  
16 receipt of federal funds by the State.

17 SECTION 10. The executive office on aging and the state  
18 health planning and development agency shall collaborate to  
19 implement the transfers and transitions required under this Act  
20 with as little disruption as is possible to the ongoing duties,



1 responsibilities, and public services each respective office or  
2 agency currently provides.

3 SECTION 11. In codifying the new sections added by section  
4 2 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters designating the new  
6 sections in this Act.

7 SECTION 12. New statutory material is underscored.

8 SECTION 13. This Act shall take effect upon its approval;  
9 provided that sections 2 through 9 shall take effect on July 1,  
10 2019.

11

INTRODUCED BY:

*John M. DeLoe*  
*Lyn de Coite*  
JAN 19 2018



# H.B. NO. 2150

**Report Title:**

Aging; Long-Term Care Ombudsman; Executive Office on Aging;  
State Health Planning and Development Agency; Transfer

**Description:**

Broadens the scope of the Long-Term Care Ombudsman. Transfers the Long-Term Care Ombudsman from the Executive Office on Aging to the State Health Planning and Development Agency.

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

