

HOUSE BILL 1671

By Lynn

AN ACT to enact the "Tennessee Business Ombudsman Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as the "Business Ombudsman Act."

SECTION 2. As used in this act, unless the context otherwise requires:

(2) "Ombudsman" means the business ombudsman appointed pursuant to Section 3 of this act.

(1) "Agency" means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases; and

SECTION 3.

(a) Not later than one hundred eighty (180) days after the effective date of this act, the governor shall appoint and the general assembly confirm a business ombudsman, who shall report directly to the governor, utilizing personnel of the department of economic development to the extent practicable. Other agencies shall assist the ombudsman and take actions as necessary to ensure compliance with the requirements of this act. Nothing in this act is intended to replace or diminish the activities of any ombudsman or similar office in any other agency.

(b) The ombudsman shall:

(1) Work with each agency with regulatory authority over businesses to ensure that business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related

communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(2) Establish means to receive comments from business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the business concern;

(3) Establish means to refer comments from business concerns received pursuant to subdivision (a)(2) to the head of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and business concern making such comments on a confidential basis to the same extent as employee identities are protected under state law;

(4) Based on substantiated comments received from business concerns, report annually to the legislature and affected agencies evaluating the enforcement activities of agency personnel, including a rating of the responsiveness to business of the various regional and program offices of each agency;

(5) Rate agencies on the extent to which they notify businesses about the ombudsman and if such agencies have an established non-retaliatory policy for individuals who file complaints with the ombudsman;

(6) Coordinate and report annually on the activities, findings and recommendations to the governor and to the heads of affected state agencies; and

(7) Provide the affected agency with an opportunity to comment on draft reports prepared under subdivision (a)(4), and include a section of the final report in which the affected agency may make such comments as are not addressed by the ombudsman in revisions to the draft.

SECTION 4. The ombudsman shall serve for a term of six (6) years and until a successor is appointed and qualified. The ombudsman may be reappointed for additional terms.

SECTION 5.

(a) The general assembly may, by a two-thirds (2/3) vote of the members of each house present and voting, remove the ombudsman from office, but only under the same state constitutional provisions for removal of judges or other public officials.

SECTION 6.

(a) No person who files a complaint or participates in any investigation or proceeding pursuant to this act shall be subject to any penalties, sanctions or restrictions in connection with their employment or be denied any right, privilege, or benefit because of such action.

(b) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, actual damages, and punitive damages. Such actions for punitive damages shall not exceed ten thousand dollars (\$10,000).

SECTION 7. The ombudsman shall receive the same salary and benefits as a state judge at the trial court level or higher. The salary of the ombudsman shall not be diminished during the ombudsman's term of office, unless by general law applying to all salaried officers of the state.

SECTION 8.

(a) The substantive content of any finding, conclusion, recommendation, or report of the ombudsman or member of the ombudsman's staff shall not be reviewable in any court.

(b) The ombudsman and the ombudsman's staff have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The ombudsman and the ombudsman's staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this act.

SECTION 9. Any person who willfully obstructs or hinders the proper and lawful exercise of the ombudsman's powers, or willfully misleads or attempts to mislead the ombudsman or any of the ombudsman's duly designated employees or agents in the performance of the person's duties or inquiries commits a class c misdemeanor.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.