

# House Bill 2898

Sponsored by Representative KENNEMER (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates the Oregon Business Development Department Ombudsman Act. Establishes office of Oregon Business Development Department Ombudsman, appointed by Governor for six-year term. Requires ombudsman to work with governmental agencies with respect to comments or complaints made or concerns expressed by businesses regulated or controlled by governmental agencies. Prohibits retaliatory action by governmental agency against business, employee, representative or agent. Requires ombudsman to report annually to Governor and Legislative Assembly.

## A BILL FOR AN ACT

1  
2 Relating to Oregon Business Development Department Ombudsman Act.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 3 to 5 of this 2011 Act shall be known and may be cited as the**  
5 **Oregon Business Development Department Ombudsman Act.**

6 **SECTION 2. Sections 3 to 5 of this 2011 Act are added to and made a part of ORS chapter**  
7 **285A.**

8 **SECTION 3. As used in sections 3 to 5 of this 2011 Act:**

9 (1) **"Business" means a business concern or entity conducting business in this state that**  
10 **is subject to regulatory authority, oversight, management, audit, inspection or other types**  
11 **of enforcement and control by one or more governmental agencies.**

12 (2) **"Governmental agency" means an executive, legislative or judicial agency, depart-**  
13 **ment, board, commission, authority, institution or instrumentality of the federal govern-**  
14 **ment, a state or a county, municipality or other political subdivision of a state.**

15 **SECTION 4. (1) The Governor shall appoint the Oregon Business Development Depart-**  
16 **ment Ombudsman, who shall hold office at the pleasure of the Governor. The appointment**  
17 **of the ombudsman is subject to confirmation by the Senate in the manner provided in ORS**  
18 **171.562 and 171.565.**

19 (2) **The ombudsman shall serve for a term of six years at the pleasure of the Governor.**  
20 **Before expiration of the term of the ombudsman, the Governor shall appoint a successor.**  
21 **The ombudsman is eligible for reappointment by the Governor. In the case of a vacancy for**  
22 **any cause, the Governor shall appoint an ombudsman to serve the unexpired term of the**  
23 **ombudsman to be replaced. The Legislative Assembly, by a two-thirds majority vote of all**  
24 **members elected to each house, may request that the Governor remove the ombudsman.**

25 (3) **The Oregon Business Development Department shall provide staff for the ombudsman**  
26 **as appropriate and necessary.**

27 (4) **The ombudsman shall receive an annual salary equal to or greater than the average**  
28 **salary per calendar year paid to a regularly elected and qualified circuit court judge, to be**  
29 **paid from funds available to the department for that purpose. The salary of the ombudsman**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 may not be discontinued or diminished during the term of the ombudsman unless the om-  
 2 budsman ceases to serve as ombudsman for any reason.

3 **SECTION 5.** (1) The Oregon Business Development Department Ombudsman shall work  
 4 with governmental agencies to:

5 (a) Establish a process to receive, investigate, substantiate and convey to governmental  
 6 agencies any comment, concern or complaint from a business regarding a communication  
 7 made or action taken by a governmental agency with respect to the business. The ombuds-  
 8 man shall maintain confidentiality to the extent possible under law.

9 (b) Provide governmental agencies with an effective and inexpensive means to notify  
 10 businesses, over which the governmental agency exercises regulatory authority, oversight,  
 11 management, audit, inspection or other types of enforcement and control, of the existence  
 12 and role of the ombudsman.

13 (c) Develop a nonretaliatory policy for governmental agencies to follow when a business,  
 14 or an employee, representative or agent of a business, makes a comment or complaint or  
 15 expresses a concern regarding the governmental agency to the ombudsman.

16 (2) Any employee, representative or agent of a business that makes a comment or com-  
 17 plaint or expresses a concern about a governmental agency to the ombudsman in good faith  
 18 pursuant to this section is immune from any liability, civil or criminal, that might otherwise  
 19 be incurred or imposed with respect to the making of the comment or complaint or the ex-  
 20 pressing of the concern, and shall have the same immunity with respect to participating in  
 21 any administrative or judicial proceeding that involves the making of the comment or com-  
 22 plaint or the expressing of the concern to the ombudsman.

23 (3)(a) No governmental agency shall retaliate against a business, or any employee, rep-  
 24 resentative or agent of a business, that makes a comment or complaint or expresses a con-  
 25 cern to the ombudsman that involves the governmental agency.

26 (b) Any governmental agency that retaliates against a business, or an employee, repre-  
 27 sentative or agent of a business, because of a comment or complaint made or concern ex-  
 28 pressed to the ombudsman shall be liable in a private action to the business, or to the  
 29 employee, representative or agent of the business, for actual damages and, in addition, a civil  
 30 penalty of up to \$1,000 per retaliatory act, notwithstanding any other remedy provided by  
 31 law.

32 (c) Any adverse action taken against a business, or an employee, representative or agent  
 33 of the business, is evidence of retaliation if taken within 90 days of the making of a comment  
 34 or complaint or the expressing of a concern to the ombudsman.

35 (4)(a) The ombudsman shall report annually to the Governor and to an appropriate com-  
 36 mittee or interim committee of the Legislative Assembly regarding:

37 (A) Comments, concerns and complaints received from businesses;

38 (B) Responses received from governmental agencies;

39 (C) Resolutions or unresolved outcomes of interventions by the ombudsman with gov-  
 40 ernmental agencies and businesses; and

41 (D) Retaliatory actions, if any, of governmental agencies against businesses, or employ-  
 42 ees, representative or agents of businesses.

43 (b) Governmental agencies shall be provided an opportunity to review and comment on  
 44 the report required under this subsection, and a section of the report shall be reserved for  
 45 written comment or input provided by any governmental agency referenced in the report.

1       **(5) A report, finding, conclusion or recommendation of the ombudsman is not subject to**  
2 **administrative or judicial review, and the ombudsman cannot be compelled to testify or**  
3 **produce evidence in any administrative or judicial proceeding with respect to any matter**  
4 **involving the exercise of the ombudsman’s duties except as may be necessary to enforce this**  
5 **section.**

6       **(6) The ombudsman has immunity from any liability, civil or criminal, that might other-**  
7 **wise be incurred or imposed with respect to the making or content of any report, finding,**  
8 **conclusion or recommendation of, or of any action taken by, the ombudsman. The ombuds-**  
9 **man has the same immunity with respect to participation in any administrative or judicial**  
10 **proceeding that involves the making or content of a report, finding, conclusion or recom-**  
11 **mendation of, or action taken by, the ombudsman.**

12       **(7) All agencies of state government, as defined in ORS 174.111, are directed to assist the**  
13 **ombudsman in the performance of the ombudsman’s duties and, to the extent permitted by**  
14 **laws relating to confidentiality, to furnish such information and advice as the ombudsman**  
15 **considers necessary to perform the ombudsman’s duties.**

16       **SECTION 6.** **The Governor shall appoint the Oregon Business Development Department**  
17 **Ombudsman no later than 180 days after the effective date of this 2011 Act.**

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