

# HOUSE . . . . . No. 1436

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By Mr. Nolen of Ware, petition of James R. Nolen for legislation to establish the Massachusetts information and referral agency under the office of ombudsman. State Administration.

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT ESTABLISHING THE MASSACHUSETTS INFORMATION AND REFERRAL AGENCY UNDER THE OFFICE OF OMBUDSMAN.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 9 of the General Laws is hereby amended by  
2 inserting after section 27 under the caption MASSACHUSETTS  
3 INFORMATION AND REFERRAL AGENCY UNDER THE OFFICE OF  
4 OMBUDSMAN the following eleven sections:—

5 *Section 28.* The following words and phrases as used in  
6 sections twenty-eight to thirty-eight inclusive, unless a dif-  
7 ferent meaning is plainly required by the context, shall have  
8 the following meanings:—“Administrative Act” includes any  
9 action, omission, decision, recommendation, practise, or pro-  
10 cedures, but does not include the preparation or presentation  
11 of legislation. “Agency” includes any department, board,  
12 commission, division or authority of the commonwealth or  
13 subdivision of any of the foregoing or official of the common-  
14 wealth authorized by law to make regulations or to conduct  
15 proceedings, but does not include a court; the legislature, its  
16 committees or staff; or the governor and his personal staff.

17 *Section 29.* There shall be directly under the general court,  
18 but not subject to its control, a Massachusetts information  
19 and referral agency under the direction of the office of  
20 ombudsman. Said office shall, in response to inquiries or  
21 complaints submitted by any person, provide information  
22 relative to any administrative act or action of an agency or

23 refer said inquiry or complaint to an appropriate agency or,  
24 on its own initiative investigate any administrative act or re-  
25 view any action of an agency if it reasonably believes that said  
26 act or action may give rise to legitimate grievances; provided,  
27 however, that its powers shall be only advisory and it shall not  
28 be authorized to veto, alter or amend any administrative de-  
29 cision. The office of ombudsman shall establish a telephone  
30 information center at the State House for the use and con-  
31 venience of citizens.

32 The office of ombudsman shall make such reports and rec-  
33 ommendations to the governor, attorney general, general  
34 court, or any other officer, or agency of the commonwealth  
35 as it may deem desirable on the basis of its investigations.

36 *Section 30.* The office of ombudsman may investigate an ad-  
37 ministrative act or an action of an agency which in its opinion  
38 is contrary to law; unreasonable, unfair or unnecessarily dis-  
39 criminatory, even though in accordance with law; based on  
40 a mistake of fact; based on improper or irrelevant grounds;  
41 unaccompanied by an adequate statement of purpose; per-  
42 formed in an inefficient manner; or, otherwise erroneous.

43 If the office of ombudsman decides to make such an in-  
44 vestigation it shall notify the agency involved of its inten-  
45 tion to investigate, and if said investigation is based on a  
46 complaint, the complainant shall be notified of the intention  
47 to investigate. A copy of any report filed by the office shall be  
48 sent to the agency involved and the complainant.

49 The ombudsman shall have any such additional powers as  
50 generally provided for agencies conducting adjudicatory pro-  
51 ceedings under chapter thirty A of the General Laws.

52 *Section 31* The office of ombudsman may refuse to investi-  
53 gate any complaint which is subject to investigation under  
54 the provisions of the preceding section if it determines that  
55 there has been undue or unreasonable delay in filing the  
56 complaint; the complaint is trivial or made in bad faith; the  
57 facilities of the office are insufficient for adequate investiga-  
58 tion; or, there are other complaints more worthy of immedi-  
59 ate attention.

60 Said office shall give notice to the complainant of its  
61 decision not to investigate and it may state its reasons for  
62 such failure to investigate.

63 *Section 32.* The office of ombudsman shall keep a record of  
64 all public publications of the commonwealth; provide de-  
65 tailed information of the purposes, scope and procedures of  
66 all major programs or refer any persons to the appropriate  
67 office which can provide said information; keep a record of  
68 the existence and procedures of all boards of appeal and  
69 similar agencies to whom a person aggrieved may appeal for  
70 possible redress and relief.

71 If said office refers a person to any other agency, it shall  
72 later confirm with such person whether further action on its  
73 part is required to satisfy the original request.

74 Any information required to be kept by the office of ombuds-  
75 man shall be made available to all interested persons upon re-  
76 quest except information deemed to be of a confidential nature.

77 *Section 33.* The office of ombudsman shall be kept in-  
78 formed as to the progress and final disposition of a case  
79 referred to another agency and may take such further action  
80 within the scope of its power as may be necessary to effect a  
81 satisfactory solution.

82 *Section 34.* The office of ombudsman may publish its  
83 reports or recommendations, or such portions of them, as it  
84 may deem to be in the public interest; provided that any  
85 material which is deemed to be of confidential nature and not  
86 properly in the public domain may be withheld from pub-  
87 lication.

88 *Section 35.* There shall be in the office of ombudsman, a  
89 chief officer who shall devote full time to his official duties,  
90 who shall be known as the ombudsman, and who shall be  
91 elected for a term of ten years by a two thirds vote of the  
92 senators and representatives, meeting jointly. The election  
93 will be made from one or more nominees chosen by a  
94 committee consisting of the senate president, the speaker of  
95 the house and the minority leaders of both branches. An  
96 ombudsman may not serve more than one term and may be  
97 removed or suspended from office for neglect of duty, mis-  
98 conduct or disability by a two thirds vote of the senators and  
99 representatives meeting jointly. No person may serve as  
100 ombudsman while he is a candidate for or holds any other  
101 state office. If the ombudsman dies, resigns, becomes ineligi-  
102 ble to serve, or is removed or suspended from office, the first

103 assistant to the ombudsman shall become the acting om-  
104 budsman until a new ombudsman is appointed and qualified  
105 for the remainder of the term.

106 *Section 36.* The ombudsman shall appoint a first assistant  
107 and such other officers and employees, as shall be necessary to  
108 carry out the duties of the office of ombudsman, who shall not  
109 be subject to the provisions of chapter thirty-one.

110 The ombudsman shall take an oath that he will not, except  
111 for the purpose of carrying out the duties of his office, divulge  
112 any confidential information received by him provided that  
113 the ombudsman may disclose in any report made by him such  
114 matters as in his opinion should be disclosed in order to  
115 establish grounds for his conclusions and recommendations.  
116 Every official under the ombudsman shall take a similar  
117 oath.

118 *Section 37.* Information received by the office of ombuds-  
119 man shall be privileged, and such privilege may be waived  
120 only by the person furnishing such information to said of-  
121 fice.

122 *Section 38.* The ombudsman shall submit an annual report  
123 of his activities to the governor and the general court.