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The original instrument was prepared by Martha Hess. The following digest, which does not constitute a part of the legislative instrument, was prepared by James Benton.

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SB 182 Engrossed

DIGEST  
2019 Regular Session

Hewitt

Present law prohibits sexual harassment in the workplace. Present law further provides for each agency of a governmental entity to develop and institute a policy to prevent sexual harassment, which is applicable to all public servants, public employees, and elected officials.

Proposed law declares the public policy of the state, in order to reduce the impact of sexual harassment judgements and settlements on the taxpayers of the state, when there has been a determination that a valid claim of sexual harassment has been filed, the state should consider certain factors in determining whether the alleged sexual harasser should be required to pay all or a portion of the judgement or settlement.

Proposed law provides for the definitions of "agency", "agency head", "complainant", "elected official", "governmental entity", "public employee", "public funds", "public servant", and "sexual harassment".

Proposed law provides that in addition to the requirements of present law relative to the development and institution of the state's mandatory policy to prevent sexual harassment, each agency policy shall include provisions relative to:

- (1) Reporting complaints.
- (2) Investigating complaints.
- (3) Resolution of complaints.
- (4) The right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.
- (5) In the event a lawsuit is filed under state or federal law, and the state is cast in judgment or enters into a settlement of the litigation, the state, through the attorney general, shall by civil suit seek restitution from the sexual harasser of the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state in the litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking restitution.

Proposed law provides that if, after an investigation is conducted in accordance with the agency policy and completed, it is determined that sexual harassment did occur, the agency head shall determine the discipline to be taken against the individual who was found to have committed sexual

harassment.

Proposed law provides that if, after an investigation is conducted and completed, it is determined that sexual harassment did not occur, the agency head shall determine the discipline to be taken against the complainant, if any.

Proposed law provides that notwithstanding any law to the contrary, when a claim of sexual harassment has been brought and the state, through the state agency, the office of risk management, or an exempted institution of higher education, determines that it is a valid claim, the sexual harasser shall be responsible for the payment of all or a portion of the amount of settlement or judgment. In determining the amount that the sexual harasser should be responsible for, the following factors should be considered:

- (1) Whether the attorney general has determined that the alleged sexual harasser was engaged in the performance of the duties of his office or employment with the state at the time the alleged sexual harassment occurred.
- (2) If the alleged sexual harasser was free from criminal conduct.
- (3) The severity of the sexual harassment.
- (4) The stage of litigation.
- (5) The ability of the sexual harasser to pay.

Proposed law provides that the commissioner of administration shall prepare a notice to be furnished to each agency head for annual dissemination to each public servant advising them of their potential liability if they are determined by an agency head or a court of competent jurisdiction to have committed sexual harassment. Requires that this notice be disseminated to any newly elected, appointed, or employed public servant.

Proposed law provides that any settlement executed in connection with a claim filed pursuant to proposed law is a public record, with the exception of the name of the victim of the sexual harassment.

Proposed law prohibits a state agency from entering into a nondisclosure agreement with any person to settle a claim that the person was the victim of sexual harassment by an elected official, public employee, or public servant, either prior to the filing of a lawsuit by that person or at any time after a lawsuit is filed.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 44:4.1(B)(28); adds R.S. 42:351-357)

## Summary of Amendments Adopted by Senate

### Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Removes provisions providing for the attorney general to filed suit against a sexual harasser to reimburse the state for the amount of any judgment, settlement, and costs of a sexual harassment claim.
2. Removes provisions regarding solidary liability.
3. Provides that the state shall consider certain factors in determining the amount the alleged tortfeasor should contribute in any settlement or judgment.
4. Provides that the bill shall be effective upon signature of the governor or lapse of time for gubernatorial action.