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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 Martha Hess.

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DIGEST

SB 182 Reengrossed

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 occurred, 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 generally describing the investigation process, the possible disciplinary actions which may occur after the conclusion of the investigation, and the right of the complainant to pursue a claim under state or federal law.

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 the claim of sexual harassment was intentionally false, the agency head shall determine the appropriate discipline to be taken against the complainant.

Proposed law provides that notwithstanding any law to the contrary, when a claim of sexual harassment has been brought and the office of risk management, or an exempted institution of higher education, determines that sexual harassment did occur, 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 sexual harasser was engaged in the performance of the duties of his office or employment with the state at the time the sexual harassment occurred.

- (2) The severity of the sexual harassment.
- (3) The stage of litigation.
- (4) The ability of the sexual harasser to pay.

Proposed law provides that when a lawsuit is filed against the state due to a claim of sexual harassment which results in a final judgment against the state, the attorney general, on behalf of the state, may file suit against the sexual harasser to assert and enforce the state's right to reimbursement and indemnity. The attorney general is also entitled to recover from the alleged sexual harasser all costs and reasonable attorney fees incurred in asserting that right.

Proposed law authorizes the attorney general to receive as compensation 25% of the total monies recovered from the enforcement of the state's right to reimbursement from the sexual harasser, with the funds to be deposited into the Dept. of Justice Debt Collection Fund. Further provides that the attorney general, the office of risk management or the exempted institution, and the agency shall determine whether the interests of the state are best served by litigation or by the making of an offer or the acceptance of an offer to settle or compromise the claim or litigation.

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. 42:342(B) and 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 file 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.

### Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Adds to the minimum requirements for agency policies prohibiting sexual harassment including the investigation process, the possible disciplinary actions which may occur, and the right of the complainant to pursue a claim under state or federal law.
2. Provides that when a lawsuit filed against the state due to a claim of sexual harassment results in a final judgment against the state, the attorney general may file suit against the sexual harasser to assert and enforce the state's right to reimbursement and indemnity.
3. Provides that the attorney general is entitled to recover from the alleged sexual harasser all costs and reasonable attorney fees incurred in asserting the right of reimbursement.
4. Authorizes the attorney general to receive as compensation 25% of the total monies recovered from the sexual harasser, with the funds to be deposited into the Dept. of Justice Debt Collection Fund.
5. Provides that the attorney general, the office of risk management or the exempted institution, and the agency shall determine whether the interests of the state are best served by litigation or by the making of an offer or the acceptance of an offer to settle or compromise the claim or litigation.