

2020 Regular Session

HOUSE BILL NO. 579

BY REPRESENTATIVES DAVIS AND HILFERTY AND SENATOR JOHNS

PUBLIC OFFLS/EMPS: Provides for the defense and indemnification of public officials and employees

1 AN ACT

2 To amend and reenact R.S. 13:5101(B) and 5108.1(A)(1) and (E)(1) and R.S. 39:1532(B),  
3 1533(B), 1535(A), (B)(6), (C), and (D)(1), and 1538(A) and to enact R.S.  
4 13:5101(C) and 5102(D) and R.S. 39:1537(8) and 1540(B)(4), relative to the defense  
5 and indemnification of public officials and employees; to provide for definitions; to  
6 provide for applicability; to provide relative to the Self-Insurance Fund; to provide  
7 for duties and responsibilities; to impose reporting requirements; to provide relative  
8 to claims against the state; to provide for access to public records upon written  
9 request; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 13:5101(B) and 5108.1(A)(1) and (E)(1) are hereby amended and  
12 reenacted and R.S. 13:5101(C) and 5102(D) are hereby enacted to read as follows:

13 §5101. Title and application

14 \* \* \*

15 B. This Part applies to any suit in contract, ~~or~~ for injury to person or  
16 property, or any antitrust claim against any of the following entities or persons:

17 (1) The the state;

18 (2) A a state agency;

19 (3) A board member, commissioner, appointee, official, an officer, or  
20 employee of the state or a state agency arising when the suit or claim arises out of

1 the discharge of his official duties or within the course and scope of his  
2 employment;

3 (4) A or a political subdivision of the state, as defined herein in R.S.  
4 13:5102., or

5 (5) A board member, commissioner, appointee, official, against an officer,  
6 or employee of a political subdivision, as defined in R.S. 13:5102. arising out of the  
7 discharge of his official duties or within the course and scope of his employment.

8 C. The provisions of this Part shall not supersede the provisions of R.S.  
9 15:1171 et seq. or R.S. 15:1181 et seq.

10 §5102. Definitions

11 \* \* \*

12 D. As used in this Part, "antitrust" or "antitrust claim" means and includes  
13 any legal action, claim, or proceeding in any state or federal court or federal agency,  
14 which alleges or reasonably relates in any manner to any of the following:

15 (1) Any anticompetitive conduct or other unlawful limitation or restraint of  
16 trade, commerce, or the scope of practice of a trade or profession, including but not  
17 limited to any of the following:

18 (a) Conspiracy to unlawfully limit or restrain trade, commerce, or the scope  
19 of practice of a trade or profession.

20 (b) Monopoly, the attempt to monopolize, or the conspiracy to monopolize.

21 (c) Price fixing or price discrimination.

22 (2) Issuance of any subpoena, cease and desist order, or investigative  
23 demand.

24 (3) Any claim or legal proceeding which invokes or reasonably relates to any  
25 provision of the Sherman Antitrust Act as amended (15 U.S.C. 1 et seq.).

26 (4) Any claim or legal proceeding which invokes or reasonably relates to any  
27 provision of the Clayton Act as amended (15 U.S.C. 12 et seq.).

28 (5) Any claim or legal proceeding which invokes or reasonably relates to any  
29 provision of the Federal Trade Commission Act as amended (15 U.S.C. 41 et seq.).



1 Section 2. R.S. 39:1532(B), 1533(B), 1535(A), (B)(6), (C), and (D)(1), and 1538(A)  
2 are hereby amended and reenacted and R.S. 39:1537(8) and 1540(B)(4) are hereby enacted  
3 to read as follows:

4 §1532. Reporting requirements

5 \* \* \*

6 B.(1) In the fiscal year immediately following a regular session of the  
7 legislature in which the legislature has enacted appropriations from the state general  
8 fund for the payment of specific judgments or claims, the commissioner of  
9 administration shall report to the House Committee on Appropriations and the Senate  
10 Committee on Finance on the fifteenth day of October and the fifteenth day of  
11 February regarding the payment status of all such claims and judgments, including  
12 but not limited to the last offer made by the ~~plaintiff~~ claimant as well as the last offer  
13 made by the state of Louisiana and the final cost of each judgment.

14 (2) Any report made pursuant to Paragraph (1) of this Subsection shall  
15 include information regarding each decision of the office of risk management to  
16 decline a claim or request for payment or reimbursement made by any state agency  
17 pursuant to this Chapter, which has occurred since the last such report.

18 §1533. Self-Insurance Fund

19 \* \* \*

20 B.(1) The representation of the state and state agencies in all claims covered  
21 by the Self-Insurance Fund, in all antitrust claims as defined in R.S. 13:5102,  
22 whether or not covered by the Self-Insurance Fund, and in all tort claims, whether  
23 or not covered by the Self-Insurance Fund, shall be provided by the attorney general  
24 or by private legal counsel appointed by the attorney general, with the concurrence  
25 of the commissioner of administration in accordance with the provisions of R.S.  
26 49:258.

27 (2) The attorney general shall be reimbursed for all reasonable costs incurred  
28 in providing the necessary legal services. The preceding sentence shall not be  
29 interpreted to prevent direct payment by the office of risk management of private

1 legal counsel and vendors. The fund shall be used for no other purposes. The office  
2 of risk management shall maintain separate accounts for each of the insurance  
3 categories.

4 \* \* \*

5 §1535. Duties and responsibilities

6 A. It is the responsibility of the commissioner of administration through the  
7 office of risk management to manage all state insurance covering property and  
8 liability exposure, through commercial underwriters or by self-insuring. Personnel  
9 benefits and group health and life coverage are excepted. It is also the responsibility  
10 of the commissioner of administration through the office of risk management to  
11 manage all antitrust claims, as defined in R.S. 13:5102, made against the state or any  
12 state agency whether or not covered by the Self-Insurance Fund and all tort claims  
13 made against the state or any state agency whether or not covered by the  
14 Self-Insurance Fund.

15 B. The duties and responsibilities of the office of risk management shall  
16 include but not be limited to the following:

17 \* \* \*

18 (6) Negotiation, compromise, and settlement of all claims against the state  
19 or state agencies covered by the Self-Insurance Fund, all antitrust claims, as defined  
20 in R.S. 13:5102, against the state or state agencies whether or not covered by the  
21 Self-Insurance Fund, and all tort claims against the state or state agencies whether  
22 or not covered by the Self-Insurance Fund; however, all such compromises and  
23 settlements shall be made in return for a complete release and waiver of all further  
24 liability of the state, state agencies, and of the officers, officials, and employees  
25 covered by R.S. 13:5108.2. No settlement over twenty-five thousand dollars per  
26 claimant shall be made without the approval of the attorney general's office.

27 \* \* \*

1 C. In addition to the foregoing duties and responsibilities, the commissioner  
 2 of administration is authorized to adjust and negotiate all antitrust claims, as defined  
 3 in R.S. 13:5102, against the state or state agencies whether or not covered by the  
 4 Self-Insurance Fund, and tort claims which are not covered by the Self-Insurance  
 5 Fund and to compromise or settle such claims against the state or against state  
 6 agencies as defined by R.S. 39:1527(1) in the manner provided for in R.S.  
 7 39:1535(B)(6). Settlements or compromises of claims which are not self-insured  
 8 shall be paid from the state general fund.

9 D.(1) Any settlement or compromise agreement of claims against the state  
 10 or a state agency for an amount of five hundred thousand dollars or more that is  
 11 covered by the Self-Insurance Fund, or of tort claims against the state or a state  
 12 agency whether or not covered by the Self-Insurance Fund, or of antitrust claims, as  
 13 defined in R.S. 13:5102, whether or not covered by the Self-Insurance Fund shall  
 14 contain a resolatory condition that payment shall not be made unless the agreement  
 15 is approved by a majority of the members of a subcommittee of the Joint Legislative  
 16 Committee on the Budget comprised of three members of the Senate and three  
 17 members of the House of Representatives designated by the chairman.

18 \* \* \*

19 §1537. Annual report

20 The commissioner of administration shall submit to the governor, the  
 21 attorney general, and the legislature annually a formal report on the state's risk  
 22 management program which shall include:

23 \* \* \*

24 (8) Data regarding each decision of the office of risk management to decline  
 25 a claim or request for payment or reimbursement made by a state agency pursuant  
 26 to this Chapter, which has occurred since the last such report.

27 §1538. Claims against the state

28 A. Claims against the state or any of its agencies to recover damages or other  
 29 equitable relief in any antitrust claim, as defined in R.S. 13:5102, or in tort, for

1 money damages against the state or its agencies for injury or loss of property,  
 2 personal injury, or death caused by the negligent or wrongful act or omission of any  
 3 employee of the agency while acting within the scope of his office or employment  
 4 under circumstances in which the state or such agency, if a private person, would be  
 5 liable to the claimant in accordance with the general laws of this state, may be  
 6 prosecuted in accordance with the provisions specified in this Chapter. However,  
 7 immunity for discretionary acts of executive, legislative, and judicial officers within  
 8 the scope of their legally defined powers shall not be abridged.

9 \* \* \*

10 §1540. Competition

11 \* \* \*

12 B.

13 \* \* \*

14 (4) Any contract entered into by the state pursuant to this Section and any  
 15 policy of insurance coverage procured either by the office of risk management or by  
 16 any licensed insurance producer on behalf of the office of risk management shall be  
 17 made immediately available by electronic mail to any authorized designee of a state  
 18 agency upon the written request of such designee.

19 Section 3. This Act shall become effective upon signature by the governor or, if not  
 20 signed by the governor, upon expiration of the time for bills to become law without signature  
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 23 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 579 Original

2020 Regular Session

Davis

**Abstract:** Requires state indemnification of any agency, board member, commissioner, appointee, official, officer, or employee of the state or of its political subdivisions in antitrust actions.

Present law provides relative to suits against the state, its agencies, officers, or employees and against political subdivisions and sets out when the state must indemnify its agents. Proposed law adds to the list of indemnified parties board members, commissioners, appointees, and officials of the state and its political subdivisions.

Present law provides state indemnity for these parties in certain types of civil actions. Proposed law adds antitrust claims to the list of covered actions.

Present law requires indemnity when the act that forms the basis of the cause of action was a tort that took place while the individual was engaged in the performance of his office, employment with the state, or engaged in providing services on behalf of the state pursuant to present law. Proposed law requires indemnity when demand is made for damages or other equitable relief, is filed in state or federal court or federal agency, and is grounded in any of the following:

- (1) An antitrust claim (as defined in proposed law).
- (2) Any tort.
- (3) Any demand made pursuant to a federal statute.

Present law (R.S. 39:1532) requires certain reports by the commissioner of administration relative to payment of specific judgments when funds have been appropriated therefore. Proposed law retains present law and further requires the report to contain information regarding each decision the office of risk management (hereafter "ORM") made to decline a claim or request for payment made by any state agency.

Present law (R.S. 39:1533) requires the attorney general or private legal counsel appointed by the attorney general to represent the state and its agencies in all tort claims. Proposed law retains present law and adds antitrust claims to the list of actions the attorney general must defend on behalf of the state and its agencies.

Present law (R.S. 39:1535) requires the commissioner of administration to manage all tort claims made against the state. Proposed law retains present law and adds antitrust claims to the list of claims the commissioner must manage.

Present law further places responsibility for negotiating settlement of all tort claims against the state or its agencies with ORM and the commissioner of administration. Proposed law retains present law and adds antitrust claims to the list of covered claims.

Present law provides that any settlement in excess of \$500,000 may not be paid until payment is approved by a majority of a subcommittee on the Litigation Subcommittee of the Joint Legislative Committee on the Budget. Proposed law adds antitrust claim settlements in excess of \$500,000 to this requirement.

Proposed law requires disclosure of any state contract for insurance and insurance policy procured by ORM or on behalf of ORM.



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

(Amends R.S. 13:5101(B) and 5108.1(A)(1) and (E)(1) and R.S. 39:1532(B), 1533(B), 1535(A), (B)(6), (C), and (D)(1), and 1538(A); Adds R.S. 13:5101(C) and 5102(D) and R.S. 39:1537(8) and 1540(B)(4))