

2022 Regular Session

HOUSE BILL NO. 561

BY REPRESENTATIVE FREEMAN

CIVIL/ACTIONS: Provides relative to civil liability for sexual assault

1 AN ACT

2 To enact Chapter 28-E of Title 46 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 46:2191 through 2194, and to repeal Civil Code Articles 2315.11
4 and 3496.2 and R.S. 46:2163, relative to civil liability of sexual assault offenders;
5 to provide for a legislative purpose; to provide for definitions; to provide relative to
6 prescription; to provide relative to exemplary damages; to provide relative to the
7 assignment of fault; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 28-E of Title 46 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 46:2191 through 2194, is hereby enacted to read as follows:

11 CHAPTER 28-E. CIVIL JUSTICE FOR SEXUAL ASSAULT SURVIVORS ACT

12 §2191. Legislative purpose

13 A. The legislature hereby finds and declares that sexual assault is a public
14 health problem and among the most heinous offenses. Unfortunately, sexual assault
15 crimes are some of the most difficult to prosecute in the criminal justice system and
16 conviction rates remain low in many jurisdictions. Because of the many obstacles
17 to proving sexual assault in the criminal arena, survivors have started exploring
18 alternative routes to pursuing justice. One route to pursuing justice is a civil lawsuit.
19 Unlike criminal cases, civil lawsuits allow survivors to have complete control over
20 essential decisions of a case, a lower burden of proof to hold offenders and other
21 responsible entities accountable, and the potential to provide survivors with

1 monetary resources necessary to rebuild their lives. A civil suit gives the victims
2 their "day-in-court" regardless of whether there was a full criminal trial.

3 B. It is the intent of the legislature to provide a civil remedy for all survivors
4 of sexual assault that will enhance survivors' access to justice outside the criminal
5 justice system and provide survivors with increased opportunities to hold
6 accountable the persons and entities who may be liable for the sexual assault.

7 §2192. Short title

8 This Chapter shall be known and may be cited as the "Civil Justice for Sexual
9 Assault Survivors Act."

10 §2193. Definitions

11 (1) "Sexual assault" means any nonconsensual sexual contact and any
12 offense listed in R.S. 15:541(24) or R.S. 14:106.

13 §2194. Action against a person for sexual assault

14 A. An action against a person who may be held civilly liable for sexual
15 assault is subject to a liberative prescriptive period of ten years from the date of the
16 injury. However, if the identity of the direct perpetrator of sexual assault is unknown
17 at the time of the offense, then the prescriptive period shall be suspended until the
18 day the survivor is notified by law enforcement or a government or judicial agency
19 of the identity of the perpetrator.

20 B. In addition to any other damages allowed by law, a sexual assault survivor
21 is entitled to exemplary damages.

22 C. A negligent tortfeasor shall not be allowed to reduce his fault by
23 comparing his fault to the fault of an intentional tortfeasor if the harm caused was
24 within the scope of the negligent tortfeasor's duty to prevent. A sexual assault
25 survivor may not be held to be at fault for his own sexual assault.

26 Section 2. Civil Code Articles 2315.11 and 3496.2 and R.S. 46:2163 are hereby
27 repealed in their entirety.

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)]

HB 561 Original

2022 Regular Session

Freeman

Abstract: Provides for an action for civil liability of the perpetrator of sexual assault.

Present law (C.C. Art. 2315.11) provides that in addition to general and special damages, exemplary damages may be awarded against the perpetrator of sexual assault upon proof that the injuries on which the action is based were caused by an act or acts of sexual assault in the workplace.

Present law (R.S. 46:2163) also provides that an individual who is a victim of human trafficking shall have a civil cause of action in district court for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and for any other appropriate relief. A prevailing plaintiff shall also be awarded court costs and attorney fees. Treble damages shall be awarded on proof of actual damages where the defendant's actions were willful and malicious.

Proposed law repeals both provisions of present law and instead provides that in addition to any other damages allowed by law, a sexual assault survivor is entitled to exemplary damages.

Present law (C.C. Art. 2315.11) provides that upon motion of the defendant or upon its own motion, if the court determines that an action seeking damages for sexual assault is frivolous or fraudulent, the court shall award costs of court, reasonable attorney fees, and any other related costs to the defendant and any other sanctions and relief requested relative to the signing of pleadings.

Proposed law repeals present law.

Present law (C.C. Art. 3696.2) provides that a delictual action against a person for any act of sexual assault is subject to a liberative prescription of three years. Further provides that prescription commences to run from the day the injury or damage is sustained or the day the victim is notified of the identity of the offender by law enforcement or a judicial agency, whichever is later. This prescriptive period shall be subject to any exception of preemption provided by law.

Proposed law repeals present law and instead provides an action against a person who may be held civilly liable for sexual assault is subject to a liberative prescriptive period of ten years from the date of the injury. However, if the identity of the direct perpetrator of sexual assault is unknown at the time of the offense, then the prescriptive period shall be suspended until the day the survivor is notified by law enforcement or a government or judicial agency of the identity of the perpetrator.

Proposed law provides a definition for "sexual assault".

Proposed law provides that a negligent tortfeasor shall not be allowed to reduce his fault by comparing his fault to the fault of an intentional tortfeasor if the harm caused was within the scope of the negligent tortfeasor's duty to prevent. Further provides that a sexual assault survivor may not be held to be at fault for his own sexual assault.

Proposed law provides legislative findings.

(Adds R.S. 46:2191-2194; Repeals C.C. Arts. 2315.11 and 3496.2 and R.S. 46:2163)