
DIGEST

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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 peremption 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)