

2018 Regular Session

HOUSE BILL NO. 844

BY REPRESENTATIVE GAROFALO

LIABILITY/CIVIL: Provides relative to the indemnification of clerks of court and their employees

1 AN ACT

2 To amend and reenact R.S. 42:1441(A) and to enact R.S. 42:1441(E), relative to limitation
3 of liability of the clerks of court and their employees; to provide for indemnification;
4 to provide for the payment of judgments; to provide for legislative appropriation and
5 review; to require reporting of certain information; to provide for effectiveness; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 42:1441(A) is hereby amended and reenacted and R.S. 42:1441(E)
9 is hereby enacted to read as follows:

10 §1441. Limitation on the liability of the state of Louisiana; indemnification

11 A. The state of Louisiana shall not be liable for any damage caused by a
12 district attorney, except as provided in Subsection D of this Section, a coroner,
13 assessor, sheriff, clerk of court, except as provided in Subsection E of this Section,
14 or public officer of a political subdivision within the course and scope of his official
15 duties, or damage caused by an employee of a district attorney, except as provided
16 for in Subsection D of this Section, a coroner, assessor, sheriff, clerk of court, except
17 as provided in Subsection E of this Section, or public officer of a political
18 subdivision.

19 * * *

1 E.(1) The state of Louisiana shall indemnify any clerk of court or any
2 employee of his office against any claim, demand, or suit when the allegation is
3 based on a challenge of the constitutional validity of a statute and when the clerk of
4 court is acting in accordance with state law.

5 (2) Payment of a final judgment or consent judgment shall be by legislative
6 appropriation. The payment of a final judgment or consent judgment, of any amount,
7 against any clerk of court or any employee of his office shall not be made unless the
8 payment is approved by a majority of members of a subcommittee of the Joint
9 Legislative Committee on the Budget, comprised of three members of the Senate and
10 three members of the House as designated by the chairman. Notwithstanding any
11 other provision of law to the contrary, the subcommittee may meet in executive
12 session to consider such agreements.

13 (3) The clerk of court shall present the subcommittee with a concise abstract
14 of the facts and principles of law upon which the claim is based. The abstract shall
15 include a detailed analysis of the calculation of damages as well as attorney fees,
16 court costs, and interest thereon. The abstract, the amount of the final or consent
17 judgment, any terms and conditions of any agreement, and any other information
18 submitted to the subcommittee shall be public record, with the exception of any
19 material that reflects the mental impressions, conclusions, opinions, or theories of
20 an attorney.

21 Section 2. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

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 844 Original

2018 Regular Session

Garofalo

Abstract: Provides indemnification of clerks of court, and their employees, by the state against any claim, demand, or suit when performing duties of their office in accordance with state law.

Present law provides that the state shall not be liable for any damage caused by a district attorney, except as provided in present law, a coroner, assessor, sheriff, clerk of court, or public officer of a political subdivision within the course and scope of his official duties, or damage caused by an employee of a district attorney, except as provided by present law, a coroner, assessor, sheriff, clerk of court, or public officer of a political subdivision.

Present law provides that the state shall indemnify a district attorney and his office against any claim, demand, suit, complaint, or petition in a federal court based on allegations of the constitutional validity of a statute when the district attorney or his office has taken no action to institute prosecution by filing a bill of information or an indictment.

Proposed law retains present law and creates a limited exception on behalf of the clerk of court by providing that the state shall indemnify a clerk of court or any employee of his office against any claim, demand, or suit when the allegation is based on a challenge of the constitutional validity of a statute and when the clerk of court is acting in accordance with present law.

Present law provides that payment of a final judgment or consent judgment against the district attorney or his office shall be by legislative appropriation and also provides that payment of a final judgment or consent judgment, of any amount, against a district attorney or his office shall not be made unless the payment is approved by a majority of members of a subcommittee of the Joint Legislative Committee on the Budget comprised of three members of the Senate and three members of the House designated by the chairman, and further provides that the subcommittee may meet in executive session to consider such agreements.

Present law provides that the district attorney, or the attorney general, if the attorney general assumed the defense of the claim shall present the subcommittee with a concise abstract of the facts and principles of law upon which the claim is based. The abstract shall include a detailed analysis of the calculation of damages as well as attorney fees, court costs, and interest thereon.

Proposed law retains present law and provides the same procedures for the payment of a judgment against a clerk of court or his office and for presentation to the Joint Legislative Committee on the Budget.

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

(Amends R.S. 42:1441(A); Adds R.S. 42:1441(E))