

2019 Regular Session

SENATE BILL NO. 182

BY SENATOR HEWITT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SUITS AGAINST STATE. Provides for the participation of a sexual harasser in a settlement or judgment in a sexual harassment claim. (gov sig)

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AN ACT

To amend and reenact R.S. 42:342(B) and R.S. 44:4.1(B)(28) and to enact Chapter 6-A of Title 42 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 42:351 through 357, relative to public officers and employees; to provide relative to the state's mandatory policy against sexual harassment; to declare the public policy regarding the use of public funds for the payment of judgments or settlements of sexual harassment claims; to provide relative to the participation of an alleged sexual harasser in a settlement or judgment in a sexual harassment claim; to provide that agreements to settle sexual harassment claims are subject to the public records law, except for the name of the alleged victim of sexual harassment; to prohibit nondisclosure agreements relative to sexual harassment claims; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 42:342(B) is hereby amended and reenacted and Chapter 6-A of Title 42 of the Louisiana Revised Statutes of 1950, comprised of R.S. 42:351 through 357, is hereby enacted to read as follows:

§342. Mandatory policy prohibiting sexual harassment

* * *

B. At a minimum, the policy shall contain all of the following:

(1) A clear statement that unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature constitute sexual harassment when the conduct explicitly or implicitly affects an individual's employment or the holding of office, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment and shall not be tolerated.

(2) A description of the behavior the agency defines as inappropriate conduct, including examples.

(3) An effective complaint or grievance process that includes taking immediate and appropriate action when a complaint of sexual harassment involving any public servant in the agency is received. The complaint process shall detail who may make a complaint, to whom a complaint may be made, and shall provide for alternative designees to receive complaints. Actions taken on the complaint shall be documented.

(4) **A general description of the investigation process, including requiring the alleged sexual harasser and the alleged victim to participate in the investigation.**

(5) A clear prohibition against retaliation against an individual for filing a complaint or testifying or participating in any way in an investigation or other proceeding involving a complaint of sexual harassment.

~~(5)~~(6) **A general description of the possible disciplinary actions which may occur after the conclusion of the investigation.**

(7) **A statement apprising public servants of applicable federal and state law on sexual harassment, including the right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.**

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CHAPTER 6-A. REIMBURSEMENT OF AMOUNTS PAID

1 BY THE STATE FOR SEXUAL HARASSMENT CLAIMS

2 §351. Declaration of public policy

3 A. The state of Louisiana is committed to providing a workplace that is
4 free from sexual harassment. Sexual harassment in the workplace is strictly
5 prohibited under the Equal Employment Opportunity Act, 42 U.S.C. 2000e-2;
6 the Louisiana Employment Discrimination Law, R.S. 23:301 through 303 and
7 332; and the Louisiana laws on the prevention of sexual harassment, R.S. 42:341
8 through 345. The Legislature of Louisiana has enacted laws requiring each
9 agency of a governmental entity to develop and institute a policy to prevent
10 sexual harassment, which is applicable to all public servants, public employees,
11 and elected officials. The agency policy is to contain an effective complaint or
12 grievance process that includes taking immediate and appropriate action when
13 a complaint of sexual harassment involving any public servant in the agency is
14 received. The policy shall also contain a clear prohibition against retaliation
15 against an individual for filing a complaint or testifying or participating in any
16 way in an investigation or other proceeding involving a complaint of sexual
17 harassment.

18 B. It is hereby declared that in order to reduce the impact of sexual
19 harassment judgments and settlements on the taxpayers of the state, it is the
20 public policy of this state that as sexual harassment is against state and federal
21 law, and state agencies have adopted policies and required training to prevent
22 sexual harassment, when there has been a determination that sexual harassment
23 has occurred, the state should consider certain factors in determining whether
24 the alleged sexual harasser should be required to pay all or a portion of the
25 settlement or judgment.

26 §352. Definitions

27 Unless the context clearly indicates otherwise, the following words and
28 terms, when used in this Chapter, shall have the following meanings:

29 (1) "Agency" means a department, office, division, agency, commission,

1 board, committee, or other organizational unit of a governmental entity.

2 (2) "Agency head" means the chief executive, administrative officer of
3 an agency, or the chairman of a board or commission.

4 (3) "Complainant" means the person who files a complaint alleging that
5 they have been the victim of sexual harassment as described in this Chapter.

6 (4) "Elected official" means any person holding an office in a
7 governmental entity which is filled by the vote of the electorate. The term
8 includes any person appointed to fill a vacancy in that office.

9 (5) "Governmental entity" means the state, but does not include political
10 subdivisions of the state.

11 (6) "Public employee" means anyone who is:

12 (a) An administrative officer or official of a governmental entity who is
13 not holding an elective office.

14 (b) Appointed to a post or position of a governmental entity created by
15 rule, law, resolution, or executive order.

16 (c) Employed by an agency, officer, or official of a governmental entity.

17 (7) "Public funds" means monies of the state, including but not limited
18 to monies from the state risk management program established by R.S. 39:1528
19 et seq., monies from an exempted institution of higher education pursuant to
20 R.S. 17:3139.5, the state general fund, dedicated funds, fees and self-generated
21 revenues, or any other source of public funds.

22 (8) "Public servant" means a public employee or an elected official.

23 (9) "Sexual harassment" means unwelcome sexual advances, requests for
24 sexual favors, and other verbal, physical, or inappropriate conduct of a sexual
25 nature which explicitly or implicitly affects an individual's employment or the
26 holding of office, unreasonably interferes with an individual's work
27 performance, or creates an intimidating, hostile, or offensive work environment,
28 by a public servant of the state. It includes intimidation, reprisal, retaliation, or
29 discrimination that is unlawful under state or federal law and is taken against

1 a public servant of the state because of a claim of sexual harassment in violation
2 of state or federal law.

3 §353. Procedures

4 A. After an investigation is conducted in accordance with the agency
5 policy and completed, if it is determined that sexual harassment did occur, the
6 agency head shall determine the discipline to be taken against the individual
7 who was found to have committed sexual harassment.

8 B. If, after an investigation is conducted and completed, it is determined
9 that the claim of sexual harassment was intentionally false, the agency head
10 shall determine the appropriate discipline to be taken against the complainant.

11 §354. Litigation and settlements

12 A. Notwithstanding any law to the contrary, including but not limited to
13 R.S. 13:5108.1, when a claim of sexual harassment has been brought and the
14 office of risk management, or the exempted institution of higher education,
15 determines that sexual harassment did occur, the sexual harasser shall be
16 responsible for the payment of all or a portion, of the amount of the settlement
17 or judgment. In determining the amount that the sexual harasser should
18 contribute to any compromise of the claim, the following factors shall be
19 considered:

20 (1) Whether the sexual harasser was engaged in the performance of the
21 duties of his office or employment with the state at the time the sexual
22 harassment occurred.

23 (2) The severity of the sexual harassment.

24 (3) The stage of litigation.

25 (4) The ability of the sexual harasser to pay.

26 B. When a lawsuit is filed against the state due to a claim of sexual
27 harassment which results in a final judgment against the state, the attorney
28 general, on behalf of the state, may file suit against the sexual harasser to assert
29 and enforce the state's right to reimbursement and indemnity from the sexual

1 harasser. The attorney general is also entitled to recover from the alleged sexual
2 harasser all costs and reasonable attorney fees incurred in asserting that right.

3 C. The attorney general shall receive as compensation an amount not to
4 exceed twenty-five percent of the total monies recovered from the enforcement
5 of the state's right to reimbursement from the sexual harasser, as set forth in
6 this Chapter, to be deposited into the Department of Justice Debt Collection
7 Fund. The attorney general, the office of risk management or the exempted
8 institution, and the agency shall determine whether the interests of the state are
9 best served by litigation or by the making of an offer or the acceptance of an
10 offer to settle or compromise the claim or litigation.

11 §355. Dissemination of information to all elected officials, public employees,
12 and public servants

13 The commissioner of administration shall prepare a notice to be
14 furnished to each agency head for annual dissemination to each public servant
15 advising them of their potential liability if they are determined by an agency
16 head or a court of competent jurisdiction to have committed sexual harassment.

17 Notice shall also be disseminated to any newly elected, appointed, or employed
18 public servant.

19 §356. Public record; exception

20 Any settlement executed in connection with a lawsuit filed pursuant to
21 this Chapter shall be a public record, with the exception of the name of the
22 victim of the sexual harassment.

23 §357. Nondisclosure agreements prohibited

24 No state agency shall execute a nondisclosure agreement with any person
25 to settle a claim that the person was the victim of sexual harassment by a public
26 servant, either prior to the filing of a lawsuit by that person or at any time after
27 a lawsuit is filed.

28 Section 2. R.S. 44:4.1(B)(28) is hereby amended and reenacted to read as follows:

29 §4.1. Exceptions

* * *

B. The legislature further recognizes that there exist exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state. Therefore, the following exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

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(28) R.S. 42:17, 57, **356**, 1111, 1141.4, 1158, 1161, 1193, 1194

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

The original instrument was prepared by Martha Hess. The following digest, which does not constitute a part of the legislative instrument, was prepared by J.W. Wiley.

DIGEST

SB 182 Re-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 judgments 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 judgment 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". Further provides that "governmental entity" does not include political subdivisions of the state.

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 SenateCommittee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Remove 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. Remove provisions regarding solidary liability.
3. Provide that the state shall consider certain factors in determining the amount the alleged tortfeasor should contribute in any settlement or judgment.
4. Provide 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. Add 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. Provide 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. Provide 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. Authorize 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. Provide 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.

Senate Floor Amendments to reengrossed bill

1. Define "governmental entity" to not include political subdivisions of the state.
2. Define "public employee" to include certain individuals appointed to a post or position of a governmental entity.
3. Make legislative bureau and bureau note technical corrections.