

2018 Regular Session

SENATE BILL NO. 492

BY SENATOR PERRY

LIABILITY. Provides relative to suits against the state and state officials and employees.
(8/1/18)

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AN ACT

To amend and reenact R.S. 13:5108.1(B)(3), R.S. 42:1441.1, and Code of Civil Procedure Art. 1001, relative to suits against the state, state agencies, or political subdivisions; to provide relative to liability for acts of public employees; to provide with respect to the indemnification of officers and employees of the state; to provide relative to limitation of liability for persons not designated state officials, officers, or employees; to provide relative to certain processes and time periods; to provide relative to the delay for answering; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:5108.1(B)(3) is hereby amended and reenacted to read as follows:

§5108.1. Indemnification of officers and employees of the state; civil rights; representation by attorney general

A. Indemnification.

* * *

B. Coverage process.

* * *

(3) If the attorney general concludes that the covered individual was engaged

1 in the performance of the duties of his office or employment with the state at the
 2 time the events that form the basis of the cause of action happened and that the
 3 covered individual was ~~free of criminal conduct~~ **not engaged in criminal conduct**,
 4 then the attorney general shall provide a defense to the covered individual. If the
 5 attorney general concludes that the covered individual was not engaged in the
 6 performance of the duties of his office or employment with the state at the time the
 7 events that form the basis of the cause of action happened or that the employee was
 8 engaged in criminal conduct, then the attorney general shall not provide a defense
 9 to the covered individual. Such a decision shall be communicated in writing to the
 10 covered individual and the head of the department of the state in which the individual
 11 is employed within ~~ten~~ **thirty** working days of delivery of the petition to the attorney
 12 general. It is sufficient notice if the communication is sent properly addressed to the
 13 covered individual either at his place of work, his home, or any other place where he
 14 may be found by United States Postal Service, third party commercial carrier for no
 15 more than three day delivery, facsimile, or electronic mail and to his departmental
 16 employer.

17 * * *

18 Section 2. R.S. 42:1441.1 is hereby amended and reenacted to read as follows:

19 §1441.1. Nonimposition of master-servant liability on state by Civil Code Article
 20 2320 and other laws for torts of persons not designated state officials,
 21 officers, or employees ~~by R.S. 13:5108.2~~

22 Civil Code Article 2320 and other laws imposing liability on a master for the
 23 offenses and quasi offenses of his servant shall not extend or apply to and shall not
 24 impose liability on the state for the offenses and quasi offenses of any person who
 25 is not expressly specified by R.S. ~~13:5108.2(A)~~ **13:5108.1** to be an official, officer,
 26 or employee of the state entitled to indemnification ~~under R.S. 13:5108.2~~.

27 Section 3. Code of Civil Procedure Article 1001 is hereby amended and reenacted
 28 to read as follows:

29 Art. 1001. Delay for answering

1 A defendant shall file his answer within fifteen days after service of citation
 2 upon him, except as otherwise provided by law. **The state of Louisiana, a state**
 3 **agency, or a state official, officer or employee sued in the course and scope of**
 4 **his employment with the state shall file his answer within sixty days after**
 5 **service of citation.**

6 When an exception is filed prior to answer and is overruled or referred to the
 7 merits, or is sustained and an amendment of the petition ordered, the answer shall be
 8 filed within ten days after the exception is overruled or referred to the merits, or ten
 9 days after service of the amended petition.

10 The court may grant additional time for answering.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 492 Original

2018 Regular Session

Perry

Present law relative to suits against the state provides relative to coverage and indemnification of state officials and employees for certain acts. Present law provides that if the attorney general concludes that the covered individual was engaged in the performance of the duties of his office or employment with the state at the time the events that form the basis of the cause of action happened and that the covered individual was free of criminal conduct, then the attorney general shall provide a defense to the covered individual.

Proposed law provides that if the attorney general concludes that the covered individual was engaged in the performance of the duties of his office or employment with the state at the time the events that form the basis of the cause of action happened and that the covered individual was not engaged in criminal conduct, then the attorney general shall provide a defense to the covered individual.

Present law provides that such a decision shall be communicated in writing to the covered individual and the head of the department of the state in which the individual is employed within 10 working days of delivery of the petition to the attorney general.

Proposed law retains present law but changes 10 days to 30 days.

Present law provides that present law imposing liability on a master for the offenses and quasi offenses of his servant shall not extend or apply to and shall not impose liability on the state for the offenses and quasi offenses of any person who is not expressly specified by present law to be an official, officer, or employee of the state entitled to indemnification. Proposed law retains present law and removes obsolete citation.

Present law in Code of Civil Procedure provides that a defendant shall file his answer within 15 days after service of citation upon him, except as otherwise provided by present law.

Present law provides that when an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within 10 days after the exception is overruled or referred to the merits, or 10

days after service of the amended petition.

Present law provides that the court may grant additional time for answering.

Proposed law retains present law, and adds that the state, a state agency, or a state official, officer or employee sued in the course and scope of his employment with the state shall file his answer within 60 days after service of citation.

Effective August 1, 2018.

(Amends R.S. 13:5108.1(B)(3), R.S. 42:1441.1 and C.C.P. Art. 1001)