

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)

AN ACT

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, and to amend and reenact R.S. 44:4.1(B)(28), 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 a 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 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. 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:

CHAPTER 6-A. REIMBURSEMENT OF AMOUNTS PAID

BY THE STATE FOR SEXUAL HARASSMENT CLAIMS

§351. Declaration of public policy

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

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

24 §352. Definitions

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

27 (1) "Agency" means a department, office, division, agency, commission,
28 board, committee, or other organizational unit of a governmental entity.

29 (2) "Agency head" means the chief executive, administrative officer of

1 an agency, or the chairman of a board or commission.

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

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

7 (5) "Governmental entity" means the state.

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

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

11 (b) Appointed to a post or position created by rule, law, resolution, or
12 executive order.

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

14 (7) "Public funds" means monies of the state, including but not limited
15 to monies from the state risk management program established by R.S. 39:1527
16 et seq., monies from an exempted institution of higher education pursuant to
17 R.S. 17:3139.5, the state general fund, dedicated funds, fees and self-generated
18 revenues, or any other source of public funds.

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

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

29 §353. Procedures

1 A. In addition to the requirements of R.S. 42:342 relative to the
2 development and institution of the state's mandatory policy to prevent sexual
3 harassment, each agency policy shall include provisions relative to the following
4 items:

5 (1) Reporting complaints.

6 (2) Investigating complaints.

7 (3) Resolution of complaints.

8 (4) The right of the complainant to pursue a claim under state or federal
9 law, regardless of the outcome of the investigation.

10 B. After an investigation is conducted in accordance with the agency
11 policy and completed, if it is determined that sexual harassment did occur, the
12 agency head shall determine the discipline to be taken against the individual
13 who was found to have committed sexual harassment.

14 C. If, after an investigation is conducted and completed, it is determined
15 that sexual harassment did not occur, the agency head shall determine the
16 discipline to be taken against the complainant, if any.

17 §354. Settlements

18 Notwithstanding any law to the contrary, including but not limited to
19 R.S. 13:5108.1, when a claim of sexual harassment has been brought and the
20 state, through the state agency, the office of risk management, or the exempted
21 institution of higher education, determines that it is a valid claim, the sexual
22 harasser shall be responsible for the payment of all or a portion, of the amount
23 of the settlement or judgment. In determining the amount that the sexual
24 harasser should be responsible for, if the following factors shall be considered:

25 (1) Whether the attorney general has determined that the alleged sexual
26 harasser was engaged in the performance of the duties of his office or
27 employment with the state at the time the alleged sexual harassment occurred.

28 (2) If the alleged sexual harasser was free from criminal conduct.

29 (3) The severity of the sexual harassment.

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(4) The stage of litigation.

(5) The ability of the sexual harasser to pay.

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

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

§356. Public record; exception

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

§357. Nondisclosure agreements prohibited

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

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

§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:

* * *

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

* * *

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 James Benton.

DIGEST

SB 182 Engrossed

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 judgements and settlements on the taxpayers of the state, when there has been a determination that a valid claim of sexual harassment has been filed, the state should consider certain factors in determining whether the alleged sexual harasser should be required to pay all or a portion of the judgement 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".

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 relative to:

- (1) Reporting complaints.
- (2) Investigating complaints.
- (3) Resolution of complaints.
- (4) The right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.
- (5) In the event a lawsuit is filed under state or federal law, and the state is cast in judgment or enters into a settlement of the litigation, the state, through the attorney general, shall by civil suit seek restitution from the sexual harasser of the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state in the litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking restitution.

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 sexual harassment did not occur, the agency head shall determine the discipline to be taken against the complainant, if any.

Proposed law provides that notwithstanding any law to the contrary, when a claim of sexual harassment has been brought and the state, through the state agency, the office of risk management, or an exempted institution of higher education, determines that it is a valid claim, 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 attorney general has determined that the alleged sexual harasser was engaged in the performance of the duties of his office or employment with the state at the time the alleged sexual harassment occurred.
- (2) If the alleged sexual harasser was free from criminal conduct.
- (3) The severity of the sexual harassment.
- (4) The stage of litigation.
- (5) The ability of the sexual harasser to pay.

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. 44:4.1(B)(28); adds R.S. 42:351-357)

Summary of Amendments Adopted by Senate

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

1. Removes provisions providing for the attorney general to filed suit against a sexual harasser to reimburse the state for the amount of any judgment, settlement, and costs of a sexual harassment claim.
2. Removes provisions regarding solidary liability.

3. Provides that the state shall consider certain factors in determining the amount the alleged tortfeasor should contribute in any settlement or judgment.
4. Provides that the bill shall be effective upon signature of the governor or lapse of time for gubernatorial action.