

SENATE BILL NO. 182

BY SENATOR HEWITT

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

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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 355, relative to public officers and employees; to provide relative to the mandatory policies 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; 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 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

1 immediate and appropriate action when a complaint of sexual harassment involving
 2 any public servant in the agency is received. The complaint process shall detail who
 3 may make a complaint, to whom a complaint may be made, and shall provide for
 4 alternative designees to receive complaints. Actions taken on the complaint shall be
 5 documented.

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

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

12 ~~(5)~~(6) A general description of the possible disciplinary actions which
 13 may occur after the conclusion of the investigation, including the possible
 14 disciplinary actions that may be taken against a complainant if it is determined
 15 that a claim of sexual harassment was intentionally false.

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

19 * * *

20 Section. 2. Chapter 6-A of Title 42 of the Louisiana Revised Statutes of 1950,
 21 comprised of R.S. 42:351 through 355, is hereby enacted to read as follows:

22 CHAPTER 6-A. REIMBURSEMENT OF AMOUNTS PAID

23 BY THE STATE FOR SEXUAL HARASSMENT CLAIMS

24 §351. Declaration of public policy

25 A. The state of Louisiana is committed to providing a workplace that is
 26 free from sexual harassment. Sexual harassment in the workplace is strictly
 27 prohibited under the Equal Employment Opportunity Act, 42 U.S.C. 2000e-2;
 28 the Louisiana Employment Discrimination Law, R.S. 23:301 through 303 and
 29 332; and the Louisiana laws on the prevention of sexual harassment, R.S. 42:341
 30 through 345. The Legislature of Louisiana has enacted laws requiring each

1 agency of a governmental entity to develop and institute a policy to prevent
2 sexual harassment, which is applicable to all public servants, public employees,
3 and elected officials.

4 B. It is hereby declared that in order to reduce the impact of sexual
5 harassment judgments and settlements on the taxpayers of the state, it is the
6 public policy of this state that as sexual harassment is against state and federal
7 law, and state agencies have adopted policies and required training to prevent
8 sexual harassment, when there has been a determination that sexual harassment
9 has occurred, the state should consider certain factors in determining whether
10 the alleged sexual harasser should be required to reimburse all or a portion of
11 the settlement or judgment.

12 §352. Definitions

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

15 (1) "Agency" means a department, office, division, agency, commission,
16 board, committee, or other organizational unit of state government.

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

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

21 (4) "Elected official" means any person holding an office in state
22 government which is filled by the vote of the electorate. The term includes any
23 person appointed to fill a vacancy in that office.

24 (5) "Public employee" means anyone who is:

25 (a) An administrative officer or official of state government who is not
26 holding an elective office.

27 (b) Appointed to a post or position of state government created by rule,
28 law, resolution, or executive order.

29 (c) Employed by an agency, officer, or official of state government.

30 (6) "Public funds" means monies of the state, including but not limited

1 to monies from the state risk management program established by R.S. 39:1528
 2 et seq., monies from an exempted institution of higher education pursuant to
 3 R.S. 17:3139.5, the state general fund, dedicated funds, fees and self-generated
 4 revenues, or any other source of public funds.

5 (7) "Public servant" means a public employee or an elected official.

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

15 (9) "State government" means the legislative branch, executive branch,
 16 and judicial branch of state government, but shall not include any parish,
 17 municipality, or any other unit of local government, including a school board
 18 special district, mayor's court, justice of the peace court, district attorney,
 19 sheriff, clerk of court, coroner, tax assessor, registrar of voters, or any other
 20 elected parochial or municipal official.

21 §353. Litigation and settlements

22 A. Notwithstanding any law to the contrary, including but not limited to
 23 R.S. 13:5108.1, when a claim of sexual harassment has been brought and the
 24 office of risk management, or the exempted institution of higher education,
 25 determines that sexual harassment did occur, the sexual harasser shall be
 26 responsible for the payment of all or a portion of the amount of the settlement
 27 or judgment. In determining the amount that the sexual harasser should
 28 contribute to any compromise of the claim, the following factors shall be
 29 considered:

30 (1) Whether the sexual harasser was engaged in the performance of the

1 duties of his office or employment with the state at the time the sexual
2 harassment occurred.

3 (2) The severity of the sexual harassment.

4 (3) The stage of litigation.

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

6 B. When a claim is filed against the state due to a claim of sexual
7 harassment which results in a final judgment or settlement against the state, the
8 attorney general, on behalf of the state, may file suit against the sexual harasser
9 to assert and enforce the state's right to reimbursement and indemnity from the
10 sexual harasser. The attorney general is also entitled to recover from the alleged
11 sexual harasser all costs and reasonable attorney fees incurred in asserting that
12 right.

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

21 §354. Dissemination of information to all elected officials, public employees,
22 and public servants

23 A. The commissioner of administration shall prepare a notice to be
24 furnished to each agency head in the executive branch of state government for
25 annual dissemination to each public servant in the executive branch of state
26 government advising them of their potential liability if they are determined by
27 the appropriate person in accordance with the public servant's agency policy or
28 by a court of competent jurisdiction to have committed sexual harassment.
29 Notice shall also be disseminated to any newly elected, appointed, or employed
30 public servant in the executive branch of state government.

1 Section 4.(A) The provisions of this Section and of Sections 2 and 3 of this Act shall
2 become effective upon signature by the governor or, if not signed by the governor, upon
3 expiration of the time for bills to become law without signature by the governor, as provided
4 by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and
5 subsequently approved by the legislature, the provisions of this Section and of Sections 2
6 and 3 of this Act shall become effective on the day following such approval.

7 (B) The provisions of Section 1 of this Act shall become effective on January 1,
8 2020.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____