

2017 Regular Session

HOUSE BILL NO. 293

BY REPRESENTATIVE AMEDEE

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

DISTRICT ATTORNEYS: Provides relative to the limitation of liability of the state

1 AN ACT

2 To amend and reenact R.S. 42:1441(A) and to enact R.S. 42:1441(D), relative to the
3 limitation of liability of the state; to provide relative to liability for damage caused
4 by district attorneys; to provide for indemnification; to provide relative to the
5 attorney general; to provide for payment of a judgment; to provide for applicability;
6 and 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(D)
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, a coroner, assessor, sheriff,
13 clerk of court, or public officer of a political subdivision within the course and scope
14 of his official duties, or damage caused by an employee of a district attorney, except
15 as provided for in Subsection D, a coroner, assessor, sheriff, clerk of court, or public
16 officer of a political subdivision.

17 * * *

18 D.(1) The state of Louisiana shall indemnify a district attorney or his office
19 against any claim, demand, suit, complaint or petition seeking damages in a federal
20 court based on allegations of the constitutional validity of a statute where the district

1 attorney or his office has taken no action to institute prosecution by filing a bill of
2 information or an indictment. The attorney general may, in exercising his discretion
3 under R.S. 49:257(C), defend the district attorney or his office.

4 (2) When the attorney general has assumed the defense of a district attorney
5 or his office, at any point in the litigation, before a judgment is final and executable,
6 the attorney general, in concurrence with the governor, and the district attorney
7 pursuant to R.S. 49:257(D), may enter into a settlement or compromise to resolve the
8 litigation by means of a consent judgment.

9 (3) Payment of a final judgment or consent judgment shall be by legislative
10 appropriation. Payment of a final judgment or consent judgment, of any amount,
11 against a district attorney or his office shall not be made unless the payment is
12 approved by a majority of members of a subcommittee of the Joint Legislative
13 Committee on the Budget comprised of three members of the Senate and three
14 members of the House designed by the chairman. Notwithstanding any other
15 provision of law to the contrary, the subcommittee may meet in executive session to
16 consider such agreements.

17 (4) The district attorney, or the attorney general, if the attorney general
18 assumed the defense of the claim shall present the subcommittee with a concise
19 abstract of the facts and principles of law upon which the claim is based. The
20 abstract shall include a detailed analysis of the calculation of damages as well as
21 attorney fees, court costs, and interest thereon. The abstract and other information
22 submitted to the subcommittee shall be public record, with the exception of material
23 that reflects the mental impressions, conclusions, opinions, or theories of an attorney.

24 (5) The amount of the final or consent judgment and terms and conditions
25 of any agreement shall be public record.

26 (6) The provisions of this Subsection apply to all claims, demands, suits,
27 complaints, or petitions seeking damages filed in court on or after November 1,
28 2015.

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 293 Engrossed

2017 Regular Session

Amedee

Abstract: Provides for indemnification of the district attorney's office by the state and representation of the district attorney's office by the attorney general's office.

Present law prevents the state from having any liability for damage caused by a district attorney.

Proposed law creates an exception to present law and requires the state to indemnify the district attorney's office against claims or suits in federal court based on the constitutional validity of a statute when the district attorney's office has not initiated any prosecution based upon that statute.

Proposed law permits the attorney general's office to defend the district attorney's office and provides for the means of reaching a settlement.

Proposed law requires the payment of final judgments or consent judgments by legislative appropriation for claims against the district attorney and requires submission to the Joint Legislative Committee on the Budget.

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