

2019 Regular Session

HOUSE BILL NO. 515

BY REPRESENTATIVE GAROFALO

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

LIABILITY: Provides relative to suits against the state and state officials and employees

1 AN ACT

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

9 Be it enacted by the Legislature of Louisiana:

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

11 §5108.1. Indemnification of officers and employees of the state; civil rights;
12 representation by attorney general

13 * * *

14 B. Coverage process.

15 * * *

16 (3) If the attorney general concludes that the covered individual was engaged
17 in the performance of the duties of his office or employment with the state at the
18 time the events that form the basis of the cause of action happened and that the
19 covered individual was ~~free of criminal conduct~~ not engaged in criminal conduct,
20 then the attorney general shall provide a defense to the covered individual. If the
21 attorney general concludes that the covered individual was not engaged in the

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

* * *

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

13 §1441.1. Nonimposition of master-servant liability on state by Civil Code Article
 14 §2320 and other laws for torts of persons not designated state officials,
 15 officers, or employees ~~by R.S. 13:5108.2~~

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

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

23 Art. 1001. Delay for answering

24 A. A defendant shall file his answer within fifteen days after service of
 25 citation upon him, except as otherwise provided by law.

26 B. The state of Louisiana, a state agency, or a state official, officer, or
 27 employee sued in the course and scope of his employment with the state shall file his
 28 answer within sixty days after service of citation.
 29

1 C. When an exception is filed prior to answer and is overruled or referred to
2 the merits, or is sustained and an amendment of the petition ordered, the answer shall
3 be filed within ten days after the exception is overruled or referred to the merits, or
4 ten days after service of the amended petition.

5 D. The court may grant additional time for answering.

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 515 Reengrossed

2019 Regular Session

Garofalo

Abstract: Provides relative to the provision of a defense for defendants in suits against the state, state officials, and employees; specifies who is an official, officer, or employee of the state; and provides for the delays for answering such suits.

Present law 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 retains present law but provides that if the attorney general concludes 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 the decision of the attorney general 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 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 replaces incorrect citations.

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

Proposed law retains present law but changes the delay for filing an answer by the state, a state agency, or a state official, officer, or employee sued in the course and scope of his employment from 15 days to 60 days from service of citation.

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Change the general delay for filing an answer from proposed law 30 days to present law 15 days.
2. Add provisions authorizing the defendant 30 days from service of citation to file an answer if the attorney general is obligated to provide a defense.
3. Add provisions authorizing a defendant to file an answer 15 days from issuance of written notice that the attorney general is not obligated to provide a defense.

The House Floor Amendments to the engrossed bill:

1. Remove provisions providing for different delays for answering suit based on whether the attorney general is obligated to provide a defense.
2. Provide a 60-day delay for answering suit by the state, a state agency, or a state official, officer, or employee.