

2018 Regular Session

SENATE BILL NO. 147

BY SENATOR MORRELL AND REPRESENTATIVE MORENO

CRIMINAL JUSTICE. Provides relative to a defamation claim brought by an alleged perpetrator of sexual misconduct against the alleged victim. (8/1/18)

1 AN ACT
2 To enact Chapter 12-A of Title 13 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 13:3381 through 3384, relative to certain claims initiated by
4 alleged perpetrators of sexual misconduct; to provide for special procedures when
5 claims are against the alleged victim; to provide for waivers; to provide for damages;
6 to provide for presumptions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 12-A of Title 13 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 13:3381 through 3384, is hereby enacted to read as follows:

10 **CHAPTER 12-A. SLANDER, DEFAMATION, OR LIBEL PROCEEDINGS**
11 **RELATED TO SEXUAL MISCONDUCT**
12 **§3381. Stay of proceedings**
13 **A.(1) Notwithstanding any provision of law to the contrary, upon the**
14 **filing of a motion to stay by the defendant, the court shall stay the proceedings**
15 **on a claim for defamation of character, libel, slander, or damage to reputation**
16 **when the plaintiff is an alleged perpetrator of sexual misconduct against the**
17 **defendant who is the alleged victim until such time as all civil or criminal**

1 investigations, administrative hearings, or any other hearing or legal proceeding
2 regarding the allegations of sexual misconduct are complete and final.

3 (2) For purposes of this Subsection, the motion to stay shall identify the
4 forum of the pending investigation, hearing, or proceeding.

5 (3) For purposes of this Chapter, a plaintiff is "an alleged perpetrator
6 of sexual misconduct" if there is a pending claim of unwelcome behavior of a
7 sexual nature that was allegedly committed without consent or by force,
8 intimidation, coercion, or manipulation and the victim of the unwelcome
9 behavior is the defendant.

10 B.(1) Notwithstanding any provision of law to the contrary, if the claim
11 for defamation of character, libel, slander, or damage to reputation referred to
12 in Subsection A of this Section is determined by the court to be fraudulent or
13 frivolous, the court shall order the plaintiff to pay all court costs and reasonable
14 attorney fees and the defendant shall be entitled to exemplary damages.

15 (2) For the purposes of this Section, "fraudulent" and "frivolous" shall
16 have the same meaning as provided in R.S. 13:5241.

17 (3) The amount of exemplary damages that may be awarded to the
18 defendant by the court pursuant to Paragraph (1) of this Subsection shall be at
19 the court's discretion and shall not be subject to any cap or similar limitation
20 provided by law.

21 §3382. Waiver

22 A. Notwithstanding any provision of law to the contrary, a plaintiff filing
23 a claim for defamation of character, libel, slander, or damage to reputation
24 referenced in R.S. 13:3381, waives all privileges and protections relating to the
25 civil or criminal investigations, administrative hearings, or any other hearing
26 or legal proceeding regarding the alleged sexual misconduct.

27 B. Such waiver shall apply but not be limited to all evidence, records,
28 testimony, and findings of an investigation, hearing, or proceeding.

29 C. Such waiver shall not be construed to waive the attorney-client

1 privilege of any party.

2 §3383. Costs

3 A defendant shall not be required to prepay costs to file an answer to a
 4 claim for defamation of character, libel, slander, or damage to reputation
 5 referenced in R.S. 13:3381.

6 §3384. Presumption; limitations

7 If the plaintiff in a claim for defamation of character, libel, slander, or
 8 damage to reputation referenced in R.S. 13:3381 is a person against whom a bill
 9 of information or indictment has been made for the pertinent sexual
 10 misconduct, there shall be a presumption that no defamation of character, libel,
 11 slander, or damage to reputation occurred.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Ashley E. Menou.

DIGEST

SB 147 Engrossed

2018 Regular Session

Morrell

Proposed law provides that a court shall stay proceedings in cases of defamation of character, libel, slander, or damage to reputation brought by an alleged perpetrator of sexual misconduct against the alleged victim. Further provides that the stay shall remain until the completion of all investigations, hearings, or proceedings relating to the allegations of sexual misconduct.

Proposed law provides that if the court determines that the defamation of character, libel, slander, or damage to reputation claim brought by an alleged perpetrator is fraudulent or frivolous, the court shall order the plaintiff to pay all court costs and reasonable attorney fees and the defendant is entitled to exemplary damages.

Proposed law provides that there is no limit to the amount of exemplary damages a defendant may receive.

Proposed law provides that the party instituting the suit against an alleged victim waives all privileges and protections relating to the findings and evidence of the investigation, hearing, or proceeding on the allegations of sexual misconduct.

Proposed law provides that the waiver does not apply to attorney-client privilege.

Proposed law provides that a defendant shall not be required to prepay costs to file an answer in a defamation of character, libel, slander, or damage to reputation claim brought pursuant to proposed law.

Proposed law provides that if the plaintiff in a claim brought pursuant to proposed law is a person against whom a bill of information or indictment has been made for the pertinent sexual misconduct, there shall be a presumption that no defamation of character, libel, slander, or damage to reputation occurred.

Effective August 1, 2018.

(Adds R.S. 13:3381 and 3384)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Adds that a plaintiff shall pay court costs and reasonable attorney fees if his claim is found to be fraudulent or frivolous.
2. Adds that a defendant is not required to prepay costs for filing an answer to a defamation of character, libel, slander, or damage of reputation claim brought pursuant to provisions of proposed law.
3. Creates a presumption that defamation of character, libel, slander, or damage to reputation did not occur if the plaintiff is a person against whom a bill of information or indictment has been made for the pertinent sexual misconduct.