
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1965 Session of
2018

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RAVENSTAHL, JANUARY 24, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 24, 2018

AN ACT

1 Amending Title 46 (Legislature) of the Pennsylvania Consolidated
2 Statutes, providing for professional conduct.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Title 46 of the Pennsylvania Consolidated
6 Statutes is amended by adding a part to read:

7 PART III

8 PROFESSIONAL CONDUCT

9 Chapter

10 21. Complaints of Behavior Constituting Sexual Harassment

11 CHAPTER 21

12 COMPLAINTS OF BEHAVIOR CONSTITUTING

13 SEXUAL HARASSMENT

14 Subchapter

- 1 A. General Provisions
- 2 B. Office of Compliance
- 3 C. Administrative Provisions
- 4 D. Prevention and Response Training

5 SUBCHAPTER A

6 GENERAL PROVISIONS

7 Sec.

8 2101. Scope of chapter.

9 2102. Legislative intent.

10 2103. Definitions.

11 2104. Prohibition.

12 2105. Retaliation.

13 § 2101. Scope of chapter.

14 This chapter relates to member and employee training and
15 official oversight (ME TOO) for legislative agencies.

16 § 2102. Legislative intent.

17 This chapter is intended to:

18 (1) Protect employees of legislative agencies from
19 sexual harassment.

20 (2) Provide for the investigation and resolution of
21 allegations involving sexual harassment of employees of
22 legislative agencies.

23 (3) Provide for programs of sexual harassment prevention
24 and response training in employment.

25 § 2103. Definitions.

26 The following words and phrases when used in this chapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Caucus." The Democratic or Republican Caucus of the Senate
30 or House of Representatives.

1 "Complaint." An allegation of a violation of section 2104
2 (relating to prohibition) or 2105 (relating to retaliation) made
3 by an employee under this chapter and the policies and
4 procedures established by the office.

5 "Director." The director of the office.

6 "Elected official." A member of the Senate or House of
7 Representatives.

8 "Employee." The following:

9 (1) An employee of a legislative agency.

10 (2) A paid or unpaid intern of a legislative agency.

11 "Legislative agency" or "employer." Any of the following:

12 (1) The Senate.

13 (2) The House of Representatives.

14 (3) The Capitol Preservation Committee.

15 (4) The Center for Rural Pennsylvania.

16 (5) The Joint Legislative Air and Water Pollution

17 Control and Conservation Committee.

18 (6) The Joint State Government Commission.

19 (7) The Legislative Budget and Finance Committee.

20 (8) The Legislative Data Processing Committee.

21 (9) The Independent Regulatory Review Commission.

22 (10) The Legislative Reference Bureau.

23 (11) The Local Government Commission.

24 (12) The Pennsylvania Commission on Sentencing.

25 (13) The Legislative Reapportionment Commission.

26 (14) The Legislative Audit Advisory Commission.

27 (15) A caucus.

28 (16) The Office of Compliance established in Subchapter

29 B (relating to Office of Compliance).

30 (17) Another office, agency, board or commission under

1 the control or supervision of the Senate or House of
2 Representatives.

3 "Office." The Office of Compliance established in Subchapter
4 B.

5 "Party." The employee alleging a violation of section 2104
6 under this chapter or the employee or elected official against
7 whom the allegation is made, as the context shall require.

8 "Selection committee." The selection committee established
9 in section 2111(b) (relating to Office of Compliance).

10 "Sexual harassment." Unwelcome sexual advances, requests for
11 sexual favors and other verbal or physical conduct of a sexual
12 nature that explicitly or implicitly affects an individual's
13 employment and unreasonably interferes with an individual's work
14 performance.

15 § 2104. Prohibition.

16 The following conduct is prohibited:

17 (1) Using the submission to or rejection by an employee
18 of conduct constituting sexual harassment as a basis for an
19 employment decision affecting the employee.

20 (2) Making submission to conduct constituting sexual
21 harassment, either explicitly or implicitly, a term or
22 condition of an employee's employment.

23 (3) Engaging in conduct constituting sexual harassment
24 that is so frequent or severe that it creates a hostile or
25 offensive work environment.

26 § 2105. Retaliation.

27 No adverse action may be taken against an employee, other
28 than an employee against whom a complaint under this chapter or
29 a civil action has been filed, who does any of the following:

30 (1) files a complaint under section 2114 (relating to

1 complaint and hearing) or a civil action under section 2113
2 (relating to initiation of proceedings);
3 (2) participates in proceedings resulting from the
4 filing of a complaint or civil action; or
5 (3) participates in an investigation conducted under
6 section 2114(b).

7 SUBCHAPTER B

8 OFFICE OF COMPLIANCE

9 Sec.

10 2111. Office of Compliance.

11 2112. Duties.

12 2113. Initiation of proceedings.

13 2114. Complaint and hearing.

14 2115. Judicial review.

15 2116. Settlement.

16 2117. Right-to-Know Law.

17 § 2111. Office of Compliance.

18 (a) Establishment.--The Office of Compliance is established
19 as an independent office within the legislative branch of the
20 State government. The office shall be charged with receiving,
21 investigating and resolving complaints.

22 (b) Selection committee.--The selection committee is
23 established to conduct a search for, interview applicants for
24 and appoint a director. The selection committee shall consist of
25 one member from each of the four caucuses, to be appointed by:

26 (1) the Majority Leader and the Minority Leader of the
27 Senate; and

28 (2) the Majority Leader and the Minority Leader of the
29 House of Representatives.

30 (c) Director.--

1 (1) The office shall be headed by a director appointed
2 by the selection committee. The appointment shall be made
3 without regard to political affiliation and solely on the
4 basis of fitness to perform the duties of director. The
5 director must have training or experience in the application
6 of rights, protections and remedies relating to sexual
7 harassment.

8 (2) No individual who is registered as a lobbyist under
9 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure) or who
10 is an employee at the time of submission of an application
11 for appointment may be eligible for appointment as director.

12 (3) The compensation of the director shall be set by the
13 selection committee.

14 (4) The director may not engage in outside employment
15 while serving as director, unless the outside employment is
16 approved in writing by the selection committee.

17 (d) Term of director.--

18 (1) The term of office of the director shall be six
19 years. An individual appointed as director to fill a vacancy
20 prior to the expiration of a term shall serve only for the
21 unexpired portion of the term.

22 (2) An individual who serves as director at the
23 expiration of a term may continue to serve until a successor
24 is appointed.

25 (3) The director may be removed for cause by a
26 concurrent resolution passed by the Senate and the House of
27 Representatives.

28 (e) Staff.--

29 (1) The director shall hire attorneys, individuals to
30 serve as hearing officers, investigators and other staff as

1 the director deems necessary to carry out the duties of the
2 office. Staff shall be hired without regard to political
3 affiliation. The director shall use best efforts to assure
4 that individuals being considered for hire by the office are
5 not biased and do not have a conflict of interest or
6 potential conflict of interest with any individual covered by
7 this chapter. Individuals hired to serve as hearing officers
8 shall be licensed to practice law in this Commonwealth.

9 (2) Staff of the office shall be compensated at a rate
10 to be determined by the director.

11 (3) Staff of the office, including the director, shall
12 be considered public employees for purposes of participating
13 in any State employees' pension or health insurance plan and
14 under 65 Pa.C.S. Ch. 11 (relating to ethics standards and
15 financial disclosure).

16 (4) Staff who are designated under section 2112(3)
17 (relating to duties) must have training or experience in the
18 application of rights, protections and remedies relating to
19 sexual harassment.

20 § 2112. Duties.

21 The office shall perform the following duties:

22 (1) Establish and implement policies and procedures for
23 reporting, investigating and resolving complaints not
24 inconsistent with this chapter. The policies and procedures
25 shall include a separate process for allegations made against
26 an employee of the office and shall be posted on the office's
27 publicly accessible Internet website.

28 (2) Develop and implement the training programs under
29 Subchapter D (relating to prevention and response training).

30 (3) Prepare and distribute for posting in each

1 legislative agency information regarding how to access the
2 policies and procedures posted under paragraph (1), the
3 availability of the assistance of a lawyer or reimbursement
4 for counseling under Subchapter C (relating to administrative
5 provisions) and the names and contact information of the
6 staff in the office with whom employees should be in contact
7 under section 2113(a) (relating to initiation of proceedings)
8 or should file a complaint under section 2114 (relating to
9 complaint and hearing).

10 (4) Develop and maintain a master list of individuals
11 licensed to practice law in this Commonwealth who are
12 experienced in adjudicating or arbitrating sexual harassment
13 complaints to serve as hearing officers under section 2114.
14 The individuals on the list developed and maintained under
15 this paragraph shall supplement any individuals hired under
16 section 2111(e) (relating to Office of Compliance) as
17 employees of the office to serve as hearing officers.

18 § 2113. Initiation of proceedings.

19 (a) Initial contact.--An employee who intends to make an
20 allegation of the violation by another employee or an elected
21 official of section 2104 (relating to prohibition) or 2105
22 (relating to retaliation) must contact the director or an
23 individual designated under 2112(3) (relating to duties) for
24 assistance in determining the employee's rights under this
25 chapter and other Federal, State or local law.

26 (b) Confidentiality.--The director or an individual
27 designated under section 2112(3) who is contacted by an employee
28 under subsection (a), may not disclose or acknowledge to any
29 other person any information relating to the initial contact,
30 except when the disclosure or acknowledgment pertains to any of

1 the following:

2 (1) communicating with staff of the office for purposes
3 of assisting in determining the employee's rights;

4 (2) consulting with a law enforcement official or agency
5 for the purpose of initiating, participating in or responding
6 to an investigation or prosecution by the law enforcement
7 official or agency; or

8 (3) such other exceptions as the office by regulation
9 may direct.

10 (c) Filing of complaint or action.--

11 (1) An employee alleging a violation of section 2104 or
12 2105 may file a complaint under section 2114 (relating to
13 complaint and hearing) or an action in Commonwealth Court in
14 its original jurisdiction without exhausting administrative
15 remedies available under this chapter.

16 (2) Nothing in this chapter shall be construed to
17 prohibit an employee from speaking to law enforcement about
18 alleged criminal conduct.

19 § 2114. Complaint and hearing.

20 (a) Filing of complaint.--An employee may file a written
21 complaint with the office. The director shall serve a copy of
22 the complaint on the employee or elected official against whom
23 the allegations are made and the employee's employer or the
24 elected official's caucus.

25 (b) Investigation.--Upon receipt of the complaint, the
26 director shall assign an investigator to investigate the
27 allegations in the complaint. The investigator shall be
28 authorized to conduct such interviews and review such materials
29 as the investigator deems appropriate, shall prepare a written
30 report of the investigator's findings, and shall provide a copy

1 of the report to the hearing officer appointed by the director
2 under subsection (c).

3 (c) Appointment of hearing officer.--Upon receipt of the
4 complaint, the director shall appoint a hearing officer to
5 consider the complaint and the investigator's report, conduct a
6 hearing and render a decision. Staff of the office not involved
7 in the investigation of the complaint may assist the hearing
8 officer.

9 (d) Dismissal.--After review of the investigator's report,
10 the hearing officer may dismiss a complaint that the hearing
11 officer finds was filed without basis in law or fact. The
12 hearing officer shall notify the parties in writing of a
13 dismissal under this subsection.

14 (e) Hearing.--Unless a complaint is dismissed under
15 subsection (d), a hearing shall be:

16 (1) Commenced no later than 60 days after the completion
17 of the investigation under subsection (b), except that the
18 office may, for good cause, extend the time for conducting
19 the hearing for up to an additional 30 days.

20 (2) Conducted in closed session by the hearing officer.

21 (3) Except as otherwise provided in this chapter,
22 conducted in the same manner as hearings conducted before
23 Commonwealth agencies in 2 Pa.C.S. Ch. 5 Subch. A (relating
24 to practice and procedure of Commonwealth agencies), except
25 for 2 Pa.C.S. § 508 (relating to notice to Department of
26 Justice).

27 (f) Discovery and attorneys.--

28 (1) Reasonable prehearing discovery may be permitted at
29 the discretion of the hearing officer. Discovery may include
30 access to the investigator's report.

1 (2) The parties shall be entitled to be represented in
2 the hearing by attorneys of their choice.

3 (g) Subpoenas.--

4 (1) At the request of a party, a hearing officer may
5 issue subpoenas for the attendance of witnesses and for the
6 production of books, papers, records, accounts, reports,
7 documents and data and information produced and stored by any
8 electronic data processing system as the hearing officer
9 deems necessary.

10 (2) The hearing officer shall have the power to
11 administer oaths and affirmations to witnesses and may cause
12 the deposition of witnesses either residing within or without
13 this Commonwealth to be taken in the manner prescribed by law
14 for taking depositions in civil actions.

15 (3) Any person who willfully neglects or refuses to
16 respond to a subpoena issued under this section shall be
17 subject to the penalties provided by the laws of this
18 Commonwealth in such case.

19 (4) If a person refuses, on the basis of relevance,
20 privilege or other objection, to testify in response to a
21 question or to produce records in connection with a
22 proceeding before a hearing officer, the hearing officer
23 shall rule on the objection.

24 (h) Burden and standard of proof.--The employee filing the
25 complaint shall have the burden of proving, by a preponderance
26 of the evidence, that a violation of section 2104 (relating to
27 prohibition) or 2015 (relating to retaliation) has occurred.

28 (i) Confidential proceeding.--

29 (1) Except as otherwise provided in this subsection and
30 as may be required by legal process in connection with an

1 appeal of the hearing officer's decision under section 2115
2 (relating to judicial review):

3 (i) the name of the employee filing the complaint,
4 the complaint, filings by the parties and evidence
5 produced, including investigative reports, in connection
6 with a complaint filed and hearing held under this
7 section shall be confidential; and

8 (ii) no evidence or testimony taken in a closed
9 session may be released to any person.

10 (2) The final decision of the hearing officer shall not
11 be confidential, except that at the request of the employee
12 who filed the complaint, the name of the employee and any
13 facts that may lead to the identification of the employee
14 shall be redacted before the decision is issued.

15 (j) Decision.--

16 (1) The hearing officer shall issue a final decision in
17 writing as expeditiously as possible, but in no case more
18 than 90 days after the conclusion of the hearing.

19 (2) The final decision shall be served by the office on
20 the parties and the employer or caucus receiving a copy of
21 the complaint under subsection (a).

22 § 2115. Judicial review.

23 (a) Appeal.--A party aggrieved by a decision of a hearing
24 officer under section 2114 (relating to complaint and hearing)
25 may file a petition for review of the decision in Commonwealth
26 Court, which shall have appellate jurisdiction over the
27 petition.

28 (b) Standard of review.--The court shall set aside a
29 decision of a hearing officer if the court determines that the
30 decision of the hearing officer was:

1 (1) arbitrary, capricious, an abuse of discretion or
2 otherwise not consistent with law;

3 (2) inconsistent with required procedures; or

4 (3) unsupported by substantial evidence.

5 § 2116. Settlement.

6 (a) General rule.--The parties may enter into a settlement
7 agreement at any time during the proceedings authorized by this
8 chapter with such terms as may be agreed to by the parties.

9 (b) Required party.--

10 (1) If the agreement requires the payment of money to or
11 for the benefit of the employee filing the complaint, the
12 employer of the employee against whom the complaint was
13 filed, or the applicable caucus in the case of an elected
14 official, must be a party to the agreement.

15 (2) Paragraph (1) shall not apply if the money is to be
16 paid from the personal funds of the employee or elected
17 official against whom the complaint was filed.

18 § 2117. Right-to-Know Law.

19 (a) Legislative agency.--For purposes of the act of February
20 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, the
21 office shall be considered a legislative agency as defined in
22 section 102 of the Right-to-Know Law and shall provide
23 legislative records in accordance with the Right-to-Know Law.

24 (b) Final decision.--The final decision of the hearing
25 officer under section 2114 (relating to complaint and hearing)
26 shall be publicly available from the office in response to a
27 request submitted under the Right-to-Know Law, except that at
28 the request of the employee who filed the complaint, the name of
29 the employee and any facts that may lead to the identification
30 of the employee shall be redacted before the decision is issued.

1 (2) The director shall approve the employee's or elected
2 official's choice if the hourly rate is reasonable for the
3 work to be performed and reflects market rates in the
4 location where the legal counsel practices.

5 (c) Contract.--

6 (1) If approval under subsection (b) has been received,
7 the employee or elected official must enter into a written
8 contract with the legal counsel or law firm.

9 (2) Invoices for payment under the contract shall be
10 provided directly to the employee or elected official who
11 shall review and approve them for payment by the office. The
12 employee or elected official shall provide the office with a
13 written request for payment that only reflects the amount to
14 be paid.

15 (3) The office shall develop a standard form for use by
16 employees and elected officials under paragraph (2).

17 § 2122. Counseling.

18 An employee filing a complaint with the office under
19 Subchapter B (relating to Office of Compliance) that does not
20 have health insurance may seek reimbursement from the office for
21 the cost of any counseling sought by the employee from a
22 professional therapist trained in psychological issues arising
23 out of subjection by the employee to sexual harassment.

24 § 2123. Nondisclosure.

25 (a) Involuntary agreements.--A nondisclosure agreement or
26 provision may not be imposed on an employee as a condition of
27 the initiation of any of the procedures or assistance available
28 under this chapter.

29 (b) Voluntary agreements.--Nothing in subsection (a) shall
30 be construed to prohibit the parties to any procedure available

1 under this chapter from voluntarily entering into a settlement
2 agreement with a nondisclosure provision agreed to by each party
3 as part of the settlement of a complaint or a civil action.

4 (c) Elected officials.--Notwithstanding the provisions of
5 subsection (b), an elected official who is the subject of a
6 complaint shall not benefit from a nondisclosure provision under
7 subsection (b) if a completed investigation by the office finds
8 that the complaint is credible.

9 § 2124. Workplace adjustments.

10 (a) General rule.--The employer of an employee filing a
11 complaint under section 2114 (relating to complaint and hearing)
12 shall, upon the request of the employee filing the complaint,
13 make adjustments to the employee's work hours and location that
14 may be appropriate under the circumstances of the allegations in
15 the complaint.

16 (b) Forms of adjustments.--The adjustments may include:

17 (1) removing the employee filing the complaint or the
18 employee or elected official against whom the complaint is
19 filed from the physical work location of the employee filing
20 the complaint; or

21 (2) allowing the employee filing the complaint to be
22 placed on administrative leave with continued pay and
23 benefits, if applicable.

24 § 2125. Payment of awards and settlements.

25 (a) Source.--

26 (1) If the resolution of allegations of a violation of
27 section 2104 (relating to prohibition) or 2105 (relating to
28 retaliation) under this chapter requires the payment of funds
29 to the employee who made the allegations, the payment shall
30 be made by the employer of the employee or by the caucus of

1 the elected official against whom the allegations were made.

2 (2) Nothing in this section shall be construed to
3 prohibit the employee or elected official from making payment
4 from the employee's or elected official's personal funds.

5 (b) Personal liability of member.--If a payment is made from
6 an account of a legislative agency under subsection (a)
7 resulting from a complaint made against an elected official, the
8 elected official shall reimburse the account for the amount of
9 the award or settlement and shall reimburse the office for any
10 legal fees paid by the office on behalf of the member under
11 section 2121 (relating to legal assistance) if:

12 (1) a completed investigation by the office finds that
13 the complaint is credible;

14 (2) the hearing officer's decision finds that a
15 violation of section 2104 or 2105 occurred; or

16 (3) a civil action filed under section 2114 (relating to
17 election of action) results in the finding of a violation, or
18 an admission of a violation under section 2104 or 2105.

19 § 2126. Reports.

20 (a) Legislative agencies.--Not later than 60 days after the
21 end of each calendar year, each legislative agency shall publish
22 on its publicly accessible Internet website a report identifying
23 the amount of each award or settlement made by the legislative
24 agency during the previous year under section 2125 (relating to
25 payment of awards and settlements).

26 (b) Office.--Not later than 180 days after the date of
27 enactment of this chapter and every two years thereafter, the
28 office shall submit a report to the General Assembly that
29 includes the following information for the reporting period:

30 (1) The number of complaints filed by employees with the

1 office and the type of behavior alleged.

2 (2) Whether the complaints were filed against employees
3 or elected officials.

4 (3) The average length of time to resolve a complaint.

5 (4) The number of settlement agreements entered into by
6 the parties.

7 (5) The number of settlement agreements with
8 nondisclosure provisions.

9 (6) The total amount of awards or settlements paid to
10 employees.

11 (7) The number and types of remedial actions taken as a
12 result of the filing of complaints.

13 (8) How many employees filing complaints remained
14 employed by the legislative agency following resolution of
15 the complaint.

16 § 2127. Safe harbor.

17 (a) Employees.--The rights, protections and benefits
18 afforded employees by this chapter shall be deemed to
19 supplement, and be in addition to, any right, protection or
20 benefit afforded by any other Federal, State or local law.

21 (b) Employers.--Notwithstanding subsection (a), an employer
22 shall not be required to establish and maintain separate
23 policies and procedures for the reporting of or response to a
24 complaint alleging the violation of section 2104 (relating to
25 prohibition) or 2105 (relating to retaliation) provided the
26 employer cooperates with the office and otherwise complies with
27 the employer's obligations under this chapter.

28 SUBCHAPTER D

29 PREVENTION AND RESPONSE TRAINING

30 Sec.

1 2131. Development of training programs.

2 2132. Schedule.

3 § 2131. Development of training programs.

4 (a) Duty of office and attendance.--The office shall develop
5 training programs concerning workplace sexual harassment
6 prevention and response. All employees and elected officials and
7 staff of the office shall attend the training programs.

8 (b) Contents of programs.--

9 (1) The training programs shall be based on the
10 principles of effective prevention and best practices in
11 consultation with rape crisis centers or other organizations
12 with experience in counseling and training regarding issues
13 of sexual harassment.

14 (2) The training program for employees, including staff
15 of the office, and elected officials shall include at least
16 the following elements:

17 (i) Bystander intervention and other strategies that
18 are found to be effective in workplace prevention.

19 (ii) The definition of sexual harassment and
20 retaliation and examples of the different acts and
21 behavior constituting sexual harassment.

22 (iii) The effects of sexual harassment on victims
23 and the workplace at large.

24 (iv) Examples of barriers to reporting incidences of
25 sexual harassment.

26 (v) The consequences of being found to be in
27 violation of section 2104 (relating to prohibition) or
28 2105 (relating to retaliation) or found to be in
29 violation of Federal law prohibiting sexual harassment.

30 (vi) A description of the policies and procedures

1 developed by the office under section 2112(1) (relating
2 to duties), the procedures for contacting the office and
3 filing a complaint under this chapter and the option for
4 filing a civil action.

5 (vii) Referrals and resources, including rape crisis
6 centers and other counseling services, attorneys, the
7 United States Equal Employment Opportunity Commission and
8 other similar Federal and State agencies.

9 (3) The additional training program for staff of the
10 office shall include at least the following elements:

11 (i) The receipt of disclosure of sexual harassment,
12 including confidentiality and privacy considerations.

13 (ii) The provision of referrals and resources to
14 complaining employees and individuals against whom
15 complaints are filed, including to appropriate law
16 enforcement.

17 (iii) The policies and procedures developed by the
18 office under section 2112(1).

19 (iv) Trauma-informed systems of response,
20 investigation and resolution.

21 (v) The anticipated roles of employees and elected
22 officials in the complaint, investigation, hearing and
23 resolution process.

24 § 2132. Schedule.

25 The office shall conduct the training programs developed
26 under section 2131 (relating to development of training
27 programs) as follows:

28 (1) For an elected official, within 30 days following
29 the election of the elected official and annually thereafter
30 at such dates and times as the director shall determine. It

1 shall be a condition of being sworn in and seated that the
2 elected official shall have completed the training program
3 required by this paragraph.

4 (2) For a newly hired employee, within 30 days following
5 commencement of work by the employee and annually thereafter
6 at such dates and times as the director shall determine. It
7 shall be a condition of continued employment that an employee
8 complete the training program required by this paragraph.

9 (3) For staff of the office, prior to being assigned any
10 work related to a complaint filed under section 2114
11 (relating to complaint and hearing).

12 Section 2. The addition of 46 Pa.C.S. Ch. 21 shall apply to
13 conduct constituting sexual harassment which occurs or is
14 alleged to occur on or after the effective date of this section.

15 Section 3. This act shall take effect in 60 days.