AN ACT

To amend and reenact R.S. 23:302(introductory paragraph) and 332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (F), and (H)(1), (3), and (4) and to enact R.S. 23:302(9) and (10) and 332(I) and (J), relative to employment discrimination; to provide definitions; to provide for intentional discrimination in employment; to provide exceptions for certain entities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:302(introductory paragraph) and 332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (F), and (H)(1), (3), and (4) are hereby amended and reenacted and R.S. 23:302(9) and (10) and 332(I) and (J) are hereby enacted to read as follows:

§302. Definitions

For purposes of this Chapter and unless the context clearly indicates otherwise, the following terms shall have the following meanings ascribed to them:

(9) "Gender identity" means a gender-related identity, appearance, or behavior, regardless of the individual's physiology or designated sex at birth. Gender-related identity may be shown by providing evidence, including but not limited to medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the
gender-related identity is sincerely held as a part of a person's core identity provided, however, that gender-related identity is not asserted for any improper purpose.

(10) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

§332. Intentional discrimination in employment

A. It shall be unlawful discrimination in employment for an employer to engage in any of the following practices:

(1) Intentionally fail or refuse to hire or to discharge any individual, or otherwise to intentionally discriminate against any individual with respect to compensation, or terms, conditions, or privileges of employment, because of the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin.

(2) Intentionally limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin.

B. It shall be unlawful discrimination in employment for an employment agency to intentionally fail or refuse to refer for employment, or otherwise to intentionally discriminate against, any individual because of his race, color, religion, sex, sexual orientation, gender identity, or national origin, or to intentionally classify or refer for employment any individual on the basis of his race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. It shall be unlawful discrimination in employment for a labor organization to engage in any of the following practices:
(1) Intentionally exclude or intentionally expel from its membership, or
otherwise intentionally discriminate against, any individual because of his race,
color, religion, sex, sexual orientation, gender identity, or national origin.

(2) Intentionally limit, segregate, or classify its membership or applicants for
membership, or intentionally classify or fail or refuse to refer for employment any
individual in any way which would deprive or tend to deprive any individual of
employment opportunities, or would limit such employment opportunities, or
otherwise adversely affect his status as an employee or as an applicant for
employment, because of such individual's race, color, religion, sex, sexual
orientation, gender identity, or national origin.

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D. It shall be unlawful discrimination in employment for any employer, labor
organization, or joint labor-management committee controlling apprenticeship or
other training or retraining, including on-the-job training programs, to discriminate
against any individual because of his race, color, religion, sex, sexual orientation,
gender identity, or national origin in admission to, or employment in, any program
established to provide apprenticeship or other training.

E. It shall be unlawful discrimination in employment for an employer,
employment agency, labor organization, or joint labor-management committee
controlling apprenticeship or other training or retraining, including on-the-job
training programs, to print or publish, or cause to be printed or published, any notice
or advertisement relating to employment by an employer or membership in or any
classification or referral for employment by a labor organization, or relating to any
classification or referral for employment by an employer or membership in, or relating to
admission to, or employment in, any program established to provide apprenticeship
or other training by a joint labor-management committee, indicating any preference,
limitation, specification, or discrimination based on race, color, religion, sex, sexual
orientation, gender identity, or national origin. However, a notice or advertisement
may indicate a preference, limitation, specification, or discrimination based on
religion, sex, sexual orientation, gender identity, or national origin when religion,
sex, sexual orientation, gender identity or national origin is a bona fide occupational
qualification for employment.

F. It shall be unlawful discrimination in employment for an insurer to engage
in any of the following practices:

(1) Intentionally fail or refuse to appoint or to discharge any insurance agent,
or otherwise to intentionally discriminate against any insurance agent with respect
to his compensation, terms, conditions, or privileges of employment, because of the
insurance agent's race, color, religion, sex, sexual orientation, gender identity, or
national origin.

(2) Intentionally limit, segregate, or classify his insurance agents or
applicants for an insurance agent in any way which would deprive or tend to deprive
any insurance agent or applicant of employment opportunities, or otherwise
adversely affect his status as an insurance agent or applicant because of the insurance
agent's or applicant's race, color, religion, sex, sexual orientation, gender identity, or
national origin.

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H. Notwithstanding any other provision of this Section, it shall not be
unlawful discrimination in employment for:

(1) An employer to hire and employ employees, for an employment agency
to classify or refer for employment any individual, for a labor organization to
classify its membership or to classify or refer for employment any individual, or for
an employer, labor organization, or joint labor-management committee controlling
apprenticeship or other training or retraining programs to admit or employ any
individual in any such program on the basis of his religion, sex, sexual orientation,
gender identity, or national origin in those certain instances where religion, sex,
sexual orientation, gender identity, or national origin is a bona fide occupational
qualification reasonably necessary for the normal operation of that particular
business or enterprise.

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CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
(3) An employer to apply different standards of compensation or different
terms, conditions, or privileges of employment pursuant to a bona fide seniority or
merit system, or a system which measures earnings by quantity or quality of
production, or any other differential based on any factor other than sex, or to
employees who work in different locations, provided that such differences are not
the result of an intention to discriminate because of race, color, religion, sex, sexual
orientation, gender identity, or national origin.

(4) An employer to give and to act upon the results of any professionally
developed ability test, provided that such test, its administration, or action upon the
results is not designed, intended, or used to discriminate because of race, color,
religion, sex, sexual orientation, gender identity, or national origin.

I. Nothing in this Section shall be interpreted to infringe upon the freedom
of expression, association, or the free exercise of religion protected by the First
Amendment of the United States Constitution and Article I, Section 8 of the
Constitution of Louisiana.

J. The provisions of this Section, relative to discrimination on the basis of
sexual orientation and gender identity, shall not apply to a religious corporation,
association, educational institution or institution of learning, or society that employs
an individual of a particular religion to perform work connected to the performance
of religious activities by the corporation, association, educational institution or
institution of learning, or society.
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 439 Original 2022 Regular Session Boyd

Abstract: Prohibits intentional employment discrimination based on gender identity and sexual orientation.

Present law provides definitions for employee, employer, employment agency, genetic monitoring, genetic services, genetic test, labor organization, and protected genetic information.

Proposed law retains present law and adds definitions for gender identity and sexual orientation.

Present law provides that it shall be unlawful for an employer to discriminate against any individual based on race, color, religion, sex, or national origin.

Proposed law retains present law and adds that it is unlawful for an employer to also discriminate against any individual based on sexual orientation and gender identity.

Present law provides that it shall not be unlawful for an employer to discriminate against any individual based on religion, sex, or national origin in certain instances where religion, sex, or national origin is a bona fide occupational qualification that is reasonably necessary for that particular business or enterprise.

Proposed law retains present law and adds that it is not unlawful under those circumstances for an employer to discriminate against any individual based on sexual orientation and gender identity.

Proposed law provides that no provision of present law or proposed law regarding intentional discrimination in employment shall be interpreted to infringe upon the freedom of expression, association, or the free exercise of religion.

Proposed law exempts religious corporations, associations, educational institutions or in situations of learning or society that employs an individual of a particular religion to perform work connected to a religious activity.

(Amends R.S. 23:302(intro. para.) and 332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (F), and (H)(1), (3), and (4); Adds R.S. 23:302(9) and (10) and 332(I) and (J))