

2022 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVE BOYD

EMPLOYMENT/DISCRIMINATION: Provides relative to employment discrimination based on gender identity and sexual orientation

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

11 §302. Definitions

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

14 \* \* \*

15 (9) "Gender identity" means a gender-related identity, appearance, or  
16 behavior, regardless of the individual's physiology or designated sex at birth.  
17 Gender-related identity may be shown by providing evidence, including but not  
18 limited to medical history, care or treatment of the gender-related identity, consistent  
19 and uniform assertion of the gender-related identity, or any other evidence that the

1 gender-related identity is sincerely held as a part of a person's core identity provided,  
2 however, that gender-related identity is not asserted for any improper purpose.

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

5 \* \* \*

6 §332. Intentional discrimination in employment

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

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

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

19 \* \* \*

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

26 C. It shall be unlawful discrimination in employment for a labor organization  
27 to engage in any of the following practices:

1 (1) Intentionally exclude or intentionally expel from its membership, or  
2 otherwise intentionally discriminate against, any individual because of his race,  
3 color, religion, sex, sexual orientation, gender identity, or national origin.

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

11 \* \* \*

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

18 E. It shall be unlawful discrimination in employment for an employer,  
19 employment agency, labor organization, or joint labor-management committee  
20 controlling apprenticeship or other training or retraining, including on-the-job  
21 training programs, to print or publish, or cause to be printed or published, any notice  
22 or advertisement relating to employment by an employer or membership in or any  
23 classification or referral for employment by a labor organization, or relating to any  
24 classification or referral for employment by an employment agency, or relating to  
25 admission to, or employment in, any program established to provide apprenticeship  
26 or other training by a joint labor-management committee, indicating any preference,  
27 limitation, specification, or discrimination based on race, color, religion, sex, sexual  
28 orientation, gender identity, or national origin. However, a notice or advertisement  
29 may indicate a preference, limitation, specification, or discrimination based on

1 religion, sex, sexual orientation, gender identity, or national origin when religion,  
2 sex, sexual orientation, gender identity or national origin is a bona fide occupational  
3 qualification for employment.

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

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

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

17 \* \* \*

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

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

30 \* \* \*

1           (3) An employer to apply different standards of compensation or different  
2 terms, conditions, or privileges of employment pursuant to a bona fide seniority or  
3 merit system, or a system which measures earnings by quantity or quality of  
4 production, or any other differential based on any factor other than sex, or to  
5 employees who work in different locations, provided that such differences are not  
6 the result of an intention to discriminate because of race, color, religion, sex, sexual  
7 orientation, gender identity, or national origin.

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

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

16           J. The provisions of this Section, relative to discrimination on the basis of  
17 sexual orientation and gender identity, shall not apply to a religious corporation,  
18 association, educational institution or institution of learning, or society that employs  
19 an individual of a particular religion to perform work connected to the performance  
20 of religious activities by the corporation, association, educational institution or  
21 institution of learning, or society.

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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)]

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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))