

2020 Regular Session

SENATE BILL NO. 49

BY SENATOR CARTER

DISCRIMINATION. Enacts the Louisiana Employment Non-Discrimination Act. (8/15/20)

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AN ACT

To amend and reenact R.S. 23:332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (H)(1), (3) and (4), R.S. 37:1025(B), 1107(C), 1360.23(H), 1437(D), 2719, 3425(C), 3447(C), and R.S. 40:1133.1(C), and to enact R.S. 23:302(9) and (10), 332(I) and (J), relative to employment discrimination; to provide definitions; to provide regarding intentional discrimination in employment; to provide exceptions for certain entities; to provide regarding applicants to certain programs; to provide regarding requirements for certain programs; to provide regarding licensure for certain professions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (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:

* * *

1 classify or refer for employment any individual on the basis of his race, color,
2 religion, sex, age, sexual orientation, gender identity, or national origin.

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

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

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

15 * * *

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

22 E. It shall be unlawful discrimination in employment for an employer,
23 employment agency, labor organization, or joint labor-management committee
24 controlling apprenticeship or other training or retraining, including on-the-job
25 training programs, to print or publish, or cause to be printed or published, any notice
26 or advertisement relating to employment by an employer or membership in or any
27 classification or referral for employment by a labor organization, or relating to any
28 classification or referral for employment by an employment agency, or relating to
29 admission to, or employment in, any program established to provide apprenticeship

1 or other training by a joint labor-management committee, indicating any preference,
 2 limitation, specification, or discrimination based on race, color, religion, sex, age,
 3 sexual orientation, gender identity, or national origin. However, a notice or
 4 advertisement may indicate a preference, limitation, specification, or discrimination
 5 based on religion, sex, age, sexual orientation, gender identity, or national origin
 6 when religion, sex, age, sexual orientation, gender identity, or national origin is
 7 a bona fide occupational qualification for employment.

8 * * *

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

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

21 * * *

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

29 (4) An employer to give and to act upon the results of any professionally

1 developed ability test, provided that such test, its administration, or action upon the
2 results is not designed, intended, or used to discriminate because of race, color,
3 religion, sex, **age, sexual orientation, gender identity**, or national origin.

4 **I. Nothing in this Section shall be interpreted to infringe upon the**
5 **freedom of expression, association, or the free exercise of religion protected by**
6 **the First Amendment of the United States Constitution and Article 1, Section**
7 **8 of the Constitution of Louisiana.**

8 **J. The provisions of this Section, relative to discrimination on the basis**
9 **of sexual orientation and gender identity, shall not apply to a religious**
10 **corporation, association, educational institution or institution of learning, or**
11 **society that employs an individual of a particular religion to perform work**
12 **connected to the performance of religious activities by the corporation,**
13 **association, educational institution or institution of learning, or society.**

14 Section 2. R.S. 37:1025(B), 1107(C), 1360.23(H), 1437(D), 2719, 3425(C), and
15 3447(C) are hereby amended and reenacted to read as follows:

16 §1025. Qualifications of applicants to the drug administration course

17 * * *

18 B. There will be no discrimination in selection of medication attendants for
19 reason of race, color, creed, religion, **age, sex, sexual orientation, gender identity,**
20 **disability;** as defined in R.S. 51:2232, or national origin.

21 * * *

22 §1107. Requirements for licensed professional counselor; provisional license;
23 temporary license or temporary provisional license; renewal of
24 license or temporary provisional license

25 * * *

26 C. No license shall be denied any applicant based upon the applicant's race,
27 religion, creed, national origin, sex, ~~or physical impairment;~~ **age, sexual orientation,**
28 **gender identity, disability, or physical impairment.**

29 * * *

1 §1360.23. Powers and duties of the board

2 * * *

3 H. The board shall ensure that applicants for the program shall not be
4 discriminated against due to race, color, creed, age, sex, **sexual orientation, gender**
5 **identity**, disability, as defined in R.S. 51:2232, or national origin.

6 * * *

7 §1437. Application for license

8 * * *

9 D. Every applicant for a license shall submit a sworn statement attesting that
10 he has knowledge of and understands the provisions of the Fair Housing Act of 1968
11 and the Louisiana Equal Housing Opportunity Act, and any amendments thereto or
12 any successor legislation subsequently following, and that the applicant shall not
13 induce or attempt to induce any person to sell or rent any dwelling by representations
14 regarding the entry or prospective entry into an area, subdivision, or neighborhood
15 of a person or persons of a particular race, color, religion, **sex, age, sexual**
16 **orientation, gender identity**, or national origin.

17 * * *

18 §2719. Discrimination

19 No license, certificate, or registration shall be denied any applicant based
20 upon the applicant's race, religion, creed, national origin, sex, **age, sexual**
21 **orientation, gender identity, disability**, or physical impairment so long as the
22 physical impairment does not interfere with the performance of professional duties.

23 * * *

24 §3425. Qualifications for licensure; renewal

25 * * *

26 C. No license shall be denied any applicant based upon the applicant's race,
27 religion, creed, national origin, sex, **age, sexual orientation, gender identity,**
28 **disability**, or physical impairment.

29 * * *

- (1) To intentionally fail or refuse to hire or to discharge any individual or otherwise discriminate against an individual with respect to compensation, or terms, conditions, or privileges of employment because of the individual's race, color, religion, sex, or national origin.
- (2) To intentionally limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, or national origin.

Proposed law retains present law but includes unlawful discrimination based on age, sexual orientation, or gender identity.

Present law prohibits an employment agency from intentionally failing or refusing to refer for employment, or otherwise discriminate against an individual because of race, color, religion, sex, or national origin, or to intentionally classify or refer for employment an individual on the basis of race, color, religion, sex, or national origin.

Proposed law retains present law but includes when the discrimination is based on age, sexual orientation, or gender identity.

Present law makes it unlawful discrimination in employment for a labor organization to engage in any of the following practices:

- (1) To intentionally exclude or intentionally expel from its membership, or otherwise intentionally discriminate against, an individual because of race, color, religion, sex, or national origin.
- (2) To intentionally limit, segregate, or classify its membership or applicants for membership, or intentionally classify or fail or refuse to refer for employment an individual in any way which would deprive or tend to deprive an individual of employment opportunities, or would limit employment opportunities, or otherwise adversely affect their status as an employee or as an applicant for employment, because of race, color, religion, sex, or national origin.

Proposed law retains present law but includes unlawful discrimination based on age, sexual orientation, or gender identity.

Present law prohibits discrimination for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, based on an individual's race, color, religion, sex, or national origin.

Proposed law retains present law but includes unlawful discrimination based on age, sexual orientation, or gender identity.

Present law prohibits discrimination for any 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 employment agency, 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, or national origin. However, a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Proposed law retains present law but includes unlawful discrimination based on age, sexual orientation, or gender identity.

Present law provides that it is not unlawful discrimination under the following situations:

- (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, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise.
- (2) 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, or national origin.
- (3) 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, or national origin.

Proposed law retains present law but includes unlawful discrimination based on age, sexual orientation, or gender identity in each listing.

Proposed law prohibits any interpretation that infringes upon the freedom of expression, association, or the free exercise of religion protected by the First Amendment of the United States Constitution and Article 1, Section 8 of the Constitution of Louisiana.

Proposed law, relative to discrimination on the basis of sexual orientation and gender identity, shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of 42 U.S.C. 2000(e)-1(a) or 2000(e)-2(e) (formerly Section 702(1) or 703(e)(2) of Title VII of the Civil Rights Act of 1964).

Present law provides for qualifications of applicants to participate in a drug administration course to become a medication attendant. Prohibits discrimination in the selection of medication attendants for reason of race, color, creed, religion, disability, or national origin.

Proposed law retains present law but includes discrimination based on age, sex, sexual orientation, or gender identity.

Present law prohibits the denial of a license for a licensed professional counselor based on the applicant's race, religion, creed, national origin, sex, or physical impairment.

Proposed law retains present law but prohibits denial based on the applicant's age, sexual orientation, gender identity, or disability.

Present law requires that the La. State Board of Medical Examiners ensure applicants for a program for physician assistant not be discriminated against due to race, color, creed, age, sex, disability, or national origin.

Proposed law retains present law but prohibits discrimination based on the applicant's sexual

orientation, gender identity, or disability.

Present law requires applicants for licensure by the La. Real Estate Commission to attest to their knowledge of and understanding of the provisions of the Fair Housing Act of 1968 and the Louisiana Equal Housing Opportunity Act, and that the applicant shall not induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into an area, subdivision, or neighborhood of a person or persons of a particular race, color, religion, or national origin.

Proposed law retains present law but adds that the applicant not discriminate based on sex, age, sexual orientation, or gender identity.

Present law provides that no license, certificate or registration be denied by the La. State Board of Social Work Examiners based on race, religion, creed, national origin, sex or physical impairment so long as the physical impairment does not interfere with performance of professional duties.

Proposed law retains present law but adds that the denial also not be based on age, sexual orientation, gender identity, or disability.

Present law provides that no license be denied by the La. State Board of Medical Examiners for licensure as a clinical exercise physiologist based on race, religion, creed, national origin, sex, or physical impairment.

Proposed law retains present law but adds that the denial also not be based on age, sexual orientation, gender identity, or disability.

Present law provides that no license be denied by the La. Licensed Professional Vocational Rehabilitation Counselors Board of Examiners based on race, religion, creed, national origin, sex, or physical impairment.

Proposed law retains present law but adds that the denial also not be based on age, sexual orientation, gender identity, or disability.

Present law requires that the La. Department of Health, bureau of emergency medical services, affirmatively provide that there is no discrimination toward any individual in the licensure process on the basis of race, religion, creed, national origin, sex, or age.

Proposed law retains present law but adds that the denial also not be based on sexual orientation or gender identity.

Effective August 15, 2020.

(Amends R.S. 23:332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (H)(1), (3) and (4), R.S. 37:1025(B), 1107(C), 1360.23(H), 1437(D), 2719, 3425(C), 3447(C), and R.S. 40:1133.1(C); adds R.S. 23:302(9) and (10), and 332(I) and (J))