

2015 Regular Session

HOUSE BILL NO. 197

BY REPRESENTATIVES SHADOIN AND ABRAMSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEYS: Provides with respect to the Judges and Lawyers Assistance Program of the Louisiana State Bar Association

1 AN ACT

2 To amend and reenact R.S. 37:221(A), (B)(1)(introductory paragraph) and (2), and (C)(1)  
3 and (2), relative to the Judges and Lawyers Assistance Program of the Louisiana  
4 State Bar Association; to provide for a statement of public policy; to provide relative  
5 to privilege and confidentiality; to provide relative to civil immunity; and to provide  
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:221(A), (B)(1)(introductory paragraph) and (2), and (C)(1) and  
9 (2) are hereby amended and reenacted to read as follows:

10 §221. Bar Committee on Alcohol and Drug Abuse; Judges and Lawyers Assistance  
11 Program; privilege, confidentiality, and immunity

12 A. Statement of public policy.

13 (1) ~~Alcoholism and drug addiction in the judiciary and among the members~~  
14 ~~of the Louisiana State Bar Association poses serious health and ethical problems for~~  
15 ~~the people of the state of Louisiana. One prominent characteristic of alcoholism and~~  
16 ~~drug addiction is denial, which is the delusion of the alcoholic or drug addict that he~~  
17 ~~or she will be able to control the use of alcohol or drugs. Successful treatment can~~  
18 ~~be initiated only when the delusion of self-control is broken and the alcoholic or drug~~  
19 ~~addict admits the hopelessness of his or her condition. Judges and lawyers are no~~  
20 ~~less susceptible than any other citizen of Louisiana to mental health issues, including~~  
21 ~~but not limited to alcoholism, drug addiction, depression, burnout, and dementia.~~

1 These impairments pose serious health and ethical issues for members of the  
2 Louisiana State Bar Association.

3 (2) ~~The delusion of self-control can be broken, and successful treatment~~  
4 Successful treatment for mental health issues can be initiated years earlier than might  
5 otherwise be possible, by the use of counseling by peers ~~and/or~~ or an intervention  
6 process. ~~Successful treatment~~ Intervention in cases of alcoholism and drug addiction  
7 involves peer counseling and confronting the ~~alcoholic or drug addict~~ person with  
8 specific instances of misconduct or abnormal behavior caused by alcohol or drug  
9 use, as recited to the subject of the intervention by fact reporters such as: family  
10 members, peers, friends, coworkers, employers, or other concerned individuals who  
11 have first-hand knowledge of such incidents and who are acting under the guidance  
12 of a trained intervenor.

13 (3) ~~The Louisiana State Bar Association has recognized the danger to the~~  
14 ~~public of Louisiana arising through substance abuse by its members, the judiciary,~~  
15 ~~prospective attorneys, and law students. In order to combat substance abuse among~~  
16 ~~the judges, lawyers, prospective lawyers and law students of Louisiana,~~ Recognizing  
17 that members of the judiciary and Louisiana State Bar Association have a strong  
18 interest in securing the competent administration of justice for citizens of Louisiana,  
19 and in upholding the dignity and respect of the judicial branch of government and  
20 legal profession, the Louisiana State Bar Association has created the Judges and  
21 Lawyers Assistance Program, Inc., and the Committee on Alcohol and Drug Abuse  
22 for the purpose of providing counseling and ~~intervening with respect to~~ intervention  
23 services for judges, lawyers, law students, and prospective lawyers who may have  
24 ~~alcohol or drug abuse problems~~ other members of the legal profession who may  
25 suffer from mental health issues. Members of the legal profession and the judiciary  
26 are encouraged to seek out the counseling and intervention services of the Judges and  
27 Lawyers Assistance Program, Inc., and shall feel confident that their participation  
28 in the Judges and Lawyers Assistance Program, Inc. will be confidential and  
29 privileged in all respects and shall not be divulged to the public in any way.

1           (4) It is hereby declared to be the public policy of the state of Louisiana to  
2           promote and encourage the use of counseling by peers and the intervention process  
3           in order to initiate successful treatment of ~~alcoholism and drug addiction among the~~  
4           ~~judiciary, members of the Louisiana State Bar Association, law students, and~~  
5           ~~prospective lawyers~~ mental health issues among members of the legal profession.  
6           The intent of this Section is to further this goal by providing for a privilege,  
7           confidentiality of information, and tort immunity for the Louisiana State Bar  
8           Association, the Louisiana State Bar Association's Committee on Alcohol and Drug  
9           Abuse, ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., the Louisiana  
10          Bar Foundation, their officers, directors, agents and employees, and persons who  
11          furnish information and who participate ~~in the counseling and intervention program~~  
12          ~~of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse and~~  
13          ~~Lawyer's Assistance Program, Inc., a nonprofit corporation whose activities are~~  
14          ~~determined by the Committee on Alcohol and Drug Abuse~~ as volunteers in the  
15          programming offered by the Judges and Lawyers Assistance Program, Inc.

16                   B. Privilege and confidentiality.

17           (1) Any information, report, or record, whether written or oral, that the  
18           Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association,  
19           ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., or any member, or  
20           employee, or agent of either generates, receives, gathers, or maintains is confidential  
21           and privileged. No member of the Committee on Alcohol and Drug Abuse, or agent,  
22           or employee of ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., may  
23           disclose that information, report or record without written approval of the subject  
24           judge, lawyer, law student, or ~~prospective lawyer~~ other member of the legal  
25           profession. No person shall be required to disclose, by way of testimony or  
26           otherwise, privileged information or to produce, under subpoena, any records,  
27           documentary evidence, opinions, or decisions relating to such privileged  
28           information:

29                   (a) In connection with any civil or criminal case or proceeding.

1 (b) By way of any discovery procedure.

2 (2) Nothing herein shall prohibit members of the Committee on Alcohol and  
3 Drug Abuse or any employee or agent of ~~Lawyer's~~ the Judges and Lawyers  
4 Assistance Program, Inc., from sharing among themselves information, reports, or  
5 records about a judge, lawyer, law student, or ~~prospective lawyer~~ other member of  
6 the legal profession for the purpose of helping the judge, lawyer, law student, or  
7 ~~prospective lawyer~~ other member of the legal profession recover from problems of  
8 alcohol and/or drug abuse with alcohol, drug abuse, or any other mental health issue.

9 \* \* \*

10 C. Civil immunity.

11 (1) Any licensed lawyer, and his supporting staff, shall be immune from civil  
12 liability for, or resulting from, any act, decision, omission, communication, writing,  
13 report, finding, opinion, or conclusion, done by or made in good faith while engaged  
14 in efforts to assist judges, lawyers, law students, or ~~prospective lawyers~~ other  
15 members of the legal profession in connection with substance abuse or mental health  
16 counseling or intervention pursuant to the programs of the Louisiana State Bar  
17 Association's Committee on Alcohol and Drug Abuse or ~~Lawyer's~~ the Judges and  
18 Lawyers Assistance Program, Inc., or in the performance of his or her duties as a  
19 member or agent of the Committee on Alcohol and Drug Abuse of the Louisiana  
20 State Bar Association or agent or as an agent, employee, or officer or director of  
21 ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., which function primarily  
22 to provide assistance in the form of counseling and intervention for any judge,  
23 lawyer, law student, or ~~prospective lawyer~~ other member of the legal profession  
24 suspected of having an impaired ability to function professionally because of his or  
25 her abuse of the use of alcohol or other drug, or due to any other mental health issue.

26 The Louisiana State Bar Association, its Committee on Alcohol and Drug Abuse, the  
27 Louisiana Bar Foundation, and ~~Lawyer's~~ the Judges and Lawyers Assistance  
28 Program, Inc., and their officers, directors, committees, employees, servants, and

1 agents shall also be immune from civil liability for any acts or omissions made or  
2 done or resulting from any of the following:

3 (a) The program of the Louisiana State Bar Association's Committee on  
4 Alcohol and Drug Abuse or ~~Lawyer's~~ the Judges and Lawyers Assistance Program,  
5 Inc.

6 (b) Any act, decision, omission, communication, writing, report, finding,  
7 opinion, or conclusion of the Committee on Alcohol and Drug Abuse, or ~~Lawyer's~~  
8 the Judges and Lawyers Assistance Program, Inc., or any of their members, agents,  
9 or employees.

10 (c) The establishment of programs or activities of such committee or  
11 corporation or the Louisiana Bar Foundation.

12 (2) A person who in good faith reports information or takes action in  
13 connection with any program of the Committee on Alcohol and Drug Abuse or  
14 ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc. is immune from civil  
15 liability for reporting information or taking any action set forth in Paragraph ~~€(1)~~  
16 (C)(1) or participating therein and in particular any counseling or intervention effort  
17 under the auspices of the Committee on Alcohol and Drug Abuse or ~~Lawyer's~~ the  
18 Judges and Lawyers Assistance Program, Inc. This immunity shall not protect a  
19 person who makes a report known to be false, or with reckless disregard for the truth.

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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 197 Engrossed                      2015 Regular Session                      Shadoin

**Abstract:** Provides a restatement of the public purpose and renames the Lawyer's Assistance Program, Inc., as the Judges and Lawyers Assistance Program, Inc., and extends the purpose, privileges, and immunities of the program to include mental health issues.

Present law provides for the Lawyer's Assistance Program to encourage the successful treatment of alcoholism and drug addiction among the judiciary, members of the La. State Bar Association, law students, and prospective law students.

Proposed law changes the name of the Lawyer's Assistance Program, Inc., to the Judges and Lawyers Assistance Program, Inc. and expands the directive of the program to include counseling and intervention services for judges, lawyers, law students, and other members of the legal profession who may suffer from mental health issues.

Present law provides that any information, report, or record that the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association, Lawyer's Assistance Program, Inc., or any member, or employee, or agent of either generates or gathers is confidential and privileged, and that no member of the Committee on Alcohol and Drug Abuse, or agent, or employee of Lawyer's Assistance Program, Inc., may disclose that information, report or record without written approval of the subject judge, lawyer, law student, or prospective lawyer.

Present law provides immunity from liability for any licensed lawyer, and his supporting staff, resulting from any act made in good faith while engaged in efforts to assist judges, lawyers, law students, or prospective lawyers in connection with substance abuse counseling or intervention pursuant to the programs of the Louisiana State Bar Association.

Proposed law extends the application of these privileges and immunities to the Judges and Lawyers Assistance Program, Inc., to also include mental health issues.

(Amends R.S. 37:221(A), (B)(1)(intro. para.) and (2), and (C)(1) and (2))