

2022 Regular Session

SENATE BILL NO. 92

BY SENATOR CATHEY

DISCRIMINATION. Prohibits employers from discriminating against employees due to their medical history. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 23:368(A) through (D), the introductory paragraph of (E)(1), the
3 introductory paragraph of (E)(2), and (E)(2)(b) and (c) and to enact R.S. 23:302(9),
4 relative to prohibited discrimination in employment; to prohibit discrimination in
5 employment based on medical information or history; to provide relative to the
6 collection of medical data; to provide relative to exemptions; to provide relative to
7 definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:368(A) through (D), the introductory paragraph of (E)(1), the
10 introductory paragraph of (E)(2), and (E)(2)(b) and (c) are hereby amended and
11 reenacted and R.S. 23:302(9) is hereby enacted to read as follows:

12 §302. Definitions

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

15 * * *

16 **(9) "Protected medical information" means information about an**
17 **individual's medical and mental history, including any psychiatric or**

1 **employment agency.**

2 (46) Disclose, **require, or solicit** protected genetic **or medical** information
3 with respect to an employee, or information about a request for or the receipt of
4 genetic services **or medical information** by an employee except:

5 (a) To the employee who is the subject of the information, at his or her
6 request.

7 (b) To an occupational or other health researcher, if the research conducted
8 complies with the regulations and protections provided for under Part 46 of Title 45,
9 of the Code of Federal Regulations.

10 (c) If required by a federal or state statute, legislative subpoena, or an order
11 issued by a court of competent jurisdiction, except that if the subpoena or court order
12 was secured without the knowledge of the individual to whom the information refers,
13 the employer shall provide the individual with adequate notice to challenge the
14 subpoena or court order, unless the subpoena or court order also imposes
15 confidentiality requirements.

16 (d) To executive branch officials investigating compliance with this order,
17 if the information is relevant to the investigation.

18 (57) Maintain protected genetic **or medical** information or information about
19 a request for or the receipt of genetic **or medical** services in general personnel files;
20 such information shall be treated as confidential medical records and kept separate
21 from personnel files.

22 **(8) Intentionally or negligently solicit, receive, or disclose an employee's**
23 **medical information.**

24 **(9) Create, assemble, or maintain any form of an employee's protected**
25 **medical information.**

26 C. Specifically, a labor organization shall not engage in any of the following
27 practices:

28 (1) Exclude or expel from membership, or otherwise discriminate against, an
29 otherwise qualified member or applicant for membership on the basis of protected

1 genetic **or medical** information.

2 (2) Limit, segregate, or classify membership, or applicants for membership,
3 or classify or fail or refuse to refer for employment an otherwise qualified person in
4 a way which would deprive or tend to deprive him of employment opportunities, or
5 which would limit employment opportunities or otherwise adversely affect his status
6 as an employee or as an applicant for employment, on the basis of protected genetic
7 **or medical** information.

8 D. An employer, labor organization, or joint labor management committee
9 controlling apprenticeship, on-the-job training, or other training programs shall not
10 engage in any of the following practices:

11 (1) Discriminate against an otherwise qualified person based on protected
12 genetic **or medical** information.

13 (2) Print, publish, or cause to be printed or published a notice or
14 advertisement relating to employment, indicating a preference, limitation,
15 specification, or discrimination, based on protected genetic **or medical** information.

16 E. The following exceptions shall apply to the nondiscrimination
17 requirements:

18 (1) An employer, labor organization, or employment agency may request or
19 require protected genetic **or medical** information with respect to an applicant who
20 has been given a conditional offer of employment or to an employee if:

21 (a) The information obtained is to be used exclusively to assess whether
22 further medical evaluation is needed to diagnose a current disease, or medical
23 condition or disorder;

24 (b) Such current disease, or medical condition or disorder could prevent the
25 applicant or employee from performing the essential functions of the position held
26 or desired; and

27 (c) The information will not be disclosed to persons other than medical
28 personnel involved in or responsible for assessing whether further medical evaluation
29 is needed to diagnose a current disease, or medical condition or disorder.

1 (2) For therapeutic purposes only, an employer, labor organization, or
2 employment agency may request, collect, or purchase protected genetic **or medical**
3 information with respect to an employee, or any information about a request for or
4 receipt of genetic **or medical** services by such employee if:

5 * * *

6 (b) The employee who uses the genetic or health care services has provided
7 prior knowing, voluntary, and written authorization to the employer to collect
8 protected genetic **or medical** information.

9 (c) The person who performs the genetic or health care services does not
10 disclose protected genetic **or medical** information to anyone except to the employee
11 who uses the services for treatment of the individual; for program evaluation or
12 assessment; for compiling and analyzing information in anticipation of or for use in
13 a civil or criminal legal proceeding; or for payment or accounting purposes, to verify
14 that the service was performed, but in such cases the genetic **or medical** information
15 itself cannot be disclosed.

16 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka Butler.

SB 92 Original DIGEST 2022 Regular Session Cathey

Present law provides definitions relative to prohibited employment discrimination.

Proposed law retains present law and defines the term "protected medical information".

Present law protects qualified persons from employment discrimination on the basis of protected genetic information and prohibits employers, labor organizations, and employment agencies from engaging in certain discriminatory practices in the workplace.

Proposed law retains present law and further forbids discrimination against qualified persons on the basis of protected medical information.

Present law provides certain exceptions to the nondiscrimination requirements by allowing employers, labor organizations, or employment agencies to request or require protected genetic information with respect to applicants who have been given a conditional offer of employment or to employees if the information obtained is to be used exclusively to assess whether further medical evaluations are needed to diagnose a current disease or medical condition or disorder.

Proposed law retains present law and adds protected medical information to the list of

nondiscrimination requirement exceptions.

Effective August 1, 2022.

(Amends R.S. 23:368(A) - (D), (E)(1)(intro para), and (E)(2)(intro para), and (E)(2)(b) and (c); adds R.S. 23:302(9))