

2020 Regular Session

HOUSE BILL NO. 238

BY REPRESENTATIVE DUPLESSIS

DISCRIMINATION: Enacts the Louisiana Employment Non-Discrimination Act

1 AN ACT

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

9 Be it enacted by the Legislature of Louisiana:

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

13 §302. Definitions

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

16 * * *

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

1 consistent and uniform assertion of the gender-related identity, or any other evidence
2 that the gender-related identity is sincerely held as a part of a person's core identity
3 provided, however, that gender-related identity shall not be asserted for any improper
4 purpose.

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

7 * * *

8 §332. Intentional discrimination in employment

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

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

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

21 * * *

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

28 C. It shall be unlawful discrimination in employment for a labor organization
29 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, age, 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, age, 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, age, sexual
16 orientation, gender identity, or national origin in admission to, or employment in,
17 any program 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, age,
28 sexual orientation, gender identity, or national origin. However, a notice or
29 advertisement may indicate a preference, limitation, specification, or discrimination

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

4 * * *

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

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

17 * * *

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

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

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

4 * * *

5 §1437. Application for license

6 * * *

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

15 * * *

16 §2719. Discrimination

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

21 * * *

22 §3425. Qualifications for licensure; renewal

23 * * *

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

27 * * *

1 §3447. Requirements for licensed professional vocational counselor; renewal of
2 license

3 * * *

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

7 Section 3. R.S. 40:1133.1(C) is hereby amended and reenacted to read as follows:

8 §1133.1. Emergency medical personnel training; licensure

9 * * *

10 C. The bureau shall affirmatively provide that there is no discrimination
11 toward any individual in the licensure process on the basis of race, religion, creed,
12 national origin, sex, sexual orientation, gender identity, or age.

13 Section 4. This Act shall be known as and may be cited as the "Louisiana
14 Employment Non-Discrimination Act" or "LEND A".

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 238 Original

2020 Regular Session

Duplessis

Abstract: Provides requirements for discrimination in employment and creates the Louisiana Employment Non-Discrimination Act (LEND A).

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 sexual orientation and gender identity.

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 age, 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 age, sexual orientation, and gender identity.

Present law provides for the prohibition of discrimination in selection of medication attendants based on race, color, creed, religion, disability, or national origin.

Proposed law retains present law and prohibits discrimination based on age, sex, sexual orientation, and gender identity.

Present law provides that application for licensure shall not be denied based on race, religion, creed, national origin, sex, or physical impairment.

Proposed law retains present law to add no application for licensure shall be denied for age, sexual orientation, gender identity, or disability.

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.

Proposed law provides that proposed law shall be called the "Louisiana Employment Non-Discrimination Act" or "LENDA".

(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))