

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 reenacted  
11 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 psychological treatment or counseling, any medication or immunization history,  
2 or any medical procedures or medical diagnoses.

3 \* \* \*

4 PART VII. GENETIC OR MEDICAL INFORMATION AND PRIVACY

5 §368. Prohibition of genetic or medical information discrimination in the  
6 workplace; privacy

7 A. No otherwise qualified person shall, on the basis of protected genetic or  
8 medical information, be subjected to discrimination in employment.

9 B. An employer, labor organization, or employment agency shall not engage  
10 in any of the following practices:

11 (1) Discharge, fail or refuse to hire, or otherwise discriminate against any  
12 employee with respect to the compensation, terms, conditions, or privileges of  
13 employment of that employee, because of protected genetic or medical information  
14 with respect to the employee, or because of information about a request for or the  
15 receipt of genetic or medical services by such employee.

16 (2) Limit, segregate, or classify employees in any way that would deprive or  
17 tend to deprive any employee of employment opportunities or otherwise adversely  
18 affect that employee's status, because of protected genetic or medical information  
19 with respect to the employee or because of information about a request for or the  
20 receipt of genetic or medical services by such employee.

21 (3) Require, collect, or purchase protected genetic or medical information  
22 with respect to an employee, or information about a request for or the receipt of  
23 genetic or medical services by such employee.

24 (4) Discharge, fail or refuse to hire, set as a prerequisite to hiring, or  
25 otherwise discriminate against an employee with respect to the employee's  
26 acceptance or rejection of any medical procedure or treatment plan.

27 (5) Require medical testing in any form as a prerequisite to hiring,  
28 continued employment, or qualification for promotion unless such periodical  
29 medical testing is a known requirement of the employer, labor organization, 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.



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))