SLS 22RS-132 **ENGROSSED**

2022 Regular Session

SENATE BILL NO. 92

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BY SENATOR CATHEY

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

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 on
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

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medical testing is a known requirement of the employer, labor organization, or

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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 <u>or medical</u> information or information about
19	a request for or the receipt of genetic <u>or medical</u> 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:

(1) Exclude or expel from membership, or otherwise discriminate against, an

otherwise qualified member or applicant for membership on the basis of protected

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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

is needed to diagnose a current disease, or medical condition or disorder.

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(c) The information will not be disclosed to persons other than medical

personnel involved in or responsible for assessing whether further medical evaluation

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 (b) The employee who uses the genetic or health care services has provided 6 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 assessment; for compiling and analyzing information in anticipation of or for use in 12 13 a civil or criminal legal proceeding; or for payment or accounting purposes, to verify that the service was performed, but in such cases the genetic **or medical** information 14 itself cannot be disclosed. 15 16

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

DIGEST 2022 Regular Session

SB 92 Engrossed

Cathey

Present law provides definitions relative to prohibited employment discrimination.

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

<u>Present law</u> 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.

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

<u>Present law</u> 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))