

2023 Regular Session

HOUSE BILL NO. 40

BY REPRESENTATIVE BOYD

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

EMPLOYMENT/DISCRIMINATION: Provides relative to employment discrimination based on gender identity and sexual orientation

1 AN ACT

2 To amend and reenact R.S. 23:302(introductory paragraph) and 332(A)(1) and (2), (B),
3 (C)(1) and (2), (D), (E), (F), (H)(1), (3), and (4), and (I) and to enact R.S. 23:302(9)
4 and (10) and 332(J) and (K), relative to employment discrimination; to provide
5 definitions; to provide for intentional discrimination in employment; to provide
6 exceptions for certain entities; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

11 §302. Definitions

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

14 * * *

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

1 gender-related identity is sincerely held as a part of a person's core identity provided,
2 however, that gender-related identity is not asserted for any improper purpose.

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

5 * * *

6 §332. Intentional discrimination in employment

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

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

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

19 * * *

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

27 C. It shall be unlawful discrimination in employment for a labor organization
28 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, sexual orientation, gender identity, national origin, or natural,
4 protective, or cultural hairstyle.

5 (2) Intentionally limit, segregate, or classify its membership or applicants for
6 membership, or intentionally classify or fail or refuse to refer for employment any
7 individual in any way which would deprive or tend to deprive any individual of
8 employment opportunities, or would limit such employment opportunities, or
9 otherwise adversely affect his status as an employee or as an applicant for
10 employment, because of such individual's race, color, religion, sex, sexual
11 orientation, gender identity, national origin, or natural, protective, or cultural
12 hairstyle.

13 * * *

14 D. It shall be unlawful discrimination in employment for any employer, labor
15 organization, or joint labor-management committee controlling apprenticeship or
16 other training or retraining, including on-the-job training programs, to discriminate
17 against any individual because of his race, color, religion, sex, sexual orientation,
18 gender identity, national origin, or natural, protective, or cultural hairstyle in
19 admission to, or employment in, any program established to provide apprenticeship
20 or other training.

21 E. It shall be unlawful discrimination in employment for an employer,
22 employment agency, labor organization, or joint labor-management committee
23 controlling apprenticeship or other training or retraining, including on-the-job
24 training programs, to print or publish, or cause to be printed or published, any notice
25 or advertisement relating to employment by an employer or membership in or any
26 classification or referral for employment by a labor organization, or relating to any
27 classification or referral for employment by an employment agency, or relating to
28 admission to, or employment in, any program established to provide apprenticeship
29 or other training by a joint labor-management committee, indicating any preference,

1 limitation, specification, or discrimination based on race, color, religion, sex, sexual
2 orientation, gender identity, national origin, or natural, protective, or cultural
3 hairstyle. However, a notice or advertisement may indicate a preference, limitation,
4 specification, or discrimination based on religion, sex, sexual orientation, gender
5 identity, or national origin when religion, sex, sexual orientation, gender identity, or
6 national origin is a bona fide occupational qualification for employment.

7 F. It shall be unlawful discrimination in employment for an insurer to engage
8 in any of the following practices:

9 (1) Intentionally fail or refuse to appoint or to discharge any insurance agent,
10 or otherwise to intentionally discriminate against any insurance agent with respect
11 to his compensation, terms, conditions, or privileges of employment, because of the
12 insurance agent's race, color, religion, sex, sexual orientation, gender identity,
13 national origin, or natural, protective, or cultural hairstyle.

14 (2) Intentionally limit, segregate, or classify his insurance agents or
15 applicants for an insurance agent in any way which would deprive or tend to deprive
16 any insurance agent or applicant of employment opportunities, or otherwise
17 adversely affect his status as an insurance agent or applicant because of the insurance
18 agent's or applicant's race, color, religion, sex, sexual orientation, gender identity,
19 national origin, or natural, protective, or cultural hairstyle.

20 * * *

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

23 (1) An employer to hire and employ employees, for an employment agency
24 to classify or refer for employment any individual, for a labor organization to
25 classify its membership or to classify or refer for employment any individual, or for
26 an employer, labor organization, or joint labor-management committee controlling
27 apprenticeship or other training or retraining programs to admit or employ any
28 individual in any such program on the basis of his religion, sex, sexual orientation,
29 gender identity, or national origin in those certain instances where religion, sex,

1 sexual orientation, gender identity, or national origin is a bona fide occupational
2 qualification reasonably necessary for the normal operation of that particular
3 business or enterprise.

4 * * *

5 (3) An employer to apply different standards of compensation or different
6 terms, conditions, or privileges of employment pursuant to a bona fide seniority or
7 merit system, or a system which measures earnings by quantity or quality of
8 production, or any other differential based on any factor other than sex, or to
9 employees who work in different locations, provided that such differences are not
10 the result of an intention to discriminate because of race, color, religion, sex, sexual
11 orientation, gender identity, national origin, or natural, protective, or cultural
12 hairstyle.

13 (4) An employer to give and to act upon the results of any professionally
14 developed ability test, provided that such test, its administration, or action upon the
15 results is not designed, intended, or used to discriminate because of race, color,
16 religion, sex, sexual orientation, gender identity, national origin, or natural,
17 protective, or cultural hairstyle.

18 I. Nothing in this Section shall be interpreted to infringe upon the freedom
19 of expression, association, or the free exercise of religion protected by the First
20 Amendment of the United States Constitution and Article I, Section 8 of the
21 Constitution of Louisiana.

22 J. The provisions of this Section, relative to discrimination on the basis of
23 sexual orientation and gender identity, shall not apply to a religious corporation,
24 association, educational institution or institution of learning, or society that employs
25 an individual of a particular religion to perform work connected to the performance
26 of religious activities by the corporation, association, educational institution or
27 institution of learning, or society.

1 ~~¶~~ K. "Natural, protective, or cultural hairstyle" shall include but is not
 2 limited to afros, dreadlocks, twists, locs, braids, cornrow braids, Bantu knots, curls,
 3 and hair styled to protect hair texture or for cultural significance.

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 40 Original

2023 Regular Session

Boyd

Abstract: Prohibits intentional employment discrimination based on gender identity and sexual orientation.

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 gender identity and sexual orientation.

Present law provides that it shall be unlawful for an employer to discriminate against any individual based on race, color, religion, sex, national origin, or natural, protective, or cultural hairstyle.

Proposed law retains present law and adds that it is unlawful for an employer to also discriminate against any individual based on sexual orientation and gender identity.

Present law provides that it shall be unlawful for a labor organization to discriminate against any member or applicants for membership based on race, color, religion, sex, national origin, or natural, protective, or cultural hairstyle.

Proposed law retains present law and adds that it is unlawful for a labor organization to also discriminate against any individual based on 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 sexual orientation and gender identity.

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 institutions of learning, or societies that employ an individual of a particular religion to perform work connected to a religious activity.

(Amends R.S. 23:302(intro. para.) and 332(A)(1) and (2), (B), (C)(1) and (2), (D), (E), (F), (H)(1), (3), and (4), and (I); Adds R.S. 23:302(9) and (10) and 332(J) and (K))