

2015 Regular Session

HOUSE BILL NO. 197

BY REPRESENTATIVE SHADOIN

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

ATTORNEYS: Provides with respect to the Judges and Lawyers Assistance Program of the Louisiana State Bar Association

1 AN ACT

2 To amend and reenact R.S. 37:221(A), (B)(1)(introductory paragraph) and (2), and (C)(1)
3 and (2), relative to the Judges and Lawyers Assistance Program of the Louisiana
4 State Bar Association; to provide for a statement of public policy; to provide relative
5 to privilege and confidentiality; to provide relative to civil immunity; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:221(A), (B)(1)(introductory paragraph) and (2), and (C)(1) and
9 (2) are hereby amended and reenacted to read as follows:

10 §221. Bar Committee on Alcohol and Drug Abuse; Judges and Lawyers Assistance
11 Program; privilege, confidentiality, and immunity

12 A. Statement of public policy.

13 (1) ~~Alcoholism and drug addiction in the judiciary and among the members~~
14 ~~of the Louisiana State Bar Association poses serious health and ethical problems for~~
15 ~~the people of the state of Louisiana. One prominent characteristic of alcoholism and~~
16 ~~drug addiction is denial, which is the delusion of the alcoholic or drug addict that he~~
17 ~~or she will be able to control the use of alcohol or drugs. Successful treatment can~~
18 ~~be initiated only when the delusion of self-control is broken and the alcoholic or drug~~
19 ~~addict admits the hopelessness of his or her condition. Judges and lawyers are no~~
20 ~~less susceptible than any other citizen of Louisiana to mental health issues, including~~
21 ~~but not limited to alcoholism, drug addiction, depression, burnout, and dementia.~~

1 These impairments pose serious health and ethical issues for members of the
2 Louisiana State Bar Association.

3 (2) ~~The delusion of self-control can be broken, and successful treatment~~
4 Successful treatment for mental health issues can be initiated years earlier than might
5 otherwise be possible, by the use of counseling by peers ~~and/or~~ or an intervention
6 process. ~~Successful treatment~~ Intervention in cases of alcoholism and drug addiction
7 involves peer counseling and confronting the ~~alcoholic or drug addict~~ person with
8 specific instances of misconduct or abnormal behavior caused by alcohol or drug
9 use, as recited to the subject of the intervention by fact reporters such as: family
10 members, peers, friends, coworkers, employers, or other concerned individuals who
11 have first-hand knowledge of such incidents and who are acting under the guidance
12 of a trained intervenor.

13 (3) ~~The Louisiana State Bar Association has recognized the danger to the~~
14 ~~public of Louisiana arising through substance abuse by its members, the judiciary,~~
15 ~~prospective attorneys, and law students. In order to combat substance abuse among~~
16 ~~the judges, lawyers, prospective lawyers and law students of Louisiana,~~ Recognizing
17 that members of the judiciary and Louisiana State Bar Association have a strong
18 interest in securing the competent administration of justice for citizens of Louisiana,
19 and in upholding the dignity and respect of the judicial branch of government and
20 legal profession, the Louisiana State Bar Association has created the Judges and
21 Lawyers Assistance Program, Inc., and the Committee on Alcohol and Drug Abuse
22 for the purpose of providing counseling and ~~intervening with respect to~~ intervention
23 services for judges, lawyers, law students, and prospective lawyers who may have
24 ~~alcohol or drug abuse problems~~ other members of the legal profession who may
25 suffer from mental health issues. Members of the legal profession and the judiciary
26 are encouraged to seek out the counseling and intervention services of the Judges and
27 Lawyers Assistance Program, Inc., and shall feel confident that their participation
28 in the Judges and Lawyers Assistance Program, Inc. will be confidential and
29 privileged in all respects and shall not be divulged to the public in any way.

1 (4) It is hereby declared to be the public policy of the state of Louisiana to
2 promote and encourage the use of counseling by peers and the intervention process
3 in order to initiate successful treatment of ~~alcoholism and drug addiction among the~~
4 ~~judiciary, members of the Louisiana State Bar Association, law students, and~~
5 ~~prospective lawyers~~ mental health issues among members of the legal profession.
6 The intent of this Section is to further this goal by providing for a privilege,
7 confidentiality of information, and tort immunity for the Louisiana State Bar
8 Association, the Louisiana State Bar Association's Committee on Alcohol and Drug
9 Abuse, ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., the Louisiana
10 Bar Foundation, their officers, directors, agents and employees, and persons who
11 furnish information and who participate ~~in the counseling and intervention program~~
12 ~~of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse and~~
13 ~~Lawyer's Assistance Program, Inc., a nonprofit corporation whose activities are~~
14 ~~determined by the Committee on Alcohol and Drug Abuse~~ as volunteers in the
15 programming offered by the Judges and Lawyers Assistance Program, Inc.

16 B. Privilege and confidentiality.

17 (1) Any information, report, or record, whether written or oral, that the
18 Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association,
19 ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., or any member, or
20 employee, or agent of either generates, receives, gathers, or maintains is confidential
21 and privileged. No member of the Committee on Alcohol and Drug Abuse, or agent,
22 or employee of ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., may
23 disclose that information, report or record without written approval of the subject
24 judge, lawyer, law student, or ~~prospective lawyer~~ other member of the legal
25 profession. No person shall be required to disclose, by way of testimony or
26 otherwise, privileged information or to produce, under subpoena, any records,
27 documentary evidence, opinions, or decisions relating to such privileged
28 information:

29 (a) In connection with any civil or criminal case or proceeding.

1 (b) By way of any discovery procedure.

2 (2) Nothing herein shall prohibit members of the Committee on Alcohol and
3 Drug Abuse or any employee or agent of ~~Lawyer's~~ the Judges and Lawyers
4 Assistance Program, Inc., from sharing among themselves information, reports, or
5 records about a judge, lawyer, law student, or ~~prospective lawyer~~ other member of
6 the legal profession for the purpose of helping the judge, lawyer, law student, or
7 ~~prospective lawyer~~ other member of the legal profession recover from problems of
8 alcohol and/or drug abuse with alcohol, drug abuse, or any other mental health issue.

9 * * *

10 C. Civil immunity.

11 (1) Any licensed lawyer, and his supporting staff, shall be immune from civil
12 liability for, or resulting from, any act, decision, omission, communication, writing,
13 report, finding, opinion, or conclusion, done by or made in good faith while engaged
14 in efforts to assist judges, lawyers, law students, or ~~prospective lawyers~~ other
15 members of the legal profession in connection with substance abuse or mental health
16 counseling or intervention pursuant to the programs of the Louisiana State Bar
17 Association's Committee on Alcohol and Drug Abuse or ~~Lawyer's~~ the Judges and
18 Lawyers Assistance Program, Inc., or in the performance of his or her duties as a
19 member or agent of the Committee on Alcohol and Drug Abuse of the Louisiana
20 State Bar Association or agent or as an agent, employee, or officer or director of
21 ~~Lawyer's~~ the Judges and Lawyers Assistance Program, Inc., which function primarily
22 to provide assistance in the form of counseling and intervention for any judge,
23 lawyer, law student, or ~~prospective lawyer~~ other member of the legal profession
24 suspected of having an impaired ability to function professionally because of his or
25 her abuse of the use of alcohol or other drug, or due to any other mental health issue.

26 The Louisiana State Bar Association, its Committee on Alcohol and Drug Abuse, the
27 Louisiana Bar Foundation, and ~~Lawyer's~~ the Judges and Lawyers Assistance
28 Program, Inc., and their officers, directors, committees, employees, servants, and

Proposed law changes the name of the Lawyer's Assistance Program, Inc., to the Judges and Lawyers Assistance Program, Inc. and expands the directive of the program to include counseling and intervention services for judges, lawyers, law students, and other members of the legal profession who may suffer from mental health issues.

Present law provides that any information, report, or record that the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association, Lawyer's Assistance Program, Inc., or any member, or employee, or agent of either generates or gathers is confidential and privileged, and that no member of the Committee on Alcohol and Drug Abuse, or agent, or employee of Lawyer's Assistance Program, Inc., may disclose that information, report or record without written approval of the subject judge, lawyer, law student, or prospective lawyer.

Present law provides immunity from liability for any licensed lawyer, and his supporting staff, resulting from any act made in good faith while engaged in efforts to assist judges, lawyers, law students, or prospective lawyers in connection with substance abuse counseling or intervention pursuant to the programs of the Louisiana State Bar Association.

Proposed law extends the application of these privileges and immunities to the Judges and Lawyers Assistance Program, Inc., to also include mental health issues.

(Amends R.S. 37:221(A), (B)(1)(intro. para.) and (2), and (C)(1) and (2))