

2017 Regular Session

SENATE BILL NO. 35

BY SENATOR COLOMB

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

CONTROL DANGER SUBSTANCE. Provides exemptions from arrest and prosecution to persons lawfully in possession of medical marijuana. (gov sig)

AN ACT

To amend and reenact R.S. 40:966(I), relative to the Uniform Controlled Dangerous Substances Law; to provide exemptions from arrest and prosecution under the Uniform Controlled Dangerous Substances Law to persons and other entities lawfully in possession of medical marijuana; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:966(I) is hereby amended and reenacted to read as follows:

§966. Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana, possession of synthetic cannabinoids, possession of heroin

* * *

I. Immunity from prosecution. **(1)** Any person who is a patient of the state-sponsored medical marijuana program in Louisiana, and ~~who~~ possesses medical marijuana in a form permissible under R.S. 40:1046 for a condition enumerated therein, a caregiver as defined in R.S. 15:1503, or any person who is a domiciliary parent of a minor child who possesses medical marijuana on behalf of his minor child in a form permissible under R.S. 40:1046 for a condition enumerated therein

1 pursuant to a legitimate medical marijuana prescription or recommendation **issued**
2 **by a physician licensed by and in good standing with the Louisiana State Board**
3 **of Medical Examiners**, shall ~~not be subject to prosecution for possession or~~
4 ~~distribution of marijuana under~~ **be exempt from the provisions of** this Section for
5 ~~possessing medical marijuana or dispensing medical marijuana to his minor child~~
6 ~~who is a patient of the state-sponsored medical marijuana program. This defense~~
7 ~~must be raised in accordance with R.S. 40:991, and the defendant bears the burden~~
8 ~~of proof of establishing that the possession or distribution of the marijuana was in~~
9 ~~accordance with the state-sponsored medical marijuana program. **This Paragraph**~~
10 **shall not prevent the arrest or prosecution of any person for diversion of**
11 **marijuana or any of its derivatives or other conduct outside the scope of the**
12 **state-sponsored medical marijuana program.**

13 **(2) Any pharmacy licensed to dispense marijuana pursuant to R.S.**
14 **40:1046, and any employee, board member, director, or agent of a pharmacy**
15 **licensed to dispense marijuana pursuant to R.S. 40:1046, shall be exempt from**
16 **the provisions of this Section for possession of marijuana at a location**
17 **designated by the Louisiana Board of Pharmacy rules and regulations, or**
18 **distribution of marijuana in a form approved by the Louisiana Board of**
19 **Pharmacy to a patient with a valid recommendation or prescription, in the**
20 **state-sponsored medical marijuana program. This Paragraph shall not prevent**
21 **the arrest or prosecution of any person for diversion of marijuana or any of its**
22 **derivatives or other conduct outside the scope of the state-sponsored medical**
23 **marijuana program or for violations of Louisiana Board of Pharmacy rules and**
24 **regulations.**

25 **(3) Any licensee or its subordinate contractor licensed by the Department**
26 **of Agriculture and Forestry to produce marijuana pursuant to R.S. 40:1046,**
27 **and any employee, board member, director, or agent of a marijuana licensee or**
28 **its subordinate contractor licensed pursuant to R.S. 40:1046, shall be exempt**
29 **from prosecution under this Section for possession, production, or manufacture**

1 of marijuana at the production facility designated by the Department of
2 Agriculture and Forestry or for the transportation of marijuana or any of its
3 derivatives in accordance with the Department of Agriculture and Forestry
4 rules and regulations. This Paragraph shall not prevent the arrest or
5 prosecution of any person for diversion of marijuana from the production
6 facility designated by the Department of Agriculture and Forestry outside the
7 scope of the state-sponsored medical marijuana program or for violations of
8 Department of Agriculture and Forestry rules and regulations.

9 (4) Any laboratory that tests marijuana or marijuana preparations
10 produced and distributed under the state-sponsored medical marijuana
11 program, and any employee, board member, director, or agent of a testing
12 laboratory pursuant to R.S. 40:1046, shall be exempt from prosecution under
13 this Section for possession of marijuana or any of its derivatives at a research
14 laboratory designated by the Louisiana Board of Pharmacy or for
15 transportation of marijuana or any of its derivatives in accordance with
16 Louisiana Board of Pharmacy rules and regulations. This Paragraph shall not
17 prevent the arrest or prosecution of any person for diversion of marijuana from
18 a research laboratory designated by the Louisiana Board of Pharmacy or other
19 conduct outside the scope of the state-sponsored medical marijuana program
20 or for violations of Board of Pharmacy rules and regulations.

21 (5) Any person conducting research as the licensee pursuant to R.S.
22 40:1046 and any employee, board member, director, agent, or any person
23 conducting research in partnership with the licensee shall be exempt from
24 prosecution under this Section for the possession, production, or manufacture
25 of marijuana or any of its derivatives at the production facility designated by
26 the Department of Agriculture and Forestry or for the transportation of
27 marijuana or any of its derivatives in accordance with Department of
28 Agriculture and Forestry rules and regulations. This Paragraph shall not
29 prevent the arrest or prosecution of any person for diversion of marijuana or

1 any of its derivatives from the production facility designated by the Department
2 of Agriculture and Forestry or other conduct outside the scope of the
3 state-sponsored medical marijuana program or for violations of Department of
4 Agriculture and Forestry rules and regulations.

5 (6)(a) The defenses in Paragraph (1) of this Subsection shall be raised by
6 reproducing a patient's medical records that have been created by his attending
7 physician, that contain the recommendation to possess marijuana for
8 therapeutic use in a form permissible under R.S. 40:1046.

9 (b) Notwithstanding any other provision of law to the contrary, except
10 when the person to be arrested has committed a felony, although not in the
11 presence of the officer, no peace officer may arrest any employee, board
12 member, director, or agent during the course and scope of his employment with
13 the following, pursuant to R.S. 40:1046:

14 (i) A pharmacy licensed to dispense marijuana for therapeutic use.

15 (ii) A licensee of marijuana for therapeutic use or its subordinate
16 licensed contractor.

17 (iii) A testing laboratory of marijuana for therapeutic use, authorized to
18 do business.

19 (iv) A licensed researcher of marijuana for therapeutic use, performing
20 his official duties.

21 (c) The defendant shall bear the burden of proving that the possession,
22 manufacture, production, transportation, or distribution was in accordance
23 with the state-sponsored medical marijuana program, the Louisiana Board of
24 Pharmacy rules and regulations, or the Department of Agriculture and Forestry
25 rules and regulation, as applicable.

26 Section 2. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

DIGEST

SB 35 Reengrossed

2017 Regular Session

Colomb

Present law provides that any person who is a patient of the state-sponsored medical marijuana program in Louisiana, and possesses medical marijuana in a form permissible under present law for a condition enumerated therein, a caregiver as defined in present law, or any person who is a domiciliary parent of a minor child who possesses medical marijuana on behalf of his minor child in a form permissible under present law for a condition enumerated therein pursuant to a legitimate medical marijuana prescription or recommendation, is not subject to prosecution for possession or distribution of marijuana under present law (Uniform Controlled Dangerous Substances Law).

Proposed law retains present law but adds that such prescription or recommendations must be issued by a physician licensed by and in good standing with the Louisiana State Board of Medical Examiners.

Present law provides that (1) the defense of immunity from prosecution under present law must be raised in accordance with present law requiring the defendant to produce sufficient proof of a valid prescription to the appropriate prosecuting office and (2) the defendant bears the burden of proof of establishing that the possession or distribution of the marijuana was in accordance with the state-sponsored medical marijuana program.

Proposed law deletes present law.

Proposed law provides that proposed law does not prevent the arrest or prosecution of any person for diversion of marijuana or any of its derivatives or other conduct outside the scope of the state-sponsored medical marijuana program.

Proposed law provides that any pharmacy licensed to dispense marijuana pursuant to present law, and any employee, board member, director, or agent of a pharmacy licensed to dispense marijuana pursuant to present law, be exempt from provisions of present law for possession of marijuana at a location designated by the Louisiana Board of Pharmacy (board) rules and regulations, or distribution of marijuana in a form approved by the board to a patient with a valid recommendation or prescription, in the state-sponsored medical marijuana program. Further provides that proposed law does not prevent the arrest or prosecution for diversion of marijuana or any of its derivatives or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Louisiana board rules and regulations.

Proposed law provides that any licensee or its subordinate contractor licensed by the Dept. of Agriculture and Forestry (department) to produce marijuana pursuant to present law and any employee, board member, director, or agent of a marijuana licensee or its subordinate contractor licensed pursuant to present law is exempt from prosecution under present law for possession, production, or manufacture of marijuana at the production facility designated by the department or for the transportation of marijuana or any of its derivatives in accordance with the department's rules and regulations. Further provides that proposed law does not prevent the arrest or prosecution of any person for diversion of marijuana from the production facility designated by the department or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of department rules and regulations.

Proposed law provides that any laboratory that tests marijuana or marijuana preparations produced and distributed under the state-sponsored medical marijuana program, and any employee, board member, director, or agent of a testing laboratory pursuant to present law, are exempt from prosecution under present law for possession of marijuana or any of its derivatives at a research laboratory designated by the board or for transportation of marijuana or any of its derivatives in accordance with the board rules and regulations. Further provides that proposed law does not prevent the arrest or prosecution of any person for diversion of marijuana from a research laboratory designated by the board or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of board rules and regulations.

Proposed law provides that any person conducting research as the licensee pursuant to present law and any employee, board member, director, agent, or any person conducting research in partnership with the licensee is exempt from prosecution under proposed law for the possession, production, or manufacture of marijuana or any of its derivatives at the production facility designated by the department or for the transportation of marijuana or any of its derivatives in accordance with the department's rules and regulations. Further provides that proposed law does not prevent the arrest or prosecution of any person for diversion of marijuana or any of its derivatives from the production facility designated by the department or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of department rules and regulations.

Proposed law provides that the defenses raised in present law must be raised by reproducing a patient's medical records that have been created by his attending physician, that contain the recommendation to possess marijuana for therapeutic use in form permissible under present law.

Proposed law provides that notwithstanding any other provision of present law, except when the person to be arrested has committed a felony, although not in the presence of the officer, no peace officer may arrest an employee, board member, director, or agent during the course and scope of his employment with a pharmacy licensed to dispense marijuana for therapeutic use, a licensee of marijuana for therapeutic use or its subordinate licensed contractor, a testing laboratory of marijuana for therapeutic use, or a licensed researcher of marijuana for therapeutic use.

Proposed law provides that the defendant bears the burden of proving that the possession, manufacture, production, transportation, or distribution was in accordance with the state-sponsored medical marijuana program, the board rules and regulations, or the department rules and regulations, as applicable.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:966(I))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Provide immunity relative to subordinate contractors licensed by the Dept. of Agriculture and Forestry.
2. Provide immunity relative to persons conducting research pursuant to present law.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Adds the La. Board of Pharmacy and the Dept. of Agriculture and Forestry as rule-making authorities for the program.
3. Provides for the arrest or prosecution of any person for diversion of marijuana or any of its derivatives or other conduct outside the scope of the state-sponsored medical marijuana program.
4. Provides for the defense and burden of proof for patients who have a recommendation to possess therapeutic marijuana.
5. Provides exemptions from prosecution for certain persons employed by entities licensed in the state-sponsored medical marijuana program.