

2016 Regular Session

SENATE BILL NO. 271

BY SENATOR MILLS

PHARMACISTS. Provides for medical marijuana. (gov sig)

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AN ACT

To amend and reenact R.S. 40:1046, relative to medical marijuana; to provide for physician requirements; to provide for definitions; to provide for rulemaking requirements; to provide for responsibilities of certain licensing boards and agencies; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1046 is hereby amended and reenacted to read as follows:

§1046. Prescription of marijuana for therapeutic use; rules and regulations; Louisiana Board of Pharmacy and the adoption of rules and regulations relating to the dispensing of prescribed marijuana for therapeutic use; the Department of Agriculture and Forestry and the licensure of a production facility

A.(1) Notwithstanding any other provision of this Part, a physician licensed **by and in good standing with the Louisiana State Board of Medical Examiners** to practice medicine in this state **and who is domiciled in this state** may ~~prescribe~~ **recommend**, in any form as permitted by the rules and regulations of the Louisiana Board of Pharmacy except for inhalation, and raw or crude marijuana,

1 tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols for
2 therapeutic use by patients clinically diagnosed as suffering from **a debilitating**
3 **medical condition** ~~glaucoma, symptoms resulting from the administration of~~
4 ~~chemotherapy cancer treatment, and spastic quadriplegia in accordance with rules~~
5 ~~and regulations promulgated by the Louisiana State Board of Medical Examiners.~~
6 ~~The Louisiana State Board of Medical Examiners shall submit to the Senate and~~
7 ~~House committees on health and welfare on an annual basis not less than sixty days~~
8 ~~prior to the beginning of the regular session of the legislature a report as to any~~
9 ~~additional diseases or medical conditions that should be added to the list of eligible~~
10 ~~diseases and conditions for prescription.~~

11 **(2) For purposes of this Subsection, "debilitating medical condition"**
12 **means cancer, glaucoma, positive status for human immunodeficiency virus,**
13 **acquired immune deficiency syndrome, or a chronic or debilitating disease or**
14 **medical condition or its treatment that produces cachexia or wasting syndrome,**
15 **seizure disorders, epilepsy, severe muscle spasms, including those characteristic**
16 **of Crohn's disease or multiple sclerosis.**

17 **(3) For purposes of this Part, "recommend" or "recommended" means**
18 **an order from a physician domiciled in Louisiana and licensed and in good**
19 **standing with the Louisiana Board of Medical Examiners and authorized by the**
20 **board to recommend medical marijuana that is patient specific and disease**
21 **specific in accordance with Paragraph (2) of this Subsection, and is**
22 **communicated by any means allowed by the Louisiana Board of Pharmacy to**
23 **a Louisiana licensed pharmacist in a Louisiana permitted dispensing pharmacy**
24 **as described in Subsection I of this Section, and is preserved on file as required**
25 **by Louisiana law or federal law regarding medical marijuana.**

26 **(4) Physicians shall recommend use of medical marijuana for treatment**
27 **of debilitating medical conditions in accordance with rules and regulations**
28 **promulgated by the Louisiana State Board of Medical Examiners.**

29 **(5) The Louisiana State Board of Medical Examiners shall submit to the**

1 Senate and House committees on health and welfare on an annual basis not less
 2 than sixty days prior to the beginning of the regular session of the legislature a
 3 report as to any additional diseases or medical conditions that should be added
 4 to the list of eligible diseases and conditions for recommendation.

5 B. The Louisiana State Board of Medical Examiners shall promulgate rules
 6 and regulations authorizing physicians licensed to practice in this state to ~~prescribe~~
 7 recommend marijuana for therapeutic use by patients as described in Subsection A
 8 of this Section ~~no later than January 1, 2016.~~ Any rules published by the Louisiana
 9 State Board of Medical Examiners on or before January 1, 2016, that describe
 10 the physician's authority to prescribe should be repromulgated to indicate that
 11 he is "recommending" use of therapeutic marijuana.

12 C.(1) The Louisiana Board of Pharmacy shall adopt rules relating to the
 13 dispensing of prescribed marijuana for therapeutic use ~~no later than December 1,~~
 14 ~~2016.~~ Any rules published by the Louisiana Board of Pharmacy on or before
 15 January 1, 2016, that describe the pharmacist as dispensing medical marijuana
 16 based on a physician's prescription should be repromulgated to indicate that the
 17 physician is "recommending" use of therapeutic marijuana. The Louisiana
 18 Board of Pharmacy shall seek input from groups including but not limited to the
 19 following:

20 ~~(a) The Louisiana District Attorneys Association.~~

21 ~~(b) Professional law enforcement associations, organizations, and~~
 22 ~~commissions.~~

23 (2) The rules shall include but not be limited to:

24 (a) Standards, procedures, and protocols for the effective use of ~~prescribed~~
 25 recommended marijuana for therapeutic use as authorized by state law and related
 26 rules and regulations.

27 (b) Standards, procedures, and protocols for the dispensing and tracking of
 28 ~~prescribed~~ recommended therapeutic marijuana in Louisiana.

29 (c) Procedures and protocols to provide that no ~~prescribed~~ recommended

1 therapeutic marijuana may be dispensed from, produced from, obtained from, sold
2 to, or transferred to a location outside of this state.

3 (d) The establishment of standards, procedures, and protocols for determining
4 the amount of usable ~~prescribed~~ **recommended** therapeutic marijuana that is
5 necessary to constitute an adequate supply to ensure uninterrupted availability for a
6 period of one month, including amounts for topical treatments.

7 (e) The establishment of standards, procedures, and protocols to ensure that
8 all ~~prescribed~~ **recommended** therapeutic marijuana dispensed is consistently
9 pharmaceutical grade.

10 (f) The establishment of standards and procedures for the revocation,
11 suspension, and nonrenewal of licenses.

12 (g) The establishment of other licensing, renewal, and operational standards
13 which are deemed necessary by the Louisiana Board of Pharmacy.

14 (h) The establishment of standards and procedures for testing ~~prescribed~~
15 **recommended** therapeutic marijuana samples for levels of tetrahydrocannabinol
16 (THC) or other testing parameters deemed appropriate by the Louisiana Board of
17 Pharmacy.

18 (i) The establishment of health, safety, and security requirements for
19 dispensers of prescribed therapeutic marijuana.

20 (j) Licensure of dispensers of prescribed therapeutic marijuana.

21 (k) The establishment of financial requirements for applicants of therapeutic
22 marijuana dispensing pharmacy license under which each applicant demonstrates the
23 following:

24 (i) The financial capacity to operate a therapeutic marijuana dispensing
25 pharmacy.

26 (ii) The ability to maintain an escrow account in a financial institution
27 headquartered in Louisiana in an amount of two million dollars, if required by the
28 Louisiana Board of Pharmacy.

29 ~~D. The Louisiana Board of Pharmacy shall submit a report to the legislature~~

1 ~~no later than January 1, 2016, with recommendations on possible fee amounts~~
2 ~~relative to the provisions of this Section.~~

3 ~~E. All rules shall be adopted in accordance with the provisions of the~~
4 ~~Administrative Procedure Act.~~

5 F.D. Nothing in this Section shall be construed to prohibit the Louisiana State
6 Board of Medical Examiners or the Louisiana Board of Pharmacy from adopting
7 emergency rules as otherwise provided for in the Administrative Procedure Act.

8 G.E. Marijuana, tetrahydrocannabinols, or a chemical derivative of
9 tetrahydrocannabinols prescribed pursuant to this Section shall be dispensed in
10 person from a licensed pharmacy in good standing located in Louisiana.

11 H.F. A prescriber and dispenser of marijuana, tetrahydrocannabinols, or a
12 chemical derivative of tetrahydrocannabinols pursuant to this Section shall review
13 the patient's information in the Prescription Monitoring Program database prior to
14 the prescribing and dispensing thereof.

15 I.G. The Louisiana Board of Pharmacy shall develop an annual,
16 nontransferable specialty license for a pharmacy to dispense prescribed marijuana
17 for therapeutic use and shall limit the number of such licenses granted in the state to
18 no more than ten licensees. The Louisiana Board of Pharmacy shall develop rules
19 and regulations regarding the geographical locations of dispensing pharmacies in
20 Louisiana.

21 J.H.(1) The Department of Agriculture and Forestry shall develop the rules
22 and regulations regarding the production of prescribed therapeutic marijuana and the
23 facility producing therapeutic marijuana. The rules and regulations shall include but
24 not be limited to the procedures for application, qualifications, eligibility,
25 background checks, and standards for suitability for a license and penalties for
26 violations of the rules and regulations.

27 (2) The Department of Agriculture and Forestry shall develop an annual,
28 nontransferable specialty license for the production of prescribed marijuana for
29 therapeutic use and shall limit the number of such licenses granted in the state to no

1 more than one licensee. The Louisiana State University Agricultural Center and the
2 Southern University Agricultural Center shall have the right of first refusal to be
3 licensed as the production facility, either separately or jointly. If neither of the
4 centers exercise this option, the license shall be awarded pursuant to the
5 requirements provided for in Paragraphs (3) through (5) of this Subsection.

6 (3) The license shall be limited to one geographic location as provided for in
7 rule by the Department of Agriculture and Forestry. The geographic location shall
8 be a public record subject to disclosure under the Public Records Law, R.S. 44:1 et
9 seq. The licensee shall permit inspection of the production facility by any elected
10 member of the Louisiana Legislature upon request after receipt of reasonable notice.

11 (4)(a) The Department of Agriculture and Forestry shall grant the license
12 pursuant to a contract awarded through a competitive sealed bid or a competitive
13 sealed proposal as provided for in R.S. 39:1594 and 1595. The contract for the
14 license shall be subject to the Louisiana Procurement Code and shall not be subject
15 to any exceptions to or other variances from the Louisiana Procurement Code. The
16 contract shall not be awarded under the sole source procurement provisions provided
17 for in R.S. 39:1597.

18 (b) Any contract for the license awarded pursuant to this Subsection shall not
19 exceed five years.

20 (c) Any contract, memorandum of understanding, or cooperative endeavor
21 agreement entered into pursuant to this Section shall be a public record subject to
22 disclosure under the Public Records Law, R.S. 44:1 et seq.

23 (d) Any contract, memorandum of understanding, or cooperative endeavor
24 agreement entered into for services for the cultivation or processing in any way of
25 marijuana pursuant to this Section shall be a public record subject to disclosure under
26 the Public Records Law, R.S. 44:1 et seq.

27 (e) No person licensed pursuant to this Subsection shall subcontract for
28 services for the cultivation or processing in any way of marijuana if the
29 subcontractor, or any of the service providers in the chain of subcontractors, is

1 owned wholly or in part by any state employee or member of a state employee's
2 immediate family, including but not limited to any legislator, statewide public
3 official, university or community or technical college employee, Louisiana State
4 University Agricultural Center employee, or Southern University Agricultural Center
5 employee. For the purposes of this Paragraph, "immediate family" has the same
6 meaning as provided in R.S. 42:1102.

7 (f) Any bid for the license awarded pursuant to this Subsection shall include
8 proof of the financial capability of the bidder to operate a therapeutic marijuana
9 production facility including but not limited to a net worth of not less than one
10 million dollars.

11 (5) No person licensed pursuant to this Subsection shall give or receive
12 anything of value in connection with any contract, memorandum of understanding,
13 or cooperative endeavor agreement executed pursuant to this Subsection except the
14 value that is expressed in the contract, memorandum of understanding, or
15 cooperative endeavor agreement.

16 (6)(a) The Department of Agriculture shall collect the following information
17 from each licensee:

18 (i) The amount of gross marijuana produced by the licensee during each
19 calendar year.

20 (ii) The details of all production costs including but not limited to seed,
21 fertilizer, labor, advisory services, construction, and irrigation.

22 (iii) The details of any items or services for which the licensee subcontracted
23 and the costs of each subcontractor directly or indirectly working for the contractor.

24 (iv) The amount of therapeutic chemicals produced resulting from the
25 marijuana grown pursuant to this Section.

26 (v) The amounts paid each year to the licensee related to the licensee's
27 production of therapeutic marijuana pursuant to this Section.

28 (vi) The amount of therapeutic marijuana distributed to each pharmacy
29 licensed to dispense therapeutic marijuana in this state during each calendar year.

1 (b) The Department of Agriculture and Forestry shall provide the information
2 collected pursuant to this Paragraph for the previous calendar year in the form of a
3 written report to the Louisiana Legislature no later than February first of each year.
4 The department shall also make a copy of the report required by this Subparagraph
5 available to the public on the Internet.

6 (7) No company that has made a contribution to a candidate in a Louisiana
7 election governed by the provisions of the Campaign Finance Disclosure Act within
8 the five years prior to bidding for the license, or is controlled wholly or in part by a
9 person who made such a contribution within the five years prior to the company
10 bidding for the license, may be eligible for the license.

11 ~~(8) The Department of Agriculture and Forestry shall submit a report to the~~
12 ~~legislature no later than January 1, 2016, with recommendations on possible fee~~
13 ~~amounts relative to the provisions of this Section.~~

14 ~~K.I.~~ The levels of THC in any marijuana produced pursuant to this Section
15 shall be reduced to the lowest acceptable therapeutic levels available through
16 scientifically accepted methods.

17 ~~L.J.~~ The provisions of this Section shall terminate on January 1, 2020.

18 Section 2. This Act shall become effective upon signature by the governor or, if not
19 signed by the governor, upon expiration of the time for bills to become law without signature
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
22 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST

SB 271 Original 2016 Regular Session Mills

Present law provides for medical marijuana to be prescribed. Proposed law changes
prescribed to recommended.

Present law provides that medical marijuana can be prescribed for glaucoma, symptoms
resulting from the administration of chemotherapy cancer treatment and spastic quadriplegia.
Proposed law changes the disease states to debilitating medical conditions (cancer,
glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency

syndrome, or a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome, seizure disorders, epilepsy, severe muscle spasms, including those characteristic of Crohn's disease or multiple sclerosis).

Proposed law adds a definition of "recommend" or "recommended" as an order from a physician domiciled in Louisiana and licensed and in good standing with the Louisiana Board of Medical Examiners and authorized by the board to recommend medical marijuana that is patient specific and disease specific in accordance with present law and is communicated by any means allowed by the Louisiana Board of Pharmacy to a Louisiana licensed pharmacist in a Louisiana permitted dispensing pharmacy as described in present law and is preserved on file as required by Louisiana law or federal law regarding medical marijuana.

Present law required the recommending physician to be licensed to practice medicine in this state. Proposed law requires the recommending physician to be licensed by the Louisiana State Board of Medical Examiners, in good standing with the board and domiciled in Louisiana.

Present law provides for reporting and rule promulgation deadlines that have passed. Proposed law repeals deadlines that have passed and instructs the boards to update their rules to reflect the change in proposed law from prescribed to recommended.

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

(Amends R.S. 40:1046)