

SENATE BILL NO. 35

BY SENATOR COLOMB AND REPRESENTATIVES BAGNERIS, BOUIE, GARY CARTER, FALCONER, GLOVER, JACKSON, JAMES, JORDAN, LYONS, MARINO AND PIERRE

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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 pursuant to a legitimate medical marijuana prescription or recommendation **issued by a physician licensed by and in good standing with the Louisiana State Board of Medical Examiners**, shall ~~not be subject to prosecution for possession or distribution of marijuana under~~ **be exempt from the provisions of** this Section for ~~possessing medical marijuana or dispensing medical marijuana to his minor child who is a patient of the state-sponsored medical marijuana program. This defense must be raised in accordance with R.S. 40:991, and the defendant bears the burden~~

1 of proof of establishing that the possession or distribution of the marijuana was in  
2 accordance with the state-sponsored medical marijuana program. This Paragraph  
3 shall not prevent the arrest or prosecution of any person for diversion of  
4 marijuana or any of its derivatives or other conduct outside the scope of the  
5 state-sponsored medical marijuana program.

6 (2) Any pharmacy licensed to dispense marijuana pursuant to R.S.  
7 40:1046, and any employee, board member, director, or agent of a pharmacy  
8 licensed to dispense marijuana pursuant to R.S. 40:1046, shall be exempt from  
9 the provisions of this Section for possession of marijuana at a location  
10 designated by the Louisiana Board of Pharmacy rules and regulations, or  
11 distribution of marijuana in a form approved by the Louisiana Board of  
12 Pharmacy to a patient with a valid recommendation or prescription, in the  
13 state-sponsored medical marijuana program. This Paragraph shall not prevent  
14 the arrest or prosecution of any person for diversion of marijuana or any of its  
15 derivatives or other conduct outside the scope of the state-sponsored medical  
16 marijuana program or for violations of Louisiana Board of Pharmacy rules and  
17 regulations.

18 (3) Any licensee or its subordinate contractor licensed by the Department  
19 of Agriculture and Forestry to produce marijuana pursuant to R.S. 40:1046,  
20 and any employee, board member, director, or agent of a marijuana licensee or  
21 its subordinate contractor licensed pursuant to R.S. 40:1046, shall be exempt  
22 from prosecution under this Section for possession, production, or manufacture  
23 of marijuana at the production facility designated by the Department of  
24 Agriculture and Forestry or for the transportation of marijuana or any of its  
25 derivatives in accordance with the Department of Agriculture and Forestry  
26 rules and regulations. This Paragraph shall not prevent the arrest or  
27 prosecution of any person for diversion of marijuana from the production  
28 facility designated by the Department of Agriculture and Forestry outside the  
29 scope of the state-sponsored medical marijuana program or for violations of  
30 Department of Agriculture and Forestry rules and regulations.

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

13           **(5) Any person conducting research as the licensee pursuant to R.S.**  
14           **40:1046 and any employee, board member, director, agent, or any person**  
15           **conducting research in partnership with the licensee shall be exempt from**  
16           **prosecution under this Section for the possession, production, or manufacture**  
17           **of marijuana or any of its derivatives at the production facility designated by**  
18           **the Department of Agriculture and Forestry or for the transportation of**  
19           **marijuana or any of its derivatives in accordance with Department of**  
20           **Agriculture and Forestry rules and regulations. This Paragraph shall not**  
21           **prevent the arrest or prosecution of any person for diversion of marijuana or**  
22           **any of its derivatives from the production facility designated by the Department**  
23           **of Agriculture and Forestry or other conduct outside the scope of the**  
24           **state-sponsored medical marijuana program or for violations of Department of**  
25           **Agriculture and Forestry rules and regulations.**

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

30           **(b) Notwithstanding any other provision of law to the contrary, except**

1 when the person to be arrested has committed a felony, although not in the  
2 presence of the officer, no peace officer may arrest any employee, board  
3 member, director, or agent during the course and scope of his employment with  
4 the following, pursuant to R.S. 40:1046:

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

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

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

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

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

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

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_