

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 **arrest and** 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

1 therein pursuant to a legitimate medical marijuana prescription or recommendation,
2 shall not be subject to prosecution for possession, ~~or distribution, purchase,~~
3 ~~preparation, or transportation~~ of marijuana, marijuana preparations, and
4 marijuana paraphernalia under this Section for possessing medical marijuana or
5 ~~dispensing medical marijuana to his minor child who is a patient of the~~
6 ~~state-sponsored medical marijuana program. This defense must be raised in~~
7 ~~accordance with R.S. 40:991, and the defendant bears the burden of proof of~~
8 ~~establishing that the possession or distribution of the marijuana was in accordance~~
9 ~~with the state-sponsored medical marijuana program. This Paragraph shall not~~
10 ~~prevent the imposition of penalties for diversion of marijuana or other conduct~~
11 ~~outside the scope of the state-sponsored medical marijuana program.~~

12 (2) Any pharmacy licensed to dispense marijuana pursuant to R.S.
13 40:1046, and any employee, board member, director, or agent of a pharmacy
14 licensed to dispense marijuana pursuant to R.S. 40:1046, shall not be subject to
15 arrest or prosecution for possession, distribution, preparation, or
16 transportation of marijuana, marijuana preparations, and marijuana
17 paraphernalia under this Section. This defense shall be a complete bar to arrest
18 and prosecution. This Paragraph shall not prevent the imposition of penalties
19 for diversion of marijuana or other conduct outside the scope of the
20 state-sponsored medical marijuana program or for violations of Board of
21 Pharmacy rules and regulations.

22 (3) Any production facility licensed by the Department of Agriculture
23 and Forestry to produce marijuana pursuant to R.S. 40:1046, and any
24 employee, board member, director, or agent of a marijuana production facility
25 licensed pursuant to R.S. 40:1046, shall not be subject to arrest or prosecution
26 for possession, manufacture, preparation, distribution, purchase, preparation,
27 or transportation of marijuana, marijuana preparations, and marijuana
28 paraphernalia under this Section. This defense shall be a complete bar to arrest
29 and prosecution. This Paragraph shall not prevent the imposition of penalties

1 for diversion of marijuana or other conduct outside the scope of the
 2 state-sponsored medical marijuana program or for violations of Department of
 3 Agriculture and Forestry rules and regulations.

4 (4) Any laboratory that tests marijuana or marijuana preparations
 5 produced and distributed under the state-sponsored medical marijuana
 6 program, and any employee, board member, director, or agent of a testing
 7 laboratory pursuant to R.S. 40:1046, shall not be subject to arrest or
 8 prosecution for possession or transportation of marijuana and marijuana
 9 paraphernalia under this Section. This defense shall be a complete bar to arrest
 10 and prosecution. This Paragraph shall not prevent the imposition of penalties
 11 for diversion of marijuana or other conduct outside the scope of the
 12 state-sponsored medical marijuana program or for violations of Board of
 13 Pharmacy rules and regulations.

14 Section 2. This Act shall become effective upon signature by the governor or, if not
 15 signed by the governor, upon expiration of the time for bills to become law without signature
 16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 18 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 Alden A. Clement Jr.

DIGEST

SB 35 Original

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 and adds that a person immune from prosecution under present law is also immune from arrest, and extends this immunity to the purchase, preparation, or transportation of marijuana, marijuana preparations, and marijuana paraphernalia.

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 imposition of penalties for diversion of marijuana 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, are not subject to arrest or prosecution for possession, distribution, preparation, or transportation of marijuana, marijuana preparations, and marijuana paraphernalia under proposed law. Proposed law further provides that this defense is a complete bar to arrest and prosecution. Proposed law does not prevent the imposition of penalties for diversion of marijuana or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Board of Pharmacy rules and regulations.

Proposed law provides that any production facility licensed by the Department of Agriculture and Forestry to produce marijuana pursuant to present law, and any employee, board member, director, or agent of a marijuana production facility licensed pursuant to present law, are not subject to arrest or prosecution for possession, manufacture, distribution, purchase, preparation, or transportation of marijuana, marijuana preparations, and marijuana paraphernalia under proposed law. Proposed law further provides that this defense is a complete bar to arrest and prosecution. Proposed law does not prevent the imposition of penalties for diversion of marijuana or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Department of Agriculture and Forestry 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 not subject to arrest or prosecution for possession or transportation of marijuana and marijuana paraphernalia under proposed law. Proposed law further provides that this defense is a complete bar to arrest and prosecution. Proposed law does not prevent the imposition of penalties for diversion of marijuana or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Board of Pharmacy rules and regulations.

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

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