

## Part X-E. Therapeutic Use of Marijuana

*[Editor's Note: A prior Part X-A, Therapeutic Use of Marijuana, consisting of R.S. 40:1021 to 40:1026, was repealed by Act 662 of 1989 Legislature, effective July 7, 1989. Act 874 of 1991 Legislature re-established Part X-A, Therapeutic Use of Marijuana. Act 676 of 2006 Legislature re-designated this Part as Part X-E. Subsequent amendments are noted herein. Act 261 of 2015 Legislature designated as "The Alison Neustrom Act."]*

### **§1046. Recommendation and dispensing of marijuana for therapeutic use; rules and regulations of the Louisiana State Board of Medical Examiners and Louisiana Board of Pharmacy; production facility licensing by the Department of Agriculture and Forestry**

- A. (1) Notwithstanding any other provision of this Part, any physician licensed by and in good standing with the Louisiana State Board of Medical Examiners to practice medicine in this state may 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, tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinols for therapeutic use by any patient clinically diagnosed as suffering from a debilitating medical condition. Nothing in this Paragraph shall be construed to prevent the Louisiana Board of Pharmacy from permitting, by rule, medical marijuana in a form to be administered by metered-dose inhaler. For purposes of this Section, "metered-dose inhaler" means a device that delivers a specific amount of medication to the lungs, in the form of a short burst of medicine that is usually self-administered by the patient via inhalation.

*(Paragraph 1 amended by Act 284 of 2019 Legislature, effective August 1, 2019; Act 286 of 2020 Legislature, effective August 1, 2020)*

- (2) (a) For purposes of this Subsection, "debilitating medical condition" means any of the following:
- (i) Cancer.
  - (ii) Glaucoma.
  - (iii) Any of the following neurodegenerative diseases and conditions:
    - (aa) Alzheimer's disease.
    - (bb) Amyotrophic lateral sclerosis.
    - (cc) Huntington's disease.
    - (dd) Lewy body dementia.
    - (ee) Motor neuron disease.
    - (ff) Parkinson's disease.
    - (gg) Spinal muscular atrophy.
  - (iv) Positive status for human immunodeficiency virus.
  - (v) Acquired immune deficiency syndrome.
  - (vi) Cachexia or wasting syndrome.
  - (vii) Seizure disorders.
  - (viii) Epilepsy.
  - (ix) Spasticity.
  - (x) Severe muscle spasms.
  - (xi) Intractable pain.
  - (xii) Crohn's disease.
  - (xiii) Muscular dystrophy.
  - (xiv) Multiple sclerosis.
  - (xv) Post-traumatic stress disorder.
  - (xvi) Any of the following conditions associated with autism spectrum disorder:
    - (aa) Repetitive or self-stimulatory behavior of such severity that the physical health of the person with autism is jeopardized.
    - (bb) Avoidance of others or inability to communicate of such severity that the physical health of the person with autism is jeopardized.
    - (cc) Self-injuring behavior.
    - (dd) Physically aggressive or destructive behavior.
  - (xvii) Traumatic brain injury.
  - (xviii) A concussion diagnosed by a physician.
  - (xix) Chronic pain associated with fibromyalgia.
  - (xx) Chronic pain associated with sickle cell disease.
  - (xxi) Any condition for which a patient is receiving hospice care or palliative care.
  - (xxii) Any condition not otherwise specified in this Subparagraph that a physician, in his medical

opinion, considers debilitating to an individual patient and is qualified through his medical education and training to treat.

*(Subparagraph (2)(a) amended by Act 286 of 2020 Legislature, effective August 1, 2020)*

- (b) No physician shall recommend medical marijuana for treatment of any condition associated with autism spectrum disorder for a patient who is under the age of eighteen unless the physician complies with the provisions of this Section and consults with a pediatric subspecialist. For purposes of this Subparagraph a pediatric subspecialist is an individual licensed to practice medicine in any state in the United States who provides care to patients with autism spectrum disorder.
- (c) Intractable pain means a pain state in which the cause of the pain cannot be removed or otherwise treated with the consent of the patient and which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. It is pain so chronic and severe as to otherwise warrant an opiate prescription.

*(Paragraph 2 amended by Act 496 of 2018 Legislature, effective May 23, 2018 and by Act 708 of 2018 Legislature, effective August 1, 2018; Subparagraph 2(b) amended and Subparagraphs 2(d) and 2(e) repealed by Act 284 of 2019 Legislature, effective August 1, 2019)*

- (3) For purposes of this Part, “recommend” or “recommended” means an opinion of any physician licensed by and in good standing with the Louisiana State Board of Medical Examiners, provided within a bona fide doctor-patient relationship, that, in the sincere judgment of the physician, therapeutic cannabis may be helpful to the patient’s condition or symptoms and is communicated by any means allowed by the Louisiana Board of Pharmacy.

*(Paragraph 3 amended by Act 284 of 2019 Legislature, effective August 1, 2019; Act 286 of 2020 Legislature, effective August 1, 2020)*

- (4) Any physician licensed by and in good standing with the Louisiana State Board of Medical Examiners to practice medicine in Louisiana may recommend medical marijuana to any patient suffering from a debilitating medical condition with whom he shares a bona fide doctor-patient relationship.

*(Paragraph 4 amended and Paragraph 5 repealed by Act 284 of 2019 Legislature, effective August 1, 2019; Paragraph 4 amended by Act 286 of 2020 Legislature, effective August 1, 2020)*

- B. *Subsection authorizing Louisiana State Board of Medical Examiners to promulgate rules added by Act 874 of 1991 Legislature, effective September 6, 1991; amended by Act 261 of 2015 Legislature, effective June 29, 2015; Act 96 of 2016 Legislature, effective May 19, 2016; repealed by Act 286 of 2020 Legislature, effective August 1, 2020)*
- C.
  - (1) The Louisiana Board of Pharmacy shall adopt rules relating to the dispensing of recommended marijuana for therapeutic use. Any rules published by the Louisiana Board of Pharmacy on or before January 1, 2016 that describe the pharmacist as dispensing medical marijuana based on a physician’s prescription should be repromulgated to indicate that the physician is “recommending” use of therapeutic marijuana.
  - (2) The rules shall include but not be limited to:
    - (a) Standards, procedures, and protocols for the effective use of recommended marijuana for therapeutic use as authorized by state law and related rules and regulations.
    - (b) Standards, procedures, and protocols for the dispensing and tracking of recommended therapeutic marijuana in Louisiana.
    - (c) Procedures and protocols to provide that no recommended therapeutic marijuana may be dispensed from, produced from, obtained from, sold to, or transferred to a location outside of this state.
    - (d) The establishment of standards, procedures, and protocols for determining the amount of usable recommended therapeutic marijuana that is necessary to constitute an adequate supply to ensure uninterrupted availability for a period of one month, including amounts for topical treatments.
    - (e) The establishment of standards, procedures, and protocols to ensure that all recommended therapeutic marijuana dispensed is consistently pharmaceutical grade.
    - (f) The establishment of standards and procedures for the revocation, suspension, and nonrenewal of licenses.
    - (g) The establishment of other licensing, renewal, and operational standards which are deemed necessary by the Louisiana Board of Pharmacy.
    - (h) The establishment of standards and procedures for testing recommended therapeutic marijuana samples for levels of tetrahydrocannabinols (THC) or other testing parameters deemed appropriate by the Louisiana Board of Pharmacy.
    - (i) The establishment of health, safety, and security requirements for dispensers of recommended therapeutic marijuana.

- (j) Licensure of dispensers of recommended therapeutic marijuana.
- (k) The establishment of financial requirements for applicants of therapeutic marijuana dispensing pharmacy license under which each applicant demonstrates the following:
  - (i) The financial capacity to operate a therapeutic marijuana dispensing pharmacy.
  - (ii) The ability to maintain an escrow account in a financial institution headquartered in Louisiana in an amount of two million dollars, if required by the Louisiana Board of Pharmacy.

*(Subsection C amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

- D. Nothing in this Section shall be construed to prohibit the Louisiana State Board of Medical Examiners or the Louisiana Board of Pharmacy from adopting emergency rules as otherwise provided for in the Administrative Procedure Act.
- E. Marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols recommended pursuant to this Section shall be dispensed in person from a licensed pharmacy in good standing located in Louisiana.  
*(Subsection E amended by Act 96 of 2016 Legislature, effective May 19, 2016)*
- F. (1) A person who recommends and person who dispenses marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols pursuant to this Section shall review the patient's information in the database of the prescription monitoring program established in [R.S. 40:1001 et seq.](#) prior to the recommending and dispensing thereof.  
*(Subsection F amended by Act 96 of 2016 Legislature, effective May 19, 2016)*
  - (2) Any person who dispenses marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols pursuant to this Section shall comply with the reporting requirements of the prescription monitoring program established in [R.S. 40:1001 et seq.](#)  
*(Paragraph 2 added by Act 286 of 2020 Legislature, effective August 1, 2020)*
- G. The Louisiana Board of Pharmacy shall develop an annual, nontransferable specialty license for a pharmacy to dispense recommended marijuana for therapeutic use and shall limit the number of such licenses granted in the state to no more than ten licenses. The Louisiana Board of Pharmacy shall develop rules and regulations regarding the geographical locations of dispensing pharmacies in Louisiana.  
*(Subsection G amended by Act 96 of 2016 Legislature effective May 19, 2016)*
- H. (1) (a) The Department of Agriculture and Forestry shall develop the rules and regulations regarding the extraction, processing, and production of recommended therapeutic marijuana and the facility producing therapeutic marijuana. The rules and regulations shall require as a minimum standard that the extraction and refining process produce a product that is food-safe and capable of producing pharmaceutical-grade products.  
*(Subparagraph 1(a) amended by Act 284 of 2019 Legislature, effective August 1, 2019)*
  - (b) The rules and regulations shall also include but not be limited to the procedures for application, qualifications, eligibility, background checks, and standards for suitability for a license and penalties for violations of the rules and regulations.
- (2) (a) The Department of Agriculture and Forestry shall develop an annual, nontransferable specialty license for the production of recommended marijuana for therapeutic use. Other than the licenses granted pursuant to Subparagraph (b) of this Paragraph, the Department of Agriculture and Forestry shall limit the number of such licenses granted in the state to no more than one license. The Louisiana State University Agricultural Center and the Southern University Agricultural Center shall have the right of first refusal to be licensed as the production facility, either separately or jointly. If neither of the centers exercise this option, the license shall be awarded pursuant to the requirements provided for in Paragraphs (3) through (5) of this Subsection.
  - (b) Prior to September 1, 2016, the Louisiana State University Agricultural Center and the Southern University Agricultural Center shall each provide written notice to the commissioner of agriculture and forestry of their intent to be licensed as a production facility, either separately or jointly.
  - (c) The Louisiana State University Agricultural Center or the Southern University Agricultural Center may conduct research on marijuana for therapeutic use if the center is licensed as a production facility pursuant to this Section. Effective January 1, 2020, and annually thereafter, the Louisiana State University Agricultural Center and the Southern University Agricultural Center shall submit a report to the Senate and House committees on health and welfare, to include data and outcomes of the research conducted pursuant to this Paragraph.  
*(Subparagraph 2(c) amended by Act 496 of 2018 Legislature, effective May 23, 2018)*
- (3) The license shall be limited to one geographic location as provided for in rule by the Department of

Agriculture and Forestry. The geographic location shall be a public record subject to disclosure under the Public Records Law, [R.S. 44:1 et seq.](#) The licensee shall permit inspection of the production facility by any elected member of the Louisiana Legislature upon request after receipt of reasonable notice.

- (4) (a) The Department of Agriculture and Forestry shall grant the license pursuant to a contract awarded through a competitive sealed bid or a competitive sealed proposal as provided for in [R.S. 39:1594](#) and [1595](#). The contract for the license shall be subject to the Louisiana Procurement Code and shall not be subject to any exceptions to or other variances from the Louisiana Procurement Code. The contract shall not be awarded under the sole source procurement provisions provided for in [R.S. 39:1597](#).
- (b) Any contract for the license awarded pursuant to this Subsection shall not exceed five years.
- (c) Any contract, memorandum of understanding, or cooperative endeavor agreement entered into pursuant to this Section shall be a public record subject to disclosure under the Public Records Law, [R.S. 44:1 et seq.](#)
- (d) Any contract, memorandum of understanding, or cooperative endeavor agreement entered into for services for the cultivation or processing in any way of marijuana pursuant to this Section shall be a public record subject to disclosure under the Public Records Law, [R.S. 44:1 et seq.](#)
- (e) No person licensed pursuant to this Subsection shall subcontract for services for the cultivation or processing in any way of marijuana if the subcontractor, or any of the service providers in the chain of subcontractors, is owned wholly or in part by any state employee or member of a state employee's immediate family, including but not limited to any legislator, statewide public official, university or community or technical college employee, Louisiana State University Agricultural Center employee, or Southern University Agricultural Center employee. For the purposes of this Paragraph, "immediate family" has the same meaning as provided in [R.S. 42:1102](#).
- (f) Any bid for the license awarded pursuant to this Subsection shall include proof of the financial capability of the bidder to operate a therapeutic marijuana production facility including but not limited to a net worth of not less than one million dollars.
- (5) No person licensed pursuant to this Subsection shall give or receive anything of value in connection with any contract, memorandum of understanding, or cooperative endeavor agreement executed pursuant to this Subsection except the value that is expressed in the contract, memorandum of understanding, or cooperative endeavor agreement.
- (6) (a) The Department of Agriculture and Forestry shall collect the following information from each licensee:
  - (i) The amount of gross marijuana produced by the licensee during each calendar year.
  - (ii) The details of all production costs including but not limited to seed, fertilizer, labor, advisory services, construction, and irrigation.
  - (iii) The details of any items or services for which the licensee subcontracted and the costs of each subcontractor directly or indirectly working for the contractor.
  - (iv) The amount of therapeutic chemicals produced resulting from the marijuana grown pursuant to this Section.
  - (v) The amounts paid each year to the licensee related to the licensee's production of therapeutic marijuana pursuant to this Section.
  - (vi) The amount of therapeutic marijuana distributed to each pharmacy licensed to dispense therapeutic marijuana in this state during each calendar year.
- (b) The Department of Agriculture and Forestry shall provide the information collected pursuant to this Paragraph for the previous calendar year in the form of a written report to the Louisiana Legislature no later than February first of each year. The department shall also make a copy of the report required by this Subparagraph available to the public on the Internet.
- (7) No company that has made a contribution to a candidate in a Louisiana election governed by the provisions of the Campaign Finance Disclosure Act within the five years prior to bidding for the license, or is controlled wholly or in part by a person who made such a contribution within the five years prior to the company bidding for the license, may be eligible for the license.
- (8) (a) The department shall perform the following:
  - (i) Establish and collect an annual license fee of one hundred thousand dollars and an annual permit fee of one hundred dollars for administrative and inspection costs.
  - (ii) Collect a nonrefundable application fee of ten thousand dollars.
  - (iii) Assess a fee of seven percent of the gross sales of therapeutic marijuana that shall be collected by the Department of Revenue and shall be subject to the provisions of

[Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950](#) as amended. Notwithstanding the provisions of Subparagraph (b) of this Paragraph, the Department of Revenue shall transfer monthly to the state treasury for deposit into the Community and Family Support System Fund, as established in [R.S. 28:826](#), the amount of revenues collected in accordance with this Item. An amount shall be allocated to the department, pursuant to legislative appropriation, for regulatory, administrative, investigative, enforcement, legal, and other such expenses as may be necessary to carry out the provisions of this Chapter and for activities associated with the enforcement of law and regulations governing the therapeutic marijuana program.

*(Item iii of Subparagraph 8(a) amended by Act 331 of 2019 Legislature, effective July 1, 2019)*

(b) All fees collected by the department shall be used to fund the expenses relating to the regulation and control of prescribed marijuana for therapeutic use.

*(Paragraph 8 repealed by Act 96 of 2016 Legislature and replaced by Act 567 of 2016 Legislature) (Subsection H amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

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

*(Subsections C – I added by Act 261 of 2015 Legislature, effective June 29, 2015)*

J. Notwithstanding any other provision of law to the contrary, employers and their worker's compensation insurers shall not be obliged or ordered to pay for medical marijuana in claims arising under [Title 23 of the Louisiana Revised Statutes of 1950](#), the Louisiana Workers' Compensation Law.

*(Subsection J added by Act 708 of 2018 Legislature, effective August 1, 2018)*

K. The provisions of this Section shall terminate on January 1, 2025.

*(Subsection K originally added by Act 261 of 2015 Legislature, effective June 29, 2015; relocated by Act 708 of 2018 Legislature, effective August 1, 2018, then amended by Act 715 of 2018 Legislature, effective August 1, 2018.)*

#### **§1047. Louisiana Department of Agriculture and Forestry; authorization to obtain criminal history record information**

A. As used in this Section, the following terms shall have the following meaning:

- (1) "Applicant" means a natural person, a corporation, limited liability corporation, partnership, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation, or any other legal entity or organization through which business is conducted.
- (2) "Bureau" means the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections.
- (3) "Criminal history record information" means information collected by state and federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision, and release. It shall not include intelligence information gathered for investigatory purposes or any identification information which does not indicate involvement of the individual in the criminal justice system.
- (4) "Department" means Louisiana Department of Agriculture and Forestry.
- (5) "FBI" means the Federal Bureau of Investigation of the United States Department of Justice.
- (6) "Licensure" means any license or permit that the department is authorized to issue for the production of recommended therapeutic marijuana and the facility producing therapeutic marijuana.

B. In addition to any other requirements established by department rules, the department shall require an applicant, as a condition of eligibility for licensure:

- (1) To submit a full set of fingerprints, in a form and manner prescribed by the department.
- (2) To permit the department to request and obtain state and national criminal history record information on the applicant.
- (3) To pay the reasonable costs to be incurred by the department in requesting and obtaining state and national criminal history record information on the applicant.

C. In accordance with the provisions and procedures prescribed by this Section, the department shall request and obtain state and national criminal history record information from the bureau and the FBI relative to any applicant for licensure whose fingerprints the department has obtained pursuant to this Section for the purpose of determining the applicant's suitability and eligibility for licensure.

D. Upon request by the department and upon submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall survey its criminal history records and identification files and make a simultaneous request of the FBI for like information from other

jurisdictions. The bureau may charge the department a reasonable processing fee for conducting and reporting on any such search.

- E. Any and all state or national criminal history record information obtained by the department from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the department in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the department to any other person or agency.

*(Section added by Act 96 of 2016 Legislature, effective May 19, 2016)*

**[Editorial Note:** Act 96 of 2016 Legislature, as well as subsequent acts amending this act, contain information not printed here. In particular, Section 2 of Act 96 contains alternative amendments that will only become effective if, and when, the United States Drug Enforcement Administration reclassifies marijuana from a Schedule I drug to a Schedule II drug. The primary difference is the use of the term "recommend" vs "prescribe"; Section 2 uses the term "prescribe", which would only be appropriate when the drug is reclassified to Schedule II. If and when that reclassification occurs, we will update the *Louisiana Pharmacy Law Book* with the language from Section 2 of Act 96 of the 2016 Legislature, as subsequently amended. **Amendment:** Act 284 of 2019 Legislature repealed Section 2 of Act 96 of 2016 Legislature, effective August 1, 2019.]