

# State of Louisiana

Office of Alcohol and Tobacco Control

JOHN BEL EDWARDS  
GOVERNOR



ERNEST P. LEGIER, JR.  
COMMISSIONER

August 21, 2023

## **ATC Advisory: Consumable Hemp Guidance and Updates**

This advisory has been prepared to provide guidance as it relates to the enforcement of the laws and rules governing the consumable hemp industry. Retailers and wholesalers of consumable hemp products who illegally distribute inhalable consumable hemp products, hemp products that contain THC amounts over the amount allowed by state law, adult-use consumable hemp products to persons under the age of twenty-one, or other consumable hemp products not allowed by law within the State of Louisiana will face legal consequences for all violations.

### **Current Louisiana Law**

- Consumable hemp products sold or offered for sale within the state of Louisiana must contain a THC concentration of not more than 0.3 percent on a dry weight basis and may not contain any type of cannabinoid that does not naturally occur in hemp.
- Inhalable consumable hemp products are not legal in the State of Louisiana. LDH has removed inhalable consumable hemp products from the list of allowed products to ensure public safety. Registration of a consumable hemp product with LDH does not make the product legal for sale or distribution within the state. Consumers, retailers, and wholesalers of consumable hemp products are advised that under the Louisiana law:
  - Consumable hemp products which are not for oral consumption or topical use are not allowed.
  - Consumable hemp product packaging may not exceed eight milligrams of THC per serving.
  - Solid consumable hemp products must be in individual, unattached single serving units.
  - Liquid consumable hemp products must include a device capable of measuring a single serving.
  - Consumable hemp beverages must be contained in packaging which enables consumers to determine when a single serving has been consumed.
- Adult-use consumable hemp products are consumable hemp products that contain more than 0.5 milligrams of total THC, must bear an "adult-use consumable hemp product" label, and shall not be sold to any person under twenty-one. Retailers of consumable hemp products must request valid identification from purchasers of adult-use consumable hemp products to safeguard against unlawful sales of adult-use consumable hemp products to persons under twenty-one years of age.

### **Questions and Complaint Submissions**

ATC remains committed to supporting businesses in the consumable hemp industry while ensuring that such businesses have the requisite knowledge of and adhere to all applicable laws, rules and regulations. All consumers and retailers should consult ATC's January 24, 2023 advisory and current Louisiana laws for in-depth research and additional guidance. Businesses and individuals who have questions concerning the law may contact the agency for guidance by emailing [ATC-Attorneys@atc.la.gov](mailto:ATC-Attorneys@atc.la.gov). Complaints pertaining to alleged violations may be submitted to the ATC by emailing [ATC-Complaints@atc.la.gov](mailto:ATC-Complaints@atc.la.gov).

**RS 40:966**

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

A. Manufacture; distribution. Except as authorized by this Part, it shall be unlawful for any person knowingly or intentionally:

(1) To produce, manufacture, distribute or dispense or possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance or controlled substance analogue classified in Schedule I.

(2) To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance classified in Schedule I.

(3) To cultivate, possess, process, or sell industrial hemp, industrial hemp products, or viable industrial hemp seeds not in accordance with the U.S. Agriculture Improvement Act of 2018 or the plan submitted by the Department of Agriculture and Forestry that is in compliance with U.S. Department of Agriculture rules.

B. Violations of Subsection A. Any person who violates Subsection A of this Section with respect to:

(1) Except as otherwise provided in Paragraphs (2) and (3) of this Subsection, a substance classified in Schedule I, upon conviction for an amount of:

(a) An aggregate weight of less than twenty-eight grams, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(b) An aggregate weight of twenty-eight grams or more, shall be imprisoned at hard labor for not less than one year nor more than twenty years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(2) A substance classified in Schedule I which is marijuana, tetrahydrocannabinols, or chemical derivatives of tetrahydrocannabinols, or synthetic cannabinoids for an amount of:

(a) An aggregate weight of less than two and one half pounds, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years, and pay a fine of not more than fifty thousand dollars.

(b) An aggregate weight of two and one half pounds or more, shall be imprisoned at hard labor for not less than one year nor more than twenty years and pay a fine of not more than fifty thousand dollars.

(3)(a) A substance classified in Schedule I that is the narcotic drug heroin or a mixture or substance containing a detectable amount of heroin or its analogues, upon conviction for any amount, shall be imprisoned at hard labor for not less than five years nor more than forty years and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

(b)(i) If the offender unlawfully distributes or dispenses heroin or a mixture or substance containing a detectable amount of heroin or its analogues, which is the direct cause of serious bodily injury to the person who ingested or consumed the substance, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five years nor more than forty years. At least five years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. In addition, the offender may be required to pay a fine of not more than fifty thousand dollars.

(ii) For purposes of this Subparagraph, "serious bodily injury" shall have the same meaning as provided by R.S. 14:2(C).

C. Possession. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule I unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner or as provided in R.S. 40:978, while acting in the course of his professional practice, or except as otherwise authorized by this Part. Any person who violates this Subsection with respect to:

(1) Except as otherwise provided in Paragraphs (2), (3), and (4) of this Subsection, a substance classified in Schedule I for an amount of:

(a) An aggregate weight of less than two grams, shall be imprisoned, with or without hard labor, for not more than two years and may, in addition, be required to pay a fine of not more than five thousand dollars.

(b) An aggregate weight of two grams or more but less than twenty-eight grams, shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years and may, in addition, be required to pay a fine of not more than five thousand dollars.

(2) A substance classified in Schedule I that is marijuana, tetrahydrocannabinol, or chemical derivatives thereof, shall be punished as follows:

(a)(i) On a first conviction or any subsequent conviction, wherein the offender possesses fourteen grams or less, the offender shall be fined not more than one hundred dollars.

(ii) If an offender upon whom a fine has been imposed under this Subparagraph alleges indigency, or otherwise fails to pay the imposed fine, the court shall determine whether the defendant has willfully refused to pay or has made bona fide efforts to legally acquire resources to pay. If an offender has not willfully refused to pay and has made bona fide efforts to attempt to pay the fine imposed, the court shall use its discretion to alternatives, including installment payments or community service.

(iii) This Subparagraph shall be enforced by use of summons in lieu of custodial arrest, in accordance with Code of Criminal Procedure Article 211.

(b) On a first conviction, wherein the offender possesses more than fourteen grams, the offender shall be fined not more than five hundred dollars, imprisoned in the parish jail for not more than six months, or both.

(c) Any person who has been sentenced under the provisions of Subparagraph (a) or (b) of this Paragraph and who has not been convicted of any other violation of a statute or ordinance prohibiting the possession of marijuana for a period of two years from the date of completion of sentence, probation, parole, or suspension of sentence shall not have the conviction used as a predicate conviction for enhancement purposes. The provisions of this Paragraph shall occur only once with respect to any person.

(d) On a second conviction, wherein the offender possesses more than fourteen grams, the offender shall be fined not more than one thousand dollars, imprisoned in the parish jail for not more than six months, or both.

(e)(i) On a third conviction, wherein the offender possesses more than fourteen grams, the offender shall be sentenced to imprisonment, with or without hard labor, for not more than two years, shall be fined not more than two thousand five hundred dollars.

(ii) If the court places the offender on probation, the probation shall provide for a minimum condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

(f)(i) On a fourth or subsequent conviction, wherein the offender possesses more than fourteen grams, the offender shall be sentenced to imprisonment with or without hard labor for not more than eight years, shall be fined not more than five thousand dollars, or both.

(ii) If the court places the offender on probation, the probation shall provide for a minimum

condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

(g) Except as provided in Subparagraph (c) of this Paragraph, a conviction for the violation of any other statute or ordinance with the same elements as Subsection C of this Section prohibiting the possession of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be considered as a prior conviction for the purposes of this Subsection relating to penalties for second, third, or subsequent offenders.

(h) Except as provided in Subparagraph (c) of this Paragraph, a conviction for the violation of any other statute or ordinance with the same elements as Paragraph (B)(2) of this Section prohibiting the distributing or dispensing or possession with intent to distribute or dispense marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids shall be considered as a prior conviction for the purposes of this Subsection relating to penalties for second, third, or subsequent offenders.

(3) A substance classified in Schedule I which is a synthetic cannabinoid, the offender shall be punished as follows:

(a) On a first conviction, the offender shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

(b) On a second conviction, the offender shall be fined not less than two hundred fifty dollars nor more than two thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

(c) On a third or subsequent conviction, the offender shall be sentenced to imprisonment at hard labor for not more than twenty years, and may, in addition, be fined not more than five thousand dollars.

(d) A conviction for the violation of any other provision of law or ordinance with the same elements as this Subsection prohibiting the possession of synthetic cannabinoids shall be considered a prior conviction for the purposes of this Paragraph relating to penalties for second, third, or subsequent offenses.

(e) A conviction for the violation of any other provision of law or ordinance with the same elements as Paragraph (B)(2) of this Section prohibiting the distributing or dispensing or possession with intent to distribute or dispense synthetic cannabinoids shall be considered a prior conviction for the purposes of this Paragraph relating to penalties for second, third, or subsequent offenses.

(f) If the court places the offender on probation, the probation shall provide for a minimum condition that he participate in a court-approved substance abuse program and perform four eight-hour days of court-approved community service activities. Any costs associated with probation shall be paid by the offender.

(4) A substance classified in Schedule I that is the narcotic drug heroin or a mixture or substance containing a detectable amount of heroin or of its analogues, upon conviction for an amount:

(a) An aggregate weight of less than two grams, shall be sentenced to a term of imprisonment, with or without hard labor, for not less than two years nor more than four years.

(b) An aggregate weight of two grams or more but less than twenty-eight grams, shall be sentenced to a term of imprisonment, with or without hard labor, for not less than two years nor more than ten years and may, in addition be required to pay a fine of not more than five thousand dollars.

D. If a person knowingly or intentionally possesses a controlled substance as classified in Schedule I, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978, while acting in the course of his professional practice, where the amount of the controlled substance is equal to or above the following weights, it shall be considered a violation of Subsection A of this Section:

(1) For marijuana, tetrahydrocannabinol, synthetic cannabinoids, or chemical derivatives thereof, two and one-half pounds.

(2) For any other Schedule I controlled substance, twenty-eight grams.

E. Notwithstanding any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections serving a life sentence for the production, manufacturing, distribution, or dispensing or possessing with intent to produce, manufacture, or distribute heroin shall be eligible for parole consideration upon serving at least fifteen years of imprisonment in actual custody.

F. Immunity from prosecution. (1) Any person who is a patient of the state-sponsored medical marijuana program in Louisiana, and 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, 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 licensed health professional authorized by R.S. 40:1046(B) to recommend medical marijuana to patients, or any visiting qualifying patient as defined in R.S. 40:1046.1 shall be exempt from the provisions of this Section. This Paragraph shall 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.

(2) Any pharmacy licensed to dispense marijuana pursuant to R.S. 40:1046, and any employee, board member, director, or agent of a pharmacy licensed to dispense marijuana pursuant to R.S. 40:1046, shall be exempt from the provisions of this Section for possession of marijuana at a location designated by the Louisiana Board of Pharmacy rules and regulations, or distribution of marijuana in a form approved by the Louisiana Board of Pharmacy to a patient with a valid recommendation or prescription, in the state-sponsored medical marijuana program. This Paragraph shall 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 or for violations of Louisiana Board of Pharmacy rules and regulations.

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

(4) 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 R.S. 40:1046, shall be exempt from prosecution under this Section for possession of marijuana or any of its derivatives at a research laboratory designated by the Louisiana Board of Pharmacy or for transportation of marijuana or any of its derivatives in accordance with Louisiana Board of Pharmacy rules and regulations. This Paragraph shall not prevent the arrest or prosecution of any person for diversion of marijuana from a research laboratory designated by the Louisiana Board of Pharmacy or other conduct outside the scope of the state-sponsored medical marijuana program or for violations of Board of Pharmacy rules and regulations.

(5) Any person conducting research as the licensee pursuant to R.S. 40:1046 and any employee,

board member, director, agent, or any person conducting research in partnership with the licensee shall be exempt from prosecution under this Section for the possession, production, or manufacture of marijuana or any of its derivatives at the production facility designated by the Department of Agriculture and Forestry or for the transportation of marijuana or any of its derivatives in accordance with Department of Agriculture and Forestry rules and regulations. This Paragraph shall 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 of Agriculture and Forestry 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.

(6) Any facility that is licensed by the Louisiana Department of Health and has patients in its care using medical marijuana pursuant to R.S. 40:1046 shall be exempt from the prohibitions provided in this Section for possession and distribution of marijuana. This Paragraph shall not prohibit the arrest or prosecution of any person for diversion of medical marijuana or any other conduct outside the scope of the state-sanctioned medical marijuana program provided for in R.S. 40:1046.

(7) Any licensed health professional authorized by R.S. 40:1046(B) to recommend medical marijuana to patients who provides information on marijuana for therapeutic use within a bona fide clinician-patient relationship or who issues a recommendation to a patient for marijuana for therapeutic use pursuant to R.S. 40:1046 shall be exempt from the prohibitions provided in this Section for possession and distribution of marijuana. This Paragraph shall not prohibit the arrest or prosecution of any person for diversion of medical marijuana or any other conduct outside the scope of the state-sanctioned medical marijuana program provided for in R.S. 40:1046.

(8)(a) The defenses in Paragraph (1) of this Subsection shall be raised by reproducing a patient's medical records that contain the legitimate recommendation to possess marijuana for therapeutic use in a form permissible under R.S. 40:1046 issued by a licensed health professional authorized by R.S. 40:1046(B) to recommend medical marijuana to patients.

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

- (i) A pharmacy licensed to dispense marijuana for therapeutic use.
- (ii) A licensee of marijuana for therapeutic use or its subordinate licensed contractor.
- (iii) A testing laboratory of marijuana for therapeutic use, authorized to do business.
- (iv) A licensed researcher of marijuana for therapeutic use, performing his official duties.

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

G. Treatment for heroin addiction as a condition for probation. (1) Upon conviction of Paragraph (B)(3) or (C)(4) of this Section, possession with intent to distribute heroin or possession of heroin, the court may suspend any sentence which it imposes and place the defendant on probation pursuant to Code of Criminal Procedure Article 893. The court may order the division of probation and parole of the Department of Public Safety and Corrections to conduct a presentence investigation, or may order the defendant to obtain a substance abuse evaluation, for the purpose of determining whether the defendant has a substance abuse disorder.

(2) Upon receiving the report or evaluation, the court shall, if it finds probable cause from such report to believe the defendant has a substance abuse disorder, order a contradictory hearing for the purpose of making a judicial determination on whether the defendant has a substance abuse disorder.

(3) If, at such contradictory hearing, the court determines that the defendant has a substance abuse disorder, it shall require as a condition of probation that the defendant complete a drug treatment program if the following conditions are met:

(a) There is an available program in the local jurisdiction that has sufficient experience in working with criminal justice participants with substance abuse disorders and is certified and approved by the state of Louisiana.

(b) The cost of the approved treatment does not create a substantial financial hardship to the defendant or his dependents. For purposes of this determination, "substantial financial hardship" shall have the same meaning as provided in R.S. 15:175.

(4) If the offender does not successfully complete the drug treatment program, or otherwise violates the conditions of his probation, the court may revoke the probation or impose other sanctions pursuant to Code of Criminal Procedure Article 900.

Added by Acts 1972, No. 634, §1. Amended by Acts 1973, No. 207, §3; Acts 1977, No. 631, §1; Acts 1981, No. 800, §1, eff. Aug. 2, 1981; Acts 1983, No. 598, §1; Acts 1984, No. 910, §1; Acts 1985, No. 208, §1; Acts 1986, No. 769, §1; Acts 1987, No. 850, §1; Acts 1991, No. 99, §1; Acts 1993, No. 969, §1; Acts 1994, 3rd Ex. Sess., No. 77, §1; Acts 2001, No. 403, §4, eff. June 15, 2001; Acts 2001, No. 1036, §1; Acts 2002, 1st Ex. Sess., No. 45, §1, eff. April 18, 2002; Acts 2004, No. 345, §1; Acts 2007, No. 19, §1; Acts 2009, No. 533, §3; Acts 2010, No. 565, §1; Acts 2010, No. 661, §1; Acts 2010, No. 810, §1; Acts 2010, No. 866, §1; Acts 2014, No. 368, §1, eff. May 30, 2014; Acts 2015, No. 295, §1, eff. June 29, 2015; Acts 2016, No. 343, §1; Acts 2017, No. 281, §§2 and 3; Acts 2017, No. 319, §1, eff. June 22, 2017; Acts 2018, No. 677, §1; Acts 2019, No. 354, §1; Acts 2020, No. 147, §1; Acts 2021, No. 247, §1; Acts 2022, No. 271, §4; Acts 2022, No. 439, §1; Acts 2022, No. 444, §1; Acts 2022, No. 671, §1.



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## 2011 Louisiana Laws Revised Statutes TITLE 40 — Public health and safety RS 40:982 — Second or subsequent offenses

**Universal Citation:** LA Rev Stat § 40:982

§982. Second or subsequent offenses

A. Any person convicted of any offense under this part, if the offense is a second or subsequent offense, shall be sentenced to a term of imprisonment that is twice that otherwise authorized or to payment of a fine that is twice that otherwise authorized, or both. If the conviction is for an offense punishable under R.S. 40:966(B), R.S. 40:967(B), R.S. 40:968(B) or R.S. 40:969(B), and if it is the offender's second or subsequent offense, the court may impose in addition to any term of imprisonment and fine, twice the special parole term otherwise authorized.

B. For purposes of this section, an offense shall be considered a second or subsequent offense, if, prior to the commission of such offense, the offender had at any time been convicted of any violation of this state, the United States, any other state of or any foreign country, relating to the unlawful use, possession, production, manufacturing, distribution, or dispensation of any narcotic drug, marijuana, depressant, stimulant, or hallucinogenic drugs.

Added by Acts 1972, No. 634, §1. Amended by Acts 1973, No. 207, §10.

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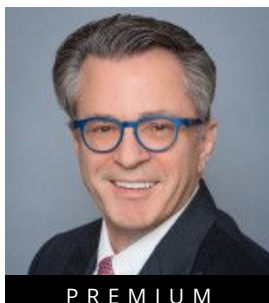
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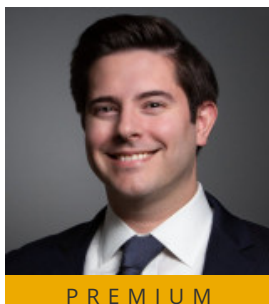
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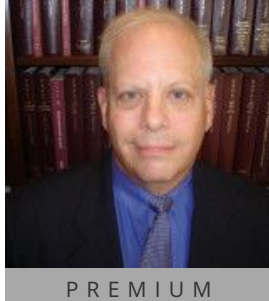
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# 2011 Louisiana Laws Revised Statutes TITLE 40 — Public health and safety RS 40:981 — Distribution to persons under age eighteen

**Universal Citation:** LA Rev Stat § 40:981

§981. Distribution to persons under age eighteen

A. Persons over twenty-five to persons under eighteen. Any person who is at least twenty-five years of age, or more, who violates R.S. 40:966 or R.S. 40:967 by distributing a substance, listed in Schedule I or II, which is a narcotic drug, to a person under eighteen years of age, shall, upon conviction, be punished by imprisonment at hard labor for not less than ten nor more than thirty years.

B. Any person who is at least eighteen years of age who violates R.S. 40:966 or R.S. 40:967 by distributing a substance listed in Schedule I or II which is a narcotic drug, to a person under eighteen years of age who is at least three years his junior, shall, upon conviction, be punished by a term of imprisonment of not less than five nor more than thirty years.

C. Any person who is at least eighteen years of age who violates R.S. 40:966 through R.S. 40:970 by distributing any other controlled dangerous substance listed in Schedules I, II, III, IV, and V, to a person under eighteen years of age who is at least three years his junior, shall, upon conviction, be punished by a term of imprisonment up to one and one-half times the longest term of imprisonment authorized by R.S. 40:966 through R.S. 40:970 or by payment of not more than twice the fine authorized by R.S. 40:966 through R.S. 40:970, or both.

Added by Acts 1972, No. 634, §1. Amended by Acts 1973, No. 207, §9; Acts 2001, No. 403, §4, eff. June 15, 2001.

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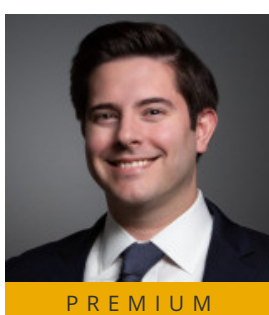
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#### Darren M. Shapiro



(516) 333-6555

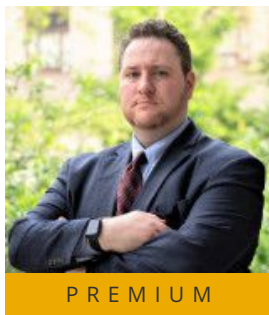
Jericho, NY  
Arbitration & Mediation, Di...

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#### Jonathan Rosenberg PRO



(718) 715-4845

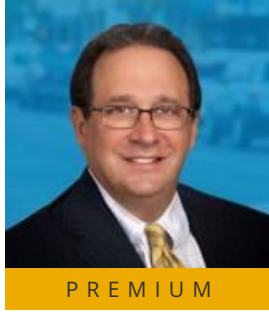
Brooklyn, NY  
Appeals & Appellate, Crimi...

Website

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#### Stephen Bilks PRO



(800) 696-9529

Baldwin, NY  
Family Law, Divorce, Perso...

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#### Michael Ettinger



(800) 500-2525

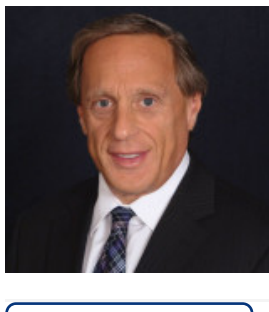
Rockville Centre, NY  
Elder Law, Estate Planning,...

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#### Roger L. Simon PRO



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Jericho, NY  
Personal Injury, Products L...

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