

2019 Regular Session

HOUSE BILL NO. 491

BY REPRESENTATIVES SCHEXNAYDER, ADAMS, AMEDEE, ANDERS, BAGNERIS, BARRAS, BOUIE, BOURRIAQUE, BRASS, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, GARY CARTER, STEVE CARTER, CONNICK, COUSSAN, COX, DAVIS, DEVILLIER, DUPLESSIS, EMERSON, FOIL, GAINES, GISCLAIR, GLOVER, GUINN, JIMMY HARRIS, LANCE HARRIS, HOWARD, JACKSON, JAMES, JEFFERSON, JENKINS, JORDAN, LACOMBE, NANCY LANDRY, TERRY LANDRY, LARVADAIN, LEGER, LYONS, MARCELLE, MARINO, MCMAHEN, DUSTIN MILLER, MUSCARELLO, NORTON, PIERRE, PYLANT, STAGNI, STOKES, AND TURNER

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

AGRICULTURAL COMMODITIES: Provides for the regulation of industrial hemp

1 AN ACT

2 To enact R.S. 3:1449(B)(3), Part V of Chapter 10-A of Title 3 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 3:1461 through 1472, and R.S. 40:4.9(F)
4 and 961.1, relative to the regulation of industrial hemp; to authorize industrial hemp
5 farming; to provide for definitions; to provide for powers and duties of the
6 commissioner of agriculture; to provide for powers and duties of the Agricultural
7 Chemistry and Seed Commission; to provide for licensure; to provide for fees; to
8 establish testing, inspection, and record keeping requirements; to provide for
9 research; to prohibit certain activities; to provide for regulation of hemp-derived
10 cannabidiol products; to provide for penalties; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 3:1449(B)(3) and Part V of Chapter 10-A of Title 3 of the Louisiana
13 Revised Statutes of 1950, comprised of R.S. 3:1461 through 1472, are hereby enacted to read
14 as follows:

15 §1449. Disposition of funds; Seed Fund

16 * * *

1 (8) "Grower" means any individual, partnership, corporation, cooperative
2 association, or other business entity that is licensed by the department to cultivate
3 industrial hemp.

4 (9) "Handle" or "handling" means possessing or storing industrial hemp for
5 any period of time on premises owned, operated, or controlled by a person licensed
6 by the Department of Agriculture and Forestry to cultivate or process industrial
7 hemp.

8 (10) "Industrial hemp" means the plant Cannabis sativa L. and any part of
9 that plant, including the seeds thereof and all derivatives, extracts, cannabinoids,
10 isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9
11 tetrahydrocannabinol (THC) concentration of not more 0.3 percent on a dry weight
12 basis.

13 (11) "Industrial hemp seed" means Cannabis sativa L. seed or other
14 propagating stock which have been inspected and sampled during their period of
15 growth and preparation for market by the commissioner, or by the inspection official
16 of the state in which the seeds or propagating stock were grown, and which have
17 been found to conform to the regulations issued by the commission pursuant to this
18 Part.

19 (12) "Process" means converting industrial hemp into a marketable form.

20 (13) "Processor" means any individual, partnership, corporation, cooperative
21 association, or other business entity that receives industrial hemp for processing into
22 commodities, products, or industrial hemp seed.

23 (14) "State plan" means a plan required for approval by the United States
24 Secretary of Agriculture to monitor and regulate the production of industrial hemp.

25 (15) "Transport" or "transporting" means the movement of industrial hemp
26 from the premises of a licensee to the premises of another licensee by means of a
27 vehicle.

1 §1463. Powers and responsibilities of the commission

2 The commission shall:

3 (1) Establish criteria for industrial hemp seed approval.

4 (2) Hold hearings on alleged violations of the provisions of this Part or of the
5 rules and regulations adopted pursuant to this Part.

6 (3) Advise the commissioner on the civil penalties to be imposed or the
7 injunctive or other civil relief to be sought to punish and restrain violations of the
8 provisions of this Part or of the rules and regulations adopted pursuant to this Part.

9 §1464. Powers and duties of the commissioner

10 The commissioner shall:

11 (1)(a) Adopt rules and regulations as are necessary to implement the
12 provisions of this Part.

13 (b) All rules and regulations adopted by the commissioner pursuant to this
14 Part shall be adopted in accordance with the Administrative Procedure Act, except
15 that all rules authorized by this Part shall also require the affirmative approval of the
16 House Committee on Agriculture, Forestry, Aquaculture, and Rural Development
17 and the Senate Committee on Agriculture, Forestry, Aquaculture, and Rural
18 Development.

19 (2) Administer and enforce the provisions of this Part and all rules and
20 regulations adopted pursuant to this Part.

21 (3) Collect, administer, and disburse the proceeds of all fees, interest,
22 penalties, and other monies collected pursuant to this Part.

23 (4) Appoint and employ all personnel necessary for the efficient and proper
24 administration of this Part.

25 (5) Enter, either directly or through a duly authorized agent, any land or
26 areas where hemp is grown, stored, or processed for the purposes of conducting
27 inspections, collecting samples, testing, examining, and copying records, and
28 carrying out suppression or eradication activities as provided in this Part.

1 (6) Seek and obtain injunctive or other civil relief to restrain and prevent
2 violations of this Part, rules and regulations adopted pursuant to this Part, or orders
3 and rulings issued by the commissioner pursuant to this Part.

4 (7) Institute civil proceedings to enforce his orders or rulings, collect any
5 assessments, late fees, fines, penalties, or costs due under this Part or to otherwise
6 enforce the provisions of this Part or rules and regulations adopted pursuant to this
7 Part.

8 (8) Create a state plan, in consultation with the governor and attorney
9 general, to monitor and regulate the production of industrial hemp. The state plan
10 shall include all requirements specified in the Agriculture Improvement Act of 2018,
11 P.L. 115-334.

12 (a) Present the state plan to the House and Senate committees on agriculture
13 no later than October 1, 2019.

14 (b) Submit the state plan for approval by the United States Secretary of
15 Agriculture no later than November 1, 2019.

16 (9) On or before January 31, 2020, and annually for four years thereafter,
17 submit a status report on the state's industrial hemp program to the House Committee
18 on Agriculture, Forestry, Aquaculture, and Rural Development and the Senate
19 Committee on Agriculture, Forestry, Aquaculture, and Rural Development. The
20 report shall include the following information:

21 (a) The number of applications received.

22 (b) The number of licenses issued in the state and in each parish.

23 (c) Total industrial hemp acreage in the state and in each parish.

24 (d) The number of licenses issued to growers with land under two hundred
25 acres and the total amount of industrial hemp sold from those growers to processors.

26 (e) Type of industrial hemp grown and processed, whether for fiber, seeds,
27 CBD, or other uses.

28 (f) Estimated value of the industrial hemp industry.

1 §1465. Licensure

2 A.(1) An industrial hemp seed producer shall obtain an annual license issued
3 by the department. The license shall authorize the licensee to produce, transport, and
4 sell approved seeds to licensed industrial hemp growers and processors.

5 (a) A licensed producer of industrial hemp seed shall ensure that the seed
6 complies with the standards set by the commission.

7 (b) The department shall make information that identifies sellers of industrial
8 hemp seed available to growers.

9 (2) A grower of industrial hemp shall obtain an annual license issued by the
10 department. The license shall authorize the licensee to cultivate, handle, and
11 transport industrial hemp in this state.

12 (3) A processor of industrial hemp shall obtain an annual license issued by
13 the department. The license shall authorize the licensee to handle, process, and
14 transport industrial hemp in this state.

15 (4) A contract carrier of industrial hemp shall obtain an annual license issued
16 by the department. The license shall authorize the licensee to transport industrial
17 hemp in this state.

18 B. Any person desiring to obtain a license shall apply to the commissioner
19 for a license on a form prescribed by the commissioner. A license must be obtained
20 before a person purchases or obtains any industrial hemp seeds.

21 C.(1) The application for any grower, processor, or industrial hemp seed
22 producer license shall include the following information:

23 (a) The name and address of the applicant.

24 (b) The name and address of the designated responsible party.

25 (c) The legal description and global positioning coordinates of the land area
26 to be used to produce or process industrial hemp.

27 (2) If any changes are made to the required information in Paragraph (1) of
28 this Subsection, the applicant shall resubmit the application to the department within
29 fifteen days.

1 D.(1) Upon application for initial licensure or annual license renewal, the
2 designated responsible party shall be required to submit to a criminal background
3 check. The designated responsible party shall submit fingerprints and other
4 identifying information to the Louisiana Bureau of Criminal Identification and
5 Information. The costs of providing the criminal background check shall be assessed
6 by the bureau, as specified in R.S. 15:587(B), and paid by the applicant.

7 (2) The applicant shall be ineligible to obtain a license if the designated
8 responsible party has been convicted under state or federal law of any of the
9 following:

10 (a) A felony within the ten years immediately preceding the date of
11 application.

12 (b) A drug-related misdemeanor within the two years immediately preceding
13 the date of application.

14 E. The applicant is responsible for any employee working under the
15 applicant's license.

16 F. The provisions of this Section shall not apply to the Louisiana State
17 University Agricultural Center and the Southern University Agricultural Center
18 when performing research as provided for in R.S. 3:1469.

19 §1466. Records required

20 A. Every grower, processor, and industrial hemp seed producer shall
21 maintain full and accurate records as required by rules and regulations of the
22 department.

23 B. The department's rules and regulations on record keeping shall, at a
24 minimum, require the following:

25 (1) All licensees shall maintain documentation of any sales or distribution,
26 including the party to which the product was sold or distributed.

27 (2) Growers shall maintain documentation of traceability from seed
28 acquisition to harvest to crop termination.

1 (3) Processors shall maintain documentation of industrial hemp acquisition
2 from grower to final product.

3 (4) Any person transporting or delivering industrial hemp shall have a dated
4 invoice, bill of lading, or manifest in his possession during the entire time he is
5 transporting or delivering industrial hemp. The invoice, bill of lading, or manifest
6 shall include the following information:

7 (a) The seller's and the purchaser's name and address.

8 (b) The specific origin and destination of the industrial hemp being
9 transported.

10 (c) The quantity of industrial hemp being transported.

11 §1467. Fees; disposition of funds

12 A. The commissioner may establish annual license and testing fees to be paid
13 to the department. The amount of the fees shall be based on the cost of the
14 regulatory functions performed and services provided. The annual license fee shall
15 not exceed five hundred dollars and the testing fee shall not exceed two hundred fifty
16 dollars.

17 B. All assessments, fees, penalties, and other funds received pursuant to this
18 Part shall be deposited in the Seed Fund provided for in R.S. 3:1449.

19 §1468. Testing; inspections

20 A. The department shall collect samples to test all industrial hemp crops
21 prior to harvest to ensure the THC concentration does not exceed 0.3 percent. The
22 grower shall harvest his approved industrial hemp plants not more than fifteen days
23 following the date of sample collection by the department, unless specifically
24 authorized in writing by the department.

25 B. In addition to any scheduled testing, the department may randomly
26 inspect any industrial hemp crop or industrial hemp product and take a representative
27 composite sample for field analysis if the department has probable cause to believe
28 a violation of this Part has occurred. If a crop of industrial hemp or industrial hemp

1 product contains a THC concentration that exceeds 0.3 percent on a dry weight basis,
2 the department may detain, seize, or embargo the crop.

3 C. Any facility processing industrial hemp products for consumption shall
4 be subject to inspection by the Louisiana Department of Health as provided for in
5 R.S. 40:631.

6 §1469. Industrial hemp research

7 A. The Louisiana State University Agricultural Center and the Southern
8 University Agricultural Center are authorized to cultivate, handle, and process
9 industrial hemp and industrial hemp seeds for research and development of new
10 varieties.

11 B. Each university may contract with licensed seed producers for
12 development of seed for distribution through a process as determined by the
13 department.

14 §1470. Prohibitions; cannabidiol product requirements

15 A. No person shall process or sell:

16 (1) Any part of hemp for inhalation.

17 (2) Any alcoholic beverage containing CBD.

18 (3) Any food product containing CBD unless the United States Food and
19 Drug Administration approves CBD as a food additive.

20 B. No retail food establishment or business selling alcoholic beverages shall
21 add CBD to any food or beverage unless the United States Food and Drug
22 Administration approves CBD as a food additive.

23 C. Any CBD product that is manufactured, distributed, imported, or sold for
24 use in Louisiana shall:

25 (1) Be produced from hemp grown in accordance with a state plan approved
26 by the United States Secretary of Agriculture.

27 (2) Be labeled in accordance with the State Food, Drug, and Cosmetic Law.

28 D. All labels shall meet the following criteria in order to receive approval
29 from the Louisiana Department of Health:

1 (1) Have the following words printed clearly on the label: "This product has
2 not been evaluated by the Food and Drug Administration and is not intended to
3 diagnose, treat, cure, or prevent any disease."

4 (2) Not contain any medical claim on the label.

5 (3) Have a scannable bar code, QR code, or web address linked to a
6 document or website that contains a certificate of analysis provided for in Subsection
7 E of this Section.

8 (4) Be registered with Louisiana Department of Health in accordance with
9 the State Food, Drug, and Cosmetic Law.

10 E. In addition to the registration requirements set forth by the Louisiana
11 Department of Health, the application for registration shall include a certificate of
12 analysis containing the following test information:

13 (1) The batch identification number, date received, date of completion, and
14 the method of analysis for each test conducted.

15 (2) Test results identifying the cannabinoid profile by percentage of dry
16 weight, solvents, pesticides, microbials, and heavy metals.

17 F. The certificate of analysis required by Subsection E of this Section shall
18 be completed by an independent laboratory that meets the following criteria:

19 (1) Is accredited as a testing laboratory by a private laboratory accrediting
20 organization approved by the Department of Health.

21 (2) Does not have a direct or indirect interest in a grower, processor, or
22 distributor of hemp or hemp products.

23 G. The Department of Health shall maintain an inventory system of
24 registered products that is accessible to the office of tobacco and alcohol control, law
25 enforcement, and any other necessary entities as determined by the department.

26 H. Prior to selling any hemp-derived CBD product, a retailer shall receive
27 permission from the office of tobacco and alcohol control.

1 I. The provisions of this Section shall not apply to any CBD product
2 approved by the United States Food and Drug Administration or produced in
3 accordance with R.S. 40:1046.

4 J. The provisions of this Section do not authorize any person to manufacture,
5 distribute, import, or sell any CBD product derived from any source that is not hemp.

6 K. The Louisiana Department of Health and the office of tobacco and
7 alcohol control shall promulgate rules and regulations as are necessary to implement
8 the provisions of this Section.

9 §1471. Civil penalties; procedures for imposition of penalties

10 A. Any person who violates any of the provisions of or the regulations
11 adopted pursuant to this Part; or who alters, forges, or counterfeits, or uses without
12 authority any license or other document provided for in this Part or in the regulations
13 adopted pursuant to this Part; or who fails to collect or to timely pay the assessments,
14 fees, and penalties due or assessed pursuant to this Part, shall be subject, in addition
15 to any unpaid assessments, late fees, or collection costs, to a civil penalty of not
16 more than five hundred dollars for each act of violation and for each day of violation.
17 Each day on which a violation occurs shall constitute a separate offense.

18 B. Any licensee who violates any of the provisions of or the regulations
19 adopted pursuant to this Part shall be subject to having his license suspended,
20 revoked, or placed on probation, in addition to any other penalties authorized by this
21 Part.

22 C. Penalties may be assessed only by a ruling of the commissioner based
23 upon an adjudicatory hearing held in accordance with the provisions of the
24 Administrative Procedure Act and this Part.

25 (1) The commission shall be convened by the commissioner for the purpose
26 of hearing any alleged violation of this Part or any rule and regulation adopted
27 pursuant to this Part.

28 (2) The commissioner shall appoint a hearing officer to preside over the
29 hearing.

1 (3) The commission shall make an initial determination on the matter. This
2 determination shall be submitted to the commissioner in writing.

3 (4) The commissioner shall make the final determination on the matter. If
4 the determination of the commissioner differs from the determination of the
5 commission, the commissioner shall issue a written opinion based on the record of
6 the hearing.

7 D. In addition to civil penalties, the commissioner may assess the cost of the
8 adjudicatory hearing against any person found to be in violation of this Part or the
9 regulations adopted pursuant to this Part. The commissioner shall, by regulation,
10 determine the amount of costs to be assessed in adjudicatory hearings.

11 §1472. Criminal penalties

12 A. It shall be unlawful for any person or entity to cultivate, handle, process,
13 or transport industrial hemp in any of the following circumstances:

14 (1) Without a license.

15 (2) Outside the scope of a license.

16 (3) If the industrial hemp originates from a seed that has not been approved
17 by the commissioner.

18 (4) If the Cannabis sativa L. plant or any part of that plant would otherwise
19 be industrial hemp as defined by this Part except that it has a delta-9
20 tetrahydrocannabinol (THC) concentration that exceeds 0.3 percent on a dry weight
21 basis. This shall not include handling the plant for destruction as required by the
22 department pursuant to this Part.

23 B. Whoever violates the provisions of this Section shall be imprisoned at
24 hard labor for not less than one year nor more than twenty years and shall be fined
25 not more than fifty thousand dollars.

26 C. The provisions of this Section shall not apply to the Louisiana State
27 University Agricultural Center and the Southern University Agricultural Center
28 when performing research as provided for in R.S. 3:1469.

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 2. R.S. 40:4.9(F) and 961.1 are hereby enacted to read as follows:

2 §4.9. Low-risk foods; preparation in home for public consumption

3 * * *

4 F. No preparer of low-risk foods pursuant to this Section shall sell any food
5 containing cannabidiol unless the United States Food and Drug Administration
6 approves cannabidiol as a food additive.

7 * * *

8 §961.1. Industrial hemp exemption

9 Notwithstanding the definitions provided for in R.S. 40:961(6) and (26), the
10 provisions of the Uniform Controlled Dangerous Substances Law shall not apply to
11 industrial hemp as provided for in Part V of Chapter 10-A of Title 3 of the Louisiana
12 Revised Statutes of 1950.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no Chapter of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute Chapter of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 491 Reengrossed 2019 Regular Session Schexnayder

Abstract: Authorizes industrial hemp farming and provides for regulation by the Dept. of Agriculture and Forestry.

Proposed law provides definitions for terms applicable to the cultivation, processing, and transportation of industrial hemp. Specifically, proposed law defines industrial hemp as the Cannabis sativa L. plant and any part of the plant that has a THC concentration of 0.3% or less on a dry weight basis.

Proposed law authorizes individuals licensed by the Dept. of Agriculture and Forestry (LDAF) to cultivate, process, handle, and transport industrial hemp.

Proposed law grants the Agricultural Chemistry and Seed Commission the authority to do the following:

- (1) Establish criteria for seed approval.
- (2) Hold hearings on alleged violations.
- (3) Advise the commissioner on civil penalties.

Proposed law grants the commissioner of agriculture the authority to do the following:

- (1) Adopt rules and regulations to regulate industrial hemp cultivation and processing.

- (2) Administer and enforce industrial hemp laws and rules.
- (3) Collect, administer, and disburse the proceeds of all fees, interest, penalties, and other monies collected for regulation of industrial hemp.
- (4) Appoint and employ necessary personnel to regulate industrial hemp.
- (5) Enter property to conduct inspections, collect samples, test, examine, and copy records, and carry out suppression or eradication activities.
- (6) Seek and obtain injunctive or other civil relief to restrain and prevent violations.
- (7) Institute civil proceedings to enforce his orders and rulings.
- (8) Create a state plan to submit to the federal government, in consultation with the attorney general and governor.

Proposed law grants the following powers and duties to the House and Senate agriculture committees:

- (1) Review of the state plan prior to submission to the federal government.
- (2) Affirmative approval of all proposed industrial hemp rules.

Proposed law establishes four license types to be issued by LDAF:

- (1) Grower - authorizes licensee to cultivate, handle, and transport industrial hemp.
- (2) Processor - authorizes licensee to handle, process, and transport industrial hemp.
- (3) Seed producer - authorizes licensee to produce, transport, and sell approved industrial hemp seeds.
- (4) Contract carrier - authorizes licensee to transport industrial hemp.

Proposed law authorizes applicants to identify a designated responsible party who must submit to a criminal background check prior to receiving a license.

Proposed law prohibits any person who has been convicted of a felony within the past 10 years or drug-related misdemeanor within the past two years from obtaining a license.

Proposed law requires licensees to maintain records including acquisition of industrial hemp seeds and plants and any sales or distribution of the seeds or plants.

Proposed law requires LDAF to test all industrial hemp crops prior to harvest to make sure the THC concentration doesn't exceed 0.3%.

Proposed law requires growers to harvest their hemp crops within 15 days of LDAF's test, unless they have received specific authorization from LDAF.

Proposed law authorizes LDAF to randomly inspect crops and products if the department has probable cause to believe a violation has occurred and to detain, seize, or embargo any crop of industrial hemp that tests higher than a 0.3% THC concentration.

Proposed law authorizes the commissioner to determine license and testing fees, not to exceed \$500 for licenses and \$250 for tests. Proposed law requires that the fees must be tied to the cost of regulation and services provided.

Proposed law provides that any person who violates the provisions of proposed law will be subject to civil penalty fines of up to \$500 per violation per day and criminal penalty fines of up to \$50,000 in addition to imprisonment from one to 20 years.

Proposed law authorizes the LSU Ag Center and the SU Ag Center to research and develop new industrial hemp seed varieties and exempts them from licensing requirements.

Proposed law prohibits processing any part of hemp for inhalation and processing or selling any alcoholic beverages or food containing CBD.

Proposed law requires any CBD products sold in La. must come from hemp produced under an approved state plan, meet labeling standards, and be registered with the La. Dept. of Health.

Proposed law requires retailers to receive permission from the office of alcohol and tobacco control prior to selling CBD products.

Proposed law exempts industrial hemp produced in accordance with proposed law from the Uniform Controlled Dangerous Substances Law.

(Adds R.S. 3:1449(B)(3) and 1461-1472 and R.S. 40:4.9(F) and 961.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill:

1. Define "transport" and "transporting" and clarify licensees are authorized to transport industrial hemp.
2. Move the authority to develop THC sampling and testing procedures from the Agricultural Chemistry and Seed Commission to the commissioner of agriculture.
3. Clarify license requirements do not apply to the LSU Ag Center and the SU Ag Center when performing research.
4. Clarify that any facility producing hemp seed products for consumption are subject to inspection by the La. Dept. of Health.
5. Make technical changes.

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Define "designated responsible party" and allow an applicant to identify a designated responsible party to submit to the background check on behalf of the applicant.
2. Change the period of time an applicant is ineligible for licensure due to a drug-related misdemeanor from 10 years to two years.
3. Define "CBD" and allow for the production and sale of CBD products that are produced under an approved state plan, meet labeling standards, and are registered with the La. Dept. of Health.

4. Prohibit processing hemp for inhalation and processing or selling any alcoholic beverages and food containing CBD.
5. Require retailers to receive permission from the office of alcohol and tobacco control prior to selling CBD products.
6. Modify the status report required by proposed law to include the number of licenses issued to growers with land under 200 acres and the total amount of industrial hemp sold from those growers to processors.
7. Modify the purpose of proposed law to include the recognition of industrial hemp as an agricultural commodity.
8. Make technical changes.