

2019 Regular Session

HOUSE BILL NO. 491

BY REPRESENTATIVES SCHEXNAYDER AND FOIL

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. 40:961.1,
4 relative to the regulation of industrial hemp; to authorize industrial hemp farming;
5 to provide for definitions; to provide for powers and duties of the commissioner of
6 agriculture; to provide for powers and duties of the Agricultural Chemistry and Seed
7 Commission; to provide for licensure; to provide for fees; to establish testing,
8 inspection, and record keeping requirements; to provide for research; to prohibit
9 certain activities; to provide for penalties; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

14 §1449. Disposition of funds; Seed Fund

15 * * *

16 B. Subject to appropriation, the monies in the fund shall be used for the
17 following purposes:

18 * * *

1 (3) To fund any and all costs related to the carrying out of the powers and
2 duties granted to the commission and the commissioner of agriculture and forestry
3 pursuant to R.S. 3:1461 through 1472.

4 * * *

5 PART V. INDUSTRIAL HEMP

6 §1461. Purpose

7 It is hereby the intent of the legislature to authorize the cultivation and
8 processing of industrial hemp as a legal, agricultural activity in the state of Louisiana
9 in accordance with the Agriculture Improvement Act of 2018, P.L. 115-334.

10 §1462. Definitions

11 As used in this Chapter, the following terms shall have the following
12 meanings:

13 (1) "Commission" means the Agricultural Chemistry and Seed Commission.

14 (2) "Commissioner" means the Louisiana commissioner of agriculture and
15 forestry.

16 (3) "Contract carrier" means an entity operating in intrastate commerce to
17 transport or deliver industrial hemp for compensation.

18 (4) "Cultivate" or "cultivating" means planting, growing, and harvesting
19 industrial hemp.

20 (5) "Department" means the Louisiana Department of Agriculture and
21 Forestry.

22 (6) "Grower" means any individual, partnership, corporation, cooperative
23 association, or other business entity that is licensed by the department to grow
24 industrial hemp.

25 (7) "Handle" or "handling" means possessing or storing industrial hemp
26 plants for any period of time on premises owned, operated, or controlled by a person
27 licensed by the Department of Agriculture and Forestry to cultivate or process hemp.
28 Handling also includes possessing or storing industrial hemp plants in a vehicle for

1 any period of time in order to transport it from the premises of a licensed person to
2 the premises of another licensed person.

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

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

14 (10) "Process" means converting industrial hemp into a marketable form.

15 (11) "Processor" means any individual, partnership, corporation, cooperative
16 association, or other business entity that receives industrial hemp for processing into
17 commodities, products, or industrial hemp seed.

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

20 §1463. Powers and responsibilities of the commission

21 The commission shall:

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

23 (2) Develop sampling and testing procedures to ensure industrial hemp and
24 industrial hemp products cultivated pursuant to the authority of this Part do not
25 exceed the 0.3 percent THC level.

26 (3) Hold hearings on alleged violations of the provisions of this Part or of the
27 rules and regulations adopted pursuant to this Part.

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

4 §1464. Powers and duties of the commissioner

5 The commissioner shall:

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

8 (b) All rules and regulations adopted by the commission pursuant to this Part
9 shall be adopted in accordance with the Administrative Procedure Act, except that
10 all rules authorized by this Part shall also require the affirmative approval of the
11 House Committee on Agriculture, Forestry, Aquaculture and Rural Development and
12 the Senate Committee on Agriculture, Forestry, Aquaculture and Rural
13 Development.

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

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

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

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

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

27 (7) Institute civil proceedings to enforce his orders or rulings, collect any
28 assessments, late fees, fines, penalties, or costs due under this Part or to otherwise

1 enforce the provisions of this Part or rules and regulations adopted pursuant to this
2 Part.

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

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

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

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

16 (a) The number of applications received.

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

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

19 (d) Type of industrial hemp grown and processed, whether for fiber or seeds.

20 (e) Estimated value of the industrial hemp industry.

21 §1465. Licensure

22 A.(1) An industrial hemp seed producer shall obtain an annual license issued
23 by the department. The license shall authorize the licensee to produce and sell
24 approved seeds to licensed industrial hemp growers and processors.

25 (a) A licensed seller of industrial hemp seed shall ensure that the seed
26 complies with the standards set by the commissioner.

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

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

4 (3) A processor of industrial hemp shall obtain an annual license issued by
5 the department. The license shall authorize the licensee to handle and process
6 industrial hemp in this state.

7 (4) A contract carrier of industrial hemp shall obtain an annual license issued
8 by the department. The license shall authorize the licensee to handle industrial hemp
9 while transporting it in this state.

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

13 C. The application for any grower, processor, or industrial hemp seed
14 producer license shall include the name and address of the applicant and the legal
15 description and global positioning coordinates of the land area to be used to produce
16 or process industrial hemp.

17 D.(1) The department shall require any person applying for an initial license
18 or annual license renewal to submit to a criminal background check to be conducted
19 by the Louisiana Bureau of Criminal Identification and Information. Fingerprints
20 and other identifying information of the applicant shall be submitted to the bureau
21 by the applicant, any members of a partnership recognized by Louisiana law, the
22 officers and directors of a corporation, the stockholders of a corporation, and
23 members of a limited liability company owning more than five percent of such a
24 corporation or company. The costs of providing the criminal background check shall
25 be assessed by the bureau, as specified in R.S. 15:587(B), and paid by the applicant.

26 (2) No person who has been convicted of a felony or drug related
27 misdemeanor, pursuant to state or federal law, within the ten years immediately
28 preceding the date of application shall be eligible to obtain a license.

1 E. The applicant is responsible for any employee working under the
2 applicant's license.

3 §1466. Records required

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

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

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

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

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

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

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

20 (b) The specific origin and destination of the industrial hemp being
21 transported.

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

23 §1467. Fees; disposition of funds

24 A. The commissioner may establish annual license fees and testing fees to
25 be paid to the department. The amount of the fees shall be based on the cost of the
26 regulatory functions performed and services provided. The annual license fee shall
27 not exceed five hundred dollars and the testing fee shall not exceed two hundred fifty
28 dollars.

1 B. All assessments, fees, penalties, and other funds received pursuant to this
2 Part shall be deposited in the Seed Fund.

3 §1468. Testing; inspections

4 A. The department shall collect samples to test all industrial hemp crops
5 prior to harvest to ensure the THC level does not exceed 0.3 percent. The grower
6 shall harvest his approved industrial hemp plants not more than fifteen days
7 following the date of sample collection by the department, unless specifically
8 authorized in writing by the department.

9 B. In addition to any scheduled testing, the department may randomly
10 inspect any industrial hemp crop or industrial hemp product and take a representative
11 composite sample for field analysis if the department has probable cause to believe
12 a violation of this Part has occurred. If a crop of industrial hemp or industrial hemp
13 product contains a THC concentration that exceeds 0.3 percent on a dry mass basis,
14 the department may detain, seize, or embargo the crop.

15 §1469. Industrial hemp research

16 A. The Louisiana State University Agricultural Center and the Southern
17 University Agricultural Center are authorized to cultivate, handle, and process
18 industrial hemp and industrial hemp seeds for research and development of new
19 varieties.

20 B. Each university may contract with licensed seed producers for
21 development of seed for distribution through a process as determined by the
22 department.

23 §1470. Prohibitions

24 No person shall:

25 (1) Process any part of hemp for inhalation.

26 (2) Process any part of hemp, except the seed, for topical use or
27 consumption.

1 §1471. Civil penalties; procedures for imposition of penalties

2 A. Any person who violates any of the provisions of or the regulations
3 adopted pursuant to this Part; or who alters, forges, or counterfeits, or uses without
4 authority any certificate or permit or other document provided for in this Part or in
5 the regulations adopted pursuant to this Part; or who fails to collect or to timely pay
6 the assessments, fees, and penalties due or assessed pursuant to this Part, shall be
7 subject, in addition to any unpaid assessments, late fees, or collection costs, to a civil
8 penalty of not more than five hundred dollars for each act of violation and for each
9 day of violation. Each day on which a violation occurs shall constitute a separate
10 offense.

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

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

18 (1) The commission shall be convened by the commissioner for the purpose
19 of hearing any alleged violation of this Part any rule and regulation adopted pursuant
20 to this Part.

21 (2) The commissioner shall appoint a hearing officer to preside over the
22 hearing.

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

25 (4) The commissioner shall make the final determination on the matter. If
26 the determination of the commissioner differs from the determination of the
27 commission, the commissioner shall issue a written opinion based on the record of
28 the hearing.

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

5 §1472. Criminal penalties

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

8 (1) Without a license.

9 (2) Outside the scope of a license.

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

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

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

20 * * *

21 Section 2. R.S. 40:961.1 is hereby enacted to read as follows:

22 §961.1. Industrial hemp exemption

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

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 and processing 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 and process industrial hemp.

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

- (1) Establish criteria for seed approval.
- (2) Develop sampling and testing procedures.
- (3) Hold hearings on alleged violations.
- (4) 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 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 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 and handle industrial hemp.
- (2) Processor-authorizes licensee to handle and process industrial hemp.
- (3) Seed producer-authorizes licensee to produce and sell approved industrial hemp seeds.
- (4) Contract carrier-authorizes licensee to handle and transport industrial hemp.

Proposed law requires all applicants to submit to a criminal background check prior to receiving a license.

Proposed law prohibits any person who has been convicted of a felony or drug related misdemeanor within the past 10 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 level 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 level.

Proposed law prohibits processing any part of the industrial hemp plant, except for the seed, for inhalation, topical use, or consumption.

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 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 up to \$50,000 in addition to imprisonment from one to 20 years.

Proposed law authorizes the LSU Ag Center and the Southern Ag Center to research and develop new industrial hemp seed varieties.

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. 40:961.1)