

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,
8 processing, and transportation of industrial hemp as legal, agricultural activities in
9 the state of Louisiana in accordance with the Agriculture Improvement Act of 2018,
10 P.L. 115-334.

11 §1462. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (13) "Transport" or "transporting" means the movement of industrial hemp
19 from the premises of a licensee to the premises of another licensee by means of a
20 vehicle.

21 §1463. Powers and responsibilities of the commission

22 The commission shall:

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

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

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

1 §1464. Powers and duties of the commissioner

2 The commissioner shall:

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

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

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

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

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

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

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

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

28 (8) Create a state plan, in consultation with the governor and attorney
29 general, to monitor and regulate the production of industrial hemp. The state plan

1 shall include all requirements specified in the Agriculture Improvement Act of 2018,
2 P.L. 115-334.

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

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

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

12 (a) The number of applications received.

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

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

15 (d) Type of industrial hemp grown and processed, whether for fiber, seeds,
16 or other uses.

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

18 §1465. Licensure

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

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

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

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

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

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

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

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

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

23 (2) No person convicted of a felony or drug-related misdemeanor, pursuant
24 to state or federal law, within the ten years immediately preceding the date of
25 application shall be eligible to obtain a license.

26 E. The applicant is responsible for any employee working under the
27 applicant's license.

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

4 §1466. Records required

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

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

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

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

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

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

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

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

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

24 §1467. Fees; disposition of funds

25 A. The commissioner may establish annual license and testing fees to be paid
26 to the department. The amount of the fees shall be based on the cost of the
27 regulatory functions performed and services provided. The annual license fee shall
28 not exceed five hundred dollars and the testing fee shall not exceed two hundred fifty
29 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 concentration does not exceed 0.3 percent. The
6 grower 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 weight basis,
14 the department may detain, seize, or embargo the crop.

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

18 §1469. Industrial hemp research

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

23 B. Each university may contract with licensed seed producers for
24 development of seed for distribution through a process as determined by the
25 department.

26 §1470. Prohibitions

27 No person shall:

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

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

3 §1471. Civil penalties; procedures for imposition of penalties

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

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

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

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

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

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

26 (4) The commissioner shall make the final determination on the matter. If
27 the determination of the commissioner differs from the determination of the
28 commission, the commissioner shall issue a written opinion based on the record of
29 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, process,
7 or transport 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 C. The provisions of this Section shall not apply to the Louisiana State
21 University Agricultural Center and the Southern University Agricultural Center
22 when performing research as provided for in R.S. 3:1469.

23 * * *

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

25 §961.1. Industrial hemp exemption

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

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 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 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 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 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 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)

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.