

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 491

2019 Regular Session

Schexnayder

AGRICULTURAL COMMODITIES: Provides for the regulation of industrial hemp

### Synopsis of Senate Amendments

1. Adds a definition of "applicant" that clarifies for businesses, "applicant" means the person designated by the business as being responsible for daily business operations. Adds additional definitions for "commissioner", "department", and "industrial hemp-derived CBD product".
2. Deletes the requirement that all industrial hemp rules promulgated by the Dept. of Agriculture shall receive affirmative approval from the House and Senate agriculture committees.
3. Requires the House and Senate agriculture committees to approve the state plan submitted by the commissioner of agriculture and changes the date of submission to no later than Oct. 15, 2019, instead of Oct. 1, 2019.
4. Clarifies that in the application process, a contract carrier is not required to submit the legal description and global positioning coordinates of the land area to be used to produce or process industrial hemp.
5. Adds a prohibition on processing or selling beverages containing cannabidiol (CBD) unless the U.S. Food and Drug Administration approves CBD as a food additive.
6. Adds a requirement that any industrial-hemp CBD product sold in Louisiana can not be marketed as a dietary supplement.
7. Expands industrial hemp-derived CBD products that can be sold in-state to include those produced from hemp grown by a licensee authorized to grow hemp by the U.S. Dept. of Agriculture or under a state pilot program.
8. Allows the Dept. of Health to charge an annual fee not to exceed \$50 for each industrial hemp-derived CBD product registered.
9. Establishes a permit for retailers selling industrial hemp-derived CBD products and authorizes the commissioner of Alcohol and Tobacco Control (ATC) to establish an annual permit fee not to exceed \$175.
10. Adds a Nov. 1, 2019, deadline for the Dept. of Health and ATC to promulgate rules.
11. Adds criminal penalties for processing or selling CBD products that do not meet the requirements of proposed law and makes the penalties effective Jan. 1, 2020.
12. Changes the definition of "industrial hemp" in House Bill No. 560 of the 2019 R.S. and make the provision effective only if House Bill No. 560 becomes law.
13. Makes all other provisions of proposed law effective upon signature of the governor.
14. Makes technical changes.

### **Digest of Bill as Finally Passed by Senate**

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 requires the Agricultural Chemistry and Seed Commission to do the following:

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

Proposed law requires the commissioner of agriculture to do the following:

- (1) Adopt rules and regulations to regulate industrial hemp cultivation and processing in accordance with the Administrative Procedure Act.
- (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.
- (9) Submit the state plan to the House and Senate agriculture committees for approval no later than Oct. 15, 2019.
- (10) Submit the state plan for approval by the U.S. Secretary of Agriculture no later than Nov. 1, 2019.
- (11) Submit a status report on the state's industrial hemp program to the House and Senate agriculture committees.

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 a 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 ensure the THC concentration does not 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 in writing from LDAF.

Proposed law authorizes LDAF to randomly inspect crops and products if the department has reason to believe a violation has occurred and to detain, seize, destroy, or embargo any industrial hemp crop or product 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 certain provisions of proposed law regarding the cultivation, handling, processing, and transportation of industrial hemp 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 provides for the regulation of industrial hemp-derived cannabidiol (CBD) products by the La. Dept. of Health (LDH) and the office of alcohol and tobacco control (ATC).

Proposed law prohibits processing or selling:

- (1) Any part of hemp for inhalation.
- (2) Any alcoholic beverage containing CBD.
- (3) Any food product or beverage containing CBD unless the U.S. Food and Drug Administration approves CBD as a food additive.

Proposed law requires any CBD product that is manufactured, distributed, imported, or sold for use in Louisiana to:

- (1) Be produced from hemp grown by a licensee authorized to grow hemp by the U.S. Dept. of Agriculture or under a state plan in accordance with the 2018 Farm Bill, or under an authorized state pilot program in accordance with the 2014 Farm Bill.
- (2) Be registered with LDH in accordance with the State Food, Drug, and Cosmetic Law.
- (3) Be labeled in accordance with the State Food, Drug, and Cosmetic Law.
- (4) Not be marketed as a dietary supplement.

Proposed law requires retailers selling industrial hemp-derived CBD products obtain a permit from ATC for each place of business.

Proposed law authorizes the commissioner of ATC to establish and collect an annual permit fee, not to exceed \$175 per year.

Proposed law provides for the following criminal penalties for processing or selling products that do not meet the requirements of proposed law:

- (1) On a first conviction, a fine not to exceed \$300.
- (2) On a second conviction, a fine not to exceed \$1,000.
- (3) On a third or subsequent conviction, imprisonment for not more than two years and a fine not to exceed \$5,000.

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

Proposed law provides the following effectiveness provisions:

R.S. 3:1484 is effective Jan. 1, 2020.

R.S. 47:1692(3) is effective only if House Bill No. 560 of this 2019 R.S. becomes law.

All other provisions will become effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:1692(3); Adds R.S. 3:1449(B)(3), 1461-1471, and 1481-1484 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.

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.

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the reengrossed bill

1. Defines "designated responsible party".
2. Adds the definitions of "industrial hemp seed producer" and "industrial hemp-derived CBD product".
3. Authorizes a processor to store commodities, products, or industrial hemp seed.
4. Modifies the definition of "transport".
5. Requires the commissioner of agriculture to submit the state plan for approval by the House and Senate agriculture committees no later than October 15, 2019.
6. Clarifies license application requirements.
7. Authorizes a processor or contract carrier license applicant to appoint a designated responsible party to submit to a criminal background check.
8. Requires a grower and industrial hemp seed producer license applicant to submit to a criminal background check.
9. Authorizes the destruction of an industrial hemp crop or industrial hemp product if the THC concentration exceeds 0.3 percent.
10. Prohibits processing, possessing, or selling any part of hemp for inhalation, alcoholic beverage containing CBD, and food products or beverages containing CBD unless the U.S. Food and Drug Administration approves CBD as a food additive.
11. Requires a seller of industrial hemp-derived CBD products to apply for and obtain a permit for each place of business from the ATC.
12. Authorizes the commissioner of ATC to establish a permit fee.

13. Provides for criminal penalties.