

2023 Regular Session

HOUSE BILL NO. 605

BY REPRESENTATIVES SCHEXNAYDER, ADAMS, COX, TRAVIS JOHNSON,
LARVADAIN, SELDERS, AND STAGNI

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

HEALTH: Provides relative to the regulation of consumable hemp products

1 AN ACT

2 To amend and reenact R.S. 3:1481(13) and (14), 1482(B)(1), 1483(A)(1)(introductory

3 paragraph), (B)(introductory paragraph), (2), and (4) through (7), (C)(introductory

4 paragraph), (D), (E)(introductory paragraph), (F)(introductory paragraph),

5 (G)(introductory paragraph), (1), and (2), and (H) through (L), and 1484(A)(1),

6 (B)(1)(a), (3), and (4), and (C) through (H), to enact R.S. 3:1481(15), 1483(F)(4) and

7 (M) through (Q), and 1484(I), and to repeal R.S. 3:1482(E), relative to consumable

8 hemp products; to provide for definitions; to provide relative to the authority and

9 responsibilities of the Louisiana Department of Health; to provide relative to fees

10 collected by the Louisiana Department of Health; to provide for product

11 requirements; to provide for limits on servings and packages; to provide relative to

12 the authority and responsibilities of the office of alcohol and tobacco control; to

13 provide relative to fees collected by the office of alcohol and tobacco control; to

14 provide for the revocation of registration of certain products; to provide for reporting

15 requirements; to provide for fines; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 3:1481(13) and (14), 1482(B)(1), 1483(A)(1)(introductory

18 paragraph), (B)(introductory paragraph), (2), and (4) through (7), (C)(introductory

19 paragraph), (D), (E)(introductory paragraph), (F)(introductory paragraph), (G)(introductory

20 paragraph), (1), and (2), and (H) through (L), and 1484(A)(1), (B)(1)(a), (3), and (4), and (C)

1 through (H) are hereby amended and reenacted and R.S. 3:1481(15), 1483(F)(4) and (M)
2 through (Q), and 1484(I) are hereby enacted to read as follows:

3 §1481. Definitions

4 As used in this Part:

5 * * *

6 (13) "Synthetically-derived tetrahydrocannabinol" means any
7 tetrahydrocannabinol that is not derived from the naturally occurring constituents of
8 Cannabis sativa L. plant material and is not a naturally occurring constituent of
9 Cannabis sativa L. plant material.

10 ~~(13)~~ (14) "THC" means a combination of any tetrahydrocannabinol and
11 tetrahydrocannabinolic acid.

12 ~~(14)~~ (15) "Wholesaler" means a wholesale seller, distributor, or packer of
13 consumable hemp products.

14 §1482. Consumable hemp products; prohibitions

15 * * *

16 B. No person shall process, sell, or offer for sale:

17 (1) Any alcoholic beverage containing ~~cannabidiol~~ any cannabinoid.

18 * * *

19 §1483. Product approval; consumable hemp processors; Louisiana Department of
20 Health

21 A. The department shall be responsible for the following:

22 (1) Reviewing and registering consumable hemp products to ensure the
23 products comply with the provisions of this Part.

24 (2) Reviewing and approving labels to ensure the labels comply with the
25 provisions of this Part.

26 (3) Maintaining a list of registered consumable hemp products and verifying
27 the products on the list comply with the provisions of this Part.

28 (4) Issuing consumable hemp processing permits and regulating the
29 permitted facilities and permittees.

1 resemblance to an existing food product that is familiar to the public as a widely
2 distributed, branded food product such that a product could be mistaken for the
3 branded product shall be considered marketed to children.

4 (6) Not contain any type of cannabinoid that does not naturally occur in
5 hemp.

6 (7) Not contain any synthetically-derived tetrahydrocannabinol.

7 ~~(6) (8)(a) For consumable hemp products, a product shall not~~ Not exceed a
8 total delta-9 THC concentration of more than 0.3 percent or a total THC
9 concentration of more than one percent. The total THC in a product shall not exceed
10 eight milligrams per serving. ~~The provisions of this Subparagraph shall not apply~~
11 ~~to floral hemp material.~~

12 ~~(b) For floral hemp material, a product shall not exceed a total delta-9 THC~~
13 ~~concentration of more than 0.3 percent on a dry weight basis or a total THC~~
14 ~~concentration of more than one percent on a dry weight basis.~~

15 ~~(c) Any consumable hemp product that exceeds the THC limits provided in~~
16 ~~this Paragraph that was registered with the department prior to June 16, 2022, may~~
17 ~~be sold in Louisiana until January 1, 2023.~~

18 ~~(7) (9)~~ A serving shall be clearly identified by one of the following means
19 determined as follows:

20 ~~(a) The package contains a measuring device that measures single servings~~
21 ~~of the product.~~

22 ~~(b) The packaging clearly enables a consumer to determine when a single~~
23 ~~serving has been consumed.~~

24 (a) For tinctures, extracts, concentrates, and other liquid-type products, the
25 package shall include a measuring device capable of administering a single serving.
26 A dropper, cap, or measuring cup included with the package shall be considered an
27 acceptable measuring device.

1 H. The department may require any applicant seeking registration of a
2 consumable hemp product to submit photographs or renderings of the product that
3 accurately depict the entirety of the product, including all accessories or physical
4 items included or sold with the product by the applicant, whether attached or not.
5 The department may also require submission of a specimen of the actual product and
6 all included accessories if the department determines in its sole discretion that
7 submitted renderings or photographs do not allow a sufficient determination that the
8 product meets all applicable requirements of this Part or any rule promulgated by the
9 department pursuant to this Part.

10 I. To ensure products comply with the registration and labeling provisions
11 provided in this Part, the department may conduct randomized sampling, analyzing,
12 and testing of consumable hemp products approved by the department. The
13 department may contract with a third-party laboratory for purposes of this
14 Subsection.

15 J.(1) The department shall refuse to register any consumable hemp product
16 that violates or fails to conform to any applicable provisions of this Part or any rules
17 promulgated by the department pursuant to this Part.

18 (2) The registration of any consumable hemp product that violates or fails
19 to conform to any applicable provision of this Part or any rules promulgated by the
20 department pursuant to this Part shall be subject to revocation.

21 ~~G. K.~~ The department shall:

22 (1) Conduct an initial review of any product submitted pursuant to this
23 Section and notify the submitting party of any deficiencies existing which prevent
24 the approval of the product within fifteen business days of the date of submission.
25 If the department fails to notify the submitting party within fifteen business days of
26 the date of submission, the product may be sold by a wholesaler or retailer permitted
27 pursuant to R.S. 3:1484 from the day following the fifteenth business day until the
28 submitting party receives final approval or denial from the department for the

1 product. The department shall indicate the product's temporary approval status on
2 its list of registered products.

3 (2) Provide ~~a~~ the list of registered products to the office of alcohol and
4 tobacco control, law enforcement, and other necessary entities as determined by the
5 department.

6 * * *

7 ~~H. L.~~ The provisions of this Section do not authorize any person to
8 manufacture, distribute, import, or sell any cannabinoid product derived from any
9 source other than hemp.

10 ~~I. M.~~ Any facility processing industrial hemp products intended for human
11 consumption that do not meet the definition of consumable hemp product provided
12 in this Part shall be regulated in accordance with the State Food, Drug, and Cosmetic
13 Law.

14 ~~J. N.~~ Whoever processes consumable hemp products without a license shall
15 be subject to imprisonment at hard labor for not less than one year nor more than
16 twenty years and shall be fined not more than fifty thousand dollars. In addition to
17 the penalties provided in this Subsection, the department may seek an injunction
18 prohibiting a person from processing consumable hemp products without a license.

19 ~~K. O.~~ The provisions of this Part shall not apply to any cannabinoid product
20 approved by the United States Food and Drug Administration or produced in
21 accordance with R.S. 40:1046.

22 P. In addition to the department's authority to revoke the registration of any
23 consumable hemp product pursuant to this Section, the department is authorized to
24 impose the following penalties:

25 (1) Any consumable hemp processor that violates or fails to conform to any
26 relevant provision or requirement of this Part or any rule promulgated by the
27 department pursuant to this Part, shall be subject to a fine not to exceed two hundred
28 fifty dollars per offense. Each day on which a violation occurs shall constitute a
29 separate offense.

1 (2) Revocation or refusal to issue or renew a consumable hemp processor
2 permit for cause, including but not limited to the following causes:

3 (a) Owing any outstanding final penalties imposed by the department against
4 the registrant or applicant, if a minimum of sixty days within which to pay any such
5 final penalties is provided.

6 (b) Having had the registration of at least three of the processor's registered
7 consumable hemp products finally revoked by the department.

8 (3) The provisions of this Subsection shall apply to juridical entities that
9 share common ownership as provided in rule by the department.

10 ~~E.~~ Q. The department shall promulgate rules and regulations in accordance
11 with the Administrative Procedure Act to implement the provisions of this Section.
12 In order to expedite implementation, the department shall utilize emergency
13 rulemaking. At a minimum, the ~~The~~ rules shall specify standards for product labels;
14 procedures for product and label approval; definitions for product types provided for
15 in ~~Subsection B~~ of this Section; limits for solvents, pesticides, microbials, and heavy
16 metals; requirements for accreditation for laboratories; any prohibited dosage
17 vehicles as determined by the department; ~~and~~ sanitary requirements specific to
18 consumable hemp processors; requirements to ensure the serving size and serving
19 identification criteria provided for in this Section are met; and procedures for denials
20 and revocations of products and permits.

21 §1484. Permit to sell; office of alcohol and tobacco control

22 A. The office of alcohol and tobacco control is responsible for and limited
23 to the following:

24 (1) Issuing wholesaler, retailer, and special event permits and regulating the
25 permitted facilities and permittees.

26 (2) Ensuring permittees are not selling any consumable hemp products that
27 are not on the Department of Health's list of registered products.

28 ~~A.~~ B.(1) Each wholesaler of consumable hemp products shall apply for and
29 obtain a permit from the office of alcohol and tobacco control.

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~~B: C.~~(1)(a) Each person who sells or is about to engage in the business of selling at retail any consumable hemp product shall first apply for and obtain a permit for each place of business from the office of alcohol and tobacco control.

* * *

(3) The commissioner may establish and collect an annual retail permit fee and an annual special event permit fee. The amount of each permit fee provided for in this Subsection shall be based on the cost of the regulatory functions performed. The annual retail permit fee shall not exceed two hundred fifty dollars and the annual special event permit fee shall not exceed one hundred seventy-five dollars per year.

(4) No permit issued pursuant to this Section shall authorize the permittee to sell or offer for sale any cannabinoid product derived from any source other than hemp.

~~(4)(a)~~ D.(1) No consumable hemp product shall be sold to any person under the age of eighteen years.

~~(b)~~(2) No adult-use consumable hemp product shall be sold to any person under the age of twenty-one years.

~~C. The commissioner may establish and collect an annual retail permit fee and an annual special event permit fee. The amount of each permit fee provided for in this Subsection shall be based on the cost of the regulatory functions performed. and shall not exceed one hundred seventy-five dollars per year.~~

~~D: E.~~ Any person who violates any of the provisions of this Part or rules adopted pursuant to this Part; who alters, forges, or counterfeits, or uses without authority any permit or other document provided for in this Part; who operates without a permit; or who fails to collect or to timely pay the assessments, fees, and penalties due or assessed pursuant to this Part shall be subject, in addition to any unpaid assessments, late fees, or collection costs, to the civil penalties provided in this Section. Each day on which a violation occurs shall constitute a separate offense Subsection.

1 (1) For a first offense, a fine of not more than ~~three~~ five hundred dollars for
2 each act of violation and each day of violation.

3 (2) For a second offense that occurs within two years of the first offense, a
4 fine of not more than one thousand dollars for each act of violation and each day of
5 violation.

6 (3) For a third or subsequent offense that occurs within two years of the first
7 offense, a fine of not less than five hundred dollars but not more than three thousand
8 dollars for each act of violation and each day of violation.

9 ~~E.~~ F. In addition to the penalties provided in ~~Subsection D~~ Subsection E of
10 this Section, any permittee who violates any provisions of this Part shall be subject
11 to having his permit suspended or revoked. Any fine imposed pursuant to this Part
12 or the revocation or suspension of a permit is in addition to and is not in lieu of or
13 a limitation on the imposition of any other penalty provided by law.

14 ~~F.~~ G. In addition to the commissioner's authority to revoke or suspend a
15 permit pursuant to this Section, the secretary of the Department of Revenue shall
16 order the commissioner to immediately suspend the retailer's permit if the secretary
17 determines that a consumable hemp product retailer has failed to timely file returns
18 or pay taxes as required by R.S. 47:1693. The secretary shall order the
19 commissioner to suspend the retailer's permit until the returns have been filed and
20 the taxes are paid. No permit shall be suspended for taxes which have been properly
21 protested or appealed by the retailer pursuant to R.S. 47:1565 or 1567.

22 ~~G.~~ H. The office of alcohol and tobacco control shall investigate any report
23 of a violation of a provision of this Part and report any criminal violation to the
24 appropriate law enforcement agency.

25 ~~H.~~ I. The commissioner shall adopt rules and regulations in accordance with
26 the Administrative Procedure Act to implement the provisions of this Section. The
27 rules shall not include any fees or penalties for any permit not provided for in this
28 Section, or any requirements for proof of Louisiana residency, criminal background

1 checks, diagrams of retail premises, or proof of lease or ownership of any retail
2 establishment.

3 Section 2. R.S. 3:1482(E) is hereby repealed in its entirety.

4 Section 3. Beginning July 1, 2023, and until July 1, 2025, the Louisiana Department
5 of Health shall submit a quarterly report to the House and Senate committees on health and
6 welfare. The report shall detail the number and types of products submitted to the
7 department, the number and types of products approved by the department, and the number
8 and types of products not approved by the department and the reasons therefor, and the
9 number and types of products revoked by the department and the reasons therefor.

DIGEST

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

HB 605 Engrossed

2023 Regular Session

Schexnayder

Abstract: Provides for the regulation of consumable hemp products.

Present law provides for definitions relative to consumable hemp products.

Proposed law adds a definition for "synthetically-derived cannabinoid".

Present law prohibits any person from processing, selling, or offer for sale any alcoholic beverage containing cannabidiol.

Proposed law expands the prohibition to prohibit any person from processing, selling, or offering for sale any alcoholic beverage containing any cannabinoid.

Present law provides that Louisiana's consumable hemp law shall be preempted by any federal statute, federal regulation, or guidance from a federal government agency that is less restrictive than Louisiana's law.

Proposed law repeals present law.

Present law requires the La. Dept. of Health (LDH) to register consumable hemp products approves labels of consumable hemp products, and permit consumable hemp processors.

Proposed law adds specific responsibilities of LDH relative to the regulatory role.

Present law authorizes LDH to collect a registration fee of \$50 per consumable hemp product.

Proposed law reduces the fee from \$50 to \$25.

Present law adds provisions that all consumable hemp products shall meet in order to receive approval from LDH:

- (1) Must be contained in tamper-evident packaging.
- (2) Not be labeled, marketed, or intended for inhalation.
- (3) Not be marketed to children.
- (4) Not contain any type of cannabinoid that does not naturally occur in hemp.
- (5) Not contain any synthetically-derived cannabinoid.

Present law provides that consumable hemp products, including floral hemp material, cannot exceed a delta-9 THC concentration of more than 0.3% or a total THC concentration of more than 1%. Present law further restricts all consumable hemp products except for floral hemp material from exceeding 8mg of THC per serving.

Proposed law removes the exemption for floral hemp material and applies the 8mg of THC per serving limit on all consumable hemp products.

Proposed law provides the following restrictions on serving sizes:

- (1) For tinctures, extracts, concentrates, and other liquid-type products: the package shall include a measuring device capable of administering a single serving.
- (2) For beverages: a single can, bottle, or other container shall contain a maximum of a single serving.
- (3) For floral hemp material: a package shall contain a maximum of a single serving.
- (4) For all other products:
 - (a) An individual unit shall constitute a single serving and shall be separate and unattached to other units within a package.
 - (b) Multiple servings shall not be combined into one unit.
 - (c) A unit shall not be scored or separated in order to produce a single serving.
 - (d) A package shall contain a maximum of 20 servings.

Present law requires applications for consumable hemp product registration to include a certificate of analysis.

Proposed law requires the test included on the certificate of analysis to take place after any modifications to floral hemp material have been completed.

Proposed law authorizes LDH to require any applicant seeking registration of a consumable hemp product to submit photographs or renderings of the product. Proposed law further authorizes LDH to also require submission of a specimen of the actual product and all included accessories if determined necessary by LDH and allows LDH to have the product lab tested by an independent lab.

Proposed law authorizes LDH to conduct randomized sampling, analyzing, and testing of approved consumable hemp products.

Present law outlines provisions that are required to be included in LDH's administrative rules.

Proposed law retains present law and adds additional provisions.

Present law provides regulatory authority the office of alcohol and tobacco control (ATC) for wholesaler, retailer, and special event permits.

Proposed law adds specific responsibilities of ATC relative to the office's regulatory role.

Present law authorizes ATC to collect an annual retail permit fee of \$175.

Proposed law increases the fee from \$175 to \$250.

Proposed law requires LDH to submit certain information regarding consumable hemp products to the House and Senate health and welfare committees on a quarterly basis from July 1, 2023 to July 1, 2025.

Proposed law adds the following additional penalties in addition to LDH's authority to revoke registrations of consumable hemp products:

- (1) Includes a fine of \$250 per offense of a provision of this Section where each day a violation occurs will constitute a separate offense.
- (2) Revocation or refusal to issue or renew a consumable hemp processor permit for cause.
- (3) These penalties shall apply to juridical entities that share common ownership as provided in rule by the department.

Present law contains penalties for any person who alters, forges, or counterfeits, or operates without a permit or otherwise not compliant with existing law. The penalty is based on offense.

- (1) For a first offense, not more than three hundred dollars.
- (2) For a second offense that occurs within two years of the first offense, not more than one thousand dollars.
- (3) For a third or subsequent offense that occurs within two years of the first offense, not less than five hundred dollars but not more than three thousand dollars.

Proposed law contains penalties for any person who alters, forges, or counterfeits, or operates without a permit or otherwise not compliant with existing law. The penalty is based on a separate offense, as follows:

- (1) For a first offense, a fine of not more than five hundred dollars for each act of violation and each day of violation.
- (2) For a second offense that occurs within two years of the first offense, a fine of not more than one thousand dollars for each act of violation and each day of violation.
- (3) For a third or subsequent offense that occurs within two years of the first offense, a fine of not less than five hundred dollars but not more than three thousand dollars for each act of violation and each day of violation.

(Amends R.S. 3:1481(13) and (14), 1482(B)(1), 1483(A)(1)(intro. para.), (B)(intro. para.), (2), and (4) through (7), (C)(intro. para.), (D), (E)(intro. para.), (F)(intro. para.), (G)(intro. para.), (1), and (2), and (H) through (L), and 1484(A)(1), (B)(1)(a), (3), and (4), and (C) through (H); Adds R.S. 3:1481(15), 1483(F)(4) and (M) through (Q), and 1484(I); Repeals R.S. 3:1482(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Revise the definition of "synthetically-derived tetrahydrocannabinol".
2. Insert a provision that prohibits producers of consumable products from marketing those products to children.
3. Add provisions to clarify what is an acceptable measuring device to be used with certain consumable hemp products.
4. Provide that tinctures are not considered beverages and will not be limited to a single serving.
5. Specify that LDH may contract with a third-party laboratory to test products to ensure compliance with respect to registration.
6. Add administrative penalties to those processing consumable hemp products without a license.
7. Provide for the revocation of registrations and administrative penalties.
8. Make technical corrections.