

By: Perry

S.B. No. 1778

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the production and regulation of hemp and consumable  
3 hemp products; providing administrative penalties; imposing and  
4 authorizing fees; creating a criminal offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section [121.003](#), Agriculture Code, is amended by  
7 adding Subsection (e) to read as follows:

8 (e) Not later than the 90th day after the date a change to a  
9 state statute, federal statute, or federal regulation takes effect,  
10 the department shall submit to the secretary of the United States  
11 Department of Agriculture any amendments to the state plan  
12 necessary to incorporate and implement the change.

13 SECTION 2. Subchapter [A](#), Chapter [122](#), Agriculture Code, is  
14 amended by adding Section 122.005 to read as follows:

15 Sec. 122.005. HEMP RESEARCH BY INSTITUTIONS OF HIGHER  
16 EDUCATION. (a) The department shall issue a license to an  
17 institution of higher education in this state that requests the  
18 license.

19 (b) Notwithstanding any provision of this chapter or  
20 department rule other than Subsection (c), an institution of higher  
21 education conducting research involving hemp:

22 (1) is not required to pay a fee collected by the  
23 department under this chapter;

24 (2) is not required to obtain from the department a lot

1 crop permit or other permit for each location where hemp is grown;

2 (3) is not required to obtain preharvest testing under  
3 Section 122.153 before harvesting plants, except as provided by  
4 Subsection (c);

5 (4) may use hemp seed and cultivate and handle plants  
6 grown from seed that is not certified or approved under Section  
7 122.252; and

8 (5) is not subject to Section 122.403(c) or (d).

9 (c) An institution of higher education may not sell or  
10 transfer hemp to another person unless the institution complies  
11 with the requirements of Sections 122.153 and 122.356.

12 SECTION 3. Section 122.051, Agriculture Code, is amended by  
13 adding Subsection (c) to read as follows:

14 (c) Not later than the 90th day after the date a change to  
15 this chapter, a federal statute, or a federal regulation takes  
16 effect, the department shall propose any rules necessary to  
17 incorporate and implement the change.

18 SECTION 4. Section 122.151, Agriculture Code, is amended by  
19 adding Subsection (g) to read as follows:

20 (g) A laboratory that performs testing required by this  
21 chapter shall report the delta-9 tetrahydrocannabinol  
22 concentration, the total tetrahydrocannabinol concentration, and  
23 any other federally regulated cannabinoid of the sample on a dry  
24 weight basis and the measurement of uncertainty in the test result.  
25 The measurement of uncertainty must comply with International  
26 Organization for Standardization ISO/IEC 17025 or a comparable or  
27 successor standard. For purposes of this chapter, the delta-9

1 tetrahydrocannabinol concentration of the sample is the lowest  
2 possible value given that measurement of uncertainty.

3 SECTION 5. Section 122.201(a), Agriculture Code, is amended  
4 to read as follows:

5 (a) A license holder shall harvest the plants from a plot  
6 not later than the 30th [~~20th~~] day after the date a preharvest  
7 sample is collected under Section 122.154 unless field conditions  
8 delay harvesting or the department authorizes the license holder to  
9 delay harvesting. This subsection does not prohibit the license  
10 holder from harvesting the plants immediately after the preharvest  
11 sample is collected.

12 SECTION 6. Subchapter E, Chapter 122, Agriculture Code, is  
13 amended by adding Section 122.203 to read as follows:

14 Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED.

15 (a) A person whose license is suspended or revoked after planting  
16 hemp plants may obtain preharvest or postharvest testing under  
17 Subchapter D and may harvest the plants under Section 122.201 in the  
18 same manner as a license holder.

19 (b) While a person's license is suspended or revoked, the  
20 department may:

21 (1) prohibit the person from selling or using plants  
22 harvested under Subsection (a); or

23 (2) if the delta-9 tetrahydrocannabinol concentration  
24 of the plants is not more than 0.3 percent on a dry weight basis,  
25 allow the person to sell or use plants harvested under Subsection  
26 (a) in the same manner as a license holder under Section 122.202.

27 (c) A person whose license is reinstated may sell or use

1 plants harvested under Subsection (a) as provided by Section  
2 122.202.

3 SECTION 7. The heading to Subchapter F, Chapter 122,  
4 Agriculture Code, is amended to read as follows:

5 SUBCHAPTER F. HEMP SEED AND PLANTS

6 SECTION 8. Section 122.252, Agriculture Code, is amended to  
7 read as follows:

8 Sec. 122.252. CERTIFICATION OR APPROVAL OF SEED AND PLANT  
9 VARIETIES. (a) The department or an entity authorized to certify  
10 seed and plants under Chapter 62 shall identify and certify or  
11 approve varieties of seed and plants confirmed to produce hemp.

12 (b) The department or entity may not certify or approve a  
13 variety of hemp seed or plant if the variety [~~seed~~] is tested and  
14 confirmed to produce a plant that has delta-9 tetrahydrocannabinol  
15 concentration of more than 0.3 percent on a dry weight basis. For  
16 purposes of this subsection, the department may partner with a  
17 private entity or an institution of higher education to test seed  
18 and plant varieties for the purpose of certification or approval  
19 under this section.

20 (c) The department may authorize the importation of hemp  
21 seed and plant varieties certified in accordance with the law of  
22 another state or jurisdiction that requires as a condition of  
23 certification that hemp be produced in compliance with:

24 (1) that state or jurisdiction's plan approved by the  
25 United States Department of Agriculture under 7 U.S.C. Section  
26 1639p; or

27 (2) a plan established under 7 U.S.C. Section 1639q if

1 that plan applies in the state or jurisdiction.

2 (d) The department shall maintain and make available to  
3 license holders a list of hemp seed and plant varieties [~~seeds~~]  
4 certified or approved under this section.

5 SECTION 9. Subchapter F, Chapter 122, Agriculture Code, is  
6 amended by adding Section 122.254 to read as follows:

7 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In  
8 this section, "immature plant" means a hemp seedling, clone, or  
9 cutting that requires substantial cultivation and further growth  
10 before the beginning of the period under Section 122.201(a) when  
11 the plant may be harvested.

12 (b) A person may transport into this state, and a license  
13 holder may obtain and cultivate, immature plants propagated outside  
14 this state if the plants are accompanied by shipping documentation  
15 that:

16 (1) complies with any requirements of the state of  
17 origin;

18 (2) indicates the grower of the immature plants is  
19 licensed by the state of origin;

20 (3) lists the recipient license holder in this state  
21 and the recipient's license number; and

22 (4) shows that the variety of the immature plants is  
23 certified or approved under Section 122.252.

24 (c) A license holder may obtain and cultivate immature  
25 plants propagated in this state by another license holder if the  
26 plants are accompanied by the shipping certificate or cargo  
27 manifest required by Section 122.055 that shows that the variety of

1 the immature plants is certified or approved under Section 122.252.  
2 The immature plants are not subject to preharvest testing under  
3 Section 122.153.

4 (d) A license holder may transplant immature plants  
5 propagated by the license holder from one plot to another plot  
6 controlled by the license holder. The department by rule shall  
7 waive the requirement that a license holder obtain a lot crop permit  
8 and not require any fee for a greenhouse or other location used to  
9 propagate immature plants if the plants are transplanted to another  
10 plot controlled by the license holder and are not sold or  
11 transferred to another person. The department by rule shall waive  
12 the requirement that a person obtain a shipping certificate or  
13 cargo manifest to transplant immature plants from one plot to  
14 another plot operated by the license holder.

15 SECTION 10. Section 122.403, Agriculture Code, is amended  
16 by amending Subsection (a) and adding Subsection (e) to read as  
17 follows:

18 (a) If the department determines that a license holder  
19 negligently violated this chapter or a rule adopted under this  
20 chapter, the department shall enforce the violation in the manner  
21 provided by 7 U.S.C. Section 1639p(e) and 7 C.F.R. Section 990.6.

22 (e) A license holder may not receive more than one negligent  
23 violation of the same kind per growing season.

24 SECTION 11. Subchapter I, Chapter 122, Agriculture Code, is  
25 amended by adding Section 122.4035 to read as follows:

26 Sec. 122.4035. PENALTIES FOR CULTIVATING HEMP WITHOUT A  
27 LICENSE; CRIMINAL OFFENSE. (a) On determining that a person

1 violated Section 122.101, the department may:

2 (1) if the person has not previously received a  
3 penalty under this section:

4 (A) issue a written warning to the person;

5 (B) impose an administrative penalty in the  
6 amount of \$500;

7 (C) require the person to obtain a license; and

8 (D) allow the person to continue to cultivate or  
9 handle the hemp plants that are the subject of the violation,  
10 harvest those plants, and, after obtaining the license, sell or use  
11 those plants as provided by Section 122.202;

12 (2) if the person has previously received a penalty  
13 under Subdivision (1) for other conduct but has not previously  
14 received a penalty under this subdivision:

15 (A) issue a second written warning to the person;

16 (B) impose an administrative penalty in the  
17 amount of \$500;

18 (C) require the person to obtain a license; and

19 (D) seize and dispose of the hemp plants that are  
20 the subject of the violation; and

21 (3) if the person has previously received a penalty  
22 under Subdivision (2) or this subdivision for other conduct:

23 (A) refer the matter to the appropriate  
24 prosecuting attorney for criminal prosecution under Subsection  
25 (b); and

26 (B) seize and dispose of the hemp plants that are  
27 the subject of the violation.

1 (b) A person commits an offense if the person:

2 (1) violates Section 122.101; and

3 (2) has previously received a penalty under Subsection  
4 (a)(2) for other conduct.

5 (c) An offense under Subsection (b) is a Class B  
6 misdemeanor.

7 SECTION 12. Subchapter A, Chapter 443, Health and Safety  
8 Code, is amended by adding Sections 443.005 and 443.006 to read as  
9 follows:

10 Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The  
11 consumable hemp products account is an account in the general  
12 revenue fund administered by the department.

13 (b) The account consists of:

14 (1) appropriations of money to the account by the  
15 legislature;

16 (2) public or private gifts, grants, or donations,  
17 including federal funds, received for the account;

18 (3) fees collected under this chapter or under Chapter  
19 431 as it applies to consumable hemp products;

20 (4) interest and income earned on the investment of  
21 money in the account;

22 (5) penalties for violations of this chapter or  
23 Chapter 431 as it applies to consumable hemp products; and

24 (6) funds from any other source deposited in the  
25 account.

26 (c) The department may accept appropriations and gifts,  
27 grants, or donations from any source to administer and enforce this

1 chapter and Chapter 431 as it applies to consumable hemp products.  
2 Money received under this subsection shall be deposited in the  
3 account.

4 (d) Money in the account may be appropriated only to the  
5 department for the administration and enforcement of this chapter  
6 and Chapter 431 as it applies to consumable hemp products.

7 Sec. 443.006. MAXIMUM TETRAHYDROCANNABINOL CONTENT. (a)  
8 Notwithstanding any other law, a person may not process,  
9 manufacture, possess, transport, sell, or purchase a consumable  
10 hemp product in this state that:

11 (1) has a delta-9 tetrahydrocannabinol concentration  
12 of more than 0.3 percent on a dry weight basis;

13 (2) has a total tetrahydrocannabinol concentration of  
14 more than one percent on a dry weight basis;

15 (3) exceeds any federal limit; or

16 (4) has been adulterated with additional  
17 tetrahydrocannabinol or synthetic tetrahydrocannabinol.

18 (b) For purposes of Subsection (a), the total  
19 tetrahydrocannabinol concentration includes all isomers, acids,  
20 compounds, and other forms of tetrahydrocannabinol and shall be  
21 determined without any adjustment for a measurement of uncertainty  
22 in a test result.

23 SECTION 13. Section 443.103, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 443.103. APPLICATION; ISSUANCE. An individual or  
26 establishment may apply for a license under this subchapter by  
27 submitting an application to the department on a form and in the

1 manner prescribed by the department. The application must be  
2 accompanied by:

3 (1) the physical address [~~a legal description~~] of each  
4 location where the applicant intends to process hemp or manufacture  
5 consumable hemp products [~~and the global positioning system~~  
6 ~~coordinates for the perimeter of each location~~];

7 (2) written consent from the applicant or the property  
8 owner if the applicant is not the property owner allowing the  
9 department, the Department of Public Safety, and any other state or  
10 local law enforcement agency to enter onto all premises where hemp  
11 is processed or consumable hemp products are manufactured to  
12 conduct a physical inspection or to ensure compliance with this  
13 chapter and rules adopted under this chapter;

14 (3) any fees required by the department to be  
15 submitted with the application; and

16 (4) any other information required by department rule.

17 SECTION 14. Subchapter C, Chapter 443, Health and Safety  
18 Code, is amended by adding Section 443.106 to read as follows:

19 Sec. 443.106. CHANGE OF OWNERSHIP. The department may  
20 change ownership to another person if:

21 (1) the current license holder and the recipient apply  
22 to the department for the change of ownership;

23 (2) the recipient is not ineligible to hold a license  
24 under Section 443.102; and

25 (3) one party to the change of ownership submits any  
26 change of ownership fee to the department.

27 SECTION 15. Section 443.152, Health and Safety Code, is

1 amended by adding Subsections (d) and (e) to read as follows:

2 (d) The executive commissioner by rule may exclude a  
3 substance that is generally recognized as having no risk of  
4 contaminating a finished consumable hemp product, including a  
5 microorganism or other substance that is inevitably destroyed or  
6 removed while processing or manufacturing the product, from the  
7 testing required under Section 443.151.

8 SECTION 16. Section 443.201, Health and Safety Code, is  
9 amended by adding Subsection (c) to read as follows:

10 (c) A person may transport and deliver a consumable hemp  
11 product to a consumer who purchased the product in compliance with  
12 this chapter. The person transporting and delivering the consumable  
13 hemp product is not required to:

14 (1) obtain a license under Section 443.101, unless the  
15 person processes or manufactures the product delivered; or

16 (2) register under Section 443.2025, unless the person  
17 sells the product delivered.

18 SECTION 17. The heading to Section 443.2025, Health and  
19 Safety Code, is amended to read as follows:

20 Sec. 443.2025. REGISTRATION REQUIRED FOR RETAILERS AND  
21 DISTRIBUTORS OF CERTAIN PRODUCTS.

22 SECTION 18. Section 443.2025, Health and Safety Code, is  
23 amended by amending Subsections (b), (d), and (f) and adding  
24 Subsection (d-1) to read as follows:

25 (b) A person may not sell or distribute consumable hemp  
26 products containing more than trace amounts of cannabinoids to  
27 consumers [~~cannabidiol at retail~~] in this state or distribute those

1 products intended for sale to consumers in this state unless the  
2 person registers with the department each location owned, operated,  
3 or controlled by the person at which those products are sold. A  
4 person is not required to register a location associated with an  
5 employee or independent contractor described by Subsection (d).

6 (d) A person is not required to register with the department  
7 under Subsection (b) if the person is:

8 (1) an employee of a registrant; or

9 (2) an independent contractor of a registrant who  
10 sells the registrant's products to consumers [~~at retail~~].

11 (d-1) A person is required to register with the department  
12 under Subsection (b) if the person, as an employee or independent  
13 contractor of a person located outside this state who is not a  
14 registrant, sells or distributes products covered by Subsection (b)  
15 in this state.

16 (f) The department by rule may adopt a registration fee  
17 schedule that establishes reasonable fee amounts for the  
18 registration of:

19 (1) a single location at which consumable hemp  
20 products containing more than trace amounts of cannabinoids  
21 [~~cannabidiol~~] are sold; and

22 (2) multiple locations at which consumable hemp  
23 products containing more than trace amounts of cannabinoids  
24 [~~cannabidiol~~] are sold under a single registration.

25 SECTION 19. Section 443.203, Health and Safety Code, is  
26 amended by adding Subsection (c) to read as follows:

27 (c) A person who sells, offers for sale, or distributes a

1 consumable hemp product that the person claims is made in this state  
2 commits a false, misleading, or deceptive act or practice  
3 actionable under Subchapter E, Chapter 17, Business & Commerce  
4 Code, if the product contains any hemp that was not grown and  
5 processed in this state by license holders under Chapter 122,  
6 Agriculture Code and Chapter 443, Health and Safety Code.

7       SECTION 20. Section 122.403, Agriculture Code, as amended  
8 by this Act, and Section 122.4035, Agriculture Code, as added by  
9 this Act, apply only to conduct that occurs on or after the  
10 effective date of this Act. Conduct that occurred before that date  
11 is governed by the law in effect when the conduct occurred, and the  
12 former law is continued in effect for that purpose.

13       SECTION 21. This Act takes effect September 1, 2021.