

By: Cain

H.B. No. 2818

Substitute the following for H.B. No. 2818:

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C.S.H.B. No. 2818

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the production and regulation of hemp; providing an
3 administrative penalty; requiring a permit to conduct certain
4 research involving hemp; authorizing a fee; creating a criminal
5 offense.

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

7 SECTION 1. Section 41.002(1), Agriculture Code, is amended
8 to read as follows:

9 (1) "Agricultural commodity" means an agricultural,
10 horticultural, viticultural, or vegetable product, bees and honey,
11 planting seed, rice, hemp, livestock or livestock product, or
12 poultry or poultry product, produced in this state, either in its
13 natural state or as processed by the producer. The term does not
14 include flax.

15 SECTION 2. Section 121.003, Agriculture Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Not later than the 120th day after the date a change to a
18 state statute, federal statute, or federal regulation takes effect,
19 the department shall submit to the secretary of the United States
20 Department of Agriculture any amendments to the state plan
21 necessary to incorporate and implement the change.

22 SECTION 3. Section 122.001, Agriculture Code, is amended by
23 amending Subdivision (5) and adding Subdivision (8-a) to read as
24 follows:

1 (5) "Institution of higher education" and "private or
2 independent institution of higher education" have [~~has~~] the
3 meanings [~~meaning~~] assigned by Section [61.003](#), Education Code.

4 (8-a) "Nonprofit research entity" means a research
5 entity that is a nonprofit corporation, nonprofit association, or
6 other entity that is organized solely for one or more of the
7 purposes specified by Section [2.002](#), Business Organizations Code.

8 SECTION 4. Subchapter [A](#), Chapter [122](#), Agriculture Code, is
9 amended by adding Section 122.005 to read as follows:

10 Sec. 122.005. HEMP RESEARCH PERMIT. (a) The department
11 shall issue a hemp research permit to an institution of higher
12 education, private or independent institution of higher education,
13 or nonprofit research entity in this state that requests the
14 permit. The entity must submit to the department a fee in an amount
15 equal to the application fee for a license, as provided by Section
16 [122.052](#).

17 (b) Notwithstanding any provision of this chapter or
18 department rule other than Subsection (c), a hemp research permit
19 holder:

20 (1) is not required to obtain from the department a lot
21 crop permit or other permit for each location where hemp is grown;

22 (2) is not required to obtain preharvest testing under
23 Section [122.153](#) before harvesting plants, except as provided by
24 Subsection (c);

25 (3) may cultivate and handle varieties of hemp seed
26 and plants that are not certified or approved under Section
27 [122.252](#);

1 (4) may collect and research feral hemp; and

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

3 (c) A hemp research permit holder may only sell or transfer
4 hemp to another person if the variety of the hemp is certified or
5 approved under Section 122.252 and the sale or transfer occurs at
6 least six months after the hemp is harvested.

7 (d) A hemp research permit holder may conduct research
8 involving hemp in conjunction with a license holder at a facility
9 designated by the license holder for research use only.

10 (e) Subsections (b) and (c) apply to a license holder and
11 facility described by Subsection (d).

12 SECTION 5. Section 122.051, Agriculture Code, is amended by
13 adding Subsections (c) and (d) 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 (d) A rule adopted by the department to incorporate or
19 implement a federal statute or federal regulation may not be
20 construed to conflict with this chapter or Chapter 121.

21 SECTION 6. Section 122.055, Agriculture Code, is amended by
22 adding Subsection (c-1) to read as follows:

23 (c-1) The department by rule may adopt a different shipping
24 certificate, cargo manifest, or other requirement for the shipment
25 or transportation of a sample of hemp to:

26 (1) a testing laboratory; or

27 (2) another destination if the sample contains not

1 more than an amount of hemp as determined by the department by rule
2 and is accompanied by the results of a laboratory test indicating
3 the delta-9 tetrahydrocannabinol concentration of the lot or plot
4 from which the sample was taken.

5 SECTION 7. Section [122.151](#), Agriculture Code, is amended by
6 adding Subsection (g) to read as follows:

7 (g) A laboratory that performs testing required by this
8 chapter shall report the delta-9 tetrahydrocannabinol
9 concentration, the total tetrahydrocannabinol concentration, and
10 the concentration of any other federally regulated cannabinoid of
11 the sample on a dry weight basis and the measurement of uncertainty
12 in the test result. The measurement of uncertainty must comply with
13 International Organization for Standardization ISO/IEC 17025 or a
14 comparable or successor standard and any provisions of federal law
15 governing the measurement of uncertainty.

16 SECTION 8. Subchapter [E](#), Chapter [122](#), Agriculture Code, is
17 amended by adding Section [122.203](#) to read as follows:

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

19 (a) A person whose license is suspended or revoked after planting
20 hemp plants may obtain preharvest or postharvest testing under
21 Subchapter D and may harvest the plants under Section [122.201](#) in the
22 same manner as a license holder.

23 (b) The department by rule shall establish fair and
24 objective standards for determining whether a person whose license
25 is suspended or revoked may use or sell plants harvested under
26 Subsection (a), based on the circumstances of the suspension or
27 revocation. Based on those rules, the department may prohibit a

1 person from selling or using plants harvested under Subsection (a)
2 while the person's license is suspended or revoked.

3 (c) A person whose license is reinstated may sell or use
4 plants harvested under Subsection (a) as provided by Section
5 122.202.

6 SECTION 9. The heading to Subchapter F, Chapter 122,
7 Agriculture Code, is amended to read as follows:

8 SUBCHAPTER F. HEMP SEED AND PLANTS

9 SECTION 10. Section 122.252, Agriculture Code, is amended
10 to read as follows:

11 Sec. 122.252. CERTIFICATION OR APPROVAL OF SEED AND PLANT
12 VARIETIES. (a) Subject to Subsection (b), the [The] department or
13 an entity authorized to certify seed and plants under Chapter 62
14 shall identify and certify or approve varieties of seed and plants
15 confirmed to produce hemp.

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

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

1 (1) that state or jurisdiction's plan approved by the
2 United States Department of Agriculture under 7 U.S.C. Section
3 1639p; or

4 (2) a plan established under 7 U.S.C. Section 1639q if
5 that plan applies in the state or jurisdiction.

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

9 SECTION 11. Subchapter F, Chapter 122, Agriculture Code, is
10 amended by adding Section 122.254 to read as follows:

11 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) A
12 person may transport into this state, and a license holder may
13 obtain and cultivate, immature plants propagated outside this state
14 if the plants are accompanied by shipping documentation that:

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

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

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

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

23 (b) A license holder may obtain and cultivate immature
24 plants propagated in this state by another license holder if the
25 plants are accompanied by the shipping certificate or cargo
26 manifest required by Section 122.055 that shows that the variety of
27 the immature plants is certified or approved under Section 122.252.

1 The immature plants are not subject to preharvest testing under
2 Section 122.153. The license holder shall maintain records, as
3 required by the department, that match the lot crop permit number
4 issued by the department for the location where the immature plants
5 were propagated with the lot crop number for the location where the
6 plants were cultivated.

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

19 (d) The department by rule shall define "immature plant."

20 SECTION 12. Section 122.403, Agriculture Code, is amended
21 by amending Subsection (a) and adding Subsection (e) to read as
22 follows:

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

27 (e) A license holder is not subject to more than one

1 negligent violation related to cultivation per calendar year.

2 SECTION 13. Subchapter I, Chapter 122, Agriculture Code, is
3 amended by adding Sections 122.4034 and 122.4035 to read as
4 follows:

5 Sec. 122.4034. ADMINISTRATIVE PENALTY FOR CULTIVATING HEMP
6 WITHOUT A LICENSE. On determining that a person violated Section
7 122.101, the department may:

8 (1) issue a written warning to the person;

9 (2) impose an administrative penalty in the amount of
10 \$500; and

11 (3) require the person to obtain a license.

12 Sec. 122.4035. PENALTY FOR CULTIVATING HEMP WITHOUT A
13 LICENSE; CRIMINAL OFFENSE. (a) A person commits an offense if the
14 person:

15 (1) violates Section 122.101; and

16 (2) has received an administrative penalty under
17 Section 122.4034 for a previous violation of Section 122.101.

18 (b) An offense under this section is a Class C misdemeanor,
19 except that the offense is:

20 (1) a Class B misdemeanor if it is shown on the trial
21 of the offense that the person has previously been convicted one
22 time of an offense under this section; and

23 (2) a Class A misdemeanor if it is shown on the trial
24 of the offense that the person has previously been convicted two or
25 more times of an offense under this section.

26 SECTION 14. Section 122.403, Agriculture Code, as amended
27 by this Act, and Sections 122.4034 and 122.4035, Agriculture Code,

1 as added by this Act, apply only to conduct that occurs on or after
2 the effective date of this Act. Conduct that occurred before that
3 date is governed by the law in effect when the conduct occurred, and
4 the former law is continued in effect for that purpose.

5 SECTION 15. This Act takes effect September 1, 2023.