

By: Cain

H.B. No. 2818

A BILL TO BE ENTITLED

AN ACT

relating to the production and regulation of hemp; providing administrative penalties; creating a criminal offense.

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

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

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

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

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

SECTION 3. Section 122.001(5), Agriculture Code, is amended to read as follows:

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

1 SECTION 4. Subchapter A, Chapter 122, Agriculture Code, is
2 amended by adding Section 122.005 to read as follows:

3 Sec. 122.005. HEMP RESEARCH BY INSTITUTIONS OF HIGHER
4 EDUCATION. (a) The department shall issue a license to an
5 institution of higher education or private or independent
6 institution of higher education in this state that requests the
7 license.

8 (b) Notwithstanding any provision of this chapter or
9 department rule other than Subsection (c):

10 (1) an institution of higher education conducting
11 research involving hemp is not required to pay a fee collected by
12 the department under this chapter; and

13 (2) an institution of higher education or private or
14 independent institution of higher education conducting research
15 involving hemp:

16 (A) is not required to obtain from the department
17 a lot crop permit or other permit for each location where hemp is
18 grown;

19 (B) is not required to obtain preharvest testing
20 under Section 122.153 before harvesting plants, except as provided
21 by Subsection (c);

22 (C) may cultivate and handle varieties of hemp
23 seed and plants that are not certified or approved under Section
24 122.252;

25 (D) may collect and research feral hemp; and

26 (E) is not subject to Section 122.403(c) or (d).

27 (c) An institution of higher education or private or

1 independent institution of higher education may not sell or
2 transfer hemp to another person unless the institution complies
3 with the requirements of Sections 122.153 and 122.356.

4 (d) An institution of higher education or private or
5 independent institution of higher education may conduct research
6 involving hemp in conjunction with a license holder at a facility
7 designated by the license holder for research use only.

8 (e) Subsections (b)(2) and (c) apply to a license holder and
9 facility described by Subsection (d).

10 SECTION 5. Section 122.051, Agriculture Code, is amended by
11 adding Subsection (c) to read as follows:

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

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

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

21 (1) a testing laboratory; or

22 (2) another destination if the sample contains not
23 more than 15 grams of hemp and is accompanied by the results of a
24 laboratory test indicating the delta-9 tetrahydrocannabinol
25 concentration of the lot or plot from which the sample was taken.

26 SECTION 7. Section 122.151, Agriculture Code, is amended by
27 adding Subsection (g) to read as follows:

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

13 SECTION 8. Section [122.202](#), Agriculture Code, is amended by
14 adding Subsection (c) to read as follows:

15 (c) The delta-9 tetrahydrocannabinol concentration shall be
16 determined as provided by Section [122.151\(g\)](#).

17 SECTION 9. Subchapter [E](#), Chapter [122](#), Agriculture Code, is
18 amended by adding Section [122.203](#) to read as follows:

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

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

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

1 revocation. Based on those rules, the department shall:

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

5 (2) if the delta-9 tetrahydrocannabinol concentration
6 of the plants is not more than 0.3 percent on a dry weight basis,
7 allow a person to sell or use plants harvested under Subsection (a)
8 in the same manner as a license holder under Section 122.202 while
9 the person's license is suspended or revoked.

10 (c) A person whose license is reinstated may sell or use
11 plants harvested under Subsection (a) as provided by Section
12 122.202.

13 SECTION 10. The heading to Subchapter F, Chapter 122,
14 Agriculture Code, is amended to read as follows:

15 SUBCHAPTER F. HEMP SEED AND PLANTS

16 SECTION 11. Section 122.252, Agriculture Code, is amended
17 to read as follows:

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

23 (b) The department or entity may not certify or approve a
24 variety of hemp seed or plant if the variety [~~seed~~] is tested and
25 confirmed to produce a plant that has delta-9 tetrahydrocannabinol
26 concentration of more than 0.3 percent on a dry weight basis. For
27 purposes of this subsection, the department may partner with a

1 private entity or an institution of higher education to test seed
2 and plant varieties for the purpose of certification or approval
3 under this section.

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

8 (1) that state or jurisdiction's plan approved by the
9 United States Department of Agriculture under 7 U.S.C. Section
10 1639p; or

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

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

16 SECTION 12. Subchapter F, Chapter 122, Agriculture Code, is
17 amended by adding Section 122.254 to read as follows:

18 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In
19 this section, "immature plant" means a hemp seedling, clone, or
20 cutting that is not flowering and requires substantial cultivation
21 and further growth before the beginning of the period under Section
22 122.201(a) when the plant may be harvested.

23 (b) A person may transport into this state, and a license
24 holder may obtain and cultivate, immature plants propagated outside
25 this state if the plants are accompanied by shipping documentation
26 that:

27 (1) complies with any requirements of the state of

1 origin;

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

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

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

8 (c) A license holder may obtain and cultivate immature
9 plants propagated in this state by another license holder if the
10 plants are accompanied by the shipping certificate or cargo
11 manifest required by Section 122.055 that shows that the variety of
12 the immature plants is certified or approved under Section 122.252.
13 The immature plants are not subject to preharvest testing under
14 Section 122.153. The license holder shall maintain records, as
15 required by the department, that match the lot crop permit number
16 issued by the department for the location where the immature plants
17 were propagated with the lot crop number for the location where the
18 plants were cultivated.

19 (d) A license holder may transplant immature plants
20 propagated by the license holder from one plot to another plot
21 controlled by the license holder. The department by rule shall
22 waive the requirement that a license holder obtain a lot crop permit
23 for and may not require a license holder to pay any fee for a
24 greenhouse or other location used to propagate immature plants if
25 the plants are transplanted to another plot controlled by the
26 license holder and are not sold or transferred to another person.
27 The department by rule may waive the requirement that a person

1 obtain a shipping certificate or cargo manifest to transplant
2 immature plants from one plot to another plot operated by the
3 license holder.

4 SECTION 13. Section 122.403, Agriculture Code, is amended
5 by amending Subsection (a) and adding Subsection (e) to read as
6 follows:

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

11 (e) A license holder is not subject to more than one
12 negligent violation related to cultivation per calendar year.

13 SECTION 14. Subchapter I, Chapter 122, Agriculture Code, is
14 amended by adding Section 122.4035 to read as follows:

15 Sec. 122.4035. PENALTIES FOR CULTIVATING HEMP WITHOUT A
16 LICENSE; CRIMINAL OFFENSE. (a) On determining that a person
17 violated Section 122.101, the department may:

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

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

21 (B) impose an administrative penalty in the
22 amount of \$500;

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

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

1 (2) if the person has received a penalty under
2 Subdivision (1) for a previous violation but has not previously
3 received a penalty under this subdivision:

4 (A) issue a second 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;

8 (D) seize and dispose of the hemp plants that are
9 the subject of the violation; and

10 (E) require the person to reimburse the
11 department for reasonable costs of disposal under Paragraph (D);
12 and

13 (3) if the person has received a penalty under
14 Subdivision (2) or this subdivision for a previous violation:

15 (A) refer the matter to the appropriate
16 prosecuting attorney for criminal prosecution under Subsection
17 (b);

18 (B) seize and dispose of the hemp plants that are
19 the subject of the violation; and

20 (C) require the person to reimburse the
21 department for reasonable costs of disposal under Paragraph (B).

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

23 (1) violates Section 122.101; and

24 (2) has received a penalty under Subsection (a)(2) for
25 a previous violation.

26 (c) An offense under Subsection (b) is a Class B
27 misdemeanor.

1 SECTION 15. Section [122.403](#), Agriculture Code, as amended
2 by this Act, and Section 122.4035, Agriculture Code, as added by
3 this Act, apply only to conduct that occurs on or after the
4 effective date of this Act. Conduct that occurred before that date
5 is governed by the law in effect when the conduct occurred, and the
6 former law is continued in effect for that purpose.

7 SECTION 16. This Act takes effect September 1, 2023.