86R10768 BEF-F

By:  Kacal, Raymond H.B. No. 2166

A BILL TO BE ENTITLED

AN ACT

relating to the administration of seed and plant certification in this state by the State Seed and Plant Certification Council and the Texas Crop Improvement Association.

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

SECTION 1.  Section 61.007, Agriculture Code, is amended by adding Subsection (c) to read as follows:

(c)  A person may not:

(1)  sell or offer for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "certified seed," "from officially inspected fields," "state crop improvement agency inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified by a seed certifying agency as Foundation, Registered, or Certified seed or plants;

(2)  represent the person to be a registered plant breeder or approved producer of Foundation, Registered, or Certified seed or plants unless the person has been registered or approved by a seed certifying agency;

(3)  sell or offer for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with applicable laws or standards adopted by a seed certifying agency; or

(4)  sell or offer for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented by a seed certifying agency.

SECTION 2.  Section 62.001, Agriculture Code, is amended to read as follows:

Sec. 62.001.  DEFINITIONS. In this chapter:

(1)  "Association" means the seed certifying agency authorized under Section 62.008(a) to certify seed and plants in this state [~~"Board" means the State Seed and Plant Board~~].

(2)  "Certified [~~The term "certified~~] seed" or "certified plant" means a seed or plant that has been determined by a seed or plant certifying agency to meet agency rules and standards as to genetic purity and identity.

(3)  "Council" means the State Seed and Plant Certification Council.

(4)  "Plant" includes plant parts.

SECTION 3.  Section 62.002, Agriculture Code, is amended to read as follows:

Sec. 62.002.  STATE SEED AND PLANT CERTIFICATION COUNCIL [~~BOARD~~]. (a) The State Seed and Plant Certification Council [~~Board is an agency of the state. The board~~] is composed of:

(1)  one individual, appointed by The [~~the president of~~] Texas A&M University System vice chancellor for agriculture, from the Department of Soil [~~Soils~~] and Crop Sciences [~~Department, Texas Agricultural Experiment Station~~], Texas A&M University;

(2)  one individual, appointed by the dean of the College of Agricultural Sciences and Natural Resources, [~~president of~~] Texas Tech University, from the Department of Plant and Soil Science [~~Sciences, Texas Tech University~~];

(3)  one individual, elected [~~appointed~~] by the members of the association [~~commissioner~~], approved by the council [~~licensed~~] as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4)  one individual, elected [~~appointed~~] by the members of the association [~~commissioner~~], who sells Texas Foundation, Registered, or Certified seed or plants;

(5)  one individual, elected [~~appointed~~] by the members of the association [~~commissioner~~], actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6)  the head of the association [~~seed division of the department~~].

(b)  The members described by Subsections (a)(1), (2), and (6) serve [~~An individual appointed from a state university or the department serves~~] on the council [~~board~~] as [~~an~~] ex officio members [~~member~~]. A member serves for a term of two years and until a successor has qualified. Members serve without compensation but are entitled to reimbursement by the association [~~state~~] for actual expenses incurred in the performance of their duties.

(c)  A member whose employment is terminated with the association or the university [~~agency or department~~] from which the member was appointed or who ceases to be engaged in the business or professional activity that the member was elected [~~appointed~~] to represent vacates membership on the council [~~board~~].

(d)  The council shall elect [~~commissioner shall designate~~] a member of the council [~~board~~] as the chair [~~chairman~~] to serve in that capacity at the pleasure of the council [~~commissioner~~]. The council [~~board~~] annually shall elect a vice chair [~~vice-chairman~~] and secretary. The council [~~board~~] shall meet at times and places determined by the chair [~~chairman~~].

[~~(e)  Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.~~]

SECTION 4.  Sections 62.004(a) and (b), Agriculture Code, are amended to read as follows:

(a)  The council [~~board~~] may establish, not inconsistent with federal law, the eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification and the procedures for that certification.

(b)  The council [~~board~~] may establish standards of genetic purity and identity, not inconsistent with federal law, for classes of certified seed and plants for which the council [~~board~~] determines that standards are desirable. In establishing the standards, the council [~~board~~] may consider all factors affecting the quality of seed and plants.

SECTION 5.  Section 62.005, Agriculture Code, is amended to read as follows:

Sec. 62.005.  APPROVAL [~~LICENSING~~] OF PRODUCERS OF FOUNDATION, REGISTERED, OR CERTIFIED SEED. (a) A person who wants to produce a certified class of seed or plant for which the council [~~board~~] has established standards of genetic purity and identity may apply to the council for approval [~~board for licensing~~] as a Foundation, Registered, or Certified producer of seed or plants. To be approved [~~licensed~~] as a producer, a person must satisfy the council [~~board~~] that:

(1)  the person [~~he or she~~] is of good character and has a reputation for honesty;

(2)  the person's [~~his or her~~] facilities meet council [~~board~~] requirements for producing and maintaining seed or plants for the certification generations desired; and

(3)  the person [~~he or she~~] has met any other council [~~board~~] requirements as to knowledge of the production or maintenance of seed or plants for the certification generations the person wishes to produce [~~for which he or she applies to be licensed~~].

(b)  The council [~~board~~] may adopt standards [~~rules~~] governing the production and handling by approved [~~licensed~~] producers of certified classes of seed and plants to ensure the maintenance of genetic purity and identity.

(c)  Approval [~~A license~~] to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked by the council as a result of a violation of applicable law or standards governing the production and handling of seed or plants [~~as provided in this chapter~~]. A person approved [~~licensed~~] as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as applicable [~~provided in the license~~], of the class the person is approved to produce [~~for which he or she is licensed~~] or of any lower class of certified seed or plants, as determined by the council [~~board~~].

(d)  An application for approval [~~licensing~~] as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a fee, as determined by the council [~~provided by department rule~~].

SECTION 6.  Section 62.006, Agriculture Code, is amended to read as follows:

Sec. 62.006.  REGISTRATION OF PLANT BREEDERS. (a) A person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the council [~~board~~] may apply to the council [~~board~~] for registration as a plant breeder. The applicant shall apply on forms prescribed by the council [~~board~~] and shall include with the application a registration fee, as determined by the council [~~board~~]. To be registered as a plant breeder, a person must satisfy the council [~~board~~] that the person is skilled in the science of plant breeding. The council [~~board~~] may require skill to be shown by evidence of accomplishments in the field and may require an oral or written examination in the subject.

(b)  A certificate of registration is not transferable and is permanent unless revoked by the council as a result of a violation of applicable law or standards governing the production and handling of seed or plants [~~as provided in this chapter~~].

SECTION 7.  Section 62.008, Agriculture Code, is amended to read as follows:

Sec. 62.008.  CERTIFICATION OF SEED AND PLANTS. (a) The Texas Crop Improvement Association is the seed certifying agency authorized to officially certify seed and plants in this state. The association shall comply with standards and procedures established by the council in accordance with the Federal Seed Act (7 U.S.C. Section 1551 et seq.) to assure the genetic purity and identity of the seed and plants certified [~~department is the certifying agency in Texas for the certification of seed and plants~~].

(a-1)  The association shall perform seed and plant certification work on a financially self-supporting basis.

(a-2)  The association [~~department~~] shall employ a sufficient number of inspectors to carry out the inspection provisions of this chapter. Inspectors must meet qualifications set by the council [~~board~~].

(b)  A person who is approved by the council [~~licensed~~] as a Foundation, Registered, or Certified seed or plant producer or who is registered as a plant breeder is eligible to have seed or plants of an eligible class and variety certified by the association [~~department~~]. On request by an approved [~~a licensed~~] producer or a registered plant breeder to have seed or plants certified, the association [~~department~~] shall inspect the producer's or registrant's fields, facilities, and seed or plants. Inspection may include tests approved by the council [~~board~~] and carried out by inspectors under the authority of the association [~~department~~].

(c)  After inspection, if the association [~~department~~] determines that the production of seed or plants has met the standards and requirements [~~rules~~] prescribed by the council [~~board~~], it shall cause to be attached to each container of the product a label identifying the seed or plant and the certified class and including other information required by law or by the council [~~statute or by rule of the board~~]. The council [~~department~~] shall prescribe the format of the label.

(d)  The association [~~department~~] shall fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

SECTION 8.  Section 62.009, Agriculture Code, is amended to read as follows:

Sec. 62.009.  SEED AND PLANTS FROM OUTSIDE THE STATE. (a) The council [~~department~~] may adopt requirements [~~rules~~], including testing [~~requirements~~] and standards, which must be met before seed or plants represented to be of a certified class may be shipped into the state for distribution in the state. The requirements [~~rules~~] adopted shall be designed to ensure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identity and shall correspond to appropriate standards [~~rules~~] used in certifying seed and plants produced in Texas.

(b)  The council [~~department~~] may require inspections by the association of seed and plants represented to be of a certified class and shipped into the state for distribution in the state. The association [~~and~~] may collect fees to cover costs of inspection, as determined by the council [~~department~~]. The council [~~department~~] may require inspection fee payment before distribution in the state.

(c)  A person may not distribute in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the person has first complied with any requirements [~~rules~~], including testing [~~requirements~~], adopted by the council [~~department~~] for seed or plants shipped into the state.

(d)  A person may not sell or offer for sale in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the seed or plants have been certified by an official certifying agency in the state, province, or country of origin or have been certified by the association [~~department~~].

(e)  Seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the association [~~department~~] after investigation to violate the requirements of this section are restricted from distribution[~~. In addition, the department may order the seed or plants in violation confiscated and retained under general supervision of the department. An owner or consignee of restricted or confiscated seed or plants may appeal the order by filing an appeal within 10 days of the order. Appeal is in the county court of the county where the seed or plants are restricted or were confiscated. The appeal in county court is by trial de novo. If no appeal is filed as provided in this section or if after an appeal in county court, the department's action is not reversed, the department may destroy confiscated seed or plants~~].

(f)  The council may recognize a certification issued by a seed certifying agency in:

(1)  another state or territory of the United States; or

(2)  a country, province, or territory not under the jurisdiction of the United States government.

SECTION 9.  Chapter 62, Agriculture Code, is amended by adding Section 62.0095 to read as follows:

Sec. 62.0095.  COOPERATION WITH GOVERNMENTAL ENTITIES. The council or association may request the department or the United States Department of Agriculture to investigate or aid in the investigation of any violation of this chapter.

SECTION 10.  Sections 64.005(a) and (b), Agriculture Code, are amended to read as follows:

(a)  The State Seed and Plant Certification Council [~~Board~~], as constituted under Section 62.002 [~~of this code~~], is the board of arbitration for complaints filed under this chapter.

(b)  As a board of arbitration, the State Seed and Plant Certification Council [~~Board~~] shall conduct arbitration as provided by this chapter. The arbitration board may be called into session by the Texas Crop Improvement Association [~~commissioner~~] or the chair [~~chairman~~] of the State Seed and Plant Certification Council [~~Board~~] to consider matters referred to the arbitration board by the association [~~commissioner~~] or the chair [~~chairman~~].

SECTION 11.  Section 64.006(f), Agriculture Code, is amended to read as follows:

(f)  In the course of its investigation, the arbitration board or any of its members may:

(1)  examine the purchaser and the seller on all matters that the arbitration board considers relevant;

(2)  grow to production a representative sample of the seed through the facilities of the Texas Crop Improvement Association [~~commissioner~~] or a designated university under the association's [~~commissioner's~~] supervision; or

(3)  hold informal hearings at the time and place the chair [~~chairman~~] of the State Seed and Plant Certification Council [~~Board~~] directs, with reasonable notice to all parties.

SECTION 12.  The following provisions of the Agriculture Code are repealed:

(1)  Section 62.0021;

(2)  Section 62.0022;

(3)  Section 62.0023;

(4)  Section 62.0024;

(5)  Section 62.0025;

(6)  Section 62.0026;

(7)  Section 62.0027;

(8)  Section 62.004(c);

(9)  Section 62.0065;

(10)  Section 62.010;

(11)  Section 62.011; and

(12)  Section 64.005(c).

SECTION 13.  On the effective date of this Act:

(1)  the State Seed and Plant Board is abolished;

(2)  the State Seed and Plant Certification Council and the Texas Crop Improvement Association shall assume the powers and duties assigned by Chapters 62 and 64, Agriculture Code, as amended by this Act; and

(3)  the Department of Agriculture and the former State Seed and Plant Board shall transfer all records of the department's and board's activities under Chapters 62 and 64, Agriculture Code, to the State Seed and Plant Certification Council and the Texas Crop Improvement Association.

SECTION 14.  Except for the addition by this Act of Section 61.007(c), Agriculture Code, the changes in law made by this Act may not be construed to affect Chapter 61, Agriculture Code.

SECTION 15.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 16.  This Act takes effect January 1, 2020.