By: King of Uvalde, Larson, Gutierrez, Rodriguez, Burrows, et al. H.B. No. 1325

A BILL TO BE ENTITLED

AN ACT

relating to the production and regulation of hemp and products made from hemp; requiring authorization to produce hemp; authorizing penalties; authorizing fees.

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

SECTION 1. This Act may be cited as the Hemp Farming Act.

SECTION 2. (a) It is the policy of this state that hemp is a viable agricultural crop and an agricultural commodity in this state.

(b) It is the purpose of this Act to:

(1) promote cultivating and processing hemp and develop new commercial markets for farmers and businesses through the sale of hemp products;

(2) promote the expansion of this state's hemp industry to the maximum extent permitted by law allowing farmers and businesses to cultivate, handle, and process hemp and sell hemp products for commercial purposes;

(3) encourage and empower research into hemp production and hemp products at institutions of higher education and in the private sector; and

(4) move this state and its citizens to the forefront of the hemp industry.

SECTION 3. Section 12.020(c), Agriculture Code, is amended to read as follows:

(c) The provisions of law subject to this section and the applicable penalty amounts are as follows:

Provision	Amount of Penalty
Chapters 13, 14A, 17, 18, 19, 41, 46, 61, 72, 73, 74, 76, 94, 95, 101, 102, 103, 122, 125, 132, and 134	not more than $5,000
Subchapters A, B, and C, Chapter 71	not more than $5,000
Chapter 14	not more than $10,000
Chapter 1951, Occupations Code	not more than $5,000
Chapter 153, Natural Resources Code	not more than $5,000
Section 91.009	not more than $5,000.

SECTION 4. Title 5, Agriculture Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. HEMP

CHAPTER 121. STATE HEMP PRODUCTION PLAN

Sec. 121.001. DEFINITION. In this chapter, "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Sec. 121.002. LEGISLATIVE INTENT. It is the intent of the legislature that this state have primary regulatory authority over the production of hemp in this state.

Sec. 121.003. DEPARTMENT RULES. (a) The department, after consulting with the governor, attorney general, and Department of State Health Services, shall adopt rules consistent with Chapter 122 providing:

(1) a practice to maintain relevant information regarding land on which hemp is produced in this state, including a legal description of the land, for a period of at least three calendar years;

(2) a procedure for testing, using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method, the delta-9 tetrahydrocannabinol concentration of hemp produced in this state;

(3) a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of 7 U.S.C. Chapter 38, Subchapter VII, and products derived from those plants;

(4) a procedure to comply with the enforcement procedures described by 7 U.S.C. Section 1639p(e);

(5) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of 7 U.S.C. Chapter 38, Subchapter VII;

(6) a procedure for submitting the information described in 7 U.S.C. Section 1639q(d)(2), as applicable, to the secretary of the United States Department of Agriculture not later than the 30th day after the date the information is received; and

(7) standards for certifying that this state has the resources and personnel to carry out the practices and procedures described by Subdivisions (1) through (6).

(b) The department shall adopt rules under Subsection (a) that will, in substance, meet the requirements for approval as a state plan under 7 U.S.C. Section 1639p.

Sec. 121.004. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT

OF STATE HEALTH SERVICES. The department and the Department of State Health Services shall enter into a memorandum of understanding that:

(1) recognizes the primary jurisdiction of the Department of State Health Services over the processing, manufacturing, packaging, transportation, sale, and use of consumable hemp products in this state; and

(2) requires the department and the Department of State Health Services to cooperate in the development of the state hemp production plan required under this chapter.

Sec. 121.005. SUBMISSION OF STATE PLAN. (a) The department, after consulting with the governor, attorney general, and Department of State Health Services shall submit to the secretary of the United States Department of Agriculture a state plan for monitoring and regulating the production of hemp in this state as provided by 7 U.S.C. Section 1639p.

(b) If the state plan submitted by the department is disapproved by the secretary of the United States Department of Agriculture, the department, after consulting with the governor, attorney general, and Department of State Health Services, shall amend the state plan as needed to obtain approval and submit an amended plan.

(c) The department shall, as necessary, seek technical assistance from the secretary of the United States Department of Agriculture in developing the state plan.

CHAPTER 122. PRODUCTION OF HEMP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 122.001. DEFINITIONS. In this chapter:

(1) "Commercial sale" means the sale of a product in the stream of commerce at retail, at wholesale, or on the Internet.

(2) "Consumable hemp product" means a hemp product that is:

(A) marketed or intended to be:

(i) ingested as a food intended for human consumption; or

(ii) applied topically to the body, including a cosmetic or personal care product; or

(B) similar to a product listed under Paragraph (A) and that contains one or more hemp-derived cannabinoids, including cannabidiol.

(3) "Cultivate" means to plant, irrigate, grow, or harvest a plant or crop.

(4) "Federally defined THC level for hemp" means a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent:

(A) on a dry weight basis for hemp; or

(B) in a hemp product.

(5) "Handle" means to possess or store a hemp plant:

(A) on premises owned, operated, or controlled by a hemp producer for any period of time; or

(B) in a vehicle for any period of time other than during the actual transport of the plant from a premises owned,

operated, or controlled by a hemp producer to a premises owned, operated, or controlled by another hemp producer.

(6) "Hemp" has the meaning assigned by Section 121.001.

(7) "Hemp producer" means a person authorized by the department to cultivate, handle, or process hemp in this state.

(8) "Hemp product" means a finished product that does not exceed the federally defined THC level for hemp, that is derived from or made by processing a hemp plant or plant part, and that is prepared in a form available for commercial sale. The term includes cosmetics, personal care products, food intended for human consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids, including cannabidiol.

(9) "Independent testing laboratory" means a laboratory certified by this state and accredited by an accreditation body, including the American Association for Laboratory Accreditation (A2LA) and Assured Calibration and Laboratory Accreditation Select Services (ACLASS), in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.

(10) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(11) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or cultivar of hemp throughout the area.

(12) "Process" means to convert hemp into a marketable

form.

(13) "QR code" means a quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to additional information.

(14) "Smoking" means burning or igniting a substance and inhaling the smoke.

Sec. 122.002. DEPARTMENT RULES AND PROCEDURES. The department shall adopt rules and administrative procedures necessary to implement this chapter.

Sec. 122.003. STATE HEMP PROGRAM ACCOUNT. (a) The state hemp program account is an account in the general revenue fund administered by the department.

(b) The account consists of:

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

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

(3) fees received under Section 122.053;

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

(5) penalties collected under this chapter; and

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

(c) The department may accept appropriations and gifts, grants, or donations from any source to administer and enforce this chapter. Money received under this subsection shall be deposited

in the account.

(d) Money in the account may be appropriated only for the administration and enforcement of this subtitle.

Sec. 122.004. INTERSTATE COMMERCE. To the extent of a conflict between a provision of this chapter and a provision of federal law involving interstate transportation of hemp, including a United States Department of Agriculture regulation, federal law controls and conflicting provisions of this chapter do not apply.

SUBCHAPTER B. STATE HEMP PROGRAM

Sec. 122.051. APPLICABILITY OF SUBCHAPTER TO HEMP PRODUCTS. This subchapter does not apply to the possession, transportation, or sale of hemp products or extracts, including products or extracts containing one or more hemp-derived cannabinoids, including cannabidiol.

Sec. 122.052. PROGRAM RULES. (a) The department shall adopt rules to establish a state hemp program that:

(1) promotes the cultivating and processing of hemp and the commercial sale of hemp products; and

(2) regulates hemp production in this state.

(b) In adopting rules under Subsection (a), the department shall consult with:

(1) relevant public agencies; and

(2) private, nonprofit associations in the hemp industry that promote standards, best practices, and self-regulation in the production of hemp.

(c) Rules adopted under Subsection (a) must:

(1) establish requirements by which the department

authorizes an individual or business entity to participate in the state hemp program as a hemp producer;

(2) prescribe the manner in which an institution of higher education may participate in or be affiliated with the program;

(3) prescribe sampling, inspection, certification, and testing procedures to ensure that hemp plants cultivated, handled, or processed in this state, and hemp products processed in this state, do not exceed the federally defined THC level for hemp;

(4) provide due process consistent with Chapter 2001, Government Code, including an appeals process, to protect hemp producers from the consequences of imperfect test results; and

(5) prescribe enforcement procedures that are consistent with 7 U.S.C. Section 1639p(e).

Sec. 122.053. FEES. (a) The department by rule shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the state hemp program.

(b) Fees prescribed by the department under this section are not refundable.

(c) Fees collected under this section shall be deposited in the state hemp program account under Section 122.003.

Sec. 122.054. DEPARTMENT AUTHORIZATION REQUIRED. (a) Except as provided by this chapter, a person or the person's agent may not cultivate, handle, or process hemp in this state or transport hemp outside of this state unless the person is authorized by the department under this section to participate in

the state hemp program as a hemp producer.

(b) A person seeking to participate in the state hemp program as a hemp producer must apply to the department on a form and in the manner prescribed by the department. The application must be accompanied by:

(1) a legal description of each location where the person intends to cultivate or process hemp and the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner if the applicant is not the property owner allowing the department, the Department of Public Safety, and any other state or local law enforcement agency to enter onto all premises where hemp is cultivated, processed, handled, or stored to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;

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

(4) any other information required by department rule.

(c) If the department determines that a person who submits an application under this section meets the state hemp program participation requirements prescribed by department rule, the department shall authorize the person to participate in the program as a hemp producer in the manner provided by department rule.

Sec. 122.055. LIMITATION ON PROGRAM PARTICIPATION. (a) A person who is or has been convicted of a felony relating to a controlled substance under state or federal law may not participate in the state hemp program established under this subchapter or

produce hemp in this state under any other law for a period of at least 10 years after the date of the person's conviction.

(b) A person who materially falsifies any information contained in an application submitted to the department under Section 122.054 may not participate in the state hemp program.

Sec. 122.056. ENFORCEMENT. (a) If the department determines that a hemp producer has negligently violated this chapter or a rule adopted under this chapter, the department shall enforce the violation in the manner provided by 7 U.S.C. Section 1639p(e). A hemp producer is not subject to a civil or criminal penalty under this subsection.

(b) If the department determines or suspects that a hemp producer has violated this chapter or a rule adopted under this chapter with a culpable mental state greater than negligence, Subsection (a) does not apply and the department shall report the hemp producer immediately to:

(1) the United States attorney general; and

(2) the attorney general of this state, who may:

(A) on behalf of the department, investigate the violation and institute proceedings for injunctive or other appropriate relief; or

(B) report the matter to an appropriate law enforcement agency.

Sec. 122.057. SEED CERTIFICATION PROGRAM. (a) The department shall establish a program to identify and certify seeds confirmed to produce hemp. The department may authorize the importation of hemp seed in accordance with state and federal law.

(b) The department may not certify a variety of hemp seed if the seed is tested and confirmed to produce a plant that exceeds the federally defined THC level for hemp. For purposes of this subsection, the department may partner with a private entity or an institution of higher education to test seed for the purpose of certification under this section.

(c) The department shall maintain and make available to hemp producers a list of hemp seeds certified by the department under this section.

Sec. 122.058. USE OR DISPOSAL OF HARVESTED PLANTS. (a) If the results of a test under Subchapter C performed on a sample show the sample does not exceed the federally defined THC level for hemp, the hemp producer may sell or use the plants represented by the sample for any purpose allowed by law.

(b) If the results of a test under Subchapter C performed on a sample show the sample exceeds the federally defined THC level for hemp, the hemp producer shall immediately confer with the department and in a manner approved by the department:

(1) have postharvest testing performed as provided by Section 122.106 or other retesting provided by department rule;

(2) dispose of all hemp plants represented by the sample; or

(3) if the department determines the plants represented by the sample reached that concentration solely as a result of negligence or acts beyond the control of the hemp producer:

(A) trim, extract, or separate the plants until

the remaining plants or plant parts do not exceed the federally defined THC level for hemp and dispose of the noncompliant plants or plant parts in a manner approved by the department;

(B) transfer the plants to a person authorized by the department to process into a product that does not exceed the federally defined THC level for hemp and dispose of any remaining parts of the plants in a manner approved by the department; or

(C) take any other corrective action consistent with federal regulations adopted under 7 U.S.C. Chapter 38, Subchapter VII.

SUBCHAPTER C. TESTING

Sec. 122.101. TESTING REQUIRED. (a) The department by rule shall establish a program for the random testing of hemp plants to determine the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plants are grown.

(b) Testing under this subchapter must be conducted using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method prescribed by department rule.

Sec. 122.102. PREHARVEST TESTING REQUIRED. A hemp producer may not harvest a hemp plant unless the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plant is grown is collected and tested using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method in the manner required by this subchapter.

Sec. 122.103. REPRESENTATIVE SAMPLE. (a) For purposes of

Section 122.102, a representative sample of hemp plants from a plot consists of cuttings taken from at least five plants throughout the plot.

(b) A laboratory performing testing under this subchapter shall homogenize all the cuttings in the sample and test the delta-9 tetrahydrocannabinol concentration of a random sample of the homogenized material.

Sec. 122.104. SAMPLE COLLECTION. (a) A hemp producer shall notify the department at least 20 days before the date the hemp producer expects to harvest hemp plants in the manner prescribed by department rule.

(b) A sample must be collected by the department or another entity described by Section 122.105(a).

(c) The department by rule may prescribe reasonable procedures for a person who collects a sample to submit the sample to the testing laboratory selected by the hemp producer.

Sec. 122.105. TESTING LABORATORY. (a) Subject to Subsection (b), testing required by this subchapter must be performed by:

(1) the department;

(2) an institution of higher education; or

(3) an independent testing laboratory.

(b) To perform the testing required by this subchapter, a laboratory described by Subsection (a) must be accredited by an accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a successor standard.

(c) A hemp producer shall select a laboratory described by

Subsection (a) to perform preharvest or postharvest testing of a sample taken from the hemp producer's plot. A hemp producer shall pay the costs of sample collection and testing in the amount prescribed by the laboratory selected by the hemp producer.

(d) The department shall recognize and accept the results of a test performed by an institution of higher education or an independent testing laboratory described by Subsection (a). The department shall require that a copy of the test results be sent by the institution of higher education or independent testing laboratory directly to the department and the hemp producer.

(e) The department shall notify the hemp producer of the results of the test not later than the 14th day after the date the sample was collected under Section 122.104 or the date the department receives test results under Subsection (d).

Sec. 122.106. POSTHARVEST TESTING. (a) The department by rule shall allow a hemp producer to have postharvest testing performed on a representative sample of plants from a plot if the results of a preharvest test exceed the federally defined THC level for hemp.

(b) A hemp producer requesting postharvest testing shall pay the costs of the testing before a testing laboratory selected by the hemp producer under Section 122.105 performs the test.

(c) If a hemp producer fails to request postharvest testing or fails to pay the postharvest testing fee not later than the 15th day after the date the hemp producer is notified of the results of the preharvest test, the results of the preharvest test are final.

(d) A hemp producer shall retain control over harvested

plants until the hemp producer receives:

(1) written notice of preharvest or postharvest testing results indicating the plants do not exceed the federally defined THC level for hemp; or

(2) a shipping certificate or cargo manifest by the department under Section 122.154.

Sec. 122.107. SHIPPING DOCUMENTATION FOR TEST SAMPLES. The department shall issue documentation to an entity authorized to collect samples of plants for testing that authorizes the transportation of those samples from the place of collection to a testing laboratory.

SUBCHAPTER D. HEMP PRODUCTS

Sec. 122.151. PROCESSING OR MANUFACTURING HEMP PRODUCTS. (a) Except as provided by Subsection (b), a state agency may not prohibit a person who processes or manufactures a product regulated by the agency from applying for or obtaining a permit or other authorization to process or manufacture the product solely on the basis that the person intends to process or manufacture the product with hemp.

(b) A state agency may not authorize a person to process or manufacture a hemp product for smoking.

Sec. 122.152. HEMP-DERIVED ADDITIVES. Notwithstanding any other law, derivatives of hemp, including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and products intended for human consumption, and the addition is not considered an adulteration of the products.

Sec. 122.153. PACKAGING AND LABELING REQUIREMENTS. (a)

Before a consumable hemp product that contains or is marketed as containing more than trace amounts of cannabinoids may be distributed or sold, the product must be packaged and labeled with the following information:

(1) batch identification number;

(2) batch size;

(3) batch date;

(4) batch number;

(5) product name;

(6) total quantity produced;

(7) an Internet link for downloading a certificate of analysis for the product;

(8) the name of the product's manufacturer; and

(9) a certification that the product does not exceed the federally defined THC level for hemp.

(b) The label required by Subsection (a) may be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides the information required by that subsection; or

(2) a QR code or other bar code that may be scanned and that leads to the information required by that subsection.

Sec. 122.154. SHIPPING CERTIFICATE OR MANIFEST. (a) The department shall develop a shipping certificate or cargo manifest that the department may issue to a hemp producer in connection with the transportation of hemp or hemp products.

(b) A certificate or manifest under Subsection (a) must

include a unique identifying number for the shipment and the department's contact information to allow law enforcement during a roadside inspection of a motor vehicle transporting the shipment to verify that the shipment consists of hemp or hemp products produced in compliance with this chapter.

Sec. 122.155. POSSESSION, TRANSPORTATION, AND SALE OF HEMP PRODUCTS. (a) Notwithstanding any other law, a person may possess, transport, sell, and purchase legally produced hemp products in this state.

(b) The department by rule must provide to a retailer of hemp products fair notice of a potential violation concerning hemp products sold by the retailer and an opportunity to cure a violation made unintentionally or negligently.

Sec. 122.156. RULES RELATED TO SALE OF HEMP PRODUCTS. The department, in consultation with the Department of State Health Services, shall adopt rules to regulate the sale of hemp products that reflect the following principles:

(1) hemp-derived cannabinoids, including cannabidiol, are not considered controlled substances or adulterants;

(2) products containing one or more hemp-derived cannabinoids, such as cannabidiol, intended for ingestion are to be considered foods, not controlled substances or adulterated products;

(3) hemp products must be packaged and labeled in the manner provided by Section 122.153; and

(4) the processing or manufacturing of a hemp product for smoking is prohibited.

Sec. 122.157. RETAIL SALE OF OUT-OF-STATE HEMP PRODUCTS. (a) Retail sales of hemp products manufactured or processed outside of this state may be made in this state when the products and the hemp used in the products were processed and cultivated legally in another state or jurisdiction that has the same or substantially similar requirements for processing hemp products or cultivating hemp as provided by this chapter.

(b) The department shall maintain a list of states or other jurisdictions described by Subsection (a).

Sec. 122.158. TRANSPORTATION AND EXPORTATION OF HEMP PRODUCTS OUT OF STATE. Hemp products may be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

SUBCHAPTER E. ENFORCEMENT; PENALTIES

Sec. 122.201. PENALTY SCHEDULE. (a) The department by rule shall adopt a schedule of sanctions and penalties for violations of this chapter and rules adopted under this chapter that does not conflict with 7 U.S.C. Section 1639p(e).

(b) A penalty collected under this chapter must be deposited in the state hemp program account under Section 122.003.

Sec. 122.202. ADMINISTRATIVE PENALTY. The department may impose an administrative penalty or other administrative sanction for a violation of this chapter or a rule or order adopted under this chapter, including a penalty or sanction under Section 12.020 or 12.0201.

SECTION 5. Sections 481.002(5) and (26), Health and Safety

Code, are amended to read as follows:

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.

(26) "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; [~~or~~]

(E) the sterilized seeds of the plant that are incapable of beginning germination; or

(F) hemp, as that term is defined by Section 121.001, Agriculture Code.

SECTION 6. (a) Not later than the 90th day after the effective date of this Act, the Department of Agriculture shall

adopt rules under Section 121.003, Agriculture Code, as added by this Act, and submit for approval a state plan to the secretary of the United States Department of Agriculture as provided by Section 121.005, Agriculture Code, as added by this Act.

(b) The Department of Agriculture shall submit amended state plans as provided by Section 121.005(b), Agriculture Code, as added by this Act, as necessary until the plan is approved.

SECTION 7. (a) Not later than January 1, 2020, the Department of Agriculture shall adopt rules and procedures necessary to implement Chapter 122, Agriculture Code, as added by this Act.

(b) Not later than the 30th day after the date on which rules and procedures are adopted under Subsection (a) of this section, the Department of Agriculture shall begin authorizing participation in the state hemp program established under Chapter 122, Agriculture Code, as added by this Act.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.