

By: Kacal

H.B. No. 2166

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 (c) A person may not:

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

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

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

1 agency; or

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

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

9 Sec. 62.001. DEFINITIONS. In this chapter:

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

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

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

19 (4) "Plant" includes plant parts.

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

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

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

1 ~~Texas Agricultural Experiment Station~~, Texas A&M University;

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

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

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

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

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

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

26 (c) A member whose employment is terminated with the  
27 association or the university [~~agency or department~~] from which the

1 member was appointed or who ceases to be engaged in the business or  
2 professional activity that the member was elected [~~appointed~~] to  
3 represent vacates membership on the council [~~board~~].

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

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

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

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

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

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

27 Sec. 62.005. APPROVAL [~~LICENSING~~] OF PRODUCERS OF

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

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

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

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

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

22 (c) Approval [~~A license~~] to produce Foundation, Registered,  
23 or Certified seed or plants is not transferable and is permanent  
24 unless revoked by the council as a result of a violation of  
25 applicable law or standards governing the production and handling  
26 of seed or plants [~~as provided in this chapter~~]. A person approved  
27 [~~licensed~~] as a producer of Foundation, Registered, or Certified

1 seed or plants is eligible to produce certified seed or plants, as  
2 applicable [~~provided in the license~~], of the class the person is  
3 approved to produce [~~for which he or she is licensed~~] or of any  
4 lower class of certified seed or plants, as determined by the  
5 council [~~board~~].

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

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

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

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

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

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

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

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

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

27 (c) After inspection, if the association [~~department~~]

1 determines that the production of seed or plants has met the  
2 standards and requirements [~~rules~~] prescribed by the council  
3 [~~board~~], it shall cause to be attached to each container of the  
4 product a label identifying the seed or plant and the certified  
5 class and including other information required by law or by the  
6 council [~~statute or by rule of the board~~]. The council [~~department~~]  
7 shall prescribe the format of the label.

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

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

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

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

1 state.

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

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

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

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

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

4 or

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

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

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

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

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

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

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

27            (f) In the course of its investigation, the arbitration

1 board or any of its members may:

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

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

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

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

- 13 (1) Section 62.0021;  
14 (2) Section 62.0022;  
15 (3) Section 62.0023;  
16 (4) Section 62.0024;  
17 (5) Section 62.0025;  
18 (6) Section 62.0026;  
19 (7) Section 62.0027;  
20 (8) Section 62.004(c);  
21 (9) Section 62.0065;  
22 (10) Section 62.010;  
23 (11) Section 62.011; and  
24 (12) Section 64.005(c).

25 SECTION 13. On the effective date of this Act:

- 26 (1) the State Seed and Plant Board is abolished;  
27 (2) the State Seed and Plant Certification Council and

1 the Texas Crop Improvement Association shall assume the powers and  
2 duties assigned by Chapters 62 and 64, Agriculture Code, as amended  
3 by this Act; and

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

9 SECTION 14. Except for the addition by this Act of Section  
10 61.007(c), Agriculture Code, the changes in law made by this Act may  
11 not be construed to affect Chapter 61, Agriculture Code.

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

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