By:  Moody H.B. No. 447

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the cultivation, manufacture, distribution, sale, testing, possession, and use of cannabis and cannabis products; authorizing the imposition of taxes and fees; requiring an occupational license; creating a criminal offense.

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

SECTION 1.  Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 491 to read as follows:

CHAPTER 491. REGULATION AND TAXATION OF CANNABIS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 491.001.  SHORT TITLE. This chapter may be cited as the Texas Regulation and Taxation of Cannabis Act.

Sec. 491.002.  DEFINITIONS. In this chapter:

(1)  "Adult" means an individual 21 years of age or older.

(2)  "Cannabis" 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 includes cannabis concentrate. The term does not include:

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

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

(C)  a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or

(D)  the sterilized seeds of the plant that are incapable of beginning germination.

(3)  "Cannabis concentrate" means the resin extracted from a part of the plant Cannabis sativa L. or a compound, manufacture, salt, derivative, mixture, or preparation of the resin.

(4)  "Cannabis establishment" means an entity licensed by the department under this chapter to process and dispense cannabis and cannabis products to an adult.

(5)  "Cannabis grower" means an entity licensed by the department to cultivate cannabis for sale and distribution to a cannabis establishment.

(6)  "Cannabis product" means a product that contains cannabis and is intended for use or consumption by humans, including as an edible product or as a topical product, ointment, oil, or tincture. The term includes products that consist of cannabis and other ingredients.

(7)  "Cannabis secure transporter" means an entity licensed by the department under this chapter to transport cannabis from a cannabis grower to a cannabis establishment.

(8)  "Cannabis testing facility" means an entity licensed by the department under this chapter to analyze the safety and potency of cannabis and cannabis products.

(9)  "Commission" means the Texas Commission of Licensing and Regulation.

(10)  "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the cannabis plant by manual or mechanical means.

(11)  "Department" means the Texas Department of Licensing and Regulation.

(12)  "Executive director" means the executive director of the department.

(13)  "Process" means to separate or otherwise prepare parts of the cannabis plant and to compound, blend, extract, infuse, or otherwise make or prepare cannabis concentrate or cannabis products.

SUBCHAPTER B. PROTECTIONS FROM LEGAL ACTION RELATED TO CANNABIS

Sec. 491.051.  AUTHORIZED CONDUCT: PERSONAL USE OF CANNABIS. (a) An adult is authorized under this chapter to:

(1)  use, possess, and transport not more than 2.5 ounces of cannabis, except that not more than 15 grams of that amount may be in the form of cannabis concentrate;

(2)  transfer without remuneration to another adult not more than 2.5 ounces of cannabis, except that not more than 15 grams of that amount may be in the form of cannabis concentrate and provided that the transfer is not advertised or promoted to the public;

(3)  cultivate for personal use not more than 12 cannabis plants in an area on the premises of the adult's private residence, provided that the cultivation occurs in an enclosed area that is:

(A)  equipped with locks or other security devices that restrict access to the area; and

(B)  not visible from a public place without the use of aircraft or optical aids;

(4)  possess, store, or process on the premises of the adult's private residence not more than:

(A)  the amount of cannabis produced from plants cultivated on the premises, provided that:

(i)  not more than the 12 cannabis plants are possessed, cultivated, or processed on the premises at one time; and

(ii)  any amount of cannabis in excess of 2.5 ounces is stored in a container or area equipped with locks or other security devices that restrict access to the contents of the container or area; and

(B)  10 ounces of cannabis that was not produced from plants cultivated on the premises, provided that the amount in excess of 2.5 ounces is stored in a container or area described by Paragraph (A)(ii);

(5)  use, possess, process, transport, or transfer to another adult without remuneration, an amount of cannabis products specified by rule of the commission as the allowable amount of cannabis for purposes of this subdivision; and

(6)  use, possess, transport, or transfer to another adult without remuneration, cannabis-related drug paraphernalia.

Sec. 491.052.  AUTHORIZED CONDUCT: RETAIL CANNABIS OPERATIONS. This chapter authorizes the conduct of:

(1)  a cannabis grower director, manager, or employee who, acting within the scope of the grower's license:

(A)  cultivates cannabis or produces cannabis products for sale or transfer to a cannabis establishment; and

(B)  possesses cannabis or cannabis-related drug paraphernalia;

(2)  a cannabis establishment director, manager, or employee who, acting within the scope of the establishment's license, possesses cannabis or cannabis products or transfers or sells cannabis, cannabis products, or cannabis-related drug paraphernalia to an adult;

(3)  a cannabis secure transporter director, manager, or employee who, acting within the scope of the secure transporter's license, transports or transfers cannabis or cannabis products from a cannabis grower to a cannabis establishment; and

(4)  a cannabis testing facility director, manager, or employee who, acting within the scope of the facility's license, possesses, tests, or transports cannabis, cannabis products, or cannabis-related drug paraphernalia.

Sec. 491.053.  PROTECTION FROM LEGAL ACTION FOR AUTHORIZED CONDUCT. (a) A person is not subject to arrest, prosecution, forfeiture of property, or penalty in any manner or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau solely due to conduct authorized under Section 491.051 or 491.052.

(b)  The fact that a person engages in conduct authorized by Section 491.051 or 491.052 does not in itself constitute grounds for denying, limiting, or restricting conservatorship or possession of or access to a child under Title 5, Family Code.

Sec. 491.054.  PROHIBITION OF CANNABIS ON PRIVATE PROPERTY; EXCEPTION. (a) Except as otherwise provided by Subsection (b), a person may prohibit or restrict the possession, consumption, cultivation, distribution, processing, sale, or display of cannabis or cannabis products on property the person owns, occupies, or manages.

(b)  A person may not prohibit a residential tenant under a lease agreement from possessing cannabis, cannabis products, or cannabis-related drug paraphernalia or consuming cannabis by means other than smoking on the premises.

Sec. 491.055.  CONDUCT NOT AUTHORIZED UNDER THIS CHAPTER. This chapter does not authorize the following conduct:

(1)  operating a motor vehicle while intoxicated or otherwise violating Chapter 49, Penal Code;

(2)  smoking or otherwise consuming cannabis in:

(A)  a motor vehicle while the vehicle is on a public road;

(B)  an aircraft, while the aircraft is in flight or in a public area;

(C)  a watercraft, while the watercraft is on a public waterway; or

(D)  a public place, unless:

(i)  the public place is an area designated by a political subdivision as an area where using cannabis is permissible; and

(ii)  the area described by Subparagraph (i) is not accessible to persons younger than 21 years of age;

(3)  possessing or consuming cannabis or cannabis products or possessing cannabis-related drug paraphernalia:

(A)  on the premises of a public or private child care facility, prekindergarten, or primary or secondary school;

(B)  on a school bus that serves a facility or school described by Paragraph (A); or

(C)  on the premises of a correctional facility, as defined by Article 18A.251, Code of Criminal Procedure, or a civil commitment facility; or

(4)  the separation of resin from the cannabis plant by butane extraction or another method that uses a substance with a flashpoint below 100 degrees Fahrenheit in a public place or motor vehicle or within the curtilage of a residential structure.

SUBCHAPTER C. DUTIES OF DEPARTMENT

Sec. 491.101.  DUTIES OF DEPARTMENT. The department shall administer this chapter.

Sec. 491.102.  RULES; FEES. (a) The commission shall adopt all necessary rules for the administration and enforcement of this chapter, including rules imposing fees under this chapter in amounts sufficient to cover the cost of administering this chapter.

(b)  The commission by rule shall set application and license fees under this chapter in amounts sufficient to administer this chapter and may annually adjust the fees for inflation.

(c)  The department shall deposit a fee collected under this chapter to the credit of the cannabis regulation fund established under Section 491.255.

(d)  The commission shall adopt rules for the reasonable regulation of cannabis growers and cannabis establishments, including rules that:

(1)  restrict the use of dangerous pesticides;

(2)  regulate the packaging and labeling of cannabis products available at a cannabis establishment;

(3)  restrict advertising and display of cannabis and cannabis products;

(4)  restrict the maximum amount of tetrahydrocannabinol that may be contained in a cannabis product sold to a consumer;

(5)  require recordkeeping and monitoring to track the transfer of cannabis and cannabis products between license holders; and

(6)  require security measures provided that the security measures do not restrict the cultivation of cannabis outdoors or in greenhouses.

Sec. 491.103.  TESTING, PACKAGING, AND LABELING STANDARDS. (a) The commission by rule shall establish standards for:

(1)  the operation of cannabis testing facilities;

(2)  the testing of cannabis and cannabis products; and

(3)  packaging and labeling requirements for cannabis and cannabis products.

(b)  In establishing standards for packaging and labeling requirements under Subsection (a)(3), the commission shall require that:

(1)  cannabis and cannabis products be packaged in opaque, resealable, child-resistant packaging that does not resemble and may not be easily confused with typical packaging for commercially sold candy;

(2)  cannabis and cannabis products be clearly labeled; and

(3)  the label for a cannabis product disclose the amount of cannabis contained in that product.

Sec. 491.104.  SECURE TRANSPORTATION OF CANNABIS. The commission by rule shall establish standards applicable to cannabis secure transporters, including standards to ensure all cannabis establishments are properly served.

Sec. 491.105.  CONFLICT OF INTEREST. (a) A person who is involved in the implementation, administration, or enforcement of this chapter as a member of the commission, an employee of the department, or a consultant to the commission or the department may not also hold a pecuniary interest in any entity licensed by the department under this chapter.

(b)  A person who holds a pecuniary interest in a cannabis testing facility or a cannabis secure transporter that holds a license issued under this chapter may not hold a pecuniary interest in any entity that holds a cannabis establishment or cannabis grower license issued under this chapter.

(c)  A person may not hold a pecuniary interest in more than five entities that are licensed under this chapter as a cannabis grower, except as provided by department rule.

Sec. 491.106.  ANNUAL REPORT. The executive director shall annually submit to the governor a report providing the following information regarding licensing and regulation under this chapter:

(1)  the number of licenses issued for each class of license under this chapter;

(2)  demographic information pertaining to license holders;

(3)  a description of any fines imposed on a license holder or disciplinary actions taken against a license holder by the department; and

(4)  a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this chapter.

SUBCHAPTER D. LICENSING

Sec. 491.151.  LICENSE REQUIRED. A license issued by the department under this chapter is required to operate as a cannabis grower, cannabis establishment, cannabis secure transporter, or cannabis testing facility.

Sec. 491.152.  QUALIFICATIONS FOR LICENSURE. The commission by rule shall provide for each class of license issued under this chapter qualifications for licensure that are demonstrably related to the operations authorized and duties imposed under that class of license.

Sec. 491.153.  APPLICATION. (a) A person may apply for an initial or renewal license under this chapter by submitting a form prescribed by the department along with the application fee in an amount set by the commission.

(b)  The application must indicate the class of license sought and include the name and address of the applicant, the name and address of each of the applicant's directors, managers, and employees, and any other information considered necessary by the department to determine the applicant's eligibility for the license.

Sec. 491.154.  ISSUANCE, RENEWAL, OR DENIAL OF LICENSE. (a) The department shall issue or renew a license under this chapter only if:

(1)  the department determines the applicant meets the qualifications for the class of license sought established under Section 491.152; and

(2)  the applicant is in compliance with any applicable local regulations.

(b)  If the department denies the issuance or renewal of a license under Subsection (a), the department shall give written notice of the grounds for denial to the applicant.

(c)  A license issued or renewed under this section expires on the second anniversary of the date of issuance or renewal, as applicable.

Sec. 491.155.  DUTY TO MAINTAIN QUALIFICATIONS. A license holder shall maintain compliance at all times with the qualifications for the applicable class of license established under Section 491.152.

Sec. 491.156.  LICENSE SUSPENSION OR REVOCATION. (a) The department may at any time suspend or revoke a license issued under this chapter if the department determines that the license holder has not maintained the qualifications established under Section 491.152 or has failed to comply with a duty imposed under this chapter.

(b)  The department shall give written notice to a license holder of a license suspension or revocation under this section and the grounds for the suspension or revocation. The notice must be sent by certified mail, return receipt requested.

(c)  After suspending or revoking a license issued under this chapter, the department shall notify the Department of Public Safety. The public safety director of the Department of Public Safety may seize or place under seal all cannabis, cannabis products, and cannabis-related drug paraphernalia owned or possessed by the license holder. If the license is revoked, a disposition may not be made of the seized or sealed cannabis, cannabis products, or drug paraphernalia until the time for administrative appeal of the order has elapsed or until all appeals have been concluded. When a revocation order becomes final, all cannabis, cannabis products, and drug paraphernalia may be forfeited to the state as provided under Subchapter E, Chapter 481.

(d)  Chapter 2001, Government Code, applies to a proceeding under this section.

Sec. 491.157.  CRIMINAL RECORD INFORMATION FOR LICENSE APPLICANTS. (a) In addition to satisfying the other requirements provided by commission rule under this chapter, an applicant for a license under this chapter must submit to the department a complete and legible set of fingerprints, on a form prescribed by the commission, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b)  The department may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the department is conditioned on the department obtaining the applicant's criminal history record information under this section.

(c)  A person's conviction for an offense other than an offense under Section 481.122, that involves the delivery or possession of marihuana, as defined under Section 481.002, does not disqualify an applicant for licensure under this chapter.

SUBCHAPTER E. DUTIES OF LICENSE HOLDERS

Sec. 491.201.  DUTIES RELATING TO DISPENSING CANNABIS OR CANNABIS PRODUCTS. Before dispensing cannabis or cannabis products to an adult, a cannabis establishment must make reasonable efforts to verify that:

(1)  the person receiving the cannabis or cannabis product is an adult;

(2)  the cannabis or cannabis product complies with department testing and labeling rules; and

(3)  the amount dispensed is not greater than the amount of cannabis or cannabis product allowed for personal use as provided by Section 491.051.

Sec. 491.202.  DUTIES RELATING TO SECURITY. (a) A license holder shall ensure that the cultivation, processing, sale, or display of cannabis, cannabis products, and cannabis-related drug paraphernalia is not visible from a public place without the use of optical aids or aircraft.

(b)  A license holder may not cultivate, process, store, or sell cannabis, cannabis products, or cannabis-related drug paraphernalia at a location other than the physical address approved by the department for the establishment under the license issued to the establishment under this chapter.

(c)  A license holder shall adopt reasonable security measures necessary to restrict access to areas where cannabis or cannabis products are stored and to prevent theft of cannabis and cannabis products.

Sec. 491.203.  LICENSE HOLDER OPERATIONS. (a) A license holder may not employ or otherwise accept the services of a person younger than 21 years of age.

(b)  A cannabis establishment may not sell tobacco products, as defined by Section 155.001, Tax Code.

Sec. 491.204.  MONTHLY SALES REPORT. A cannabis establishment shall monthly submit a report to the comptroller specifying the amount of cannabis sold, the number of cannabis products sold, and the amount of money collected in sales by the establishment during the preceding month.

SUBCHAPTER F. TAXES

Sec. 491.251.  SALES TAX. Cannabis and cannabis products are taxable items subject to the sales tax imposed by Chapter 151, Tax Code.

Sec. 491.252.  CANNABIS TAX IMPOSED. (a) A tax is imposed on each sale of cannabis or a cannabis product by a cannabis establishment.

(b)  The rate of the tax is 10 percent of the sales price of the cannabis or cannabis product.

(c)  The tax imposed by this section is administered, collected, and enforced in the same manner as the tax under Chapter 151 is administered, collected, and enforced.

(d)  The tax imposed by this section is in addition to any other tax imposed by law.

Sec. 491.253.  ALLOCATION OF CANNABIS TAX. (a) The comptroller shall allocate the net revenue derived from the tax imposed by this subchapter as follows:

(1)  10 percent as a local share to municipalities in which cannabis establishments are located, allocated among those municipalities as provided by Subsection (b);

(2)  10 percent as a local share to counties in which cannabis establishments are located, allocated among those counties as provided by Subsection (c);

(3)  one percent to the cannabis testing and quality control fund established under Section 491.254;

(4)  the amount certified to the comptroller by the commission under Section 491.255 to the fund established under that section; and

(5)  the remainder to the public school teachers fund established under Section 491.256.

(b)  In determining the local share for each municipality in which one or more cannabis establishments are located, the comptroller shall allocate funds under Subsection (a)(1) in proportion to the number of cannabis establishments located in each municipality.

(c)  In determining the local share for each county in which one or more cannabis establishments are located, the comptroller shall allocate funds under Subsection (a)(2) in proportion to the number of cannabis establishments located in each county.

Sec. 491.254.  CANNABIS TESTING AND QUALITY CONTROL FUND. (a) The cannabis testing and quality control fund is established outside the treasury and is administered by the public safety director of the Department of Public Safety.

(b)  The public safety director shall use money in the fund available to enable Department of Public Safety crime laboratory facilities to test cannabis and cannabis products on request by the executive director, for the purposes of assisting the department in monitoring compliance with testing and quality control requirements imposed on license holders under this chapter or by commission rules adopted under this chapter.

(c)  Interest and income from the assets of the trust fund shall be credited to and deposited in the fund.

Sec. 491.255.  CANNABIS REGULATION FUND. (a) The cannabis regulation fund is established outside the treasury and is administered by the commission.

(b)  The commission shall make money in the fund available to the department for implementing and administering this chapter.

(c)  The commission shall monthly certify to the comptroller the amount of money the department expended during the preceding month in the implementation and administration of this chapter.

(d)  Interest and income from the assets of the trust fund shall be credited to and deposited in the fund.

Sec. 491.256.  PUBLIC SCHOOL TEACHERS FUND. (a) The public school teachers fund is established outside the treasury and is administered by the comptroller. The comptroller shall deposit:

(1)  half of all money allocated to the fund in a teacher retirement support account in the fund; and

(2)  the remainder in a teacher salary support account in the fund.

(b)  Each month the comptroller shall transfer the balance of the teacher retirement support account to the state contribution account of the teacher retirement system trust fund. Money transferred to the state contribution account under this section may not be considered in computing the amount owed by the state under Section 825.404(a), Government Code, and is not considered a state contribution for purposes of that section.

(c)  Each month the comptroller shall transfer the balance of the teacher salary support account to the commissioner of education. Notwithstanding any other law, money transferred to the commissioner of education under this section may be used only to provide additional state aid under the Foundation School Program to public schools to pay for teacher salary increases. The commissioner of education may adopt rules as necessary to implement this subsection.

SUBCHAPTER G. LOCAL REGULATION

Sec. 491.301.  PROHIBITED LOCAL REGULATION. A political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits or unreasonably restricts the cultivation, production, processing, dispensing, transportation, or possession of cannabis or cannabis products or the operation of a cannabis grower, cannabis establishment, cannabis secure transporter, or cannabis testing facility as authorized by this chapter.

Sec. 491.302.  PERMISSIBLE LOCAL REGULATION. A political subdivision may adopt regulations consistent with this chapter governing the hours of operation, location, manner of conducting business, and number of cannabis growers, cannabis establishments, or cannabis testing facilities.

SUBCHAPTER H. SALE OR DISTRIBUTION OF CANNABIS OR CANNABIS PRODUCT TO MINORS PROHIBITED

Sec. 491.351.  DEFINITION. In this subchapter, "minor" means a person younger than 21 years of age.

Sec. 491.352.  SALE OR DISTRIBUTION OF CANNABIS OR CANNABIS PRODUCT TO MINORS PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, under the authority of this chapter:

(1)  sells, gives, or causes to be sold or given cannabis or cannabis products to a minor; or

(2)  sells, gives, or causes to be sold or given cannabis or cannabis products to another person who intends to deliver the cannabis or cannabis products to a minor.

(b)  If an offense under this section occurs in connection with a sale by an employee of the owner of a cannabis establishment, the employee is criminally responsible for the offense and is subject to prosecution.

(c)  An offense under this section is a Class C misdemeanor.

(d)  It is a defense to prosecution under Subsection (a)(1) that the person to whom the cannabis or cannabis products were sold or given presented to the defendant apparently valid proof of identification.

(e)  A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

SECTION 2.  Section 481.062, Health and Safety Code, is amended to read as follows:

Sec. 481.062.  EXEMPTIONS. (a) The following persons are not required to register and may possess a controlled substance under this chapter [~~without registering with the Federal Drug Enforcement Administration~~]:

(1)  an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance [~~who is registered with the Federal Drug Enforcement Administration and~~] acting in the usual course of business or employment;

(2)  a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3)  an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V;

(4)  an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties;

(5)  if the substance is tetrahydrocannabinol or one of its derivatives:

(A)  a Department of State Health Services official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B)  a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol; [~~or~~]

(6)  a dispensing organization licensed under Chapter 487 that possesses low-THC cannabis;

(7)  a cannabis grower, cannabis establishment, cannabis secure transporter, or cannabis testing facility licensed under Chapter 491 that possesses cannabis or cannabis products; or

(8)  a person who possesses cannabis or cannabis products in accordance with Chapter 491.

(b)  In this section, "cannabis" and "cannabis product" have the meanings assigned to those terms by Section 491.001.

SECTION 3.  Section 481.111, Health and Safety Code, is amended by adding Subsections (g) and (h) to read as follows:

(g)  Sections 481.120, 481.121, and 481.125 do not apply to a person who engages in the acquisition, possession, production, processing, cultivation, delivery, transportation, or disposal of a raw material used in or by-product created by the production or cultivation of cannabis or cannabis products if the conduct is expressly authorized by Subchapter B, Chapter 491.

(h)  For purposes of Subsection (g), "cannabis" and "cannabis product" have the meanings assigned to those terms by Section 491.001.

SECTION 4.  (a) Not later than July 1, 2022, the Texas Commission of Licensing and Regulation shall adopt rules as required to implement, administer, and enforce Chapter 491, Health and Safety Code, as added by this Act.

(b)  Not later than November 1, 2022, the Texas Department of Licensing and Regulation shall begin licensing cannabis growers, cannabis establishments, cannabis secure transporters, and cannabis testing facilities in accordance with Chapter 491, Health and Safety Code, as added by this Act, provided that the applicants for a license have met all requirements for approval under Chapter 491, Health and Safety Code, as added by this Act.

SECTION 5.  This Act takes effect September 1, 2021.