88R4638 MP-F

By:  Perry S.B. No. 321

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D)  may collect and research feral hemp; and

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

(c)  An institution of higher education or private or independent institution of higher education may not sell or transfer hemp to another person unless the institution complies with the requirements of Sections 122.153 and 122.356.

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

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

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

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

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

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

(1)  a testing laboratory; or

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

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

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

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

(c)  The delta-9 tetrahydrocannabinol concentration shall be determined as provided by Section 122.151(g).

SECTION 9.  Subchapter E, Chapter 122, Agriculture Code, is amended by adding Section 122.203 to read as follows:

Sec. 122.203.  HARVEST WHILE LICENSE SUSPENDED OR REVOKED. (a) A person whose license is suspended or revoked after planting hemp plants may obtain preharvest or postharvest testing under Subchapter D and may harvest the plants under Section 122.201 in the same manner as a license holder.

(b)  The department by rule shall establish fair and objective standards for determining whether a person whose license is suspended or revoked may use or sell plants harvested under Subsection (a), based on the circumstances of the suspension or revocation. Based on those rules, the department shall:

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

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

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

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

SUBCHAPTER F. HEMP SEED AND PLANTS

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

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

(b)   The department or entity may not certify or approve a variety of hemp seed or plant if the variety [~~seed~~] is tested and confirmed to produce a plant that has delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis. For purposes of this subsection, the department may partner with a private entity or an institution of higher education to test seed and plant varieties for the purpose of certification or approval under this section.

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

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

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

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

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

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

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

(1)  complies with any requirements of the state of origin;

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

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

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

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

(d)  A license holder may transplant immature plants propagated by the license holder from one plot to another plot controlled by the license holder. The department by rule shall waive the requirement that a license holder obtain a lot crop permit for and may not require a license holder to pay any fee for a greenhouse or other location used to propagate immature plants if the plants are transplanted to another plot controlled by the license holder and are not sold or transferred to another person. The department by rule may waive the requirement that a person obtain a shipping certificate or cargo manifest to transplant immature plants from one plot to another plot operated by the license holder.

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

(a)  If the department determines that a license holder 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) and 7 C.F.R. Section 990.6.

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

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

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

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

(A)  issue a written warning to the person;

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

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

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

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

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

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

(C)  require the person to obtain a license;

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

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

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

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

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

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

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

(1)  violates Section 122.101; and

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

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

SECTION 15.  Section 122.403, Agriculture Code, as amended by this Act, and Section 122.4035, Agriculture Code, as added by this Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurred before that date is governed by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

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