

By: Cain, Rosenthal, King of Uvalde, Toth,
Bernal, et al.

H.B. No. 2818

A BILL TO BE ENTITLED

AN ACT

relating to the production and regulation of hemp; providing an administrative penalty; requiring a permit to conduct certain research involving hemp; authorizing a fee; 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, Agriculture Code, is amended by amending Subdivision (5) and adding Subdivision (8-a) 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.

(8-a) "Nonprofit research entity" means a research entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more of the purposes specified by Section 2.002, Business Organizations 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 PERMIT. (a) The department shall issue a hemp research permit to an institution of higher education, private or independent institution of higher education, or nonprofit research entity in this state that requests the permit. The entity must submit to the department a fee in an amount equal to the application fee for a license, as provided by Section 122.052.

(b) Notwithstanding any provision of this chapter or department rule other than Subsection (c), a hemp research permit holder:

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

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

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

1 (4) may collect and research feral hemp; and

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

3 (c) A hemp research permit holder may only sell or transfer
4 hemp to another person if the variety of the hemp is certified or
5 approved under Section 122.252 and the sale or transfer occurs at
6 least six months after the hemp is harvested.

7 (d) A hemp research permit holder may conduct research
8 involving hemp in conjunction with a license holder at a facility
9 designated by the license holder for research use only.

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

12 SECTION 5. Section 122.051, Agriculture Code, is amended by
13 adding Subsections (c) and (d) to read as follows:

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

18 (d) This chapter, Chapter 121, and any rule adopted by the
19 department to incorporate or implement a federal statute or federal
20 regulation may not be construed in a manner that is inconsistent
21 with 7 U.S.C. Chapter 38, Subchapter VII, or any other applicable
22 federal law or rule.

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

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

1 (1) a testing laboratory; or

2 (2) another destination if the sample contains not
3 more than an amount of hemp as determined by the department by rule
4 and is accompanied by the results of a laboratory test indicating
5 the delta-9 tetrahydrocannabinol concentration of the lot or plot
6 from which the sample was taken.

7 SECTION 7. Section [122.102](#), Agriculture Code, is amended to
8 read as follows:

9 Sec. 122.102. LICENSE AND HEMP RESEARCH PERMIT
10 INELIGIBILITY. (a) An individual who is or has been convicted of a
11 felony relating to a controlled substance under federal law or the
12 law of any state may not, before the 10th anniversary of the date of
13 the conviction:

14 (1) hold a license under this subchapter or a hemp
15 research permit under Subchapter A; or

16 (2) be a governing person of a business entity or
17 nonprofit research entity that holds a license under this
18 subchapter or a hemp research permit under Subchapter A.

19 (b) The department may not issue a license under this
20 subchapter or a hemp research permit under Subchapter A to a person
21 who materially falsifies any information contained in an
22 application submitted to the department under Section [122.005](#) or
23 [122.103](#).

24 SECTION 8. Section [122.151](#), Agriculture Code, is amended by
25 adding Subsection (g) to read as follows:

26 (g) A laboratory that performs testing required by this
27 chapter shall report the delta-9 tetrahydrocannabinol

concentration, the total tetrahydrocannabinol concentration, and the concentration of any other cannabinoid federally regulated under 7 U.S.C. Chapter 38, Subchapter VII, 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.

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 may prohibit a person from selling or using plants harvested under Subsection (a) 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) 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.

(b) 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.

(c) A license holder may transplant immature plants

1 propagated by the license holder from one plot to another plot
2 controlled by the license holder. The department by rule shall
3 waive the requirement that a license holder obtain a lot crop permit
4 for and may not require a license holder to pay any fee for a
5 greenhouse or other location used to propagate immature plants if
6 the plants are transplanted to another plot controlled by the
7 license holder and are not sold or transferred to another person.
8 The department by rule may waive the requirement that a person
9 obtain a shipping certificate or cargo manifest to transplant
10 immature plants from one plot to another plot operated by the
11 license holder.

12 (d) The department by rule shall define "immature plant."

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

16 (a) If the department determines that a license holder
17 negligently violated this chapter or a rule adopted under this
18 chapter, the department shall enforce the violation in the manner
19 provided by 7 U.S.C. Section 1639p(e) and 7 C.F.R. Section 990.6.

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

22 SECTION 14. Subchapter [I](#), Chapter [122](#), Agriculture Code, is
23 amended by adding Sections [122.4034](#) and [122.4035](#) to read as
24 follows:

25 Sec. 122.4034. ADMINISTRATIVE PENALTY FOR CULTIVATING HEMP
26 WITHOUT A LICENSE. On determining that a person violated Section
27 [122.101](#), the department may:

1 (1) issue a written warning to the person;

2 (2) impose an administrative penalty in the amount of
3 \$500; and

4 (3) require the person to obtain a license.

5 Sec. 122.4035. PENALTY FOR CULTIVATING HEMP WITHOUT A
6 LICENSE; CRIMINAL OFFENSE. (a) A person commits an offense if the
7 person:

8 (1) violates Section 122.101; and

9 (2) has received an administrative penalty under
10 Section 122.4034 for a previous violation of Section 122.101.

11 (b) An offense under this section is a Class C misdemeanor,
12 except that the offense is:

13 (1) a Class B misdemeanor if it is shown on the trial
14 of the offense that the person has previously been convicted one
15 time of an offense under this section; and

16 (2) a Class A misdemeanor if it is shown on the trial
17 of the offense that the person has previously been convicted two or
18 more times of an offense under this section.

19 SECTION 15. Section 122.403, Agriculture Code, as amended
20 by this Act, and Sections 122.4034 and 122.4035, Agriculture Code,
21 as added by this Act, apply only to conduct that occurs on or after
22 the effective date of this Act. Conduct that occurred before that
23 date is governed by the law in effect when the conduct occurred, and
24 the former law is continued in effect for that purpose.

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