

By: _____ .B. No. _____

Substitute the following for .B. No. _____:

By: _____ C.S. .B. No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the production and regulation of hemp and consumable
3 hemp products; providing administrative penalties; creating a
4 criminal offense.

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

6 SECTION 1. Section 122.001(5), Agriculture Code, is amended
7 to read as follows:

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

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

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

18 SECTION 3. Subchapter A, Chapter 122, Agriculture Code, is
19 amended by adding Section 122.005 to read as follows:

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

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

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

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

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

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

15 (C) may cultivate and handle varieties of hemp
16 seed and plants that are not certified or approved under Section
17 122.252;

18 (D) may collect and research feral hemp; and

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

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

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

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

3 SECTION 4. Section 122.051, Agriculture Code, is amended by
4 adding Subsection (c) to read as follows:

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

9 SECTION 5. Section 122.055, Agriculture Code, is amended by
10 adding Subsection (c-1) to read as follows:

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

14 (1) a testing laboratory; or

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

19 SECTION 6. Section 122.151, Agriculture Code, is amended by
20 adding Subsection (g) to read as follows:

21 (g) A laboratory that performs testing required by this
22 chapter shall report the delta-9 tetrahydrocannabinol
23 concentration, the total tetrahydrocannabinol concentration, and
24 the concentration of any other federally regulated cannabinoid of
25 the sample on a dry weight basis and the measurement of uncertainty
26 in the test result. The measurement of uncertainty must comply with
27 International Organization for Standardization ISO/IEC 17025 or a

1 comparable or successor standard and any provisions of federal law
2 governing the measurement of uncertainty. For purposes of this
3 chapter, the delta-9 tetrahydrocannabinol concentration of the
4 sample is the lowest possible value given that measurement of
5 uncertainty.

6 SECTION 7. Section 122.201(a), Agriculture Code, is amended
7 to read as follows:

8 (a) A license holder shall harvest the plants from a plot
9 not later than the 30th [~~20th~~] day after the date a preharvest
10 sample is collected under Section 122.154 unless field conditions
11 delay harvesting or the department authorizes the license holder to
12 delay harvesting. This subsection does not prohibit the license
13 holder from harvesting the plants immediately after the preharvest
14 sample is collected.

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

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

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

21 Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED.

22 (a) A person whose license is suspended or revoked after planting
23 hemp plants may obtain preharvest or postharvest testing under
24 Subchapter D and may harvest the plants under Section 122.201 in the
25 same manner as a license holder.

26 (b) The department by rule shall establish fair and
27 objective standards for determining whether a person whose license

1 is suspended or revoked may use or sell plants harvested under
2 Subsection (a), based on the circumstances of the suspension or
3 revocation. Based on those rules, the department shall:

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

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

12 (c) A person whose license is reinstated may sell or use
13 plants harvested under Subsection (a) as provided by Section
14 122.202.

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

17 SUBCHAPTER F. HEMP SEED AND PLANTS

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

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

25 (b) The department or entity may not certify or approve a
26 variety of hemp seed or plant if the variety [~~seed~~] is tested and
27 confirmed to produce a plant that has delta-9 tetrahydrocannabinol

1 concentration of more than 0.3 percent on a dry weight basis. For
2 purposes of this subsection, the department may partner with a
3 private entity or an institution of higher education to test seed
4 and plant varieties for the purpose of certification or approval
5 under this section.

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

10 (1) that state or jurisdiction's plan approved by the
11 United States Department of Agriculture under 7 U.S.C. Section
12 1639p; or

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

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

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

20 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In
21 this section, "immature plant" means a hemp seedling, clone, or
22 cutting that is not flowering and requires substantial cultivation
23 and further growth before the beginning of the period under Section
24 122.201(a) when the plant may be harvested.

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

1 that:

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

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

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

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

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

21 (d) A license holder may transplant immature plants
22 propagated by the license holder from one plot to another plot
23 controlled by the license holder. The department by rule shall
24 waive the requirement that a license holder obtain a lot crop permit
25 for and may not require a license holder to pay any fee for a
26 greenhouse or other location used to propagate immature plants if
27 the plants are transplanted to another plot controlled by the

1 license holder and are not sold or transferred to another person.
2 The department by rule may waive the requirement that a person
3 obtain a shipping certificate or cargo manifest to transplant
4 immature plants from one plot to another plot operated by the
5 license holder.

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

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

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

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

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

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

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

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

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

26 (D) allow the person to continue to cultivate or
27 handle the hemp plants that are the subject of the violation,

1 harvest those plants, and, after obtaining the license, sell or use
2 those plants as provided by Section 122.202;

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

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

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

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

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

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

14 and

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

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

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

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

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

25 (1) violates Section 122.101; and

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

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

3 SECTION 15. Subchapter A, Chapter 443, Health and Safety
4 Code, is amended by adding Sections 443.005 and 443.006 to read as
5 follows:

6 Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The
7 consumable hemp products account is an account in the general
8 revenue fund administered by the department.

9 (b) The account consists of:

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

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

14 (3) fees collected under this chapter or under Chapter
15 431 as it applies to consumable hemp products;

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

18 (5) penalties for violations of this chapter or
19 Chapter 431 as it applies to consumable hemp products; and

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

22 (c) The department may accept appropriations and gifts,
23 grants, or donations from any source to administer and enforce this
24 chapter and Chapter 431 as it applies to consumable hemp products.
25 Money received under this subsection shall be deposited in the
26 account.

27 (d) Money in the account may be appropriated only to the

1 department for the administration and enforcement of this chapter
2 and Chapter 431 as it applies to consumable hemp products.

3 Sec. 443.006. TETRAHYDROCANNABINOL CONTENT. (a)

4 Notwithstanding any other law, a person may not manufacture, sell,
5 or purchase a consumable hemp product in this state:

6 (1) that has a delta-9 tetrahydrocannabinol
7 concentration of more than 0.3 percent on a dry weight basis;

8 (2) that contains synthetically derived
9 tetrahydrocannabinols, as defined by department rule, including
10 synthetically derived acids, isomers, or salts of
11 tetrahydrocannabinol;

12 (3) that, in the form and quantity as packaged for
13 consumer use, is reasonably determined by the department to have an
14 intoxicating effect;

15 (4) that exceeds any federal limit for
16 tetrahydrocannabinol; or

17 (5) if additional tetrahydrocannabinol in a
18 concentration greater than 0.3 percent on a dry weight basis has
19 been applied to the product.

20 (b) Chapter 481 prevails to the extent of any conflict with
21 this section.

22 SECTION 16. Section 443.103, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 443.103. APPLICATION; ISSUANCE. An individual or
25 establishment may apply for a license under this subchapter by
26 submitting an application to the department on a form and in the
27 manner prescribed by the department. The application must be

1 accompanied by:

2 (1) the physical address [~~a legal description~~] of each
3 location where the applicant intends to process hemp or manufacture
4 consumable hemp products [~~and the global positioning system~~
5 ~~coordinates for the perimeter of each location~~];

6 (2) written consent from the applicant or the property
7 owner if the applicant is not the property owner allowing the
8 department, the Department of Public Safety, and any other state or
9 local law enforcement agency to enter onto all premises where hemp
10 is processed or consumable hemp products are manufactured to
11 conduct a physical inspection or to ensure compliance with this
12 chapter and rules adopted under this chapter;

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

15 (4) any other information required by department rule.

16 SECTION 17. Subchapter C, Chapter 443, Health and Safety
17 Code, is amended by adding Section 443.106 to read as follows:

18 Sec. 443.106. EXPEDITED LICENSING PROCESS. The department
19 by rule may provide an expedited licensing process for the
20 purchaser of a business that requires a license.

21 SECTION 18. Section 443.152, Health and Safety Code, is
22 amended by adding Subsection (d) to read as follows:

23 (d) The executive commissioner by rule may exclude a
24 substance that is generally recognized as having no risk of
25 contaminating a finished consumable hemp product, including a
26 microorganism or other substance that is inevitably destroyed or
27 removed while processing or manufacturing the product, from the

1 testing required under Section 443.151.

2 SECTION 19. Section 443.201, Health and Safety Code, is
3 amended by adding Subsection (c) to read as follows:

4 (c) A person may transport and deliver a consumable hemp
5 product to a consumer who purchased the product in compliance with
6 this chapter. The person transporting and delivering the consumable
7 hemp product is not required to:

8 (1) obtain a license under Section 443.101, unless the
9 person processes or manufactures the product delivered; or

10 (2) register under Section 443.2025, unless the person
11 sells the product delivered.

12 SECTION 20. Section 443.2025, Health and Safety Code, is
13 amended by amending Subsections (b), (d), and (f) and adding
14 Subsection (d-1) to read as follows:

15 (b) A person may not sell or distribute consumable hemp
16 products containing cannabinoids to consumers [~~cannabidiol at~~
17 ~~retail~~] in this state, other than products generally recognized as
18 safe by the United States Food and Drug Administration, unless the
19 person registers with the department each location owned, operated,
20 or controlled by the person at which those products are sold. A
21 person is not required to register a location associated with an
22 employee or independent contractor described by Subsection (d).

23 (d) A person is not required to register with the department
24 under Subsection (b) if the person is:

25 (1) an employee of a registrant; or

26 (2) an independent contractor of a registrant who
27 sells the registrant's products to consumers [~~at retail~~].

1 (d-1) A person is required to register with the department
2 under Subsection (b) if the person, as an employee or independent
3 contractor of a person located outside this state who is not a
4 registrant, sells or distributes products covered by Subsection (b)
5 in this state.

6 (f) The department by rule may adopt a registration fee
7 schedule that establishes reasonable fee amounts for the
8 registration of:

9 (1) a single location at which consumable hemp
10 products containing cannabinoids [~~cannabidiol~~] are sold; and

11 (2) multiple locations at which consumable hemp
12 products containing cannabinoids [~~cannabidiol~~] are sold under a
13 single registration.

14 SECTION 21. Section 443.203, Health and Safety Code, is
15 amended by adding Subsection (c) to read as follows:

16 (c) A person who sells, offers for sale, or distributes a
17 consumable hemp product commits a false, misleading, or deceptive
18 act or practice actionable under Subchapter E, Chapter 17, Business
19 & Commerce Code, if the person:

20 (1) claims the product is made in this state and the
21 product contains any hemp that was not grown and processed in this
22 state solely by persons who hold the appropriate licenses under
23 Chapter 122, Agriculture Code, and this chapter;

24 (2) claims the product is "grown in Texas" and the
25 product was not grown in this state by a license holder under
26 Chapter 122, Agriculture Code; or

27 (3) claims the product is "processed in Texas" and the

1 product was not processed in this state by a license holder under
2 this chapter.

3 SECTION 22. Section 443.205(a), Health and Safety Code, is
4 amended to read as follows:

5 (a) Before a consumable hemp product, including hemp plant
6 material, that contains or is marketed as containing more than
7 trace amounts of cannabinoids may be distributed or sold, the
8 product must be labeled in the manner provided by this section with
9 the following information:

10 (1) batch identification number;

11 (2) batch date;

12 (3) product name;

13 (4) a uniform resource locator (URL) that provides or
14 links to a certificate of analysis for the product or each
15 hemp-derived ingredient of the product;

16 (5) the name of the product's manufacturer; and

17 (6) a certification that the delta-9
18 tetrahydrocannabinol concentration of the product or each
19 hemp-derived ingredient of the product is not more than 0.3
20 percent.

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

27 SECTION 24. This Act takes effect September 1, 2021.