

By: Perry, et al.

S.B. No. 1240

A BILL TO BE ENTITLED

AN ACT

relating to the production and regulation of hemp; requiring an occupational license; authorizing fees.

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

SECTION 1. Title 5, Agriculture Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. HEMP

CHAPTER 121. STATE HEMP PRODUCTION PLAN

Sec. 121.001. DEFINITION. In this chapter, "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Sec. 121.002. LEGISLATIVE INTENT. It is the intent of the legislature that this state have primary regulatory authority over the production of hemp in this state.

Sec. 121.003. DEPARTMENT RULES. (a) The department, after consulting with the governor and attorney general, shall adopt rules consistent with Chapter 122 providing:

(1) a practice to maintain relevant information regarding land on which hemp is produced in this state, including a legal description of the land, for a period of at least three calendar years;

1 (2) a procedure for testing, using
2 post-decarboxylation, high-performance liquid chromatography, or
3 another similarly reliable method, the delta-9
4 tetrahydrocannabinol concentration of hemp produced in this state;

5 (3) a procedure for the effective disposal of plants,
6 whether growing or not, that are produced in violation of Subtitle
7 G, Agricultural Marketing Act of 1946 (7 U.S.C. Chapter 38,
8 Subchapter VII), and products derived from those plants;

9 (4) a procedure to comply with the enforcement
10 procedures described by Section 297B(e), Agricultural Marketing
11 Act of 1946 (7 U.S.C. Section 1639p(e));

12 (5) a procedure for conducting annual inspections of,
13 at a minimum, a random sample of hemp producers to verify that hemp
14 is not produced in violation of Subtitle G, Agricultural Marketing
15 Act of 1946 (7 U.S.C. Chapter 38, Subchapter VII);

16 (6) a procedure for submitting the information
17 described in Section 297C(d)(2), Agricultural Marketing Act of 1946
18 (7 U.S.C. Section 1639q(d)(2)), as applicable, to the secretary of
19 the United States Department of Agriculture not later than the 30th
20 day after the date the information is received; and

21 (7) standards for certifying that this state has the
22 resources and personnel to carry out the practices and procedures
23 described by Subdivisions (1) through (6).

24 (b) The department shall attempt to adopt rules under
25 Subsection (a) that will, in substance, meet the minimum
26 requirements for approval as a state plan under Section 297B,
27 Agricultural Marketing Act of 1946 (7 U.S.C. Section 1639p).

1 Sec. 121.004. SUBMISSION OF STATE PLAN. (a) The
2 department, after consulting with the governor and attorney
3 general, shall submit to the secretary of the United States
4 Department of Agriculture a state plan for monitoring and
5 regulating the production of hemp in this state as provided by
6 Section 297B, Agricultural Marketing Act of 1946 (7 U.S.C. Section
7 1639p).

8 (b) The plan shall include the rules adopted under Section
9 121.003 and any other required information.

10 (c) If a plan submitted by the department is disapproved by
11 the secretary of the United States Department of Agriculture, the
12 department, after consulting with the governor and attorney
13 general, shall amend the rules under Section 121.003 as needed to
14 obtain approval and submit an amended plan.

15 (d) The department shall, as necessary, seek technical
16 assistance from the secretary of the United States Department of
17 Agriculture in adopting rules under Section 121.003 and otherwise
18 developing the plan.

19 CHAPTER 122. PRODUCTION OF HEMP

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 122.001. DEFINITIONS. In this chapter:

22 (1) "Hemp" has the meaning assigned by Section
23 121.001.

24 (2) "Institution of higher education" has the meaning
25 assigned by Section 61.003, Education Code.

26 (3) "License" means a hemp producer's license issued
27 under Subchapter C.

1 (4) "License holder" means an individual or business
2 entity holding a license.

3 (5) "Plot" means a contiguous area in a field,
4 greenhouse, or indoor growing structure containing the same variety
5 or strain of hemp throughout the area.

6 Sec. 122.002. LOCAL REGULATION PROHIBITED. A municipality,
7 county, or other political subdivision of this state may not enact,
8 adopt, or enforce a rule, ordinance, order, resolution, or other
9 regulation that prohibits the production of hemp as authorized by
10 this chapter.

11 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

12 Sec. 122.051. RULES. (a) The department may adopt rules
13 necessary to implement, administer, and enforce this chapter.

14 (b) Rules under Subsection (a) must be consistent with any
15 similar rules governing the production of a comparable crop.

16 Sec. 122.052. FEES. (a) The department shall set and
17 collect:

18 (1) an application fee for an initial license in an
19 amount not to exceed \$100;

20 (2) a license renewal fee in an amount not to exceed
21 \$100;

22 (3) a participation fee for each location described by
23 Section 122.103(b)(3) and each location added after the application
24 is submitted in an amount not to exceed \$100;

25 (4) a site modification fee for each change to a
26 location described by Section 122.103(b)(3) in an amount not to
27 exceed \$500; and

1 (5) a collection and testing fee for each preharvest
2 test or secondary test if performed by the department in an amount
3 not to exceed \$300.

4 (b) A fee set by the department under this section may not
5 exceed the least of:

6 (1) the amount necessary to administer this chapter;
7 or

8 (2) the maximum amount provided by Subsection (a).

9 (c) The department may not set or collect a fee associated
10 with the production of hemp that is not listed in Subsection (a).

11 (d) Fees collected by the department under this chapter are
12 not refundable and may be appropriated only to the department for
13 the purpose of administering this chapter.

14 Sec. 122.053. INSPECTIONS. (a) The department shall
15 randomly inspect land where hemp is grown to determine whether hemp
16 is being produced in compliance with this chapter.

17 (b) The department may enter onto land described by Section
18 122.103(b)(3), conduct inspections, and collect and test plant
19 samples.

20 Sec. 122.054. SAMPLE COLLECTION AND TESTING. The
21 department may collect samples and perform testing or contract with
22 a laboratory for the performance of that collection and testing on
23 behalf of the department. A test performed by a laboratory on
24 behalf of the department is considered to be performed by the
25 department for purposes of this chapter.

26 SUBCHAPTER C. HEMP PRODUCER'S LICENSE

27 Sec. 122.101. LICENSE REQUIRED; EXCEPTIONS. (a) Except as

provided by Subsection (b), a person may not produce hemp in this state unless the person holds a license under this subchapter.

(b) A person is not required to hold a license under this subchapter to:

(1) produce hemp if the person holds a license under Chapter 487, Health and Safety Code;

(2) manufacture commercial feed containing hemp in accordance with Chapter 141; or

(3) manufacture an article or other item containing hemp in accordance with Subtitle A, Title 6, Health and Safety Code.

Sec. 122.102. INELIGIBILITY BASED ON CRIMINAL CONVICTION.

(a) An individual who is convicted of a felony relating to a controlled substance under state or federal law may not, before the 10th anniversary of the date of the conviction:

(1) hold a license under this subchapter; or

(2) be a governing person of a business entity that holds a license under this subchapter.

(b) In connection with each application for the issuance or renewal of a license, the department shall obtain criminal history record information for each individual described by Section 122.103(b)(1) or (2)(C) for the purpose of determining whether the applicant is disqualified under Subsection (a).

(c) The department by rule may require an individual to submit a complete and legible set of fingerprints to the department for purposes of obtaining criminal history record information under Subsection (b).

(d) Notwithstanding Subsections (b) and (c), the department

1 is not required to obtain criminal history record information for
2 an individual if the department receives a copy of the individual's
3 license to carry a handgun under Subchapter H, Chapter 411,
4 Government Code, that was issued or renewed not more than one year
5 before the application date.

6 Sec. 122.103. APPLICATION; ISSUANCE. (a) A person may
7 apply for a license under this subchapter by submitting to the
8 department an application form prescribed by the department along
9 with the required application fee.

10 (b) The application must include:

11 (1) if the applicant is an individual, the
12 individual's full legal name and contact information; or

13 (2) if the applicant is a business entity:

14 (A) the name under which the entity is authorized
15 to transact business in this state;

16 (B) the entity's principal business location
17 address in this state; and

18 (C) the full legal name, title, and contact
19 information of each governing person, including an e-mail address
20 if available;

21 (3) the legal description of the land on which the
22 applicant will cultivate or harvest hemp and the global positioning
23 system coordinates of that location; and

24 (4) other information required by department rule.

25 (c) The department shall issue a license to a qualified
26 applicant not later than the 60th day after the date the department
27 receives the completed application and the required application

1 fee.

2 Sec. 122.104. TERM; RENEWAL. (a) A license is valid for
3 one year and may be renewed as provided by this section.

4 (b) A license holder may apply for the renewal of a license
5 under this subchapter by submitting an application in the manner
6 prescribed by the department and paying the required renewal fee.

7 (c) The department shall renew a license if the department
8 determines the applicant's license is eligible for renewal.

9 Sec. 122.105. REVOCATION. (a) The department may revoke a
10 license if the license holder intentionally violates this chapter
11 or a rule adopted under this chapter.

12 (b) The department shall revoke a license if the license
13 holder is convicted of a felony relating to a controlled substance
14 under Chapter 481, Health and Safety Code.

15 SUBCHAPTER D. PREHARVEST TESTING

16 Sec. 122.151. TESTING REQUIRED. A license holder may not
17 harvest a hemp plant unless the delta-9 tetrahydrocannabinol
18 concentration of a representative sample of hemp plants from the
19 plot where the plant is grown is tested using post-decarboxylation,
20 high-performance liquid chromatography, or another similarly
21 reliable method in the manner required by this subchapter.

22 Sec. 122.152. REPRESENTATIVE SAMPLE. (a) For purposes of
23 Section 122.151, a representative sample of hemp plants from a plot
24 consists of cuttings taken from at least five plants throughout the
25 plot.

26 (b) A laboratory performing testing under this subchapter
27 shall homogenize all the cuttings in the sample and test the delta-9

1 tetrahydrocannabinol concentration of a random sample of the
2 homogenized material.

3 Sec. 122.153. SAMPLE COLLECTION. (a) A license holder
4 shall notify the department at least 20 days before the date the
5 license holder expects to harvest hemp plants.

6 (b) A sample must be collected by the department or another
7 entity described by Section 122.154(a).

8 (c) The department by rule may prescribe reasonable
9 procedures for a person who collects a sample to submit the sample
10 to the testing laboratory selected by the license holder.

11 Sec. 122.154. TESTING LABORATORY. (a) Testing required by
12 this subchapter must be performed by:

13 (1) the department;

14 (2) an institution of higher education; or

15 (3) a private testing laboratory accredited by an
16 accreditation body in accordance with International Organization
17 for Standardization ISO/IEC 17025 or a successor standard.

18 (b) A license holder shall select a laboratory described by
19 Subsection (a) to perform testing of a sample taken from the license
20 holder's plot. A license holder must pay the costs of sample
21 collection and testing. The fee for sample collection and testing
22 performed by the department may not exceed the amount provided by
23 Section 122.052.

24 (c) The department shall recognize and accept the results of
25 a test performed by an institution of higher education or private
26 testing laboratory described by Subsection (a). The department may
27 require that a copy of the test results be sent directly to the

1 department by the institution of higher education or private
2 testing laboratory.

3 (d) The department shall notify the license holder of the
4 results of a test performed by the department not later than the
5 14th day after the date the sample was collected under Section
6 122.153.

7 SUBCHAPTER E. HARVEST AND USE OR DISPOSAL OF PLANTS

8 Sec. 122.201. HARVEST. (a) A license holder shall harvest
9 the plants from a plot not later than the 20th day after the date a
10 preharvest sample is collected under Section 122.153 unless field
11 conditions delay harvesting or the department authorizes the
12 license holder to delay harvesting.

13 (b) A license holder may not sell or use harvested plants
14 before the results of a test under Subchapter D performed on a
15 sample representing the plants are received. If the test results
16 are not received before the plants are harvested, the license
17 holder shall dry and store the harvested plants until the results
18 are received.

19 (c) A license holder may not commingle harvested plants
20 represented by one sample with plants represented by another sample
21 until the results of the tests are received.

22 Sec. 122.202. USE OR DESTRUCTION OF HARVESTED PLANTS. (a)
23 If the results of a test under Subchapter D performed on a sample
24 show a delta-9 tetrahydrocannabinol concentration of not more than
25 0.3 percent on a dry weight basis, the license holder may sell or
26 use the plants represented by the sample for any purpose allowed by
27 law.

1 (b) If the results of a test under Subchapter D performed on
2 a sample show a delta-9 tetrahydrocannabinol concentration of more
3 than 0.3 percent on a dry weight basis:

4 (1) the license holder shall dispose of all plants
5 represented by the sample in a manner approved by the department; or

6 (2) if the department determines the plants
7 represented by the sample reached that concentration solely as a
8 result of negligence, the license holder may:

9 (A) process the plants into fiber with a delta-9
10 tetrahydrocannabinol concentration of not more than 0.3 percent on
11 a dry weight basis and dispose of any remaining parts of the plants
12 in a manner approved by the department; or

13 (B) transfer the plants to an appropriately
14 licensed person to process into a product with a delta-9
15 tetrahydrocannabinol concentration of not more than 0.3 percent on
16 a dry weight basis and dispose of any remaining parts of the plants
17 in a manner approved by the department

18 SUBCHAPTER F. ENFORCEMENT

19 Sec. 122.251. NEGLIGENT VIOLATIONS. (a) If the department
20 determines that a license holder negligently violated this chapter
21 or a rule adopted under this chapter, the department shall enforce
22 the violation in the manner provided by Section 297B(e),
23 Agricultural Marketing Act of 1946 (7 U.S.C. Section 1639p(e)).

24 (b) A license holder described by Subsection (a) is not
25 subject to a civil, criminal, or administrative enforcement action
26 other than an enforcement action provided by this chapter.

27 (c) A license holder who negligently violates this chapter

1 three times in any five year period may not grow, process, or
2 otherwise produce hemp in this state before the fifth anniversary
3 of the date of the third violation.

4 Sec. 122.252. OTHER VIOLATIONS. If the department
5 determines that a license holder violated this chapter or a rule
6 adopted under this chapter with a culpable mental state greater
7 than negligence, the department shall immediately report the
8 license holder to:

9 (1) the United States attorney general; and

10 (2) the attorney general of this state, who may:

11 (A) investigate the violation;

12 (B) institute proceedings for injunctive or
13 other appropriate relief on behalf of the department; or

14 (C) report the matter to an appropriate law
15 enforcement agency.

16 SECTION 2. Subchapter A, Chapter 141, Agriculture Code, is
17 amended by adding Section 141.008 to read as follows:

18 Sec. 141.008. UNADULTERATED FEED. (a) Commercial feed is
19 not considered adulterated solely on the basis that the commercial
20 feed contains hemp as defined by Section 121.001 if the hemp was
21 produced in accordance with Subtitle G, Agricultural Marketing Act
22 of 1946 (7 U.S.C. Chapter 38, Subchapter VII).

23 (b) The service may not take an enforcement action under
24 this chapter solely on the basis that commercial feed contains hemp
25 as defined by Section 121.001 if the hemp was produced in accordance
26 with Subtitle G, Agricultural Marketing Act of 1946 (7 U.S.C.
27 Chapter 38, Subchapter VII).

1 SECTION 3. Subchapter C, Chapter 431, Health and Safety
2 Code, is amended by adding Section 431.062 to read as follows:

3 Sec. 431.062. PROHIBITED ENFORCEMENT ACTIONS RELATED TO
4 HEMP PRODUCTS. The department may not take an enforcement action
5 under this subchapter solely on the basis that a product contains
6 hemp as defined by Section 121.001, Agriculture Code, if the hemp
7 was produced in accordance with Subtitle G, Agricultural Marketing
8 Act of 1946 (7 U.S.C. Chapter 38, Subchapter VII) and the product is
9 in conformance with this chapter and other applicable law.

10 SECTION 4. Subchapter D, Chapter 431, Health and Safety
11 Code, is amended by adding Section 431.0815 to read as follows:

12 Sec. 431.0815. UNADULTERATED FOOD. A food is not
13 considered adulterated under Section 431.081 solely on the basis
14 that the food contains hemp as defined by Section 121.001,
15 Agriculture Code, if the hemp was produced in accordance with
16 Subtitle G, Agricultural Marketing Act of 1946 (7 U.S.C. Chapter
17 38, Subchapter VII) and the food is in conformance with this chapter
18 and other applicable law.

19 SECTION 5. Subchapter E, Chapter 431, Health and Safety
20 Code, is amended by adding Section 431.1115 to read as follows:

21 Sec. 431.1115. UNADULTERATED DRUG OR DEVICE. A drug or
22 device is not considered adulterated under Section 431.111 solely
23 on the basis that the drug or device contains hemp as defined by
24 Section 121.001, Agriculture Code, if the hemp was produced in
25 accordance with Subtitle G, Agricultural Marketing Act of 1946 (7
26 U.S.C. Chapter 38, Subchapter VII) and the drug or device is in
27 conformance with this chapter and other applicable law.

SECTION 6. Subchapter F, Chapter 431, Health and Safety Code, is amended by adding Section 431.1415 to read as follows:

Sec. 431.1415. UNADULTERATED COSMETIC. A cosmetic is not considered adulterated under Section 431.141 solely on the basis that the cosmetic contains hemp as defined by Section 121.001, Agriculture Code, if the hemp was produced in accordance with Subtitle G, Agricultural Marketing Act of 1946 (7 U.S.C. Chapter 38, Subchapter VII) and the cosmetic is in conformance with this chapter and other applicable law.

SECTION 7. Section 431.043, Health and Safety Code is amended to read as follows:

(a) A person who is required to maintain records under this chapter or Section 519 or 520(g) of the federal Act or a person who is in charge or custody of those records shall, at the request of the department or a health authority, permit the department or health authority at all reasonable times access to and to copy and verify the records. These records include records that verify the hemp ingredients were produced in accordance with Chapter 122, Texas Agriculture Code.

SECTION 8. Sections 481.002(5) and (26), Health and Safety Code, are amended to read as follows:

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code,

1 or the tetrahydrocannabinols in hemp.

2 (26) "Marihuana" means the plant *Cannabis sativa* L.,
3 whether growing or not, the seeds of that plant, and every compound,
4 manufacture, salt, derivative, mixture, or preparation of that
5 plant or its seeds. The term does not include:

6 (A) the resin extracted from a part of the plant
7 or a compound, manufacture, salt, derivative, mixture, or
8 preparation of the resin;

9 (B) the mature stalks of the plant or fiber
10 produced from the stalks;

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

12 (D) a compound, manufacture, salt, derivative,
13 mixture, or preparation of the mature stalks, fiber, oil, or cake;
14 [~~or~~]

15 (E) the sterilized seeds of the plant that are
16 incapable of beginning germination; or

17 (F) hemp, as that term is defined by Section
18 121.001, Agriculture Code.

19 SECTION 9. (a) Not later than the 90th day after the
20 effective date of this Act, the Department of Agriculture shall
21 adopt rules under Section 121.003, Agriculture Code, as added by
22 this Act, and submit for approval a state plan to the secretary of
23 the United States Department of Agriculture as provided by Section
24 121.004, Agriculture Code, as added by this Act.

25 (b) The Department of Agriculture shall submit amended
26 state plans as provided by Section 121.004(c), Agriculture Code, as
27 added by this Act, as necessary until the plan is approved.

1 (c) As soon as practicable after the effective date of this
2 Act, the executive commissioner of the Health and Human Services
3 Commission shall adopt rules necessary to implement the changes in
4 law made by this Act.

5 SECTION 10. The Department of Agriculture shall implement
6 the state plan approved by the secretary of the United States
7 Department of Agriculture not later than the 30th day after the date
8 on which the state plan is approved.

9 SECTION 11. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2019.