

BILL ANALYSIS

C.S.H.B. 1325
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that hemp is a viable agricultural crop and an agricultural commodity with many applications. It has been suggested that with recent changes on the federal level, Texas farmers would stand to benefit from a state-regulated hemp industry. C.S.H.B. 1325 seeks to address this issue by establishing the Hemp Farming Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Agriculture in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 1325 amends the Agriculture Code to require the Department of Agriculture (TDA), after consulting with the governor, attorney general, and Department of State Health Services (DSHS), to adopt certain rules relating to the production of hemp, as defined by the bill, and submit to the secretary of the U.S. Department of Agriculture (USDA) a state plan for monitoring and regulating the production of hemp in Texas as provided by certain federal law. The bill requires the TDA, if the state plan is disapproved by the USDA secretary and after consulting with the governor, the attorney general, and DSHS, to amend the state plan as needed to obtain approval and submit an amended plan. The bill requires the TDA, as necessary, to seek technical assistance from the USDA secretary in developing the state plan. The bill requires the TDA and DSHS to enter into a memorandum of understanding that recognizes the primary jurisdiction of DSHS over the processing, manufacturing, packaging, transportation, sale, and use of consumable hemp products in Texas and that requires the TDA and DSHS to cooperate in the development of the state hemp production plan. The bill requires the TDA, not later than the 90th day after the bill's effective date, to adopt the applicable rules and submit for approval a state plan to the USDA secretary and requires the TDA to submit amended state plans as necessary until the plan is approved. The bill establishes the state's policy regarding hemp and sets out the bill's purpose and legislative intent with regard to hemp production in Texas.

C.S.H.B. 1325 requires the TDA to adopt rules to establish a state hemp program that promotes the cultivating and processing of hemp and the commercial sale of hemp products, as defined by the bill, and that regulates hemp production in Texas. The bill requires the TDA, in adopting the rules, to consult with relevant public agencies and private, nonprofit associations in the hemp industry that promote standards, best practices, and self-regulation in the production of hemp and sets out requirements for those rules. The bill's provisions relating to the state hemp program do not apply to the possession, transportation, or sale of hemp products or extracts.

C.S.H.B. 1325 establishes the state hemp program account as an account in the general revenue fund administered by the TDA, provides for the account's composition, and restricts appropriation of money in the account to the administration and enforcement of the bill's hemp provisions. The bill requires the TDA by rule to set and collect nonrefundable fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the state hemp program and requires the deposit of the collected fees in the state hemp program account.

C.S.H.B. 1325 prohibits, except as otherwise provided by the bill, a person or the person's agent from cultivating, handling, or processing hemp in Texas or transporting hemp outside of Texas unless the person is authorized by the TDA to participate in the state hemp program as a hemp producer. The bill requires a person seeking such participation to apply to the TDA on a form and in the manner prescribed by the TDA and sets out required application accompaniments. The bill requires the TDA to authorize an applicant who the TDA determines meets the program participation requirements prescribed by TDA rule to participate in the program as a hemp producer in the manner provided by TDA rule. The bill prohibits a person who is or has been convicted of a felony relating to a controlled substance under state or federal law from participating in the state hemp program or producing hemp in Texas under any other law for a period of at least 10 years after the date of the person's conviction. The bill prohibits a person who materially falsifies any information contained in a program application submitted to the TDA from participating in the program.

C.S.H.B. 1325 requires the TDA, if the TDA determines that a hemp producer has negligently violated the bill's hemp production provisions or a rule adopted under those provisions, to enforce the violation in the manner provided by certain federal law and establishes that the hemp producer is not subject to a civil or criminal penalty for such a violation. This requirement and establishment do not apply to a hemp producer determined or suspected by the TDA to have committed such a violation with a culpable mental state greater than negligence. The bill requires the TDA in such case to report the hemp producer immediately to the U.S. attorney general and the Texas attorney general, who may investigate the violation and institute proceedings for injunctive or other appropriate relief on behalf of the TDA or report the matter to an appropriate law enforcement agency.

C.S.H.B. 1325 requires the TDA to establish a program to identify and certify seeds confirmed to produce hemp and authorizes the TDA to authorize the importation of hemp seed in accordance with state and federal law. The bill prohibits the TDA from certifying a variety of hemp seed if the seed is tested and confirmed to produce a plant that exceeds the federally defined THC level for hemp. The bill authorizes the TDA, for purposes of such prohibition, to partner with a private entity or an institution of higher education to test seed for the purpose of certification. The bill requires the TDA to maintain and make available to hemp producers a list of hemp seeds certified by the TDA.

C.S.H.B. 1325 requires the TDA by rule to establish a program for the random testing of hemp plants to determine the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plants are grown. The bill requires testing to be conducted using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method prescribed by TDA rule. The bill prohibits a hemp producer from harvesting a hemp plant unless the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plant is grown is collected and tested using such a method. The bill sets out provisions relating to representative samples, sample collection, testing laboratories, postharvest testing under certain circumstances, and shipping documentation for test samples.

C.S.H.B. 1325 authorizes a hemp producer, if the results of a test performed on a sample show the sample does not exceed the federally defined THC level for hemp, to sell or use the plants represented by the sample for any purpose allowed by law. The bill requires the hemp producer,

if the results show the sample exceeds such level, immediately to confer with the TDA and take one of certain prescribed actions in a manner approved by the TDA.

C.S.H.B. 1325 sets out provisions relating to hemp products, including provisions relating to the following:

- the processing or manufacturing of hemp products, including a prohibition against a state agency authorizing a person to process or manufacture a hemp product for smoking;
- hemp-derived additives in cosmetics, personal care products, and products intended for consumption by humans or animals;
- packaging and labeling requirements for a consumable hemp product;
- a TDA-developed shipping certificate or cargo manifest for the transportation of hemp or hemp products;
- the authorized possession, transport, and sale of hemp products;
- TDA rules related to the sale of hemp products;
- retail sale of hemp products manufactured or processed out of state; and
- the transportation and exportation of hemp products out of state.

C.S.H.B. 1325 requires the TDA, not later than January 1, 2020, to adopt rules and administrative procedures necessary to implement the bill's hemp production provisions and, not later than the 30th day after the date on which such rules and procedures are adopted, to begin authorizing participation in the state hemp program. The bill establishes that to the extent of a conflict between the bill's hemp production provisions and a provision of federal law involving interstate commerce, including a regulation or an interpretation of federal law, federal law controls and conflicting provisions of the bill do not apply. The bill requires the TDA by rule to adopt a schedule of sanctions and penalties for violations of the bill's hemp production provisions and rules adopted under those provisions that does not conflict with certain federal law, authorizes the TDA to impose an administrative penalty capped at \$5,000 or other administrative sanction for a violation of such provisions or a rule or order adopted under those provisions, and requires a collected penalty to be deposited in the state hemp program account.

C.S.H.B. 1325 amends the Health and Safety Code to specify that, for purposes of the Texas Controlled Substances Act, a "controlled substance" does not include hemp or the tetrahydrocannabinols in hemp and "marihuana" does not include hemp.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1325 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes DSHS as an entity with which the TDA is required to consult in developing the state hemp production plan and related rules and includes a requirement for the TDA and DSHS to enter into a certain memorandum of understanding.

The substitute includes a prohibition against a state agency authorizing a person to process or manufacture a hemp product for smoking and includes provisions relating to the following:

- a seed certification program;

- the use or disposal of harvested plants based on test results;
- hemp plant testing;
- packaging and labeling requirements for a consumable hemp product; and
- a TDA-developed shipping certificate or cargo manifest for the transportation of hemp or hemp products.

The substitute makes the following changes:

- revises the definitions of "cultivate" and "hemp product";
- replaces an authorization for the TDA to adopt rules and administrative procedures necessary to implement the bill's hemp production provisions with a requirement to do so;
- revises the purpose for which money in the state hemp program account may be appropriated;
- revises the application requirements for a person seeking to participate in the state hemp program as a hemp producer;
- broadens certain enforcement provisions; and
- replaces the authorization for the TDA to adopt rules to regulate the sale of hemp products with a requirement to do so and revises the rule criteria.

The substitute does not include a provision establishing that the bill's hemp production provisions do not authorize a person to violate federal or other state law. The substitute includes a provision establishing that to the extent of a conflict between the bill's hemp production provisions and a provision of federal law involving interstate commerce, including a regulation or an interpretation of federal law, federal law controls and conflicting provisions of the bill do not apply.

The substitute provides for retail sales of hemp products manufactured outside of Texas to be made in Texas and includes a requirement for the TDA to maintain a list of states or other jurisdictions that have the same or substantially similar requirements for processing hemp products or cultivating hemp as provided by the bill's hemp production provisions. The substitute changes from foreign countries to foreign jurisdictions the locations to which hemp products may be exported out of state.