

BILL ANALYSIS

C.S.H.B. 3948
By: King, Tracy O.
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The U.S. Department of Agriculture recently modified federal law with regard to hemp production, making changes in state law necessary. C.S.H.B. 3948 seeks to incorporate these federal updates into state law by revising provisions governing the production and regulation of hemp and consumable hemp products in Texas. C.S.H.B. 3948 also addresses necessary changes to the state plan in response to feedback from industry participants since the state plan was adopted.

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 SECTIONS 3 and 9 of this bill and to the executive commissioner of the Health and Human Services Commission in SECTION 13 of this bill.

ANALYSIS

C.S.H.B. 3948 amends the Agriculture Code to require the Department of Agriculture (TDA) to do the following not later than the 90th day after the date a change to an applicable state statute, a federal statute, or a federal regulation takes effect:

- submit to the secretary of the U.S. Department of Agriculture any amendments to the state plan for monitoring and regulating the production of hemp necessary to incorporate and implement the change; and
- propose any hemp cultivation rules necessary to incorporate and implement the change.

C.S.H.B. 3948 requires the TDA to issue a hemp grower's license to a public institution of higher education in Texas that requests the license. The bill does the following with regard to an institution of higher education conducting research involving hemp:

- exempts the institution from being required to pay a fee collected by the TDA under hemp cultivation provisions;
- exempts the institution from being required to obtain from the TDA a lot crop permit or other permit for each location where hemp is grown;
- exempts the institution from being required to obtain preharvest testing before harvesting plants, except as otherwise provided by the bill;
- authorizes the institution to use hemp seed and cultivate and handle plants grown from seed that is not certified or approved; and
- exempts the institution from being subject to specified provisions relating to negligent violations by a license holder.

The bill prohibits an institution of higher education from selling or transferring hemp to another person unless the institution complies with applicable preharvest testing, documentation, and shipping requirements.

C.S.H.B. 3948 requires a laboratory that performs testing required by hemp cultivation provisions to 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. The bill establishes that for purposes of such provisions the delta-9 tetrahydrocannabinol concentration of the sample is the lowest possible value given that measurement of uncertainty.

C.S.H.B. 3948 extends the deadline by which a license holder is required to harvest plants from a plot from not later than the 20th day after the date a preharvest sample is collected to not later than the 30th day after that date.

C.S.H.B. 3948 authorizes a person whose license is suspended or revoked after planting hemp plants to obtain preharvest or postharvest testing and harvest the plants in the same manner as a license holder. The bill authorizes the TDA to do the following while a person's license is suspended or revoked:

- prohibit the person from selling or using the harvested plants; or
- if the delta-9 tetrahydrocannabinol concentration of the plants is not more than 0.3 percent on a dry weight basis, allow the person to sell or use the harvested plants in the same manner as a license holder.

The bill authorizes a person whose license is reinstated to sell or use the harvested plants.

C.S.H.B. 3948 extends provisions relating to the certification and approval of seed varieties confirmed to produce hemp to apply to the certification and approval of plant varieties confirmed to produce hemp.

C.S.H.B. 3948 authorizes a person to transport into Texas, and authorizes a license holder to obtain and cultivate, immature plants propagated outside Texas if the plants are accompanied by shipping documentation that does the following:

- complies with any requirements of the state of origin;
- indicates the grower of the immature plants is licensed by the state of origin;
- lists the recipient license holder in Texas and the recipient's license number; and
- shows that the variety of the immature plants is certified or approved.

The bill authorizes a license holder to obtain and cultivate immature plants propagated in Texas by another license holder if the plants are accompanied by the required shipping certificate or cargo manifest that shows that the variety of the immature plants is certified or approved. The bill exempts the immature plants from being subject to preharvest testing. The bill authorizes a license holder to transplant immature plants propagated by the license holder from one plot to another plot controlled by the license holder.

C.S.H.B. 3948 requires the TDA by rule to waive the requirement that a license holder obtain a lot crop permit 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 bill prohibits the TDA from requiring a license holder to pay any fee for such a greenhouse or other location. The bill authorizes the TDA by rule to 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. The bill defines "immature plant" for purposes of these provisions as a hemp seedling, clone, or cutting that requires substantial cultivation and further growth before the beginning of the period when the plant may be harvested.

C.S.H.B. 3948 amends the Health and Safety Code to establish the consumable hemp products account as an account in the general revenue fund administered by the Department of State Health Services (DSHS). The bill provides for the account's composition and authorizes DSHS to accept appropriations and gifts, grants, or donations from any source to administer and enforce provisions relating to the manufacture, distribution, and sale of consumable hemp products and the Texas Food, Drug, and Cosmetic Act as it applies to consumable hemp products. The bill requires money from those appropriations, gifts, grants, and donations to be deposited in the account and restricts the appropriation of money in the account to DSHS for such administration and enforcement.

C.S.H.B. 3948 removes the requirement that an applicant for a consumable hemp product manufacturer's license include in the application the global positioning system coordinates for the perimeter of each location where the applicant intends to process hemp or manufacture consumable hemp products and changes from a legal description to the physical address the detail of each such location that must be included in an application. The bill authorizes DSHS to modify a license held by a hemp processing or manufacturing establishment in the event of a change in ownership of the establishment under the following conditions:

- the current owner and the new owner apply to DSHS for the modification;
- the new owner is not ineligible to hold the license; and
- one party to the transaction submits any license modification fee to DSHS.

C.S.H.B. 3948 authorizes the executive commissioner of the Health and Human Services Commission by rule to exclude a substance that is generally recognized as having no risk of contaminating a finished consumable hemp product, including a microorganism or other substance that is inevitably destroyed or removed while processing or manufacturing the product, from the testing required for a consumable hemp product.

C.S.H.B. 3948 authorizes a person to transport and deliver a consumable hemp product to a consumer who purchased the product in compliance with applicable provisions. The person transporting and delivering the product is not required to do the following:

- obtain a consumable hemp product manufacturer's license, unless the person processes or manufactures the product delivered; or
- register as required for certain retailers, unless the person sells the product delivered.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3948 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 a requirement absent from the original for a laboratory that performs the required testing to report the concentration of any federally regulated cannabinoid of the tested sample.

The original required the TDA by rule to 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. The substitute replaces that requirement with an authorization for the TDA to waive the requirement.

The substitute does not include the following provisions, which were present in the original:

- a provision expanding the federal provisions under which the TDA is required to enforce a negligent violation by a license holder of state statutory hemp cultivation provisions or a rule adopted under those provisions; and
- a prohibition against a license holder from receiving more than one negligent violation of the same kind per growing season.

The substitute does not include the original's provisions establishing a penalty schedule for the cultivation or handling of hemp in Texas or the transporting of hemp outside of Texas by a person who does not hold a hemp grower's license. The substitute does not include the original's provision creating a Class B misdemeanor offense for a person who violates that license requirement and has previously received a certain penalty for other conduct.

The substitute does not include the original's prohibition against a person from processing, manufacturing, possessing, transporting, selling, or purchasing certain consumable hemp products in Texas.

The original authorized DSHS to change the ownership of a consumable hemp product manufacturer's license to another person under certain conditions, whereas the substitute authorizes DSHS to modify a license held by an establishment in the event of a change in ownership of the establishment under certain conditions.

The substitute does not include the original's revision of provisions relating to the registration for retailers of certain consumable hemp products or the original's requirement for a person to register if the person sells or distributes those products and is an employee or independent contractor of a person located outside Texas who is not a registrant.

The substitute does not include the original's provision creating a false, misleading, or deceptive act or practice actionable under the Deceptive Trade Practices-Consumer Protection Act.

The substitute does not include the original's transition provision.