

SUBJECT: Regulating hemp and hemp products, authorizing penalties and fees

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 8 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza,
Zwiener

0 nays

1 absent — Raymond

WITNESSES: For — Shawn Hauser, American Hemp Campaign, Vicente Sederberg LLC.; Charles Beall, Ana-Lab; Haden Shibley, Circle B Ranch; David Cree Crawford, Ionization labs; Rudolpho Montes, Phoenix Inc.; W T Skip Leake, PC; Bob Avant, Texas Farm Bureau; Coleman Hemphill, Texas Hemp Industries Association; Sheila Hemphill, Texas Right To Know; Jason Vaughn, Texas Young Republicans; Jeff Williams, Williams Farms and Ranches; Steven Thompson, Zilis; and seven individuals; (*Registered, but did not testify*: Dwight Clark, American Hemp Campaign, Vicente Sederberg LLC; Tobi Duckworth, Ana-Lab; Jonathan Green, Texas Hemp Industries Association; Michael Booth and Ilissa Nolan, Booth, Ahrens & Werkenthin; Karen Reeves, CenTex Community Outreach; Mandi Hughes, COCW; Judith McGeary, Farm and Ranch Freedom Alliance; Leslie Provence, Food Policy Council of San Antonio; Connor Oakley, Hemp Producers Association of Texas; Alexander Andrawes, Ionization Labs; Steve Spencer and Sydney Spencer, Margins PAC; Timmie Lane and Jerry Walters, Oppidan Wellness Inc.; Kristen Jardine, Prime My Body; James Dickey, Republican Party of Texas; Heather Fazio, Texans for Accountable Government; Marissa Patton, Texas Farm Bureau; Jaclyn Finkel, Texas NORML; Justin Williamson, Texas Retailers Association; Denise Gentsch, Texas Seed Trade Association; John Pitts, Jr, Texas Wellness; Drew Miller, U.S. Hemp Roundtable; Susan Hays, Village Farms, L.P.; and 19 individuals)

Against — None

On — Dan Hunter, Texas Department of Agriculture; Brady Mills, Texas Department of Public Safety-Crime Lab; (*Registered, but did not testify*: Kirk Cole, Texas Department of State Health Services)

BACKGROUND: 7 U.S.C. ch. 38, subch. VII establishes the federal guidelines for production of hemp at the state level. It states that the federal government is the primary regulatory authority unless a state submits a hemp production plan and the U.S. secretary of agriculture approves it.

DIGEST: CSHB 1325 would establish the Hemp Farming Act to regulate the commercial production of hemp and would establish the intent of the Legislature that the state have primary regulatory authority over the production of hemp and hemp products in Texas.

Hemp would be defined as 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.

The bill would specify that hemp, as defined by the bill, was not a controlled substance or included in the definition of marijuana under state law.

State hemp production plan. The Texas Department of Agriculture (TDA) in consultation with the governor, attorney general, and the Department of State Health Services (DSHS), would have to submit to the U.S. secretary of agriculture a state hemp production plan as provided by 7 U.S.C. ch. 38 sec. 1639p.

TDA would have to adopt rules that provided for:

- the maintenance of relevant information regarding land on which hemp was produced, including a legal description of the land for a period of at least three years;
- procedures to test the THC concentration of hemp;

- the effective disposal of hemp and hemp-derived products in violation of federal law;
- procedures to comply with federal law on corrective action and penalties;
- procedures to conduct annual inspections of a random sample of hemp producers to verify that hemp was not produced in violation of federal law;
- procedures to submit to the U.S. secretary of agriculture the contact information, permit information, and changes to permit status of every state-permitted hemp producer as well as legal description of the lands used to cultivate hemp within 30 days of its receipt; and
- procedures to certify that the state had the resources and personnel to carry out the above rules.

The bill would require TDA enter into a memorandum of understanding with DSHS that recognized DSHS had primary jurisdiction over consumable hemp products and that established cooperation between the agencies in developing the state hemp production plan.

CSHB 1325 would require TDA to adopt rules for the production of hemp and hemp products and develop the state plan and submit it to the U.S. secretary of agriculture within 90 days of the effective date of this bill. If the plan were disapproved, it would be amended until approved. TDA could seek necessary technical help from the U.S. secretary of agriculture to develop the state plan.

State hemp program. TDA would be required to adopt rules, in consultation with relevant public agencies and nonprofit associations in the hemp industry, to promote and regulate commercial hemp production and sale. These rules would be required to authorize an individual, business, or institution of higher education to cultivate hemp in a manner that complied with federal law.

TDA would be required to set and collect fees sufficient to cover the costs of administering hemp regulations.

TDA authorization would be required for any person to cultivate, handle or process hemp. A person seeking authorization would be required to:

- provide a legal description and GPS coordinates of the perimeter of each location where the person intends to cultivate or process hemp;
- provide written consent allowing TDA, the Department of Public Safety, and any other state or local law enforcement agency to enter onto the premises where hemp was cultivated, processed, handled, or stored to evaluate compliance with statute and rule;
- pay any fees required by TDA rule; and
- provide any other information required by TDA rule.

Persons who had been convicted of a felony relating to controlled substances would not be eligible for authorization within 10 years of conviction. Persons who had falsified their application for authorization could not be authorized.

State agencies could not authorize a person to process or manufacture a hemp product intended for smoking, defined in the bill as burning or igniting a substance and inhaling the smoke. State agencies could not prohibit a person from processing or manufacturing a product solely on the basis that the person intended to process or manufacture the product with hemp.

State hemp program account. CSHB 1325 would establish the state hemp program account in the general revenue fund that would consist of legislative appropriations; gifts, grants, or donations; fees received and penalties collected; and earned interest. The account could be appropriated only to administer and enforce state hemp laws.

Testing. CSHB 1325 would require TDA to establish a program for random testing of hemp plants to verify compliance with the federally defined THC limit for hemp. Hemp producers would be prohibited from harvesting hemp plants unless pre-harvest tests had been done on plants from the plot where the plant was grown. Testing procedures and rules are

specified in the bill.

TDA would be required to permit post-harvest testing. If a producer had not requested a post-harvest test within 15 days of receiving the results of the pre-harvest test, the pre-harvest test results would be final.

TDA would be required to issue documentation authorizing the testing entity to collect and transport samples.

Enforcement. The bill would require any hemp producer who negligently violated the bill to take corrective action as provided by federal law. A producer would not be subject to civil or criminal penalty in this case.

If a hemp plant sample exceeded the federally defined THC level for hemp but TDA determined the plants represented by the sample reached that concentration solely as a result of the negligence or acts beyond the control of the hemp producer, the producer would be permitted to:

- trim, extract, or separate the plants until the remaining plants or plant parts no longer exceed the federal THC limit and dispose of the noncompliant parts;
- transfer the plants to an appropriately licensed person to process into a product that did not exceed the federal THC limit and dispose of any remaining parts of the plants; or
- take any other corrective action consistent with federal regulations.

If TDA learned a hemp producer to any degree greater than negligence violated statute or rule, it would be required to immediately report the producer to the U.S. and Texas attorneys general. The Texas attorney general would be permitted to investigate or report the matter to law enforcement.

TDA would be required to create a penalty schedule did not conflict with federal law. The maximum penalty would be \$5,000. Any penalties collected would have to be deposited in the hemp program account.

Possession, transport, and sale. The bill would permit a person to possess, transport, sell, and purchase legally produced hemp. TDA would be required to provide retailers with notice of potential violations and provide an opportunity to cure unintentional or negligent violations.

Hemp-derived cannabinoids would not be considered controlled substances, and such products intended for consumption would be considered foods.

Hemp products produced out of state could be sold in Texas provided that TDA had established the other jurisdiction had substantially similar requirements for cultivating and processing hemp. TDA would be required to maintain a list of such jurisdictions. Hemp products could be legally transported across state lines and exported to foreign jurisdictions in a manner consistent with federal law.

Consumables labeling. A consumable hemp product would not be permitted to be distributed and sold unless it was packaged and labeled with the following information:

- batch size, date, number, and identification number;
- product name;
- total quantity produced;
- an internet link to download a certificate of analysis;
- the name of the product's manufacturer; and
- certification that the product complied the with the federal THC limit.

The label could be in the form of a URL or bar code that could be scanned to lead to the above information.

Shipping document. TDA would be required to issue shipping documentation that would allow law enforcement to verify shipments consisted of hemp or hemp products in compliance with statute and rule.

Seed certification. The bill would require TDA to establish a program to

certify hemp seeds that were compliant with the federal THC limit. TDA would be permitted to partner with a private entity or institution of higher education to test seeds. TDA would be required to make a list of certified hemp seeds and make that list available to hemp producers.

Rulemaking. TDA would be required to adopt rules by January 1, 2020, necessary to implement the state hemp production plan. TDA would also be required to begin issuing permits within 30 days of adopting such rules.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS
SAY:

CSHB 1325 would support a state-regulated commercial hemp industry in Texas, providing new economic opportunities. The bill would not legalize marijuana; rather, it would make Texas the primary regulatory authority over the cultivation of hemp and production of hemp products in the state.

The hemp industry has grown, and it should come to Texas where it could create jobs and generate revenue for the state. This opportunity was enabled by passage of the federal Agriculture Improvement Act of 2018, which included the federal Hemp Farming Act that permitted the cultivation, processing, and possession of hemp. If Texas does not submit a state plan to the U.S. Department of Agriculture (USDA), the state will cede primary regulatory authority to the USDA when its rules on hemp production are established. To date, at least 42 other states have legalized hemp in some capacity.

Hemp is a valuable commodity that is drought and heat resistant and not water intensive, making it well suited to Texas. Every part of the hemp plant has commercial use. It is also an excellent rotational crop that rejuvenates the soil and improves the yields of other crops.

The bill would establish a regulatory regime necessary and appropriate to verify that hemp and hemp products were below the THC limit. TDA testing would ensure the hemp crop was below the THC limit while U.S.

Food and Drug Administration tests would ensure edible hemp products were below the THC limit. The shipping certificate and labeling provisions of the bill would allow legal hemp and hemp products to be easily identified. Those provisions would mean other Texas departments, including the Department of Public Safety Crime Lab, would not need to expend significant resources distinguishing between legal and illegal hemp and hemp products. The bill would provide that the full costs of the state hemp program would be paid for with fees and not tax dollars, ensuring that the burden of regulation did not fall on taxpayers.

The bill's prohibition against hemp products for smoking would include products intended to be burned and inhaled, such as cigarettes. Other products that do not function in this manner would not be subject to the prohibition.

OPPONENTS
SAY:

CSHB 1325 should provide greater clarity in defining hemp products intended to be smoked to allow for better determination between marijuana- and hemp-derived products. Recreational marijuana often comes from other states in the form of wax or oil that is later ingested by smoking. The bill would not provide enough to differentiate between these products and hemp-derived wax or oils designed for topical use.

Under the bill, edible items with a maximum THC concentration of 0.3 percent would be legal, which could increase the amount of testing the DPS crime lab would undertake incidental to investigating crimes. An increased caseload due to greater availability of hemp products and the need to distinguish between legal and illegal amounts of THC could require a significant number of new staff and expensive testing equipment. The bill should be explicit that these expenses would be paid for out of the state hemp program account.

OTHER
OPPONENTS
SAY:

CSHB 1325 should stipulate that Texas Department of Agriculture rules for the regulation of hemp would be no more restrictive than federal rules. Hemp is a legal crop with a cornucopia of medical, chemical, industrial, commercial, and culinary applications; such a stipulation would ensure Texans could fully benefit from hemp.

NOTES:

According to the Legislative Budget Board, the bill would have an indeterminate positive fiscal impact due to the unknown number of administrative penalties; the unknown number of authorizations and renewals that would be issued; the unknown number of inspections and tests that would be conducted; and unknown amounts for authorization, testing, and inspection fees that would be established.