

**SUBJECT:** Revising regulation of hemp, consumable hemp products

**COMMITTEE:** Agriculture and Livestock — committee substitute recommended

**VOTE:** 9 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Herrero, Rosenthal, Toth

0 nays

**WITNESSES:** For — Benjamin Meggs, Bayou City Hemp Company and Texas Hemp Coalition; Jesse Kerns, New Bloom Labs and Texas Hemp Coalition; W T Skip Leake, PrimeMyBody.com; Aaron Owens, Tejas Hemp LLC and Texas Hemp Coalition; Zachary Maxwell, Texas Hemp Growers; Coleman Hemphill, Texas Hemp Industries Association; Sheila Hemphill, Texas Hemp Industries Association and Texas Right To Know; Elias Jackson, Vyripharm Enterprises; Susan Hays, Wild Hempettes; Shaun Salvaje; Jesse Williams; (*Registered, but did not testify*: Rene Perez, Libertarian Party of Texas; Joy Davis, Texas Farm Bureau; Ilissa Nolan and Shayda Torabi, Texas Hemp Coalition; Tris Castaneda, Texas Hemp Federation; and 16 individuals)

Against — None

On — (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services; Dan Hunter and Randy Rivera, Texas Department of Agriculture)

**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.

Agriculture Code ch. 121 governs the state hemp production plan to monitor and regulate the production of hemp in Texas. Sec. 121.003 requires the Texas Department of Agriculture to submit the plan to the U.S. Department of Agriculture as provided under federal law.

Ch. 122 governs the cultivation of hemp in Texas, including requirements for a license to cultivate or handle hemp, preharvest testing and seed certification to determine THC concentration, harvest and use, and transportation.

Health and Safety Code ch. 443 governs the manufacture, distribution, and sale of consumable hemp products, including requirements for licensing, testing, and retail sale.

Some have noted that the U.S. Department of Agriculture recently modified federal law relating to hemp production and that state law should be revised to incorporate the federal updates. Others have called for several updates to the state hemp production plan since it was enacted by the 86th Legislature in 2019.

**DIGEST:**

CSHB 3948 would revise processes related to the production and regulation of hemp and consumable hemp products in the state.

**State hemp production.** Within 90 days of a change to a state or federal statute or federal regulation taking effect, the Texas Department of Agriculture (TDA) would have to submit to the U.S. secretary of agriculture any amendments to the state plan necessary to incorporate and implement any changes. TDA also would have to propose any rules necessary to implement the changes within 90 days.

*Hemp research by institutions of higher education.* TDA would have to issue a license to an institution of higher education that requested one. An institution of higher education conducting research involving hemp:

- would not have to pay a fee collected by TDA under law;
- would not have to obtain from TDA a lot crop permit or other permit for each location where hemp was grown;
- would not have to obtain preharvest testing before harvesting plants, except as provided by the bill;
- could use hemp seed and cultivate and handle plants grown from

- seed that was not certified or approved; and
- would not be subject to certain provisions related to penalties for certain violations.

An institution of higher education could not sell or transfer hemp to another person unless the institution complied with the requirements for preharvest testing and transportation.

*Testing.* A lab that performed testing would have to report the delta-9 tetrahydrocannabinol (THC) concentration, the total THC 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, which would have to comply with certain standards. For purposes of state laws governing the cultivation of hemp, the delta-9 THC concentration of the sample would be the lowest possible value given that measurement of uncertainty.

*Harvesting.* Under the bill, a license holder would have to harvest the plants from a plot within 30 days, rather than 20 days, after a preharvest sample was collected.

A person whose license was suspended or revoked after planting hemp plants could obtain preharvest or postharvest testing and harvest the plants in the same manner as a license holder. While the license was suspended or revoked, TDA could prohibit the person from selling or using harvested plants or, if the delta-9 THC concentration was no 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.

A person whose license was reinstated could sell or use plants harvested while the license was suspended or revoked.

*Certification.* The bill would expand TDA's certification requirements to require TDA to certify plants in addition to seeds.

*Seedlings and other immature plants.* The bill would allow a person to

transport into the state, and a license holder could obtain and cultivate, immature plants propagated outside of the state if the plants were accompanied by shipping documentation that:

- complied with any requirements of the state of origin;
- indicated the grower of the immature plants was licensed by the state of origin;
- listed the recipient license holder in this state and the recipient's license number; and
- showed that the variety of the immature plants was certified or approved.

A license holder could obtain and cultivate immature plants propagated in Texas by another license holder if the plants were accompanied by the shipping certificate or cargo manifest required under law that showed the variety of the immature plants was certified or approved. The immature plants would not be subject to preharvest testing.

A license holder could transplant immature plants propagated by the license holder from one controlled plot to another. TDA would waive the requirement that a license holder obtain a lot crop permit for and could not require a license holder to pay any fee for a greenhouse or other location used to propagate immature plants if the plants were transplanted to another plot controlled by the license holder and were not sold or transferred to another person. TDA could waive the requirement that a person obtain a shipping certificate or cargo manifest to transplant immature plants from one plot to another operated by the license holder.

**Consumable hemp products.** For an individual or establishment applying for a consumable hemp product manufacturer license, the application would have to include the physical address of each location where the applicant intended to process hemp or manufacture consumable hemp products, rather than a legal description and the GPS coordinates for the perimeter of each location.

The Department of State Health Services (DSHS) could modify a

consumable hemp product manufacturer license held by an establishment in the event of a change of ownership if the current owner and new owner applied to DSHS for modification, the new owner was not ineligible to hold a license, and one party submitted any license modification fee.

*Testing.* The executive commissioner of the Health and Human Services Commission could exclude a substance that generally was recognized as having no risk of contaminating a finished consumable hemp product, including a microorganism or other substance that inevitably was destroyed or removed while processing or manufacturing the product, from the required testing for concentration of various cannabinoids, presence of heavy metals and other substances, or the presence of harmful microorganisms and residual solvents.

*Account.* The bill would create the consumable hemp products account in the general revenue fund. The fund would be administered by DSHS and would consist of:

- legislative appropriations;
- public or private gifts, grants, or donations, including federal funds;
- fees collected under law related to consumable hemp products;
- interest and income earned on the investment of the account;
- penalties for violations of related provisions of state law; and
- funds from any other source.

DSHS could accept appropriations and gifts, grants, or donations from any source to administer and enforce state law governing consumable hemp products, and money in the account could be appropriated only to DSHS for that purpose.

*Transportation.* A person could transport and deliver a consumable hemp product to a consumer who purchased the product in compliance with state law. The person transporting and delivering the product would not be required to obtain a license, unless the person processed or manufactured the product, or to register as a retailer of certain products, unless the person sold the delivered product.

The bill would take effect September 1, 2021.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of about \$1.2 million to general revenue through fiscal 2023.