

## **BILL ANALYSIS**

Senate Research Center  
86R32533 TSR-D

C.S.H.B. 1325  
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Agriculture  
5/10/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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. H.B. 1325 seeks to address this issue by establishing the Hemp Farming Act. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1325 amends current law relating to the production of hemp; requires occupational licenses; authorizes fees; creates criminal offenses; and provides civil and administrative penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 2 (Section 121.004, 122.051, 122.153, 122.154, 122.155, 122.302, 122.354, 122.401, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Feed and Fertilizer Control Service in SECTION 3 (Section 141.008, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 443.051 and 443.201, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Department of State Health Services in SECTION 7 (Section 443.2025, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 12.020(c), Agriculture Code, to set forth certain provisions of law that are subject to this section and certain applicable penalty amounts. Sets forth required applicable penalty amounts.

SECTION 2. Amends Title 5, Agriculture Code, by adding Subtitle F, as follows:

#### **SUBTITLE F. HEMP**

##### **CHAPTER 121. STATE HEMP PRODUCTION PLAN**

Sec. 121.001. DEFINITION. Defines "hemp" for purposes of this chapter.

Sec. 121.002. LEGISLATIVE INTENT. Provides that 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. STATE PLAN. (a) Requires the Texas Department of Agriculture (TDA), after consulting with the governor and Texas attorney general (attorney general), to develop a state plan to monitor and regulate the production of hemp in this state. Requires the plan to comply with:

- (1) 7 U.S.C. Section 1639p;
- (2) Chapter 122; and
- (3) Chapter 443, Health and Safety Code.

(b) Requires TDA to submit the plan developed under Subsection (a) to the secretary of the United States Department of Agriculture (USDA) as this state's plan for monitoring and regulating the production of hemp as provided by 7 U.S.C. Section 1639p.

(c) Requires TDA, if a plan submitted under Subsection (b) is disapproved by the secretary of USDA, after consulting with the governor and attorney general, to amend the plan as needed to obtain approval and submit an amended plan.

(d) Requires TDA to, as necessary, seek technical assistance from the secretary of USDA and other state agencies in developing the plan under this section.

Sec. 121.004. RULES. Authorizes TDA to adopt any rules necessary to implement and administer the state plan under Section 121.003.

## CHAPTER 122. CULTIVATION OF HEMP

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 122.001. DEFINITIONS. Defines "cultivate," "governing person," "handle," "hemp," "institution of higher education," "license," "license holder," "nonconsumable hemp product," and "plot" for purposes of this chapter.

Sec. 122.002. LOCAL REGULATION PROHIBITED. Prohibits a municipality, county, or other political subdivision of this state from enacting, adopting, or enforcing a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, handling, transportation, or sale of hemp as authorized by this chapter.

Sec. 122.003. STATE HEMP PRODUCTION ACCOUNT. (a) The state hemp production account (account) is an account in the general revenue fund administered by TDA.

(b) Provides that the account consists of:

- (1) appropriations of money to the account by the legislature;
- (2) public or private gifts, grants, or donations, including federal funds, received for the account;
- (3) fees received under Section 122.052;
- (4) interest and income earned on the investment of money in the account;
- (5) penalties collected under this chapter other than a civil penalty collected under Subchapter H; and
- (6) funds from any other source deposited in the account.

(c) Authorizes TDA to accept appropriations and gifts, grants, or donations from any source to administer and enforce this subtitle. Requires money received under this subsection to be deposited in the account.

(d) Authorizes money in the account to be appropriated only to TDA for the administration and enforcement of this subtitle.

Sec. 122.004. SEVERABILITY. (a) Provides that a provision of this chapter or its application to any person or circumstance is invalid if the secretary of USDA determines that the provision or application conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the state plan submitted under Chapter 121.

(b) Provides that the invalidity of a provision or application under Subsection (a) does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

#### SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 122.051. DEPARTMENT RULES AND PROCEDURES. (a) Requires TDA to adopt rules and procedures necessary to implement, administer, and enforce this chapter.

(b) Requires rules adopted under Subsection (a) to:

(1) prescribe sampling, inspection, and testing procedures, including standards and procedures for the calibration of laboratory equipment, to ensure that the delta-9 tetrahydrocannabinol concentration of hemp plants cultivated in this state is not more than 0.3 percent on a dry weight basis; and

(2) provide due process consistent with Chapter 2001 (Administrative Procedure), Government Code, including an appeals process, to protect license holders from the consequences of imperfect test results.

Sec. 122.052. FEES. (a) Requires TDA to set and collect:

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

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

(3) a participation fee for each location described by Section 122.103(a)(1) and each location added after the application is submitted in an amount not to exceed \$100;

(4) a site modification fee for each change to a location described by Section 122.103(a)(1) in an amount not to exceed \$500; and

(5) a collection and testing fee for each preharvest test or postharvest test if performed by TDA in an amount not to exceed \$300.

(b) Prohibits a fee set by TDA under this section from exceeding the amount necessary to administer this chapter. Authorizes the comptroller of public accounts of the State of Texas (comptroller) to authorize TDA to collect a fee described by Subsection (a) in an amount greater than the maximum amount provided by that subsection if necessary to cover TDA's costs of administering this chapter.

(c) Prohibits TDA from setting or collecting a fee associated with the cultivation of hemp that is not listed in Subsection (a), other than:

(1) a fee for the organic certification of hemp under Chapter 18 (Certification and Agricultural Product Standards) or for participation in another optional marketing program; or

(2) a fee for the certification of seed or plants under Chapter 62 (Seed and Plant Certification).

(d) Provides that fees collected by TDA under this chapter are not refundable and are authorized to be appropriated only to TDA for the purpose of administering this chapter.

Sec. 122.053. INSPECTIONS. (a) Authorizes TDA to randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with this chapter.

(b) Authorizes TDA to enter onto land described by Section 122.103(a)(1), conduct inspections, and collect and test plant samples.

(c) Requires TDA, using participation fees set and collected under Section 122.052(a)(3), to pay the cost of inspections under this section.

(d) Authorizes the Department of Public Safety of the State of Texas (DPS) to inspect, collect samples from, or test plants from any portion of a plot to ensure compliance with this chapter. Requires a license holder to allow DPS access to the plot and the property on which the plot is located for purposes of this subsection.

(e) Authorizes TDA or DPS, if, after conducting an inspection or performing testing under this section, TDA or DPS determines any portion of a plot is not compliant with this chapter, to report the license holder to the other department or to the attorney general.

Sec. 122.054. SAMPLE COLLECTION AND TESTING. Authorizes TDA to collect samples and perform testing or contract with a laboratory for the performance of that collection and testing on behalf of TDA. Provides that a test performed by a laboratory on behalf of TDA is considered to be performed by TDA for purposes of this chapter.

Sec. 122.055. SHIPPING CERTIFICATE OR CARGO MANIFEST. (a) Requires TDA to develop a shipping certificate or cargo manifest which TDA is required to issue to a license holder in connection with the transportation of a shipment of hemp plant material originating in this state, other than sterilized seeds that are incapable of beginning germination.

(b) Requires a certificate or manifest developed under Subsection (a) to include a unique identifying number for the shipment and TDA's contact information to allow law enforcement during a roadside inspection of a motor vehicle transporting the shipment to verify that the shipment consists of hemp cultivated in compliance with this chapter.

(c) Provides that a person commits an offense if the person, with intent to deceive law enforcement, forges, falsifies, or alters a shipping certificate or cargo manifest issued under this section. Provides that an offense under this subsection is a third degree felony.

#### SUBCHAPTER C. HEMP GROWER'S LICENSE

Sec. 122.101. LICENSE REQUIRED; EXCEPTIONS. (a) Prohibits a person or the person's agent, except as provided by Subsection (b), from cultivating or handling hemp in this state or transporting hemp outside of this state unless the person holds a license under this subchapter.

(b) Provides that a person is not required to hold a license under this subchapter to manufacture a consumable hemp product in accordance with Subtitle A (Food and Drug Health Regulations), Title 6, Health and Safety Code.

Sec. 122.102. LICENSE INELIGIBILITY. (a) Prohibits an individual who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state from, before the 10th anniversary of the date of the conviction:

(1) holding a license under this subchapter; or

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

(b) Prohibits TDA from issuing a license under this subchapter to a person who materially falsifies any information contained in an application submitted to TDA under Section 122.103.

Sec. 122.103. APPLICATION; ISSUANCE. (a) Authorizes a person to apply for a license under this subchapter by submitting an application to TDA on a form and in the manner prescribed by TDA. Requires the application to be accompanied by:

(1) a legal description of each location where the applicant intends to cultivate or handle hemp and the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner if the applicant is not the property owner allowing TDA, DPS, and any other state or local law enforcement agency to enter onto all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;

(3) the application fee; and

(4) any other information required by TDA rule.

(b) Requires TDA, except as provided by Subsection (c), to issue a license to a qualified applicant not later than the 60th day after the date TDA receives the completed application and the required application fees.

(c) Provides that a qualified applicant who along with the application submits proof to TDA that the applicant holds a license under Chapter 487 (Texas Compassionate-Use Act), Health and Safety Code, is not required to pay an application fee, and TDA is required to issue the license to the applicant within the time prescribed by Subsection (b).

Sec. 122.104. TERM; RENEWAL. (a) Provides that a license is valid for one year and is authorized to be renewed as provided by this section.

(b) Requires TDA to renew a license if the license holder:

(1) is not ineligible to hold the license under Section 122.102;

(2) submits to TDA the license renewal fee; and

(3) does not owe any outstanding fee described by Section 122.052.

Sec. 122.105. REVOCATION. Requires TDA to revoke a license if the license holder is convicted of a felony relating to a controlled substance under federal law or the law of any state.

#### SUBCHAPTER D. TESTING

Sec. 122.151. TESTING LABORATORIES. (a) Requires testing under this subchapter or Section 122.053, subject to Subsection (b), to be performed by:

- (1) TDA;
- (2) an institution of higher education; or
- (3) an independent testing laboratory registered under Section 122.152.

(b) Requires a laboratory described by Subsection (a), to perform testing under this chapter, to be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.

(c) Requires a license holder to select a laboratory described by Subsection (a) to perform preharvest or postharvest testing of a sample taken from the license holder's plot. Prohibits a license holder from selecting an independent testing laboratory under Subsection (a)(3) unless the license holder has:

- (1) no ownership interest in the laboratory; or
- (2) less than a 10 percent ownership interest in the laboratory if the laboratory is a publicly traded company.

(d) Requires a license holder to pay the costs of preharvest or postharvest sample collection and testing in the amount prescribed by the laboratory selected by the license holder.

(e) Requires TDA to recognize and accept the results of a test performed by an institution of higher education or an independent testing laboratory described by Subsection (a). Requires TDA to require that a copy of the test results be sent by the institution of higher education or independent testing laboratory directly to TDA and the license holder.

(f) Requires TDA to notify the license holder of the results of the test not later than the 14th day after the date the sample was collected under Section 122.154 or the date TDA receives test results under Subsection (e).

**Sec. 122.152. REGISTRATION OF INDEPENDENT TESTING LABORATORIES.** (a) Requires TDA to register independent testing laboratories authorized to conduct testing under Section 122.151(a)(3).

(b) Provides that a laboratory is eligible for registration if the laboratory submits to TDA proof of accreditation by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and any required fee.

(c) Requires TDA to annually prepare a registry of all independent testing laboratories registered by TDA and make the registry available to license holders.

(d) Authorizes TDA to charge a registration fee to recover the costs of administering this section.

**Sec. 122.153. PREHARVEST TESTING REQUIRED.** (a) Prohibits a license holder from harvesting a hemp plant or plant intended or believed to be hemp unless a representative sample of plants from the plot where the plant is grown is collected before harvest and subsequently tested using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method to determine the delta-9 tetrahydrocannabinol concentration of the sample in the manner required by this subchapter.

(b) Provides that, for purposes of Subsection (a), a representative sample of plants from a plot consists of cuttings taken from at least five plants throughout the plot. Requires TDA by rule to prescribe the minimum distance between plants from which cuttings may be taken based on the size of the plot.

(c) Requires a laboratory performing preharvest testing under this section to homogenize all the cuttings in the sample and test the delta-9 tetrahydrocannabinol concentration of a random sample of the homogenized material.

(d) Provides that this section does not prohibit a license holder from harvesting plants immediately after a preharvest sample is collected.

Sec. 122.154. PREHARVEST SAMPLE COLLECTION. (a) Requires a license holder to notify TDA at least 20 days before the date the license holder expects to harvest plants from a plot in the manner prescribed by TDA rule.

(b) Requires a sample to be collected by TDA or another entity described by Section 122.151(a) for purposes of preharvest testing under Section 122.153.

(c) Authorizes TDA by rule to prescribe reasonable procedures for submitting a preharvest sample collected under this section to a testing laboratory selected by the license holder.

Sec. 122.155. OPTIONAL POSTHARVEST TESTING. (a) Requires TDA by rule to allow a license holder to have a single postharvest test performed on a representative sample of plants from a plot if the results of the preharvest test representing the plot show a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(b) Requires TDA by rule to prescribe the requirements for a representative sample and for sample collection under this section.

(c) Provides that if a license holder fails to request postharvest testing on or before the 15th day after the date the license holder is notified of the results of the preharvest test, the results of the preharvest test are final.

Sec. 122.156. SHIPPING DOCUMENTATION FOR TEST SAMPLES. Requires TDA to issue documentation to an entity authorized to collect samples of plants for testing that authorizes the transportation of those samples from the place of collection to a testing laboratory described by Section 122.151(a).

Sec. 122.157. FALSE LABORATORY REPORT; CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person, with the intent to deceive, forges, falsifies, or alters the results of a laboratory test required or authorized under this chapter.

(b) Provides that an offense under Subsection (a) is a third degree felony.

#### SUBCHAPTER E. HARVEST AND USE OR DISPOSAL OF PLANTS

Sec. 122.201. HARVEST. (a) Requires a license holder to harvest the plants from a plot not later than the 20th day after the date a preharvest sample is collected under Section 122.154 unless field conditions delay harvesting or TDA authorizes the license holder to delay harvesting. Provides that this subsection does not prohibit the license holder from harvesting the plants immediately after the preharvest sample is collected.

(b) Prohibits a license holder from selling or using harvested plants before the results of a preharvest and, if applicable, postharvest test performed on a sample representing the plants are received. Requires the license holder, if the test results

are not received before the plants are harvested, to dry and store the harvested plants until the results are received.

(c) Prohibits a license holder from commingling harvested plants represented by one sample with plants represented by another sample until the results of the tests are received.

Sec. 122.202. USE OR DISPOSAL OF HARVESTED PLANTS. (a) Authorizes the license holder, if the results of a preharvest or postharvest test performed on a sample show a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, to sell or use the plants represented by the sample for any purpose allowed by law.

(b) Provides that, if the results of a preharvest and, if applicable, postharvest test performed on a sample show a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis:

(1) the license holder is required to dispose of or destroy all plants represented by the sample:

(A) in the manner prescribed by federal law; or

(B) in a manner approved by TDA that does not conflict with federal law; or

(2) provides that the license holder is subject to Section 122.403(c), if TDA determines the plants represented by the sample reached that concentration solely as a result of negligence, and is authorized to:

(A) trim the plants until the delta-9 tetrahydrocannabinol concentration of the plants is not more than 0.3 percent on a dry weight basis and dispose of the noncompliant parts of the plants in a manner approved by TDA;

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

(C) take any other corrective action consistent with federal regulations adopted under 7 U.S.C. Chapter 38, Subchapter VII.

#### SUBCHAPTER F. HEMP SEED

Sec. 122.251. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter does not apply to sterilized seeds that are incapable of beginning germination.

Sec. 122.252. CERTIFICATION OR APPROVAL. (a) Requires TDA or an entity authorized to certify seed under Chapter 62 to identify and certify or approve seed confirmed to produce hemp.

(b) Prohibits TDA or the entity from certifying or approving a variety of hemp seed if the seed is tested and confirmed to produce a plant that has delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis. Authorizes TDA, for purposes of this subsection, to partner with a private entity or an institution of higher education to test seed for the purpose of certification or approval under this section.

(c) Authorizes TDA to authorize the importation of hemp seed certified in accordance with the law of another state or jurisdiction that requires as a condition of certification that hemp be produced in compliance with:

(1) that state or jurisdiction's plan approved by USDA under 7 U.S.C. Section 1639p; or

(2) a plan established under 7 U.S.C. Section 1639q if that plan applies in the state or jurisdiction.

(d) Requires TDA to maintain and make available to license holders a list of hemp seeds certified or approved under this section.

Sec. 122.253. PROHIBITED USE OF CERTAIN HEMP SEED. Prohibits a person from selling, offering for sale, distributing, or using hemp seed in this state unless the seed is certified or approved under Section 122.252.

#### SUBCHAPTER G. NONCONSUMABLE HEMP PRODUCTS

Sec. 122.301. MANUFACTURE. (a) Prohibits a state agency, except as provided by Subsection (b), from prohibiting a person who manufactures a product regulated by the agency, other than an article regulated under Chapter 431 (Texas Food, Drug, and Cosmetic Act), Health and Safety Code, from applying for or obtaining a permit or other authorization to manufacture the product solely on the basis that the person intends to manufacture the product as a nonconsumable hemp product.

(b) Prohibits a state agency from authorizing a person to manufacture a product containing hemp for smoking, as defined by Section 443.001, Health and Safety Code.

Sec. 122.302. POSSESSION, TRANSPORTATION, AND SALE. (a) Authorizes a person, notwithstanding any other law, to possess, transport, sell, and purchase legally produced nonconsumable hemp products in this state.

(b) Requires TDA by rule to provide to a retailer of nonconsumable hemp products fair notice of a potential violation concerning hemp products sold by the retailer and an opportunity to cure a violation made unintentionally or negligently.

Sec. 122.303. RETAIL SALE OF OUT-OF-STATE PRODUCTS. (a) Authorizes retail sales of nonconsumable hemp products manufactured outside of this state to be made in this state when the hemp used in the products was cultivated legally in another state or jurisdiction in compliance with:

(1) that state or jurisdiction's plan approved USDA under 7 U.S.C. Section 1639p; or

(2) a plan established under 7 U.S.C. Section 1639q if that plan applies to the state or jurisdiction.

(b) Requires TDA to maintain a list of states or other jurisdictions in which hemp is authorized to be cultivated legally as described by Subsection (a).

Sec. 122.304. TRANSPORTATION AND EXPORTATION OUT OF STATE. Authorizes nonconsumable hemp products to be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

#### SUBCHAPTER H. TRANSPORTATION REQUIREMENTS

Sec. 122.351. DEFINITION. Defines "peace officer" for purposes of this subchapter.

Sec. 122.352. POLICY. Provides that it is the policy of this state to not interfere with the interstate commerce of hemp or the transshipment of hemp through this state.

Sec. 122.353. INTERSTATE TRANSPORTATION. Provides that, to the extent of a conflict between a provision of this chapter and a provision of federal law involving interstate transportation of hemp, including a USDA regulation, federal law controls and conflicting provisions of this chapter do not apply.

Sec. 122.354. DEPARTMENT RULES. Requires TDA, in consultation with DPS, to adopt rules regulating the transportation of hemp in this state to ensure that illegal marihuana is not transported into or through this state disguised as legal hemp.

Sec. 122.355. HEMP TRANSPORTATION ACCOUNT. (a) Provides that the hemp transportation account is a dedicated account in the general revenue fund administered by TDA. Provides that the account consists of:

(1) civil penalties collected under this subchapter; and

(2) interest and income earned on the investment of money in the account.

(b) Authorizes money in the account to be appropriated only to TDA for the administration and enforcement of this subchapter. Authorizes TDA to transfer money appropriated under this subsection to DPS for the administration and enforcement of TDA's powers and duties under this subchapter, unless prohibited by other law.

Sec. 122.356. DOCUMENTATION AND OTHER SHIPPING REQUIREMENTS. (a) Prohibits a person from transporting hemp plant material in this state unless the hemp:

(1) is produced in compliance with:

(A) a state or tribal plan approved by USDA under 7 U.S.C. Section 1639p; or

(B) a plan established under 7 U.S.C. Section 1639q if the hemp was cultivated in an area where that plan applies; and

(2) is accompanied by:

(A) a shipping certificate or cargo manifest issued under Section 122.055 if the hemp originated in this state; or

(B) documentation containing the name and address of the place where the hemp was cultivated and a statement that the hemp was produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII, if the hemp originated outside this state.

(b) Provides that a person transporting hemp plant material in this state:

(1) is prohibited from concurrently transporting any cargo that is not hemp plant material; and

(2) is required to furnish the documentation required by this section to TDA or any peace officer on request.

Sec. 122.357. AGRICULTURAL PESTS AND DISEASES. Prohibits a person from transporting in this state hemp that contains an agricultural pest or disease as provided by TDA rule.

Sec. 122.358. POWERS AND DUTIES OF PEACE OFFICERS. (a) Authorizes a peace officer to inspect and collect a reasonably sized sample of any material from the plant *Cannabis sativa L.* found in a vehicle to determine the delta-9 tetrahydrocannabinol concentration of the plant material. Prohibits the peace officer, unless a peace officer has probable cause to believe the plant material is marihuana, from:

(1) seizing the plant material; or

(2) arresting the person transporting the plant material.

(b) Authorizes a peace officer to detain any hemp being transported in this state until the person transporting the hemp provides the documentation required by Section 122.356. Requires the peace officer to immediately release the hemp to the person if the person produces documentation required by that section.

(c) Authorizes the peace officer, if a peace officer has probable cause to believe that a person transporting hemp in this state is also transporting marihuana or a controlled substance, as defined by Section 481.002 (Definitions), Health and Safety Code, or any other illegal substance under state or federal law, to seize and impound the hemp along with the controlled or illegal substance.

(d) Provides that this subchapter does not limit or restrict a peace officer from enforcing to the fullest extent the laws of this state regulating marihuana and controlled substances, as defined by Section 481.002, Health and Safety Code.

Sec. 122.359. CIVIL PENALTY. (a) Provides that a person who violates Section 122.356 is liable to this state for a civil penalty in an amount not to exceed \$500 for each violation.

(b) Authorizes the attorney general or any district or county attorney to bring an action to recover the civil penalty.

(c) Requires a civil penalty collected under this section to be deposited in the hemp transportation account under Section 122.355.

Sec. 122.360. CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person violates Section 122.356.

(b) Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$1,000.

#### SUBCHAPTER I. ENFORCEMENT; PENALTIES

Sec. 122.401. PENALTY SCHEDULE. (a) Requires TDA by rule to adopt a schedule of sanctions and penalties for violations of this chapter and rules adopted under this chapter that does not conflict with 7 U.S.C. Section 1639p(e).

(b) Requires a penalty collected under this chapter other than a civil penalty collected under Subchapter H to be deposited in the state hemp production account under Section 122.003.

Sec. 122.402. ADMINISTRATIVE PENALTY. Authorizes TDA, except as provided by Section 122.403 and to the extent permitted under 7 U.S.C. Section 1639p(e), to impose an administrative penalty or other administrative sanction for a violation of this chapter or a rule or order adopted under this chapter, including a penalty or sanction under Section 12.020 (Administrative Penalties) or 12.0201 (License Sanctions).

Sec. 122.403. NEGLIGENT VIOLATIONS BY LICENSE HOLDER. (a) Requires TDA, if TDA determines that a license holder negligently violated this chapter or a rule adopted

under this chapter, to enforce the violation in the manner provided by 7 U.S.C. Section 1639p(e).

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

(c) Provides that a license holder who violates this chapter by cultivating plants described by Section 122.202(b)(2):

(1) is required to comply with an enhanced testing protocol developed by TDA;

(2) is required to pay a fee in the amount of \$500 for each violation to cover TDA's costs of administering the enhanced testing protocol; and

(3) is required to be included on a list maintained by TDA of license holders with negligent violations, which is public information for purposes of Chapter 552 (Public Information), Government Code.

(d) Prohibits a person who negligently violates this chapter three times in any five-year period from cultivating, processing, or otherwise producing hemp in this state before the fifth anniversary of the date of the third violation. Requires TDA to include each person subject to this subsection on a list of banned producers, which is public information for purposes of Chapter 552, Government Code.

Sec. 122.404. OTHER VIOLATIONS BY LICENSE HOLDER. Requires TDA, if TDA suspects or determines that a license holder violated this chapter or a rule adopted under this chapter with a culpable mental state greater than negligence, to immediately report the license holder to:

(1) the United States attorney general; and

(2) the attorney general of this state, who is authorized to:

(A) investigate the violation;

(B) institute proceedings for injunctive or other appropriate relief on behalf of TDA; or

(C) report the matter to DPS and any other appropriate law enforcement agency.

SECTION 3. Amends Subchapter A, Chapter 141, Agriculture Code, by adding Section 141.008, as follows:

Sec. 141.008. HEMP IN COMMERCIAL FEED. Authorizes the Texas Feed and Fertilizer Control Service to adopt rules authorizing, defining, and controlling the use of hemp and hemp products in commercial feed.

SECTION 4. Amends Subchapter A, Chapter 431, Health and Safety Code, by adding Section 431.011, as follows:

Sec. 431.011. APPLICABILITY OF CHAPTER TO CONSUMABLE HEMP PRODUCTS AND MANUFACTURERS. (a) Provides that this chapter applies to a consumable hemp product subject to Chapter 443. Prohibits an article regulated under this chapter from being deemed to be adulterated solely on the basis that the article is a consumable hemp product.

(b) Provides that, except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a license under Chapter 443.

(c) Provides that a person who holds a license under Chapter 443 related to the processing of hemp or the manufacturing of a consumable hemp product regulated under that chapter and is engaging in conduct within the scope of that license is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

SECTION 5. Amends Section 431.043, Health and Safety Code, as follows:

Sec. 431.043. ACCESS TO RECORDS. Provides that 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, including records that verify that the hemp in a consumable hemp product was produced in accordance with Chapter 122, Agriculture Code, or 7 U.S.C. Chapter 38, Subchapter VII.

SECTION 6. Amends Section 431.2211, Health and Safety Code, by adding Subsection (a-3), to provide that a person is not required to hold a license under this subchapter if the person holds a license under Chapter 443 and is engaging in conduct within the scope of that license.

SECTION 7. Amends Subtitle A, Title 6, Health and Safety Code, by adding Chapter 443, as follows:

## CHAPTER 443. MANUFACTURE, DISTRIBUTION, AND SALE OF CONSUMABLE HEMP PRODUCTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 443.001. DEFINITIONS. Defines "consumable hemp product," "establishment," "hemp," "license," "license holder," "manufacture," "process," "QR code," and "smoking" and defines "department" to mean the Department of State Health Services (DSHS) and defines "executive commissioner" to mean the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) for purposes of this chapter.

Sec. 443.002. APPLICABILITY OF OTHER LAW. Provides that, except as provided by Section 431.011(c), Chapter 431 applies to a license holder and a consumable hemp product regulated under this chapter.

Sec. 443.003. LOCAL REGULATION PROHIBITED. Prohibits a municipality, county, or other political subdivision of this state from enacting, adopting, or enforcing a rule, ordinance, order, resolution, or other regulation that prohibits the processing of hemp or the manufacturing or sale of a consumable hemp product as authorized by this chapter.

Sec. 443.004. SEVERABILITY. (a) Provides that a provision of this chapter or its application to any person or circumstance is invalid if the secretary of USDA determines that the provision or application conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the state plan submitted under Chapter 121, Agriculture Code.

(b) Provides that the invalidity of a provision or application under Subsection (a) does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

### SUBCHAPTER B. POWERS AND DUTIES

Sec. 443.051. RULEMAKING AUTHORITY OF EXECUTIVE COMMISSIONER. Requires the executive commissioner to adopt rules and procedures necessary to administer and enforce this chapter. Requires rules and procedures adopted under this section to be consistent with:

- (1) an approved state plan submitted to USDA under Chapter 121, Agriculture Code; and
- (2) 7 U.S.C. Chapter 38, Subchapter VII, and federal regulations adopted under that subchapter.

#### SUBCHAPTER C. CONSUMABLE HEMP PRODUCT MANUFACTURER LICENSE

Sec. 443.101. LICENSE REQUIRED; EXCEPTIONS. Prohibits a person from processing hemp or manufacturing a consumable hemp product in this state unless the person holds a license under this subchapter.

Sec. 443.102. LICENSE INELIGIBILITY. (a) Prohibits an individual who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state from, before the 10th anniversary of the date of the conviction:

- (1) holding a license under this subchapter; or
- (2) being a governing person of an establishment that holds a license under this subchapter.

(b) Prohibits DSHS from issuing a license under this subchapter to a person who materially falsifies any information contained in an application submitted to DSHS under Section 443.103.

Sec. 443.103. APPLICATION; ISSUANCE. Authorizes an individual or establishment to apply for a license under this subchapter by submitting an application to DSHS on a form and in the manner prescribed by DSHS. Requires the application to be accompanied by:

- (1) a legal description of each location where the applicant intends to process hemp or manufacture consumable hemp products and the global positioning system coordinates for the perimeter of each location;
- (2) written consent from the applicant or the property owner if the applicant is not the property owner allowing DSHS, DPS, and any other state or local law enforcement agency to enter onto all premises where hemp is processed or consumable hemp products are manufactured to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;
- (3) any fees required by DSHS to be submitted with the application; and
- (4) any other information required by DSHS rule.

Sec. 443.104. TERM; RENEWAL. (a) Provides that a license is valid for one year and is authorized to be renewed as provided by this section.

(b) Requires DSHS to renew a license if the license holder:

- (1) is not ineligible to hold the license under Section 443.102;
- (2) submits to DSHS any license renewal fee; and
- (3) does not owe any outstanding fees to DSHS.

Sec. 443.105. REVOCATION. Requires DSHS to revoke a license if the license holder is convicted of a felony relating to a controlled substance under federal law or the law of any state.

#### SUBCHAPTER D. TESTING OF CONSUMABLE HEMP PRODUCTS

Sec. 443.151. TESTING REQUIRED. (a) Requires a consumable hemp product to be tested as provided by:

(1) Subsections (b) and (c); or

(2) Subsection (d).

(b) Requires a sample representing the plant, before a hemp plant is processed or otherwise used in the manufacture of a consumable hemp product, to be tested, as required by the executive commissioner, to determine:

(1) the concentration of various cannabinoids; and

(2) the presence or quantity of heavy metals, pesticides, and any other substance prescribed by DSHS.

(c) Requires the material, before material extracted from hemp by processing is sold as, offered for sale as, or incorporated into a consumable hemp product, to be tested, as required by the executive commissioner, to determine:

(1) the presence of harmful microorganisms; and

(2) the presence or quantity of:

(A) any residual solvents used in processing, if applicable; and

(B) any other substance prescribed by DSHS.

(d) Requires a sample representing the hemp product, except as otherwise provided by Subsection (e), before a consumable hemp product is sold at retail or otherwise introduced into commerce in this state, to be tested by a laboratory that is accredited by an accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard to determine the delta-9 tetrahydrocannabinol concentration of the product.

(e) Provides that a consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product:

(1) has been tested in accordance with Subsections (b) and (c); and

(2) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Sec. 443.152. PROVISIONS RELATED TO TESTING. (a) Prohibits a consumable hemp product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent from being sold at retail or otherwise introduced into commerce in this state.

(b) Requires a person licensed under Chapter 122, Agriculture Code, to provide to a license holder who is processing hemp harvested by the person or otherwise using that hemp to manufacture a consumable hemp product the results of a test conducted under that chapter, if available, as proof that the delta-9 tetrahydrocannabinol concentration of the hemp does not exceed 0.3 percent, including for purposes of Section 443.151(b)(1).

(c) Requires a license holder to make available to a seller of a consumable hemp product processed or manufactured by the license holder the results of testing required by Section 443.151. Authorizes the results to accompany a shipment to the seller or be made available to the seller electronically. Authorizes the seller, if the results are not able to be made available, to have the testing required under Section 443.151 performed on the product and requires the seller to make the results available to a consumer.

#### SUBCHAPTER E. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

Sec. 443.201. POSSESSION, TRANSPORTATION, AND SALE OF CONSUMABLE HEMP PRODUCTS. (a) Authorizes a person to possess, transport, sell, or purchase a consumable hemp product processed or manufactured in compliance with this chapter.

(b) Requires the executive commissioner by rule to provide to a retailer of consumable hemp products fair notice of a potential violation concerning consumable hemp products sold by the retailer and an opportunity to cure a violation made unintentionally or negligently.

Sec. 443.202. REGULATION OF CERTAIN CANNABINOID OILS. (a) Provides that this section does not apply to low-THC cannabis regulated under Chapter 487 (Texas Compassionate-Use Act).

(b) Prohibits a person, notwithstanding any other law, from selling, offering for sale, possessing, distributing, or transporting a cannabinoid oil, including cannabidiol oil, in this state:

(1) if the oil contains any material extracted or derived from the plant *Cannabis sativa* L., other than from hemp produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(2) unless a sample representing the oil has been tested by a laboratory that is accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and found to have a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

(c) Requires DSHS and DPS to establish a process for the random testing of cannabinoid oil, including cannabidiol oil, at various retail and other establishments that sell, offer for sale, distribute, or use the oil to ensure that the oil:

(1) does not contain harmful ingredients;

(2) is produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(3) has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

Sec. 443.2025. PERMIT REQUIRED FOR RETAILERS OF CERTAIN PRODUCTS.

(a) Provides that this section does not apply to low-THC cannabis regulated under Chapter 487.

(b) Prohibits a person from selling a consumable hemp product containing cannabidiol at retail in this state unless the person holds a permit issued by DSHS.

(c) Provides that a person is not required to hold a permit issued by DSHS under Subsection (b) if the person is:

(1) an employee of a permit holder; or

(2) a location affiliated with or owned, operated, or controlled by the permit holder whose address is maintained in a list by the permit holder under Subsection (d).

(d) Requires a permit holder to maintain a list of each location affiliated with or owned, operated, or controlled by the permit holder that sells products described by Subsection (b) at retail in this state. Requires the permit holder to make the list readily available to DSHS on request.

(e) Requires DSHS to adopt rules and authorizes DSHS to prescribe a reasonable permit fee to implement and administer this section.

Sec. 443.203. DECEPTIVE TRADE PRACTICE. (a) Provides that a person who sells, offers for sale, or distributes a cannabinoid oil, including cannabidiol oil, that the person claims is processed or manufactured in compliance with this chapter commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil is not processed or manufactured in accordance with this chapter.

(b) Provides that a person who sells, offers for sale, or distributes a cannabinoid oil commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil:

(1) contains harmful ingredients;

(2) is not produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; or

(3) has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS. Requires rules adopted by the executive commissioner regulating the sale of consumable hemp products to the extent allowable by federal law to reflect the following principles:

(1) hemp-derived cannabinoids, including cannabidiol, are not considered controlled substances or adulterants;

(2) products containing one or more hemp-derived cannabinoids, such as cannabidiol, intended for ingestion are considered foods, not controlled substances or adulterated products;

(3) consumable hemp products are required to be packaged and labeled in the manner provided by Section 443.205; and

(4) the processing or manufacturing of a consumable hemp product for smoking is prohibited.

Sec. 443.205. PACKAGING AND LABELING REQUIREMENTS. (a) Requires the product, before a consumable hemp product that contains or is marketed as containing more than trace amounts of cannabinoids is authorized to be distributed or sold, to be labeled in the manner provided by this section with the following information:

(1) batch identification number;

(2) batch date;

(3) product name;

(4) a uniform resource locator (URL) that provides or links to a certificate of analysis for the product or each hemp-derived ingredient of the product;

(5) the name of the product's manufacturer; and

(6) a certification that the delta-9 tetrahydrocannabinol concentration of the product or each hemp-derived ingredient of the product is not more than 0.3 percent.

(b) Authorizes the label required by Subsection (a) to be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides or links to the information required by that subsection; and

(2) a QR code or other bar code that may be scanned and that leads to the information required by that subsection.

(c) Authorizes the label required by Subsection (a) to appear on each unit of the product intended for individual retail sale. Authorizes the label, if that unit includes inner and outer packaging, to appear on any of that packaging.

(d) Provides that this section does not apply to sterilized seeds incapable of beginning germination.

Sec. 443.206. **RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP PRODUCTS.** (a) Authorizes retail sales of consumable hemp products processed or manufactured outside of this state to be made in this state when the products were processed or manufactured legally in another state or jurisdiction in compliance with:

(1) that state or jurisdiction's plan approved by USDA under 7 U.S.C. Section 1639p; or

(2) a plan established under 7 U.S.C. Section 1639q if that plan applies to the state or jurisdiction.

(b) Requires DSHS to maintain a list of states or other jurisdictions described by Subsection (a).

Sec. 443.207. **TRANSPORTATION AND EXPORTATION OF CONSUMABLE HEMP PRODUCTS OUT OF STATE.** Authorizes consumable hemp products to be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

**SECTION 8.** Amends Sections 481.002(5) and (26), Health and Safety Code, to redefine "controlled substance" and "marihuana."

**SECTION 9.** (a) Requires TDA, not later than the 90th day after the effective date of this Act, to submit for approval a state plan to the secretary of USDA as provided by Section 121.003, Agriculture Code, as added by this Act.

(b) Requires TDA to submit amended state plans as provided by Section 121.003(c), Agriculture Code, as added by this Act, as necessary until the plan is approved.

(c) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 10. Requires TDA and DSHS to begin implementing the state plan approved by the secretary of USDA not later than the 30th day after the date on which the state plan is approved and to fully implement the state plan as soon as practicable after the state plan is approved.

SECTION 11. Authorizes a retailer, notwithstanding Chapter 443, Health and Safety Code, as added by this Act, to possess, transport, or sell a consumable hemp product, as defined by Section 443.001, Health and Safety Code, as added by this Act, that is part of the retailer's inventory on the effective date of this Act regardless of whether the product was processed, manufactured, packaged, or labeled in compliance with that chapter.

SECTION 12. Provides that, notwithstanding Section 443.2025, Health and Safety Code, as added by this Act, a person is not required to hold a permit to sell a consumable hemp product containing cannabidiol at retail in this state until the 60th day after the date DSHS begins accepting applications for the permit.

SECTION 13. Effective date: upon passage or September 1, 2019.