

## **BILL ANALYSIS**

Senate Research Center

H.B. 3948  
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Water, Agriculture & Rural Affairs  
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Engrossed

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

Last session, we passed H.B. 1325 to implement a state hemp program allowed under the 2018 United States Farm Bill. Because the United States Farm Bill only addressed cultivating hemp, and because the United States Department of Agriculture (USDA) had not yet adopted rules, H.B. 1325 added additional guardrails to cultivating hemp and consumer protections for consumable hemp products. The USDA in January of this year adopted their final rule which further elaborated on what is allowed federally.

Many provisions in H.B. 3948 update the Agriculture Code to address new USDA rules: 30-day preharvest testing, measurements of uncertainty, three-strikes, and negligent violations. Some of the language cleans up the consumable hemp program in the Health and Safety Code: dedicated consumable hemp program fees, physical address on a consumable hemp license application instead of "legal description," and registration requirements.

The bill furthers the ability of institutions of higher education to study hemp while providing growers with additional flexibilities now that a hemp program has been established at the Texas Department of Agriculture.

All 50 states now have a hemp program and many have begun to address unintended consequences of the United States Farm Bill.

Hemp has a THC cap of 0.3 percent delta-9. The United States Farm Bill and the Texas hemp statute reflect that cap. Delta-8 is relatively new. It is intoxicating, and it is on the shelves; the delta-8 products that are being sold to consumers are most likely not the cultivated delta-8 found naturally in very minimal amounts in hemp. It is a highly processed and chemically altered cannabinoid.

H.B. 3948 attempts to address delta-8 and future synthetically derived cannabinoids.

H.B. 3948 amends current law relating to the production and regulation of hemp and consumable hemp products and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Department of Agriculture is modified in SECTION 3 (Section 122.051, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 9 (Section 122.254, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 14 (Section 443.152, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 121.003, Agriculture Code, by adding Subsection (e), to require the Texas Department of Agriculture (TDA), not later than the 90th day after the date a change to

a state statute, federal statute, or federal regulation takes effect, to submit to the secretary of the United States Department of Agriculture any amendments to the state plan necessary to incorporate and implement the change.

SECTION 2. Amends Subchapter A, Chapter 122, Agriculture Code, by adding Section 122.005, as follows:

Sec. 122.005. HEMP RESEARCH BY INSTITUTIONS OF HIGHER EDUCATION. (a) Requires TDA to issue a license to an institution of higher education in this state that requests the license.

(b) Provides that, notwithstanding any provision of Chapter 122 Cultivation of Hemp) or TDA rule other than Subsection (c), an institution of higher education conducting research involving hemp:

(1) is not required to pay a fee collected by TDA under Chapter 122;

(2) is not required to obtain from TDA a lot crop permit or other permit for each location where hemp is grown;

(3) is not required to obtain preharvest testing under Section 122.153 (Preharvest Testing Required) before harvesting plants, except as provided by Subsection (c);

(4) is authorized to use hemp seed and cultivate and handle plants grown from seed that is not certified or approved under Section 122.252 (Certification or Approval); and

(5) is not subject to Section 122.403(c) (relating to requiring a license holder who violates this chapter by cultivating plants to receive a certain punishment) or (d) (relating to prohibiting 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).

(c) Prohibits an institution of higher education from selling or transferring hemp to another person unless the institution complies with the requirements of Sections 122.153 and 122.356 (Documentation and Other Shipping Requirements).

SECTION 3. Amends Section 122.051, Agriculture Code, by adding Subsection (c), to require TDA, not later than the 90th day after the date a change to this chapter, a federal statute, or a federal regulation takes effect, to propose any rules necessary to incorporate and implement the change.

SECTION 4. Amends Section 122.151, Agriculture Code, by adding Subsection (g), as follows:

(g) Requires a laboratory that performs testing required by Chapter 122 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. Requires that the measurement of uncertainty comply with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard. Provides that, for purposes of Chapter 122, the delta-9 tetrahydrocannabinol concentration of the sample is the lowest possible value given that measurement of uncertainty.

SECTION 5. Amends Section 122.201(a), Agriculture Code, as follows:

(a) Requires a license holder to harvest the plants from a plot not later than the 30th, rather than 20th, day after the date a preharvest sample is collected under Section 122.154

(Preharvest Sample Collection) unless field conditions delay harvesting or TDA authorizes the license holder to delay harvesting.

SECTION 6. Amends Subchapter E, Chapter 122, Agriculture Code, by adding Section 122.203, as follows:

Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED. (a) Authorizes a person whose license is suspended or revoked after planting hemp plants to obtain preharvest or postharvest testing under Subchapter D (Testing) and to harvest the plants under Section 122.201 (Harvest) in the same manner as a license holder.

(b) Authorizes TDA, while a person's license is suspended or revoked, to:

(1) prohibit the person from selling or using plants harvested under Subsection (a); or

(2) 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 plants harvested under Subsection (a) in the same manner as a license holder under Section 122.202 (Use or Disposal of Harvested Plants).

(c) Authorizes a person whose license is reinstated to sell or use plants harvested under Subsection (a) as provided by Section 122.202.

SECTION 7. Amends the heading to Subchapter F, Chapter 122, Agriculture Code, to read as follows:

#### SUBCHAPTER F. HEMP SEED AND PLANTS

SECTION 8. Amends Section 122.252, Agriculture Code, as follows:

Sec. 122.252. New heading: CERTIFICATION OR APPROVAL OF SEED AND PLANT VARIETIES. (a) Requires TDA or an entity authorized to certify seed and plants under Chapter 62 (Seed and Plant Certification) to identify and certify or approve varieties of seed and plants confirmed to produce hemp.

(b) Prohibits TDA or the entity from certifying or approving a variety of hemp seed or plant if the variety, rather than 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 and plant varieties for the purpose of certification or approval under this section.

(c) Authorizes TDA to authorize the importation of plant varieties 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 certain rules.

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

SECTION 9. Amends Subchapter F, Chapter 122, Agriculture Code, by adding Section 122.254, as follows:

Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) Defines "immature plant."

(b) Authorizes a person to transport into this state, and a license holder to obtain and cultivate, immature plants propagated outside this state if the plants are accompanied by shipping documentation that:

- (1) complies with any requirements of the state of origin;
- (2) indicates the grower of the immature plants is licensed by the state of origin;
- (3) lists the recipient license holder in this state and the recipient's license number; and
- (4) shows that the variety of the immature plants is certified or approved under Section 122.252.

(c) Authorizes a license holder to obtain and cultivate immature plants propagated in this state by another license holder if the plants are accompanied by the shipping certificate or cargo manifest required by Section 122.055 (Shipping Certificate or Cargo Manifest) that shows that the variety of the immature plants is certified or approved under Section 122.252. Provides that the immature plants are not subject to preharvest testing under Section 122.153.

(d) Authorizes a license holder to transplant immature plants propagated by the license holder from one plot to another plot controlled by the license holder. Provides that TDA is required by rule to waive the requirement that a license holder obtain a lot crop permit for and is prohibited from requiring a license holder to pay any fee 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. Authorizes 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.

SECTION 10. Amends Section 122.301, Agriculture Code, by adding Subsection (c), as follows:

(c) Authorizes a person, notwithstanding Subsection (b) (relating to prohibiting a state agency from authorizing a person to manufacture a product containing hemp for smoking), to manufacture products described by that subsection in this state if:

- (1) the products are sold only to persons located outside this state; and
- (2) the person was manufacturing or processing consumable hemp products, as those terms are defined by Section 443.001 (Definitions), Health and Safety Code, in this state on May 22, 2019.

SECTION 11. Amends Subchapter A, Chapter 443, Health and Safety Code, by adding Section 443.005, as follows:

Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) Provides that the consumable hemp products account (account) is an account in the general revenue fund administered by the Department of State Health Services (DSHS).

(b) Provides that the accounts 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 collected under Chapter 443 (Manufacture, Distribution, and Sale of Consumable Hemp Products) or under Chapter 431 (Texas Food, Drug, and Cosmetic Act) as it applies to consumable hemp products;

- (4) interest and income earned on the investment of money in the account;
- (5) penalties for violations of this chapter or Chapter 431 as it applies to consumable hemp products; and
- (6) funds from any other source deposited in the account.

(c) Authorizes DSHS to accept appropriations and gifts, grants, or donations from any source to administer and enforce this chapter and Chapter 431 as it applies to consumable hemp products. Requires that money received under this subsection be deposited in the account.

(d) Authorizes money in the account to be appropriated only to DSHS for the administration and enforcement of Chapter 443 and Chapter 431 as it applies to consumable hemp products.

SECTION 12. Amends Section 443.103, Health and Safety Code, as follows:

Sec. 443.103. APPLICATION; ISSUANCE. Requires that the application be accompanied by the physical address of each location where the applicant intends to process hemp or manufacture consumable hemp products, rather than 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.

SECTION 13. Amends Subchapter C, Chapter 443, Health and Safety Code, by adding Section 443.106, as follows:

Sec. 443.106. CHANGE OF OWNERSHIP. Authorizes DSHS to modify a license held by an establishment in the event of a change in ownership of the establishment if:

- (1) the current owner and the new owner apply to DSHS for the modification;
- (2) the new owner is not ineligible to hold the license under Section 443.102 (License Ineligibility); and
- (3) one party to the transaction submits any license modification fee to DSHS.

SECTION 14. Amends Section 443.152, Health and Safety Code, by adding Subsection (d), as follows:

(d) 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 under Section 443.151 (Testing Required).

SECTION 15. Amends Section 443.201, Health and Safety Code, by adding Subsection (c), as follows:

(c) Authorizes a person to transport and deliver a consumable hemp product to a consumer who purchased the product in compliance with Chapter 443. Provides that the person transporting and delivering the consumable hemp product is not required to obtain a license under Section 443.101, unless the person processes or manufactures the product delivered, or to register under Section 443.2025 (Registration Required for Retailers of Certain Products), unless the person sells the product delivered.

SECTION 16. Amends Section 443.204, Health and Safety Code, as follows:

Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS.

(a) Creates this subsection from existing text and makes no further changes.

(b) Authorizes a person, notwithstanding Subsection (a)(4) (relating to requiring the product, before a consumable hemp product that contains or is marketed as containing more than trace amounts of cannabinoids may be distributed or sold, the product to be labeled in the manner with 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), to manufacture products described by that subsection in this state if the products are sold only to persons located outside this state, and the person was manufacturing or processing consumable hemp products in this state on May 22, 2019.

SECTION 17. Effective date: September 1, 2021.