

BILL ANALYSIS

Senate Research Center

H.B. 1325
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Agriculture
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Engrossed

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.

H.B. 1325 amends current law relating to the production and regulation of hemp and products made from hemp; requires authorization to produce hemp; authorizes penalties; and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTIONS 4 (Sections 121.003, 122.002, 122.052, 122.053, and 122.201, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Hemp Farming Act.

SECTION 2. (a) Provides that it is the policy of this state that hemp is a viable agricultural crop and an agricultural commodity in this state.

(b) Provides that it is the purpose of this Act to:

- (1) promote cultivating and processing hemp and develop new commercial markets for farmers and businesses through the sale of hemp products;
- (2) promote the expansion of this state's hemp industry to the maximum extent permitted by law allowing farmers and businesses to cultivate, handle, and process hemp and sell hemp products for commercial purposes;
- (3) encourage and empower research into hemp production and hemp products at institutions of higher education and in the private sector; and
- (4) move this state and its citizens to the forefront of the hemp industry.

SECTION 3. Amends Section 12.020(c), Agriculture Code, to provide certain provisions of law that are subject to this section and certain applicable penalty amounts. Sets forth required applicable penalty amounts.

SECTION 4. 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. DEPARTMENT RULES. (a) Requires the Texas Department of Agriculture (TDA), after consulting with the governor, the Texas attorney general (attorney general), and the Department of State Health Services (DSHS), to adopt rules consistent with Chapter 122 providing:

(1) a practice to maintain relevant information regarding land on which hemp is produced in this state, including a legal description of the land, for a period of at least three calendar years;

(2) a procedure for testing, using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method, the delta-9 tetrahydrocannabinol concentration of hemp produced in this state;

(3) a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of 7 U.S.C. Chapter 38, Subchapter VII, and products derived from those plants;

(4) a procedure to comply with the enforcement procedures described by 7 U.S.C. Section 1639p(e);

(5) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of 7 U.S.C. Chapter 38, Subchapter VII;

(6) a procedure for submitting the information described in 7 U.S.C. Section 1639q(d)(2), as applicable, to the secretary of the United States Department of Agriculture (USDA) not later than the 30th day after the date the information is received; and

(7) standards for certifying that this state has the resources and personnel to carry out the practices and procedures described by Subdivisions (1) through (6).

(b) Requires TDA to adopt rules under Subsection (a) that will, in substance, meet the requirements for approval as a state plan under 7 U.S.C. Section 1639p.

Sec. 121.004. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF STATE HEALTH SERVICES. Requires TDA and DSHS to enter into a memorandum of understanding that:

(1) recognizes the primary jurisdiction of DSHS over the processing, manufacturing, packaging, transportation, sale, and use of consumable hemp products in this state; and

(2) requires TDA and DSHS to cooperate in the development of the state hemp production plan required under this chapter.

Sec. 121.005. SUBMISSION OF STATE PLAN. (a) Requires TDA, after consulting with the governor, attorney general, and DSHS to submit to the secretary of the USDA a state plan for monitoring and regulating the production of hemp in this state as provided by 7 U.S.C. Section 1639p.

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

(c) Requires TDA to, as necessary, seek technical assistance from the secretary of the USDA in developing the state plan.

CHAPTER 122. PRODUCTION OF HEMP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 122.001. DEFINITIONS. Defines "commercial sale," "consumable hemp product," "cultivate," "federally defined THC level for hemp," "handle," "hemp," "hemp producer," "hemp product," "independent testing laboratory," "institution of higher education," "plot," "process," "QR code," and "smoking" for purposes of this chapter.

Sec. 122.002. DEPARTMENT RULES AND PROCEDURES. Requires TDA to adopt rules and administrative procedures necessary to implement this chapter.

Sec. 122.003. STATE HEMP PROGRAM ACCOUNT. (a) Provides that the state hemp program 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 122.053;
- (4) interest and income earned on the investment of money in the account;
- (5) penalties collected under this chapter; 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 chapter. Requires money received under this subsection to be deposited in the account.

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

Sec. 122.004. INTERSTATE COMMERCE. 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.

SUBCHAPTER B. STATE HEMP PROGRAM

Sec. 122.051. APPLICABILITY OF SUBCHAPTER TO HEMP PRODUCTS. Provides that this subchapter does not apply to the possession, transportation, or sale of hemp products or extracts, including products or extracts containing one or more hemp-derived cannabinoids, including cannabidiol.

Sec. 122.052. PROGRAM RULES. (a) Requires TDA to adopt rules to establish a state hemp program that:

- (1) promotes the cultivating and processing of hemp and the commercial sale of hemp products; and
- (2) regulates hemp production in this state.

(b) Requires TDA, in adopting rules under Subsection (a), to consult with:

(1) relevant public agencies; and

(2) private, nonprofit associations in the hemp industry that promote standards, best practices, and self-regulation in the production of hemp.

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

(1) establish requirements by which TDA authorizes an individual or business entity to participate in the state hemp program as a hemp producer;

(2) prescribe the manner in which an institution of higher education may participate in or be affiliated with the program;

(3) prescribe sampling, inspection, certification, and testing procedures to ensure that hemp plants cultivated, handled, or processed in this state, and hemp products processed in this state, do not exceed the federally defined THC level for hemp;

(4) provide due process consistent with Chapter 2001, Government Code, including an appeals process, to protect hemp producers from the consequences of imperfect test results; and

(5) prescribe enforcement procedures that are consistent with 7 U.S.C. Section 1639p(e).

Sec. 122.053. FEES. (a) Requires TDA by rule to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the state hemp program.

(b) Provides that fees prescribed by TDA under this section are not refundable.

(c) Requires fees collected under this section to be deposited in the state hemp program account under Section 122.003.

Sec. 122.054. DEPARTMENT AUTHORIZATION REQUIRED. (a) Prohibits a person or the person's agent, except as provided by this chapter, from cultivating, handling, or processing hemp in this state or transporting hemp outside of this state unless the person is authorized by TDA under this section to participate in the state hemp program as a hemp producer.

(b) Requires a person seeking to participate in the state hemp program as a hemp producer to apply 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 person intends to cultivate or process 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, the Department of Public Safety of the State of Texas, and any other state or local law enforcement agency to enter onto all premises where hemp is cultivated, processed, handled, or stored to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;

(3) any fees required by TDA to be submitted with the application; and

(4) any other information required by TDA rule.

(c) Requires TDA, if TDA determines that a person who submits an application under this section meets the state hemp program participation requirements prescribed by TDA rule, to authorize the person to participate in the program as a hemp producer in the manner provided by TDA rule.

Sec. 122.055. LIMITATION ON PROGRAM PARTICIPATION. (a) Prohibits a person who is or has been convicted of a felony relating to a controlled substance under state or federal law from participating in the state hemp program established under this subchapter or produce hemp in this state under any other law for a period of at least 10 years after the date of the person's conviction.

(b) Prohibits a person who materially falsifies any information contained in an application submitted to TDA under Section 122.054 from participating in the state hemp program.

Sec. 122.056. ENFORCEMENT. (a) Requires TDA, if TDA determines that a hemp producer has 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). Provides that a hemp producer is not subject to a civil or criminal penalty under this subsection.

(b) Provides that if TDA determines or suspects that a hemp producer has violated this chapter or a rule adopted under this chapter with a culpable mental state greater than negligence, Subsection (a) does not apply and TDA is required to report the hemp producer immediately to:

(1) the United States attorney general; and

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

(A) on behalf of TDA, investigate the violation and institute proceedings for injunctive or other appropriate relief; or

(B) report the matter to an appropriate law enforcement agency.

Sec. 122.057. SEED CERTIFICATION PROGRAM. (a) Requires TDA to establish a program to identify and certify seeds confirmed to produce hemp. Authorizes TDA to authorize the importation of hemp seed in accordance with state and federal law.

(b) Prohibits TDA from certifying a variety of hemp seed if the seed is tested and confirmed to produce a plant that exceeds the federally defined THC level for hemp. 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 under this section.

(c) Requires TDA to maintain and make available to hemp producers a list of hemp seeds certified by TDA under this section.

Sec. 122.058. USE OR DISPOSAL OF HARVESTED PLANTS. (a) Authorizes the hemp producer, if the results of a test under Subchapter C performed on a sample show the sample does not exceed the federally defined THC level for hemp, to sell or use the plants represented by the sample for any purpose allowed by law.

(b) Requires the hemp producer, if the results of a test under Subchapter C performed on a sample show the sample exceeds the federally defined THC level for hemp, to immediately confer with TDA and in a manner approved by TDA:

(1) have postharvest testing performed as provided by Section 122.106 or other retesting provided by TDA rule;

(2) dispose of all hemp plants represented by the sample; or

(3) if TDA determines the plants represented by the sample reached that concentration solely as a result of negligence or acts beyond the control of the hemp producer:

(A) trim, extract, or separate the plants until the remaining plants or plant parts do not exceed the federally defined THC level for hemp and dispose of the noncompliant plants or plant parts in a manner approved by TDA;

(B) transfer the plants to a person authorized by TDA to process into a product that does not exceed the federally defined THC level for hemp 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 C. TESTING

Sec. 122.101. TESTING REQUIRED. (a) Requires TDA by rule to establish a program for the random testing of hemp plants to determine the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plants are grown.

(b) Requires testing under this subchapter to be conducted using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method prescribed by TDA rule.

Sec. 122.102. PREHARVEST TESTING REQUIRED. Prohibits a hemp producer from harvesting a hemp plant unless the delta-9 tetrahydrocannabinol concentration of a representative sample of hemp plants from the plot where the plant is grown is collected and tested using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method in the manner required by this subchapter.

Sec. 122.103. REPRESENTATIVE SAMPLE. (a) Provides that, for purposes of Section 122.102, a representative sample of hemp plants from a plot consists of cuttings taken from at least five plants throughout the plot.

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

Sec. 122.104. SAMPLE COLLECTION. (a) Requires a hemp producer to notify TDA at least 20 days before the date the hemp producer expects to harvest hemp plants in the manner prescribed by TDA rule.

(b) Requires a sample to be collected by TDA or another entity described by Section 122.105(a).

(c) Authorizes TDA by rule to prescribe reasonable procedures for a person who collects a sample to submit the sample to the testing laboratory selected by the hemp producer.

Sec. 122.105. TESTING LABORATORY. (a) Requires testing required by this subchapter, subject to Subsection (b), to be performed by:

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

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

(c) Requires a hemp producer to select a laboratory described by Subsection (a) to perform preharvest or postharvest testing of a sample taken from the hemp producer's plot. Requires a hemp producer to pay the costs of sample collection and testing in the amount prescribed by the laboratory selected by the hemp producer.

(d) 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 hemp producer.

(e) Requires TDA to notify the hemp producer of the results of the test not later than the 14th day after the date the sample was collected under Section 122.104 or the date TDA receives test results under Subsection (d).

Sec. 122.106. POSTHARVEST TESTING. (a) Requires TDA by rule to allow a hemp producer to have postharvest testing performed on a representative sample of plants from a plot if the results of a preharvest test exceed the federally defined THC level for hemp.

(b) Requires a hemp producer requesting postharvest testing to pay the costs of the testing before a testing laboratory selected by the hemp producer under Section 122.105 performs the test.

(c) Provides that if a hemp producer fails to request postharvest testing or fails to pay the postharvest testing fee not later than the 15th day after the date the hemp producer is notified of the results of the preharvest test, the results of the preharvest test are final.

(d) Requires a hemp producer to retain control over harvested plants until the hemp producer receives:

- (1) written notice of preharvest or postharvest testing results indicating the plants do not exceed the federally defined THC level for hemp; or
- (2) a shipping certificate or cargo manifest by TDA under Section 122.154.

Sec. 122.107. 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.

SUBCHAPTER D. HEMP PRODUCTS

Sec. 122.151. PROCESSING OR MANUFACTURING HEMP PRODUCTS. (a) Prohibits a state agency, except as provided by Subsection (b), from prohibiting a person who processes or manufactures a product regulated by the agency from applying for or

obtaining a permit or other authorization to process or manufacture the product solely on the basis that the person intends to process or manufacture the product with hemp.

(b) Prohibits a state agency from authorizing a person to process or manufacture a hemp product for smoking.

Sec. 122.152. HEMP-DERIVED ADDITIVES. Authorizes derivatives of hemp, including hemp-derived cannabidiol, notwithstanding any other law, to be added to cosmetics, personal care products, and products intended for human consumption, and provides that the addition is not considered an adulteration of the products.

Sec. 122.153. 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 packaged and labeled with the following information:

- (1) batch identification number;
- (2) batch size;
- (3) batch date;
- (4) batch number;
- (5) product name;
- (6) total quantity produced;
- (7) an Internet link for downloading a certificate of analysis for the product;
- (8) the name of the product's manufacturer; and
- (9) a certification that the product does not exceed the federally defined THC level for hemp.

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

Sec. 122.154. SHIPPING CERTIFICATE OR MANIFEST. (a) Requires TDA to develop a shipping certificate or cargo manifest that TDA is authorized to issue to a hemp producer in connection with the transportation of hemp or hemp products.

(b) Requires a certificate or manifest 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 or hemp products produced in compliance with this chapter.

Sec. 122.155. POSSESSION, TRANSPORTATION, AND SALE OF HEMP PRODUCTS. (a) Authorizes a person, notwithstanding any other law, to possess, transport, sell, and purchase legally produced hemp products in this state.

(b) Requires TDA by rule to provide to a retailer of 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. 122.156. RULES RELATED TO SALE OF HEMP PRODUCTS. Requires TDA, in consultation with DSHS, to adopt rules to regulate the sale of hemp products that 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 to be considered foods, not controlled substances or adulterated products;

(3) hemp products must be packaged and labeled in the manner provided by Section 122.153; and

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

Sec. 122.157. RETAIL SALE OF OUT-OF-STATE HEMP PRODUCTS. (a) Authorizes retail sales of hemp products manufactured or processed outside of this state to be made in this state when the products and the hemp used in the products were processed and cultivated legally in another state or jurisdiction that has the same or substantially similar requirements for processing hemp products or cultivating hemp as provided by this chapter.

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

Sec. 122.158. TRANSPORTATION AND EXPORTATION OF HEMP PRODUCTS OUT OF STATE. Authorizes 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 E. ENFORCEMENT; PENALTIES

Sec. 122.201. 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 to be deposited in the state hemp program account under Section 122.003.

Sec. 122.202. ADMINISTRATIVE PENALTY. Authorizes TDA 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 or 12.0201.

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

SECTION 6. (a) Requires TDA, not later than the 90th day after the effective date of this Act, to adopt rules under Section 121.003, Agriculture Code, as added by this Act, and submit for approval a state plan to the secretary of the USDA as provided by Section 121.005, Agriculture Code, as added by this Act.

(b) Requires TDA to submit amended state plans as provided by Section 121.005(b), Agriculture Code, as added by this Act, as necessary until the plan is approved.

SECTION 7. (a) Requires TDA, not later than January 1, 2020, to adopt rules and procedures necessary to implement Chapter 122, Agriculture Code, as added by this Act.

(b) Requires TDA, not later than the 30th day after the date on which rules and procedures are adopted under Subsection (a) of this section, to begin authorizing participation in the state hemp program established under Chapter 122, Agriculture Code, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2019.