

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3948  
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Water, Agriculture & Rural Affairs  
5/18/2021  
Committee Report (Substituted)

### **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.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3948 amends current law relating to the production and regulation of hemp and consumable hemp products, provides administrative penalties, and creates a criminal offense.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Department of Agriculture is modified in SECTION 4 (Section 122.051, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 5 (Section 122.055, Agriculture Code), SECTION 9 (Section 122.203, Agriculture Code), and SECTION 12 (Section 122.254, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Department of State Health Services in SECTION 17 (Section 443.106, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 18 (Section 443.152, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 122.001(5), Agriculture Code, to define "private or independent institution of higher education" for purposes of Chapter 122 (Cultivation of Hemp).

SECTION 2. Amends Section 121.003, Agriculture Code, by adding Subsection (e) to require the Texas Department of Agriculture (TDA), not later than the 120th 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 3. 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 or private or independent institution of higher education in this state that requests the license.

(b) Provides that, notwithstanding any provision of Chapter 122 or TDA rule other than Subsection (c):

(1) an institution of higher education conducting research involving hemp is not required to pay a fee collected by TDA under Chapter 122; and

(2) an institution of higher education or private or independent institution of higher education conducting research involving hemp:

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

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

(C) is authorized to cultivate and handle varieties of hemp seed and plants that are not certified or approved under Section 122.252 (Certification or Approval);

(D) is authorized to cultivate and research feral hemp; and

(E) 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 or private or independent 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).

(d) Authorizes an institution of higher education or private or independent institution of higher education to conduct research involving hemp in conjunction

with a license holder at a facility designated by the license holder for research use only.

(e) Provides that Subsections (b)(2) and (c) apply to a license holder and facility described by Subsection (d).

SECTION 4. 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 5. Amends Section 122.055, Agriculture Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes TDA by rule to adopt a different shipping certificate, cargo manifest, or other requirement for the shipment or transportation of a sample of hemp to:

(1) a testing laboratory; or

(2) another destination if the sample contains not more than 15 grams of hemp and is accompanied by the results of a laboratory test indicating the delta-9 tetrahydrocannabinol concentration of the lot or plot from which the sample was taken.

SECTION 6. 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 and any provisions of federal law governing the measurement of uncertainty. 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 7. 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 8. Amends Section 122.202, Agriculture Code, by adding Subsection (c), to require that the delta-9 tetrahydrocannabinol concentration be determined as provided by Section 122.151(g).

SECTION 9. 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) Requires TDA by rule to establish fair and objective standards for determining whether a person whose license is suspended or revoked is authorized to use or sell plants harvested under Subsection (a), based on the circumstances of the suspension or revocation. Requires TDA, based on those rules, to:

(1) prohibit the person from selling or using plants harvested under Subsection (a) while the person's license is suspended or revoked; 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) while the person's license is suspended or revoked.

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

SECTION 10. Amends the heading to Subchapter F, Chapter 122, Agriculture Code, to read as follows:

#### SUBCHAPTER F. HEMP SEED AND PLANTS

SECTION 11. Amends Section 122.252, Agriculture Code, as follows:

Sec. 122.252. New heading: CERTIFICATION OR APPROVAL OF SEED AND PLANT VARIETIES. (a) Requires TDA, subject to Subsection (b), 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 hemp seed and 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 12. 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. Requires the license holder to maintain records, as required by TDA, that match the lot crop permit number issued by TDA for the location where the immature plants were propagated with the lot crop number for the location where the plants were cultivated.

(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 13. Amends Section 122.403, Agriculture Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires TDA, if TDA determines that a license holder negligently violated Chapter 122 or a rule adopted under Chapter 122, to enforce the violation in the manner provided by 7 U.S.C. Section 1639p(e) and 7 C.F.R. Section 990.6.

(e) Provides that a license holder is not subject to more than one negligent violation related to cultivation per calendar year.

SECTION 14. Amends Subchapter I, Chapter 122, Agriculture Code, by adding Section 122.4035, as follows:

Sec. 122.4035. PENALTIES FOR CULTIVATING HEMP WITHOUT A LICENSE; CRIMINAL OFFENSE. (a) Authorizes TDA, on determining that a person violated Section 122.101 (License Ineligibility), to:

(1) if the person has not previously received a penalty under this section:

(A) issue a written warning to the person;

(B) impose an administrative penalty in the amount of \$500;

(C) require the person to obtain a license; and

(D) allow the person to continue to cultivate or handle the hemp plants that are the subject of the violation, harvest those plants, and, after obtaining the license, sell or use those plants as provided by Section 122.202;

(2) if the person has received a penalty under Subdivision (1) for a previous violation but has not previously received a penalty under this subdivision:

(A) issue a second written warning to the person;

(B) impose an administrative penalty in the amount of \$500;

(C) require the person to obtain a license;

(D) seize and dispose of the hemp plants that are the subject of the violation; and

(E) require the person to reimburse TDA for reasonable costs of disposal under Paragraph (D); and

(3) if the person has received a penalty under Subdivision (2) or this subdivision for a previous violation:

(A) refer the matter to the appropriate prosecuting attorney for criminal prosecution under Subsection (b);

(B) seize and dispose of the hemp plants that are the subject of the violation; and

(C) require the person to reimburse TDA for reasonable costs of disposal under Paragraph (B).

(b) Provides that a person commits an offense if the person:

(1) violates Section 122.101; and

(2) has received a penalty under Subsection (a)(2) for a previous violation.

(c) Provides that an offense under Subsection (b) is a Class B misdemeanor.

SECTION 15. Amends Subchapter A, Chapter 443, Health and Safety Code, by adding Section 443.005 and 443.006, 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.

Sec. 443.006. TETRAHYDROCANNABINOL CONTENT. (a) Prohibits a person, notwithstanding any other law, from manufacturing, selling, or purchasing a consumable hemp product in this state:

(1) that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis;

(2) that contains synthetically derived tetrahydrocannabinols, as defined by DSHS rule, including synthetically derived acids, isomers, or salts of tetrahydrocannabinol;

(3) that, in the form and quantity as packaged for consumer use, is reasonably determined by DSHS to have an intoxicating effect;

(4) that exceeds any federal limit for tetrahydrocannabinol; or

(5) if additional tetrahydrocannabinol in a concentration greater than 0.3 percent on a dry weight basis has been applied to the product.

(b) Provides that Chapter 481 (Texas Controlled Substances Act) prevails to the extent of any conflict with this section.

SECTION 16. 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 17. Amends Subchapter C, Chapter 443, Health and Safety Code, by adding Section 443.106, as follows:

Sec. 443.106. EXPEDITED LICENSING PROCESS. Authorizes DSHS by rule to provide an expedited licensing process for the purchaser of a business that requires a license.

SECTION 18. 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 19. 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 20. Amends Section 443.2025, Health and Safety Code, by amending Subsections (b), (d), and (f) and adding Subsection (d-1), as follows:

(b) Prohibits a person from selling or distributing consumable hemp products containing cannabinoids to consumers, rather than products containing cannabidiol at retail, in this state, other than products generally recognized as safe by the United States Food and Drug Administration, unless the person registers with DSHS each location owned, operated, or controlled by the person at which those products are sold.

(d) Provides that a person is not required to register with DSHS under Subsection (b) if the person is an independent contractor of a registrant who sells the registrant's products to consumers, rather than products at retail.

(d-1) Provides that a person is required to register with DSHS under Subsection (b) if the person, as an employee or independent contractor of a person located outside this state who is not a registrant, sells or distributes products covered by Subsection (b) in this state.

(f) Authorizes DSHS by rule to adopt a registration fee schedule that establishes reasonable fee amounts for the registration of a single location at which consumable hemp products containing cannabinoids, rather than containing cannabidol are sold. Makes a conforming change.

SECTION 21. Amends Section 443.203, Health and Safety Code, by adding Subsection (c), as follows:

(c) Provides that a person who sells, offers for sale, or distributes a consumable hemp product commits a false, misleading, or deceptive act or practice actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection) Chapter 17 (Deceptive Trade Practices), Business and Commerce Code, if the person:

(1) claims the product is made in this state and the product contains any hemp that was not grown and processed in this state solely by persons who hold the appropriate licenses under Chapter 122, Agriculture Code, and Chapter 443;

(2) claims the product is "grown in Texas" and the product was not grown in this state by a license holder under Chapter 122, Agriculture Code; or

(3) claims the product is "processed in Texas" and the product was not processed in this state by a license holder under Chapter 443.

SECTION 22. Amends Section 443.205(a), Health and Safety Code, as follows:

(a) Requires that the product, before a consumable hemp product, including hemp plant material, 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 Section 443.205 (Packaging and Labeling Requirements) with certain information.

SECTION 23. Makes application of Section 122.403, Agriculture Code, as amended by this Act, and Section 122.4035, Agriculture Code, as added by this Act, prospective.

SECTION 24. Effective date: September 1, 2021.