

1-1 By: King of Uvalde, et al. (Senate Sponsor - Perry) H.B. No. 3948
 1-2 (In the Senate - Received from the House May 5, 2021;
 1-3 May 13, 2021, read first time and referred to Committee on Business
 1-4 & Commerce; May 14, 2021, rereferred to Committee on Water,
 1-5 Agriculture & Rural Affairs; May 21, 2021, reported adversely,
 1-6 with favorable Committee Substitute by the following vote: Yeas 8,
 1-7 Nays 0; May 21, 2021, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 3948 By: Perry

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the production and regulation of hemp and consumable
 1-23 hemp products; providing administrative penalties; creating a
 1-24 criminal offense.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 122.001(5), Agriculture Code, is amended
 1-27 to read as follows:

1-28 (5) "Institution of higher education" and "private or
 1-29 independent institution of higher education" have ~~has~~ the
 1-30 meanings ~~meaning~~ assigned by Section 61.003, Education Code.

1-31 SECTION 2. Section 121.003, Agriculture Code, is amended by
 1-32 adding Subsection (e) to read as follows:

1-33 (e) Not later than the 120th day after the date a change to a
 1-34 state statute, federal statute, or federal regulation takes effect,
 1-35 the department shall submit to the secretary of the United States
 1-36 Department of Agriculture any amendments to the state plan
 1-37 necessary to incorporate and implement the change.

1-38 SECTION 3. Subchapter A, Chapter 122, Agriculture Code, is
 1-39 amended by adding Section 122.005 to read as follows:

1-40 Sec. 122.005. HEMP RESEARCH BY INSTITUTIONS OF HIGHER
 1-41 EDUCATION. (a) The department shall issue a license to an
 1-42 institution of higher education or private or independent
 1-43 institution of higher education in this state that requests the
 1-44 license.

1-45 (b) Notwithstanding any provision of this chapter or
 1-46 department rule other than Subsection (c):

1-47 (1) an institution of higher education conducting
 1-48 research involving hemp is not required to pay a fee collected by
 1-49 the department under this chapter; and

1-50 (2) an institution of higher education or private or
 1-51 independent institution of higher education conducting research
 1-52 involving hemp:

1-53 (A) is not required to obtain from the department
 1-54 a lot crop permit or other permit for each location where hemp is
 1-55 grown;

1-56 (B) is not required to obtain preharvest testing
 1-57 under Section 122.153 before harvesting plants, except as provided
 1-58 by Subsection (c);

1-59 (C) may cultivate and handle varieties of hemp
 1-60 seed and plants that are not certified or approved under Section

2-1 122.252;

2-2 (D) may collect and research feral hemp; and

2-3 (E) is not subject to Section 122.403(c) or (d).

2-4 (c) An institution of higher education or private or
2-5 independent institution of higher education may not sell or
2-6 transfer hemp to another person unless the institution complies
2-7 with the requirements of Sections 122.153 and 122.356.

2-8 (d) An institution of higher education or private or
2-9 independent institution of higher education may conduct research
2-10 involving hemp in conjunction with a license holder at a facility
2-11 designated by the license holder for research use only.

2-12 (e) Subsections (b)(2) and (c) apply to a license holder and
2-13 facility described by Subsection (d).

2-14 SECTION 4. Section 122.051, Agriculture Code, is amended by
2-15 adding Subsection (c) to read as follows:

2-16 (c) Not later than the 90th day after the date a change to
2-17 this chapter, a federal statute, or a federal regulation takes
2-18 effect, the department shall propose any rules necessary to
2-19 incorporate and implement the change.

2-20 SECTION 5. Section 122.055, Agriculture Code, is amended by
2-21 adding Subsection (c-1) to read as follows:

2-22 (c-1) The department by rule may adopt a different shipping
2-23 certificate, cargo manifest, or other requirement for the shipment
2-24 or transportation of a sample of hemp to:

2-25 (1) a testing laboratory; or

2-26 (2) another destination if the sample contains not
2-27 more than 15 grams of hemp and is accompanied by the results of a
2-28 laboratory test indicating the delta-9 tetrahydrocannabinol
2-29 concentration of the lot or plot from which the sample was taken.

2-30 SECTION 6. Section 122.151, Agriculture Code, is amended by
2-31 adding Subsection (g) to read as follows:

2-32 (g) A laboratory that performs testing required by this
2-33 chapter shall report the delta-9 tetrahydrocannabinol
2-34 concentration, the total tetrahydrocannabinol concentration, and
2-35 the concentration of any other federally regulated cannabinoid of
2-36 the sample on a dry weight basis and the measurement of uncertainty
2-37 in the test result. The measurement of uncertainty must comply with
2-38 International Organization for Standardization ISO/IEC 17025 or a
2-39 comparable or successor standard and any provisions of federal law
2-40 governing the measurement of uncertainty. For purposes of this
2-41 chapter, the delta-9 tetrahydrocannabinol concentration of the
2-42 sample is the lowest possible value given that measurement of
2-43 uncertainty.

2-44 SECTION 7. Section 122.201(a), Agriculture Code, is amended
2-45 to read as follows:

2-46 (a) A license holder shall harvest the plants from a plot
2-47 not later than the 30th [~~20th~~] day after the date a preharvest
2-48 sample is collected under Section 122.154 unless field conditions
2-49 delay harvesting or the department authorizes the license holder to
2-50 delay harvesting. This subsection does not prohibit the license
2-51 holder from harvesting the plants immediately after the preharvest
2-52 sample is collected.

2-53 SECTION 8. Section 122.202, Agriculture Code, is amended by
2-54 adding Subsection (c) to read as follows:

2-55 (c) The delta-9 tetrahydrocannabinol concentration shall be
2-56 determined as provided by Section 122.151(g).

2-57 SECTION 9. Subchapter E, Chapter 122, Agriculture Code, is
2-58 amended by adding Section 122.203 to read as follows:

2-59 Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED.

2-60 (a) A person whose license is suspended or revoked after planting
2-61 hemp plants may obtain preharvest or postharvest testing under
2-62 Subchapter D and may harvest the plants under Section 122.201 in the
2-63 same manner as a license holder.

2-64 (b) The department by rule shall establish fair and
2-65 objective standards for determining whether a person whose license
2-66 is suspended or revoked may use or sell plants harvested under
2-67 Subsection (a), based on the circumstances of the suspension or
2-68 revocation. Based on those rules, the department shall:

2-69 (1) prohibit a person from selling or using plants

3-1 harvested under Subsection (a) while the person's license is
 3-2 suspended or revoked; or

3-3 (2) if the delta-9 tetrahydrocannabinol concentration
 3-4 of the plants is not more than 0.3 percent on a dry weight basis,
 3-5 allow a person to sell or use plants harvested under Subsection (a)
 3-6 in the same manner as a license holder under Section 122.202 while
 3-7 the person's license is suspended or revoked.

3-8 (c) A person whose license is reinstated may sell or use
 3-9 plants harvested under Subsection (a) as provided by Section
 3-10 122.202.

3-11 SECTION 10. The heading to Subchapter F, Chapter 122,
 3-12 Agriculture Code, is amended to read as follows:

3-13 SUBCHAPTER F. HEMP SEED AND PLANTS

3-14 SECTION 11. Section 122.252, Agriculture Code, is amended
 3-15 to read as follows:

3-16 Sec. 122.252. CERTIFICATION OR APPROVAL OF SEED AND PLANT
 3-17 VARIETIES. (a) Subject to Subsection (b), the ~~[The]~~ department or
 3-18 an entity authorized to certify seed and plants under Chapter 62
 3-19 shall identify and certify or approve varieties of seed and plants
 3-20 confirmed to produce hemp.

3-21 (b) The department or entity may not certify or approve a
 3-22 variety of hemp seed or plant if the variety ~~[seed]~~ is tested and
 3-23 confirmed to produce a plant that has delta-9 tetrahydrocannabinol
 3-24 concentration of more than 0.3 percent on a dry weight basis. For
 3-25 purposes of this subsection, the department may partner with a
 3-26 private entity or an institution of higher education to test seed
 3-27 and plant varieties for the purpose of certification or approval
 3-28 under this section.

3-29 (c) The department may authorize the importation of hemp
 3-30 seed and plant varieties certified in accordance with the law of
 3-31 another state or jurisdiction that requires as a condition of
 3-32 certification that hemp be produced in compliance with:

3-33 (1) that state or jurisdiction's plan approved by the
 3-34 United States Department of Agriculture under 7 U.S.C. Section
 3-35 1639p; or

3-36 (2) a plan established under 7 U.S.C. Section 1639q if
 3-37 that plan applies in the state or jurisdiction.

3-38 (d) The department shall maintain and make available to
 3-39 license holders a list of hemp seed and plant varieties ~~[seeds]~~
 3-40 certified or approved under this section.

3-41 SECTION 12. Subchapter F, Chapter 122, Agriculture Code, is
 3-42 amended by adding Section 122.254 to read as follows:

3-43 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In
 3-44 this section, "immature plant" means a hemp seedling, clone, or
 3-45 cutting that is not flowering and requires substantial cultivation
 3-46 and further growth before the beginning of the period under Section
 3-47 122.201(a) when the plant may be harvested.

3-48 (b) A person may transport into this state, and a license
 3-49 holder may obtain and cultivate, immature plants propagated outside
 3-50 this state if the plants are accompanied by shipping documentation
 3-51 that:

3-52 (1) complies with any requirements of the state of
 3-53 origin;

3-54 (2) indicates the grower of the immature plants is
 3-55 licensed by the state of origin;

3-56 (3) lists the recipient license holder in this state
 3-57 and the recipient's license number; and

3-58 (4) shows that the variety of the immature plants is
 3-59 certified or approved under Section 122.252.

3-60 (c) A license holder may obtain and cultivate immature
 3-61 plants propagated in this state by another license holder if the
 3-62 plants are accompanied by the shipping certificate or cargo
 3-63 manifest required by Section 122.055 that shows that the variety of
 3-64 the immature plants is certified or approved under Section 122.252.
 3-65 The immature plants are not subject to preharvest testing under
 3-66 Section 122.153. The license holder shall maintain records, as
 3-67 required by the department, that match the lot crop permit number
 3-68 issued by the department for the location where the immature plants
 3-69 were propagated with the lot crop number for the location where the

4-1 plants were cultivated.

4-2 (d) A license holder may transplant immature plants
 4-3 propagated by the license holder from one plot to another plot
 4-4 controlled by the license holder. The department by rule shall
 4-5 waive the requirement that a license holder obtain a lot crop permit
 4-6 for and may not require a license holder to pay any fee for a
 4-7 greenhouse or other location used to propagate immature plants if
 4-8 the plants are transplanted to another plot controlled by the
 4-9 license holder and are not sold or transferred to another person.
 4-10 The department by rule may waive the requirement that a person
 4-11 obtain a shipping certificate or cargo manifest to transplant
 4-12 immature plants from one plot to another plot operated by the
 4-13 license holder.

4-14 SECTION 13. Section 122.403, Agriculture Code, is amended
 4-15 by amending Subsection (a) and adding Subsection (e) to read as
 4-16 follows:

4-17 (a) If the department determines that a license holder
 4-18 negligently violated this chapter or a rule adopted under this
 4-19 chapter, the department shall enforce the violation in the manner
 4-20 provided by 7 U.S.C. Section 1639p(e) and 7 C.F.R. Section 990.6.

4-21 (e) A license holder is not subject to more than one
 4-22 negligent violation related to cultivation per calendar year.

4-23 SECTION 14. Subchapter I, Chapter 122, Agriculture Code, is
 4-24 amended by adding Section 122.4035 to read as follows:

4-25 Sec. 122.4035. PENALTIES FOR CULTIVATING HEMP WITHOUT A
 4-26 LICENSE; CRIMINAL OFFENSE. (a) On determining that a person
 4-27 violated Section 122.101, the department may:

4-28 (1) if the person has not previously received a
 4-29 penalty under this section:

4-30 (A) issue a written warning to the person;
 4-31 (B) impose an administrative penalty in the
 4-32 amount of \$500;

4-33 (C) require the person to obtain a license; and
 4-34 (D) allow the person to continue to cultivate or
 4-35 handle the hemp plants that are the subject of the violation,
 4-36 harvest those plants, and, after obtaining the license, sell or use
 4-37 those plants as provided by Section 122.202;

4-38 (2) if the person has received a penalty under
 4-39 Subdivision (1) for a previous violation but has not previously
 4-40 received a penalty under this subdivision:

4-41 (A) issue a second written warning to the person;
 4-42 (B) impose an administrative penalty in the
 4-43 amount of \$500;

4-44 (C) require the person to obtain a license;
 4-45 (D) seize and dispose of the hemp plants that are
 4-46 the subject of the violation; and

4-47 (E) require the person to reimburse the
 4-48 department for reasonable costs of disposal under Paragraph (D);
 4-49 and

4-50 (3) if the person has received a penalty under
 4-51 Subdivision (2) or this subdivision for a previous violation:

4-52 (A) refer the matter to the appropriate
 4-53 prosecuting attorney for criminal prosecution under Subsection
 4-54 (b);

4-55 (B) seize and dispose of the hemp plants that are
 4-56 the subject of the violation; and

4-57 (C) require the person to reimburse the
 4-58 department for reasonable costs of disposal under Paragraph (B).

4-59 (b) A person commits an offense if the person:

4-60 (1) violates Section 122.101; and

4-61 (2) has received a penalty under Subsection (a)(2) for
 4-62 a previous violation.

4-63 (c) An offense under Subsection (b) is a Class B
 4-64 misdemeanor.

4-65 SECTION 15. Subchapter A, Chapter 443, Health and Safety
 4-66 Code, is amended by adding Sections 443.005 and 443.006 to read as
 4-67 follows:

4-68 Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The
 4-69 consumable hemp products account is an account in the general

5-1 revenue fund administered by the department.
 5-2 (b) The account consists of:
 5-3 (1) appropriations of money to the account by the
 5-4 legislature;
 5-5 (2) public or private gifts, grants, or donations,
 5-6 including federal funds, received for the account;
 5-7 (3) fees collected under this chapter or under Chapter
 5-8 431 as it applies to consumable hemp products;
 5-9 (4) interest and income earned on the investment of
 5-10 money in the account;
 5-11 (5) penalties for violations of this chapter or
 5-12 Chapter 431 as it applies to consumable hemp products; and
 5-13 (6) funds from any other source deposited in the
 5-14 account.
 5-15 (c) The department may accept appropriations and gifts,
 5-16 grants, or donations from any source to administer and enforce this
 5-17 chapter and Chapter 431 as it applies to consumable hemp products.
 5-18 Money received under this subsection shall be deposited in the
 5-19 account.
 5-20 (d) Money in the account may be appropriated only to the
 5-21 department for the administration and enforcement of this chapter
 5-22 and Chapter 431 as it applies to consumable hemp products.
 5-23 Sec. 443.006. TETRAHYDROCANNABINOL CONTENT. (a)
 5-24 Notwithstanding any other law, a person may not manufacture, sell,
 5-25 or purchase a consumable hemp product in this state:
 5-26 (1) that has a delta-9 tetrahydrocannabinol
 5-27 concentration of more than 0.3 percent on a dry weight basis;
 5-28 (2) that contains synthetically derived
 5-29 tetrahydrocannabinols, as defined by department rule, including
 5-30 synthetically derived acids, isomers, or salts of
 5-31 tetrahydrocannabinol;
 5-32 (3) that, in the form and quantity as packaged for
 5-33 consumer use, is reasonably determined by the department to have an
 5-34 intoxicating effect;
 5-35 (4) that exceeds any federal limit for
 5-36 tetrahydrocannabinol; or
 5-37 (5) if additional tetrahydrocannabinol in a
 5-38 concentration greater than 0.3 percent on a dry weight basis has
 5-39 been applied to the product.
 5-40 (b) Chapter 481 prevails to the extent of any conflict with
 5-41 this section.
 5-42 SECTION 16. Section 443.103, Health and Safety Code, is
 5-43 amended to read as follows:
 5-44 Sec. 443.103. APPLICATION; ISSUANCE. An individual or
 5-45 establishment may apply for a license under this subchapter by
 5-46 submitting an application to the department on a form and in the
 5-47 manner prescribed by the department. The application must be
 5-48 accompanied by:
 5-49 (1) the physical address [~~a legal description~~] of each
 5-50 location where the applicant intends to process hemp or manufacture
 5-51 consumable hemp products [~~and the global positioning system~~
 5-52 ~~coordinates for the perimeter of each location~~];
 5-53 (2) written consent from the applicant or the property
 5-54 owner if the applicant is not the property owner allowing the
 5-55 department, the Department of Public Safety, and any other state or
 5-56 local law enforcement agency to enter onto all premises where hemp
 5-57 is processed or consumable hemp products are manufactured to
 5-58 conduct a physical inspection or to ensure compliance with this
 5-59 chapter and rules adopted under this chapter;
 5-60 (3) any fees required by the department to be
 5-61 submitted with the application; and
 5-62 (4) any other information required by department rule.
 5-63 SECTION 17. Subchapter C, Chapter 443, Health and Safety
 5-64 Code, is amended by adding Section 443.106 to read as follows:
 5-65 Sec. 443.106. EXPEDITED LICENSING PROCESS. The department
 5-66 by rule may provide an expedited licensing process for the
 5-67 purchaser of a business that requires a license.
 5-68 SECTION 18. Section 443.152, Health and Safety Code, is
 5-69 amended by adding Subsection (d) to read as follows:

6-1 (d) The executive commissioner by rule may exclude a
6-2 substance that is generally recognized as having no risk of
6-3 contaminating a finished consumable hemp product, including a
6-4 microorganism or other substance that is inevitably destroyed or
6-5 removed while processing or manufacturing the product, from the
6-6 testing required under Section 443.151.

6-7 SECTION 19. Section 443.201, Health and Safety Code, is
6-8 amended by adding Subsection (c) to read as follows:

6-9 (c) A person may transport and deliver a consumable hemp
6-10 product to a consumer who purchased the product in compliance with
6-11 this chapter. The person transporting and delivering the consumable
6-12 hemp product is not required to:

6-13 (1) obtain a license under Section 443.101, unless the
6-14 person processes or manufactures the product delivered; or

6-15 (2) register under Section 443.2025, unless the person
6-16 sells the product delivered.

6-17 SECTION 20. Section 443.2025, Health and Safety Code, is
6-18 amended by amending Subsections (b), (d), and (f) and adding
6-19 Subsection (d-1) to read as follows:

6-20 (b) A person may not sell or distribute consumable hemp
6-21 products containing cannabinoids to consumers [~~cannabidiol~~ at
6-22 retail] in this state, other than products generally recognized as
6-23 safe by the United States Food and Drug Administration, unless the
6-24 person registers with the department each location owned, operated,
6-25 or controlled by the person at which those products are sold. A
6-26 person is not required to register a location associated with an
6-27 employee or independent contractor described by Subsection (d).

6-28 (d) A person is not required to register with the department
6-29 under Subsection (b) if the person is:

6-30 (1) an employee of a registrant; or

6-31 (2) an independent contractor of a registrant who
6-32 sells the registrant's products to consumers [at retail].

6-33 (d-1) A person is required to register with the department
6-34 under Subsection (b) if the person, as an employee or independent
6-35 contractor of a person located outside this state who is not a
6-36 registrant, sells or distributes products covered by Subsection (b)
6-37 in this state.

6-38 (f) The department by rule may adopt a registration fee
6-39 schedule that establishes reasonable fee amounts for the
6-40 registration of:

6-41 (1) a single location at which consumable hemp
6-42 products containing cannabinoids [~~cannabidiol~~] are sold; and

6-43 (2) multiple locations at which consumable hemp
6-44 products containing cannabinoids [~~cannabidiol~~] are sold under a
6-45 single registration.

6-46 SECTION 21. Section 443.203, Health and Safety Code, is
6-47 amended by adding Subsection (c) to read as follows:

6-48 (c) A person who sells, offers for sale, or distributes a
6-49 consumable hemp product commits a false, misleading, or deceptive
6-50 act or practice actionable under Subchapter E, Chapter 17, Business
6-51 & Commerce Code, if the person:

6-52 (1) claims the product is made in this state and the
6-53 product contains any hemp that was not grown and processed in this
6-54 state solely by persons who hold the appropriate licenses under
6-55 Chapter 122, Agriculture Code, and this chapter;

6-56 (2) claims the product is "grown in Texas" and the
6-57 product was not grown in this state by a license holder under
6-58 Chapter 122, Agriculture Code; or

6-59 (3) claims the product is "processed in Texas" and the
6-60 product was not processed in this state by a license holder under
6-61 this chapter.

6-62 SECTION 22. Section 443.205(a), Health and Safety Code, is
6-63 amended to read as follows:

6-64 (a) Before a consumable hemp product, including hemp plant
6-65 material, that contains or is marketed as containing more than
6-66 trace amounts of cannabinoids may be distributed or sold, the
6-67 product must be labeled in the manner provided by this section with
6-68 the following information:

6-69 (1) batch identification number;

- 7-1 (2) batch date;
- 7-2 (3) product name;
- 7-3 (4) a uniform resource locator (URL) that provides or
- 7-4 links to a certificate of analysis for the product or each
- 7-5 hemp-derived ingredient of the product;
- 7-6 (5) the name of the product's manufacturer; and
- 7-7 (6) a certification that the delta-9
- 7-8 tetrahydrocannabinol concentration of the product or each
- 7-9 hemp-derived ingredient of the product is not more than 0.3
- 7-10 percent.

7-11 SECTION 23. Section [122.403](#), Agriculture Code, as amended
7-12 by this Act, and Section [122.4035](#), Agriculture Code, as added by
7-13 this Act, apply only to conduct that occurs on or after the
7-14 effective date of this Act. Conduct that occurred before that date
7-15 is governed by the law in effect when the conduct occurred, and the
7-16 former law is continued in effect for that purpose.

7-17 SECTION 24. This Act takes effect September 1, 2021.

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