

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: King of Uvalde, Guillen,  
Morales of Maverick, Israel, et al.

H.B. No. 3948

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the production and regulation of hemp and consumable  
3 hemp products; authorizing a fee.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 121.003, Agriculture Code, is amended by  
6 adding Subsection (e) to read as follows:

7 (e) Not later than the 90th day after the date a change to a  
8 state statute, federal statute, or federal regulation takes effect,  
9 the department shall submit to the secretary of the United States  
10 Department of Agriculture any amendments to the state plan  
11 necessary to incorporate and implement the change.

12 SECTION 2. Subchapter A, Chapter 122, Agriculture Code, is  
13 amended by adding Section 122.005 to read as follows:

14 Sec. 122.005. HEMP RESEARCH BY INSTITUTIONS OF HIGHER  
15 EDUCATION. (a) The department shall issue a license to an  
16 institution of higher education in this state that requests the  
17 license.

18 (b) Notwithstanding any provision of this chapter or  
19 department rule other than Subsection (c), an institution of higher  
20 education conducting research involving hemp:

21 (1) is not required to pay a fee collected by the  
22 department under this chapter;

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

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

4           (4) may use hemp seed and cultivate and handle plants  
5 grown from seed that is not certified or approved under Section  
6 122.252; and

7           (5) is not subject to Section 122.403(c) or (d).

8           (c) An institution of higher education may not sell or  
9 transfer hemp to another person unless the institution complies  
10 with the requirements of Sections 122.153 and 122.356.

11           SECTION 3. Section 122.051, Agriculture Code, is amended by  
12 adding Subsection (c) to read as follows:

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

17           SECTION 4. Section 122.151, Agriculture Code, is amended by  
18 adding Subsection (g) to read as follows:

19           (g) A laboratory that performs testing required by this  
20 chapter shall report the delta-9 tetrahydrocannabinol  
21 concentration, the total tetrahydrocannabinol concentration, and  
22 the concentration of any other federally regulated cannabinoid of  
23 the sample on a dry weight basis and the measurement of uncertainty  
24 in the test result. The measurement of uncertainty must comply with  
25 International Organization for Standardization ISO/IEC 17025 or a  
26 comparable or successor standard. For purposes of this chapter,  
27 the delta-9 tetrahydrocannabinol concentration of the sample is the

1 lowest possible value given that measurement of uncertainty.

2 SECTION 5. Section 122.201(a), Agriculture Code, is amended  
3 to read as follows:

4 (a) A license holder shall harvest the plants from a plot  
5 not later than the 30th [~~20th~~] day after the date a preharvest  
6 sample is collected under Section 122.154 unless field conditions  
7 delay harvesting or the department authorizes the license holder to  
8 delay harvesting. This subsection does not prohibit the license  
9 holder from harvesting the plants immediately after the preharvest  
10 sample is collected.

11 SECTION 6. Subchapter E, Chapter 122, Agriculture Code, is  
12 amended by adding Section 122.203 to read as follows:

13 Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED.

14 (a) A person whose license is suspended or revoked after planting  
15 hemp plants may obtain preharvest or postharvest testing under  
16 Subchapter D and may harvest the plants under Section 122.201 in the  
17 same manner as a license holder.

18 (b) While a person's license is suspended or revoked, the  
19 department may:

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

22 (2) if the delta-9 tetrahydrocannabinol concentration  
23 of the plants is not more than 0.3 percent on a dry weight basis,  
24 allow the person to sell or use plants harvested under Subsection  
25 (a) in the same manner as a license holder under Section 122.202.

26 (c) A person whose license is reinstated may sell or use  
27 plants harvested under Subsection (a) as provided by Section

1 122.202.

2 SECTION 7. The heading to Subchapter F, Chapter 122,  
3 Agriculture Code, is amended to read as follows:

4 SUBCHAPTER F. HEMP SEED AND PLANTS

5 SECTION 8. Section 122.252, Agriculture Code, is amended to  
6 read as follows:

7 Sec. 122.252. CERTIFICATION OR APPROVAL OF SEED AND PLANT  
8 VARIETIES. (a) The department or an entity authorized to certify  
9 seed and plants under Chapter 62 shall identify and certify or  
10 approve varieties of seed and plants confirmed to produce hemp.

11 (b) The department or entity may not certify or approve a  
12 variety of hemp seed or plant if the variety [~~seed~~] is tested and  
13 confirmed to produce a plant that has delta-9 tetrahydrocannabinol  
14 concentration of more than 0.3 percent on a dry weight basis. For  
15 purposes of this subsection, the department may partner with a  
16 private entity or an institution of higher education to test seed  
17 and plant varieties for the purpose of certification or approval  
18 under this section.

19 (c) The department may authorize the importation of hemp  
20 seed and plant varieties certified in accordance with the law of  
21 another state or jurisdiction that requires as a condition of  
22 certification that hemp be produced in compliance with:

23 (1) that state or jurisdiction's plan approved by the  
24 United States Department of Agriculture under 7 U.S.C. Section  
25 1639p; or

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

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

4 SECTION 9. Subchapter F, Chapter 122, Agriculture Code, is  
5 amended by adding Section 122.254 to read as follows:

6 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In  
7 this section, "immature plant" means a hemp seedling, clone, or  
8 cutting that requires substantial cultivation and further growth  
9 before the beginning of the period under Section 122.201(a) when  
10 the plant may be harvested.

11 (b) A person may transport into this state, and a license  
12 holder may obtain and cultivate, immature plants propagated outside  
13 this state if the plants are accompanied by shipping documentation  
14 that:

15 (1) complies with any requirements of the state of  
16 origin;

17 (2) indicates the grower of the immature plants is  
18 licensed by the state of origin;

19 (3) lists the recipient license holder in this state  
20 and the recipient's license number; and

21 (4) shows that the variety of the immature plants is  
22 certified or approved under Section 122.252.

23 (c) A license holder may obtain and cultivate immature  
24 plants propagated in this state by another license holder if the  
25 plants are accompanied by the shipping certificate or cargo  
26 manifest required by Section 122.055 that shows that the variety of  
27 the immature plants is certified or approved under Section 122.252.

1 The immature plants are not subject to preharvest testing under  
2 Section 122.153.

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

15 SECTION 10. Section 122.301, Agriculture Code, is amended  
16 by adding Subsection (c) to read as follows:

17 (c) Notwithstanding Subsection (b), a person may  
18 manufacture products described by that subsection in this state if:

19 (1) the products are sold only to persons located  
20 outside this state; and

21 (2) the person was manufacturing or processing  
22 consumable hemp products, as those terms are defined by Section  
23 443.001, Health and Safety Code, in this state on May 22, 2019.

24 SECTION 11. Subchapter A, Chapter 443, Health and Safety  
25 Code, is amended by adding Section 443.005 to read as follows:

26 Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The  
27 consumable hemp products account is an account in the general

1 revenue fund administered by the department.

2 (b) The account consists of:

3 (1) appropriations of money to the account by the  
4 legislature;

5 (2) public or private gifts, grants, or donations,  
6 including federal funds, received for the account;

7 (3) fees collected under this chapter or under Chapter  
8 431 as it applies to consumable hemp products;

9 (4) interest and income earned on the investment of  
10 money in the account;

11 (5) penalties for violations of this chapter or  
12 Chapter 431 as it applies to consumable hemp products; and

13 (6) funds from any other source deposited in the  
14 account.

15 (c) The department may accept appropriations and gifts,  
16 grants, or donations from any source to administer and enforce this  
17 chapter and Chapter 431 as it applies to consumable hemp products.  
18 Money received under this subsection shall be deposited in the  
19 account.

20 (d) Money in the account may be appropriated only to the  
21 department for the administration and enforcement of this chapter  
22 and Chapter 431 as it applies to consumable hemp products.

23 SECTION 12. Section 443.103, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 443.103. APPLICATION; ISSUANCE. An individual or  
26 establishment may apply for a license under this subchapter by  
27 submitting an application to the department on a form and in the

1 manner prescribed by the department. The application must be  
2 accompanied by:

3 (1) the physical address [~~a legal description~~] of each  
4 location where the applicant intends to process hemp or manufacture  
5 consumable hemp products [~~and the global positioning system~~  
6 ~~coordinates for the perimeter of each location~~];

7 (2) written consent from the applicant or the property  
8 owner if the applicant is not the property owner allowing the  
9 department, the Department of Public Safety, and any other state or  
10 local law enforcement agency to enter onto all premises where hemp  
11 is processed or consumable hemp products are manufactured to  
12 conduct a physical inspection or to ensure compliance with this  
13 chapter and rules adopted under this chapter;

14 (3) any fees required by the department to be  
15 submitted with the application; and

16 (4) any other information required by department rule.

17 SECTION 13. Subchapter C, Chapter 443, Health and Safety  
18 Code, is amended by adding Section 443.106 to read as follows:

19 Sec. 443.106. CHANGE OF OWNERSHIP. The department may  
20 modify a license held by an establishment in the event of a change  
21 in ownership of the establishment if:

22 (1) the current owner and the new owner apply to the  
23 department for the modification;

24 (2) the new owner is not ineligible to hold the license  
25 under Section 443.102; and

26 (3) one party to the transaction submits any license  
27 modification fee to the department.



1 SECTION 14. Section 443.152, Health and Safety Code, is  
2 amended by adding Subsection (d) to read as follows:

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

9 SECTION 15. Section 443.201, Health and Safety Code, is  
10 amended by adding Subsection (c) to read as follows:

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

15 (1) obtain a license under Section 443.101, unless the  
16 person processes or manufactures the product delivered; or

17 (2) register under Section 443.2025, unless the person  
18 sells the product delivered.

19 SECTION 16. Section 443.204, Health and Safety Code, is  
20 amended to read as follows:

21 Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP  
22 PRODUCTS. (a) Rules adopted by the executive commissioner  
23 regulating the sale of consumable hemp products must to the extent  
24 allowable by federal law reflect the following principles:

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

27 (2) products containing one or more hemp-derived

1 cannabinoids, such as cannabidiol, intended for ingestion are  
2 considered foods, not controlled substances or adulterated  
3 products;

4 (3) consumable hemp products must be packaged and  
5 labeled in the manner provided by Section 443.205; and

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

8 (b) Notwithstanding Subsection (a)(4), a person may  
9 manufacture products described by that subsection in this state if:

10 (1) the products are sold only to persons located  
11 outside this state; and

12 (2) the person was manufacturing or processing  
13 consumable hemp products in this state on May 22, 2019.

14 SECTION 17. This Act takes effect September 1, 2021.

ADOPTED

MAY 26 2021

Lacey *Lacey*  
Secretary of the Senate

BY: Charles Perry  
Substitute the following for H.B. No. 3948:  
BY: Charles Perry

H.B. No. 3948

C.S. H.B. No. 3948

A BILL TO BE ENTITLED

AN ACT

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relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

(e) Not later than the 120th day after the date a change to a state statute, federal statute, or federal regulation takes effect, the department shall 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. Subchapter A, Chapter 122, Agriculture Code, is amended by adding Section 122.005 to read as follows:

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

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

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

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

9           (A) is not required to obtain from the department  
10 a lot crop permit or other permit for each location where hemp is  
11 grown;

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

15           (C) may cultivate and handle varieties of hemp  
16 seed and plants that are not certified or approved under Section  
17 122.252;

18           (D) may collect and research feral hemp; and

19           (E) is not subject to Section 122.403(c) or (d).

20           (c) An institution of higher education or private or  
21 independent institution of higher education may not sell or  
22 transfer hemp to another person unless the institution complies  
23 with the requirements of Sections 122.153 and 122.356.

24           (d) An institution of higher education or private or  
25 independent institution of higher education may conduct research  
26 involving hemp in conjunction with a license holder at a facility  
27 designated by the license holder for research use only.

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

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

5       (c) Not later than the 90th day after the date a change to  
6 this chapter, a federal statute, or a federal regulation takes  
7 effect, the department shall propose any rules necessary to  
8 incorporate and implement the change.

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

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

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

19       SECTION 6. Section 122.151, Agriculture Code, is amended by  
20 adding Subsection (g) to read as follows:

21       (g) A laboratory that performs testing required by this  
22 chapter shall report the delta-9 tetrahydrocannabinol  
23 concentration, the total tetrahydrocannabinol concentration, and  
24 the concentration of any other federally regulated cannabinoid of  
25 the sample on a dry weight basis and the measurement of uncertainty  
26 in the test result. The measurement of uncertainty must comply with  
27 International Organization for Standardization ISO/IEC 17025 or a

1 comparable or successor standard and any provisions of federal law  
2 governing the measurement of uncertainty. For purposes of this  
3 chapter, the delta-9 tetrahydrocannabinol concentration of the  
4 sample is the lowest possible value given that measurement of  
5 uncertainty.

6 SECTION 7. Section 122.201(a), Agriculture Code, is amended  
7 to read as follows:

8 (a) A license holder shall harvest the plants from a plot  
9 not later than the 30th [~~20th~~] day after the date a preharvest  
10 sample is collected under Section 122.154 unless field conditions  
11 delay harvesting or the department authorizes the license holder to  
12 delay harvesting. This subsection does not prohibit the license  
13 holder from harvesting the plants immediately after the preharvest  
14 sample is collected.

15 SECTION 8. Section 122.202, Agriculture Code, is amended by  
16 adding Subsection (c) to read as follows:

17 (c) The delta-9 tetrahydrocannabinol concentration shall be  
18 determined as provided by Section 122.151(g).

19 SECTION 9. Subchapter E, Chapter 122, Agriculture Code, is  
20 amended by adding Section 122.203 to read as follows:

21 Sec. 122.203. HARVEST WHILE LICENSE SUSPENDED OR REVOKED.

22 (a) A person whose license is suspended or revoked after planting  
23 hemp plants may obtain preharvest or postharvest testing under  
24 Subchapter D and may harvest the plants under Section 122.201 in the  
25 same manner as a license holder.

26 (b) The department by rule shall establish fair and  
27 objective standards for determining whether a person whose license

1 is suspended or revoked may use or sell plants harvested under  
2 Subsection (a), based on the circumstances of the suspension or  
3 revocation. Based on those rules, the department shall:

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

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

12 (c) A person whose license is reinstated may sell or use  
13 plants harvested under Subsection (a) as provided by Section  
14 122.202.

15 SECTION 10. The heading to Subchapter F, Chapter 122,  
16 Agriculture Code, is amended to read as follows:

17 SUBCHAPTER F. HEMP SEED AND PLANTS

18 SECTION 11. Section 122.252, Agriculture Code, is amended  
19 to read as follows:

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

25 (b) The department or entity may not certify or approve a  
26 variety of hemp seed or plant if the variety [seed] is tested and  
27 confirmed to produce a plant that has delta-9 tetrahydrocannabinol

1 concentration of more than 0.3 percent on a dry weight basis. For  
2 purposes of this subsection, the department may partner with a  
3 private entity or an institution of higher education to test seed  
4 and plant varieties for the purpose of certification or approval  
5 under this section.

6 (c) The department may authorize the importation of hemp  
7 seed and plant varieties certified in accordance with the law of  
8 another state or jurisdiction that requires as a condition of  
9 certification that hemp be produced in compliance with:

10 (1) that state or jurisdiction's plan approved by the  
11 United States Department of Agriculture under 7 U.S.C. Section  
12 1639p; or

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

15 (d) The department shall maintain and make available to  
16 license holders a list of hemp seed and plant varieties [~~seeds~~]  
17 certified or approved under this section.

18 SECTION 12. Subchapter F, Chapter 122, Agriculture Code, is  
19 amended by adding Section 122.254 to read as follows:

20 Sec. 122.254. SEEDLINGS AND OTHER IMMATURE PLANTS. (a) In  
21 this section, "immature plant" means a hemp seedling, clone, or  
22 cutting that is not flowering and requires substantial cultivation  
23 and further growth before the beginning of the period under Section  
24 122.201(a) when the plant may be harvested.

25 (b) A person may transport into this state, and a license  
26 holder may obtain and cultivate, immature plants propagated outside  
27 this state if the plants are accompanied by shipping documentation



1 that:

2 (1) complies with any requirements of the state of  
3 origin;

4 (2) indicates the grower of the immature plants is  
5 licensed by the state of origin;

6 (3) lists the recipient license holder in this state  
7 and the recipient's license number; and

8 (4) shows that the variety of the immature plants is  
9 certified or approved under Section 122.252.

10 (c) A license holder may obtain and cultivate immature  
11 plants propagated in this state by another license holder if the  
12 plants are accompanied by the shipping certificate or cargo  
13 manifest required by Section 122.055 that shows that the variety of  
14 the immature plants is certified or approved under Section 122.252.  
15 The immature plants are not subject to preharvest testing under  
16 Section 122.153. The license holder shall maintain records, as  
17 required by the department, that match the lot crop permit number  
18 issued by the department for the location where the immature plants  
19 were propagated with the lot crop number for the location where the  
20 plants were cultivated.

21 (d) A license holder may transplant immature plants  
22 propagated by the license holder from one plot to another plot  
23 controlled by the license holder. The department by rule shall  
24 waive the requirement that a license holder obtain a lot crop permit  
25 for and may not require a license holder to pay any fee for a  
26 greenhouse or other location used to propagate immature plants if  
27 the plants are transplanted to another plot controlled by the

1 license holder and are not sold or transferred to another person.  
2 The department by rule may waive the requirement that a person  
3 obtain a shipping certificate or cargo manifest to transplant  
4 immature plants from one plot to another plot operated by the  
5 license holder.

6 SECTION 13. Section 122.403, Agriculture Code, is amended  
7 by amending Subsection (a) and adding Subsection (e) to read as  
8 follows:

9 (a) If the department determines that a license holder  
10 negligently violated this chapter or a rule adopted under this  
11 chapter, the department shall enforce the violation in the manner  
12 provided by 7 U.S.C. Section 1639p(e) and 7 C.F.R. Section 990.6.

13 (e) A license holder is not subject to more than one  
14 negligent violation related to cultivation per calendar year.

15 SECTION 14. Subchapter I, Chapter 122, Agriculture Code, is  
16 amended by adding Section 122.4035 to read as follows:

17 Sec. 122.4035. PENALTIES FOR CULTIVATING HEMP WITHOUT A  
18 LICENSE; CRIMINAL OFFENSE. (a) On determining that a person  
19 violated Section 122.101, the department may:

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

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

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

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

26 (D) allow the person to continue to cultivate or  
27 handle the hemp plants that are the subject of the violation,

1 harvest those plants, and, after obtaining the license, sell or use  
2 those plants as provided by Section 122.202;

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

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

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

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

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

12 (E) require the person to reimburse the  
13 department for reasonable costs of disposal under Paragraph (D);  
14 and

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

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

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

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

24 (b) A person commits an offense if the person:

25 (1) violates Section 122.101; and

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

1           (c) An offense under Subsection (b) is a Class B  
2 misdemeanor.

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

6           Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The  
7 consumable hemp products account is an account in the general  
8 revenue fund administered by the department.

9           (b) The account consists of:

10           (1) appropriations of money to the account by the  
11 legislature;

12           (2) public or private gifts, grants, or donations,  
13 including federal funds, received for the account;

14           (3) fees collected under this chapter or under Chapter  
15 431 as it applies to consumable hemp products;

16           (4) interest and income earned on the investment of  
17 money in the account;

18           (5) penalties for violations of this chapter or  
19 Chapter 431 as it applies to consumable hemp products; and

20           (6) funds from any other source deposited in the  
21 account.

22           (c) The department may accept appropriations and gifts,  
23 grants, or donations from any source to administer and enforce this  
24 chapter and Chapter 431 as it applies to consumable hemp products.  
25 Money received under this subsection shall be deposited in the  
26 account.

27           (d) Money in the account may be appropriated only to the

1 department for the administration and enforcement of this chapter  
2 and Chapter 431 as it applies to consumable hemp products.

3 Sec. 443.006. TETRAHYDROCANNABINOL CONTENT. (a)  
4 Notwithstanding any other law, a person may not manufacture, sell,  
5 or purchase a consumable hemp product in this state:

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

8 (2) that contains synthetically derived  
9 tetrahydrocannabinols, as defined by department rule, including  
10 synthetically derived acids, isomers, or salts of  
11 tetrahydrocannabinol;

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

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

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

20 (b) Chapter 481 prevails to the extent of any conflict with  
21 this section.

22 SECTION 16. Section 443.103, Health and Safety Code, is  
23 amended to read as follows:

24 Sec. 443.103. APPLICATION; ISSUANCE. An individual or  
25 establishment may apply for a license under this subchapter by  
26 submitting an application to the department on a form and in the  
27 manner prescribed by the department. The application must be

1 accompanied by:

2 (1) the physical address [~~a legal description~~] of each  
3 location where the applicant intends to process hemp or manufacture  
4 consumable hemp products [~~and the global positioning system~~  
5 ~~coordinates for the perimeter of each location~~];

6 (2) written consent from the applicant or the property  
7 owner if the applicant is not the property owner allowing the  
8 department, the Department of Public Safety, and any other state or  
9 local law enforcement agency to enter onto all premises where hemp  
10 is processed or consumable hemp products are manufactured to  
11 conduct a physical inspection or to ensure compliance with this  
12 chapter and rules adopted under this chapter;

13 (3) any fees required by the department to be  
14 submitted with the application; and

15 (4) any other information required by department rule.

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

18 Sec. 443.106. EXPEDITED LICENSING PROCESS. The department  
19 by rule may provide an expedited licensing process for the  
20 purchaser of a business that requires a license.

21 SECTION 18. Section 443.152, Health and Safety Code, is  
22 amended by adding Subsection (d) to read as follows:

23 (d) The executive commissioner by rule may exclude a  
24 substance that is generally recognized as having no risk of  
25 contaminating a finished consumable hemp product, including a  
26 microorganism or other substance that is inevitably destroyed or  
27 removed while processing or manufacturing the product, from the

1 testing required under Section 443.151.

2 SECTION 19. Section 443.201, Health and Safety Code, is  
3 amended by adding Subsection (c) to read as follows:

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

8 (1) obtain a license under Section 443.101, unless the  
9 person processes or manufactures the product delivered; or

10 (2) register under Section 443.2025, unless the person  
11 sells the product delivered.

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

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

23 (d) A person is not required to register with the department  
24 under Subsection (b) if the person is:

25 (1) an employee of a registrant; or

26 (2) an independent contractor of a registrant who  
27 sells the registrant's products to consumers [~~at retail~~].

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

6           (f) The department by rule may adopt a registration fee  
7 schedule that establishes reasonable fee amounts for the  
8 registration of:

9           (1) a single location at which consumable hemp  
10 products containing cannabinoids [~~cannabidiol~~] are sold; and

11           (2) multiple locations at which consumable hemp  
12 products containing cannabinoids [~~cannabidiol~~] are sold under a  
13 single registration.

14           SECTION 21. Section 443.203, Health and Safety Code, is  
15 amended by adding Subsection (c) to read as follows:

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

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

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

27           (3) claims the product is "processed in Texas" and the



1 product was not processed in this state by a license holder under  
2 this chapter.

3 SECTION 22. Section 443.205(a), Health and Safety Code, is  
4 amended to read as follows:

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

10 (1) batch identification number;

11 (2) batch date;

12 (3) product name;

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

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

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

21 SECTION 23. Section 122.403, Agriculture Code, as amended  
22 by this Act, and Section 122.4035, Agriculture Code, as added by  
23 this Act, apply only to conduct that occurs on or after the  
24 effective date of this Act. Conduct that occurred before that date  
25 is governed by the law in effect when the conduct occurred, and the  
26 former law is continued in effect for that purpose.

27 SECTION 24. This Act takes effect September 1, 2021.

ADOPTED

VV  
MAY 26 2021

*Latey Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Charles Perry*

Amend C.S.H.B. No. 3948 (senate committee report) as follows:

(1) In SECTION 15 of the bill, in added Section 443.006(a), Health and Safety Code, strike Subdivision (3) (page 5, lines 32 through 34) and renumber the subdivisions of the added subsection accordingly.

(2) In SECTION 21 of the bill, strike added Section 443.203(c), Health and Safety Code (page 6, lines 48 through 61), and substitute the following:

(c) 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, Chapter 17, Business & Commerce Code, if the person claims the product is made in this state and less than 75 percent of the hemp contained in the product was grown in this state by a person who holds a license under Chapter 122, Agriculture Code.

ADOPTED

✓✓

MAY 26 2021

FLOOR AMENDMENT NO. 2

*Latey Spald*  
Secretary of the Senate  
*Chris Ferry*

1 Amend C.S.H.B. No. 3948 (senate committee report) by adding  
2 the following appropriately numbered SECTIONS to the bill and  
3 renumbering the SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_\_. Section 41.002(1), Agriculture Code, is  
5 amended to read as follows:

6 (1) "Agricultural commodity" means an agricultural,  
7 horticultural, viticultural, or vegetable product, bees and honey,  
8 planting seed, rice, hemp, livestock or livestock product, or  
9 poultry or poultry product, produced in this state, either in its  
10 natural state or as processed by the producer. The term does not  
11 include flax.

12 SECTION \_\_\_\_\_. Section 141.008, Agriculture Code, is amended  
13 to read as follows:

14 Sec. 141.008. HEMP IN COMMERCIAL FEED. (a) The service  
15 shall ~~may~~ adopt rules authorizing, defining, and controlling the  
16 use of hemp and hemp products in commercial feed.

17 (b) Rules adopted under this section must authorize the use  
18 of hemp as commercial feed or an ingredient or component of  
19 commercial feed for:

20 (1) pets, specialty and exotic pets, horses, and other  
21 animals that are not intended for human consumption or for the  
22 production of animal byproducts intended for human consumption; and

23 (2) only to the extent authorized by the United States  
24 Food and Drug Administration, animals that are intended for human  
25 consumption or for the production of animal byproducts intended for  
26 human consumption.

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 27, 2021**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3948, As Passed 2nd House : a negative impact of (\$1,197,984) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$598,992)
2023	(\$598,992)
2024	(\$598,992)
2025	(\$598,992)
2026	(\$598,992)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>	<b>Probable Revenue Gain/(Loss) from New General Revenue Dedicated Consumable Hemp Product account</b>	<b>Probable Savings/(Cost) from State Hemp Program 5178</b>	<b>Probable Revenue Gain/(Loss) from State Hemp Program 5178</b>
2022	(\$598,992)	\$598,992	(\$95,666)	\$95,666
2023	(\$598,992)	\$598,992	(\$89,856)	\$89,856
2024	(\$598,992)	\$598,992	(\$89,856)	\$89,856
2025	(\$598,992)	\$598,992	(\$89,856)	\$89,856
2026	(\$598,992)	\$598,992	(\$89,856)	\$89,856

<i>Fiscal Year</i>	<b>Change in Number of State Employees from FY 2021</b>
2022	1.0
2023	1.0
2024	1.0
2025	1.0
2026	1.0

## **Fiscal Analysis**

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping that it is otherwise exempt from in the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person. The bill would also establish a criminal offense for cultivating hemp without a license. The bill would set penalties for cultivating hemp without a license to include a \$500 administrative penalty on the first and second violations with the third and subsequent offenses being Class B misdemeanors.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

The bill would authorize DSHS to establish and implement an expedited licensing process for someone who purchases a consumable hemp products business and would add requirements for certain consumable hemp product labels.

This bill would take effect September 1, 2021.

## **Methodology**

The hemp program currently exists at the Texas Department of Agriculture (TDA) as a cost recovery program funded through General Revenue–Dedicated State Hemp Program Fund No. 5178. Based on information provided by TDA, this analysis assumes the agency would need 1.0 additional FTE to implement the provisions of the bill. This includes 0.5 FTE for an Assistant Attorney General II (\$31,808 in annual salary plus \$10,344 in benefits) and 0.5 FTE for a Program Specialist III (\$27,801 in annual salary plus \$9,041 in benefits) with annual operating expenses of \$16,672 in fiscal year 2022 and \$10,862 each subsequent fiscal year. This analysis also assumes that TDA would adjust program fees to cover the total cost of the bill's obligations.

Consumable hemp fees are collected by DSHS and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

Based on information provided by the Office of Court Administration, it is assumed that the establishment of a criminal offense for cultivating hemp without a license would not have a significant fiscal impact to the state court system.

This analysis assumes the provisions of the bill addressing sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Based on information provided by the Comptroller of Public Accounts, this analysis assumes the fiscal impact related to penalties and associated court cost revenues cannot be determined because the number of penalties that would be assessed is unknown.

Based on information provided by the Office of the Attorney General, this analysis assumes that duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing

existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551 Department of Agriculture

**LBB Staff:** JMc, LBO, MW, GDZ, AJL, JLI, NDA, CMA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 21, 2021**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3948, Committee Report 2nd House, Substituted : a negative impact of (\$1,952,267) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$953,947)
2023	(\$998,320)
2024	(\$999,024)
2025	(\$999,748)
2026	(\$1,000,496)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>	<b>Probable Savings/(Cost) from State Hemp Program 5178</b>	<b>Probable Revenue Gain/(Loss) from State Hemp Program 5178</b>
2022	(\$354,955)	(\$598,992)	(\$95,666)	\$95,666
2023	(\$399,328)	(\$598,992)	(\$89,856)	\$89,856
2024	(\$400,032)	(\$598,992)	(\$89,856)	\$89,856
2025	(\$400,756)	(\$598,992)	(\$89,856)	\$89,856
2026	(\$401,504)	(\$598,992)	(\$89,856)	\$89,856

<i>Fiscal Year</i>	<b>Probable Revenue Gain/(Loss) from New General Revenue Dedicated Consumable Hemp Product account</b>	<b>Change in Number of State Employees from FY 2021</b>
2022	\$598,992	5.0
2023	\$598,992	5.0
2024	\$598,992	5.0
2025	\$598,992	5.0
2026	\$598,992	5.0

## **Fiscal Analysis**

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping that it is otherwise exempt from in the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person. The bill would also establish a criminal offense for cultivating hemp without a license. The bill would set penalties for cultivating hemp without a license to include a \$500 administrative penalty on the first and second violations with the third and subsequent offenses being Class B misdemeanors.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

The bill would require DSHS to determine if a consumable hemp product, in the form and quantity as packaged for consumer use, does or does not reasonably have an intoxicating effect. The bill would authorize DSHS to establish and implement an expedited licensing process for someone who purchases a consumable hemp products business and would add requirements for certain consumable hemp product labels.

This bill would take effect September 1, 2021.

## **Methodology**

The hemp program currently exists at the Texas Department of Agriculture (TDA) as a cost recovery program funded through General Revenue–Dedicated State Hemp Program Fund No. 5178. Based on information provided by TDA, this analysis assumes the agency would need 1.0 additional FTE to implement the provisions of the bill. This includes 0.5 FTE for an Assistant Attorney General II (\$31,808 in annual salary plus \$10,344 in benefits) and 0.5 FTE for a Program Specialist III (\$27,801 in annual salary plus \$9,041 in benefits) with annual operating expenses of \$16,672 in fiscal year 2022 and \$10,862 each subsequent fiscal year. This analysis also assumes that TDA would adjust program fees to cover the total cost of the bill's obligations.

Consumable hemp fees are collected by DSHS and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

According to DSHS, the agency does not currently have the resources to determine if a consumable hemp product does or does not reasonably have an intoxicating effect or to enforce the new provisions of the bill. The analysis assumes that DSHS would require 4.0 additional FTEs including a toxicologist and 3.0 sanitarians to enforce the new requirements. The analysis assumes costs for the FTEs including salary, benefits, furniture, supplies, and travel would be \$333,690 in fiscal year 2022; \$381,508 in fiscal year 2023; \$382,212 in fiscal year 2024; \$382,936 in fiscal year 2025; and \$383,684 in fiscal year 2026. The analysis assumes that these costs would be in General Revenue because statute does not require DSHS to increase fees to cover program costs for the consumable hemp program.

Based on information provided by the Office of Court Administration, it is assumed that the establishment of a



criminal offense for cultivating hemp without a license would not have a significant fiscal impact to the state court system.

This analysis assumes the provisions of the bill addressing sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Based on information provided by the Comptroller of Public Accounts, this analysis assumes the fiscal impact related to penalties and associated court cost revenues cannot be determined because the number of penalties that would be assessed is unknown.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

### **Technology**

The analysis assumes DSHS would have technology-related costs of \$3,425 in General Revenue in fiscal year 2022 to configure inspection forms in the Regulatory Automation System. In addition, DSHS would have technology costs for FTEs related to data center services and seat management. These costs are estimated to be \$17,840 in General Revenue in fiscal year 2022 and \$17,820 in General Revenue in subsequent fiscal years.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551 Department of Agriculture

**LBB Staff:** JMc, AJL, JLI, NDA, CMA, MW, GDZ

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 17, 2021**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; authorizing a fee.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3948, As Engrossed : a negative impact of (\$1,197,984) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$598,992)
2023	(\$598,992)
2024	(\$598,992)
2025	(\$598,992)
2026	(\$598,992)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>	<b>Probable Revenue Gain/(Loss) from New General Revenue Dedicated Consumable Hemp Product account</b>
2022	(\$598,992)	\$598,992
2023	(\$598,992)	\$598,992
2024	(\$598,992)	\$598,992
2025	(\$598,992)	\$598,992
2026	(\$598,992)	\$598,992

**Fiscal Analysis**

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping otherwise exempt from the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp be required to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) and consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

This bill would take effect September 1, 2021.

### **Methodology**

Consumable hemp fees are collected by the Department of State Health Services and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

Based on information provided by the Office of Court Administration and Texas Department of Agriculture, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be absorbed with existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551 Department of Agriculture

**LBB Staff:** JMc, AJL, MW, GDZ

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 17, 2021**

**TO:** Honorable DeWayne Burns, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; authorizing a fee.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3948, Committee Report 1st House, Substituted : a negative impact of (\$1,197,984) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to <i>General Revenue Related Funds</i>
2022	(\$598,992)
2023	(\$598,992)
2024	(\$598,992)
2025	(\$598,992)
2026	(\$598,992)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	Probable Revenue Gain/(Loss) from <i>General Revenue Fund 1</i>	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated Consumable Hemp Product account</i>
2022	(\$598,992)	\$598,992
2023	(\$598,992)	\$598,992
2024	(\$598,992)	\$598,992
2025	(\$598,992)	\$598,992
2026	(\$598,992)	\$598,992

**Fiscal Analysis**

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping otherwise exempt from the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp be required to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) and consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

This bill would take effect September 1, 2021.

### **Methodology**

Consumable hemp fees are collected by the Department of State Health Services and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

Based on information provided by the Office of Court Administration and Texas Department of Agriculture, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be absorbed with existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551 Department of Agriculture

**LBB Staff:** JMc, AJL, MW, GDZ

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 8, 2021**

**TO:** Honorable DeWayne Burns, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; imposing and authorizing fees; creating a criminal offense.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3948, As Introduced : a negative impact of (\$1,197,984) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$598,992)
2023	(\$598,992)
2024	(\$598,992)
2025	(\$598,992)
2026	(\$598,992)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund 1</b>	<b>Probable Savings/(Cost) from State Hemp Program 5178</b>	<b>Probable Revenue Gain/(Loss) from State Hemp Program 5178</b>	<b>Probable Revenue Gain/(Loss) from New General Revenue Dedicated Consumable Hemp Product account</b>
2022	(\$598,992)	(\$95,666)	\$95,666	\$598,992
2023	(\$598,992)	(\$89,856)	\$89,856	\$598,992
2024	(\$598,992)	(\$89,856)	\$89,856	\$598,992
2025	(\$598,992)	(\$89,856)	\$89,856	\$598,992
2026	(\$598,992)	(\$89,856)	\$89,856	\$598,992

<i>Fiscal Year</i>	<b>Change in Number of State Employees from FY 2021</b>
2022	1.0
2023	1.0
2024	1.0
2025	1.0
2026	1.0

## **Fiscal Analysis**

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping otherwise exempt from the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp be required to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person. The bill would also establish a criminal offense for cultivating hemp without a license. The bill would set penalties for cultivating hemp without a license to include a \$500 administrative penalty on the first and second violations with the third and subsequent offenses being Class B misdemeanors.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) and consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

This bill would take effect September 1, 2021.

## **Methodology**

The hemp program currently exists at the Texas Department of Agriculture (TDA) as a cost recovery program funded through General Revenue–Dedicated State Hemp Program Fund No. 5178. Based on information provided by TDA, this analysis assumes the agency would need 1.0 additional FTEs to implement the provisions of the bill. This includes 0.5 FTE for an Assistant Attorney General II (\$31,808 in annual salary plus \$10,344 in benefits) and 0.5 FTE for a Program Specialist III (\$27,801 in annual salary plus \$9,041 in benefits) with annual operating expenses of \$16,672 in fiscal year 2022 and \$10,862 each subsequent fiscal year. This analysis also assumes that TDA will adjust program fees to cover the total cost of the bill's obligations.

Consumable hemp fees are collected by the Department of State Health Services and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

Based on information provided by the Office of Court Administration, it is assumed that the establishment of a criminal offense for cultivating hemp without a license would not have a significant fiscal impact to the state court system.

Based on information provided by the Comptroller of Public Accounts, this analysis assumes the fiscal impact related to penalties and associated court cost revenues cannot be determined because the number of penalties that would be assessed is unknown.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551  
Department of Agriculture

**LBB Staff:** JMc, AJL, MW, GDZ



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**87TH LEGISLATIVE REGULAR SESSION**

**May 27, 2021**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.), **As Passed 2nd House**

The provisions of the bill addressed by this analysis would amend various codes as they relate to the production and regulation of hemp and consumable hemp products. Under the provisions of the bill, cultivating hemp without a license would be punishable as a Class B misdemeanor under certain circumstances. The bill would also make engaging in certain activities after making certain claims about a consumable hemp product punishable as a Class C misdemeanor.

A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and in addition to confinement, an optional fine not to exceed \$2,000. A Class C misdemeanor is punishable by a fine not to exceed \$500 (up to 180 days of deferred disposition and no confinement). This analysis assumes the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

**Source**

**Agencies:**

**LBB Staff:** JMc, LBO, LM, AJL, MP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**  
**87TH LEGISLATIVE REGULAR SESSION**

**May 21, 2021**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressed by this analysis would amend various codes as they relate to the production and regulation of hemp and consumable hemp products. Under the provisions of the bill, cultivating hemp without a license would be punishable as a Class B misdemeanor under certain circumstances.

A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and in addition to confinement, an optional fine not to exceed \$2,000. This analysis assumes the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

**Source**

**Agencies:**

**LBB Staff:** JMc, AJL, LM, MP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**87TH LEGISLATIVE REGULAR SESSION**

**May 17, 2021**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; authorizing a fee.), **As Engrossed**

The provisions of the bill addressed by this analysis would amend various codes as they relate to the production and regulation of hemp and consumable hemp products.

This analysis assumes implementing the provisions of the bill would not result in a significant impact on the demand for state correctional resources. The bill does not expressly create a felony offense, increase the punishment for an existing misdemeanor to that of a felony, increase the punishment for an existing felony offense or category of felony level offenses, or change the eligibility of a person for felony community supervision, parole, or mandatory supervision.

**Source**

**Agencies:**

**LBB Staff:** JMc, AJL, LM, MP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**87TH LEGISLATIVE REGULAR SESSION**

**April 17, 2021**

**TO:** Honorable DeWayne Burns, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; authorizing a fee.), **Committee Report 1st House, Substituted**

The provisions of the bill addressed by this analysis would amend various codes as they relate to the production and regulation of hemp and consumable hemp products. Under the provisions of the bill, licensing, production, and regulation requirements for hemp and consumable hemp products would be amended.

This analysis assumes implementing the provisions of the bill would not result in a significant impact on the demand for state correctional resources. The bill does not expressly create a felony offense, increase the punishment for an existing misdemeanor to that of a felony, increase the punishment for an existing felony offense or category of felony level offenses, or change the eligibility of a person for felony community supervision, parole, or mandatory supervision.

**Source**

**Agencies:**

**LBB Staff:** JMc, AJL, LM, MP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**87TH LEGISLATIVE REGULAR SESSION**

**April 8, 2021**

**TO:** Honorable DeWayne Burns, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3948** by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; imposing and authorizing fees; creating a criminal offense.), **As Introduced**

The provisions of the bill addressed by this analysis would amend various codes as they relate to the production and regulation of hemp and consumable hemp products. Under the provisions of the bill, failure to follow licensing requirements related to the production and regulation of hemp would be punishable as a Class B misdemeanor.

A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and in addition to confinement, an optional fine not to exceed \$2,000. This analysis assumes implementing the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

**Source**

**Agencies:**

**LBB Staff:** JMc, AJL, LM, MP