

BILL ANALYSIS

C.S.H.B. 2818
By: Cain
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The U.S. Department of Agriculture has modified federal law with regard to hemp production, making changes in state law necessary. C.S.H.B. 2818 seeks to reflect these federal updates in state law and make other necessary changes by revising provisions governing the cultivation of hemp in Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Agriculture in SECTIONS 5, 6, 8, and 11 of this bill.

ANALYSIS

Updating Statutes and Regulations Regarding the Production of Hemp

C.S.H.B. 2818 amends the Agriculture Code to require the Department of Agriculture (TDA) to do the following not later than the specified day after the date a change to an applicable state statute, a federal statute, or a federal regulation takes effect:

- not later than the 90th day, propose any hemp cultivation rules necessary to incorporate and implement the change; and
- not later than the 120th day, submit to the secretary of the U.S. Department of Agriculture any amendments to the state plan for monitoring and regulating the production of hemp necessary to incorporate and implement the change.

The bill prohibits a rule adopted by TDA to incorporate or implement a federal statute or federal regulation from being construed to conflict with state statutory provisions relating to hemp cultivation or the state hemp production plan.

Hemp as an Agricultural Commodity

C.S.H.B. 2818 includes hemp that is produced in Texas, either in its natural state or as processed by the producer, as an agricultural commodity for purposes of statutory provisions relating to commodity producers boards.

Issuance of Hemp Research Permit

C.S.H.B. 2818 requires TDA to issue a hemp research permit to a public, private, or independent institution of higher education or nonprofit research entity in Texas that requests the permit. The

bill requires the entity to submit to TDA a fee in an amount equal to the application fee for a hemp grower's license and defines "nonprofit research entity" as a research entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more specified purposes of a nonprofit entity.

C.S.H.B. 2818 does the following with regard to a hemp research permit holder:

- exempts the permit holder from being required to obtain from TDA a lot crop permit or other permit for each location where hemp is grown;
- exempts the permit holder from being required to obtain preharvest testing before harvesting plants, except as otherwise provided by the bill;
- authorizes the permit holder to cultivate and handle varieties of hemp seed and plants that are not certified or approved;
- authorizes the permit holder to collect and research feral hemp;
- exempts the permit holder from being subject to specified provisions relating to negligent violations by a license holder;
- authorizes the permit holder to only sell or transfer hemp to another person if the variety of the hemp is certified or approved and the sale or transfer occurs at least six months after the hemp is harvested; and
- authorizes the permit holder to conduct research involving hemp in conjunction with a hemp grower's license holder at a facility designated by the license holder for research use only.

These provisions of the bill apply to that license holder and facility.

Shipping Certificate and Cargo Manifest

C.S.H.B. 2818 authorizes TDA by rule to adopt a shipping certificate or cargo manifest, different than that required by current state law, or other requirement for the shipment or transportation of a sample of hemp to the following:

- a testing laboratory; or
- another destination if the sample contains not more than an amount of hemp as determined by TDA by rule and is accompanied by the results of a laboratory test indicating the delta-9 tetrahydrocannabinol concentration of the lot or plot from which the sample was taken.

Concentrations of Certain Cannabinoids

C.S.H.B. 2818 requires a laboratory that performs testing required by hemp cultivation provisions to report the delta-9 tetrahydrocannabinol concentration, the total tetrahydrocannabinol concentration, and the concentration of any other federally regulated cannabinoid of the sample on a dry weight basis and the measurement of uncertainty in the test result. The measurement of uncertainty must comply with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and any provisions of federal law governing the measurement of uncertainty.

License Suspension or Revocation

C.S.H.B. 2818 authorizes a person whose hemp grower's license is suspended or revoked after planting hemp plants to obtain preharvest or postharvest testing and to harvest the plants in the same manner as a license holder. The bill requires TDA by rule to establish fair and objective standards for determining whether the person may use or sell the harvested plants, based on the circumstances of the suspension or revocation. The bill authorizes TDA, based on those rules, to prohibit a person from selling or using the harvested plants while the person's license is suspended or revoked. The bill authorizes a person whose license is reinstated to sell or use the harvested plants.

Immature Plants

C.S.H.B. 2818 makes provisions relating to the certification and approval of seed varieties confirmed to produce hemp applicable to the certification and approval of plant varieties confirmed to produce hemp.

C.S.H.B. 2818 authorizes a person to transport into Texas, and authorizes a hemp grower's license holder to obtain and cultivate, immature plants propagated outside Texas if the plants are accompanied by shipping documentation that does the following:

- complies with any requirements of the state of origin;
- indicates the grower of the immature plants is licensed by the state of origin;
- lists the recipient license holder in Texas and the recipient's license number; and
- shows that the variety of the immature plants is certified or approved.

C.S.H.B. 2818 authorizes a license holder to obtain and cultivate immature plants propagated in Texas by another license holder if the plants are accompanied by the required shipping certificate or cargo manifest that shows that the variety of the immature plants is certified or approved. With respect to immature plants propagated in Texas, the bill does the following:

- exempts the immature plants from being subject to preharvest testing; and
- requires the license holder to maintain records, as required by TDA, that match the lot crop permit number issued by TDA for the location where the immature plants were propagated with the lot crop number for the location where the plants were cultivated.

C.S.H.B. 2818 authorizes a license holder to transplant immature plants propagated by the license holder from one plot to another plot controlled by the license holder. The bill provides the following:

- TDA must by rule waive the requirement that a license holder obtain a lot crop permit for a greenhouse or other location used to propagate immature plants if the plants are transplanted to another plot controlled by the license holder and are not sold or transferred to another person;
- TDA may not require a license holder to pay any fee for such a greenhouse or other location;
- TDA by rule may waive the requirement that a person obtain a shipping certificate or cargo manifest to transplant immature plants from one plot to another plot operated by the license holder; and
- TDA must by rule define "immature plant."

Violations: Administrative Penalty and Criminal Offense

C.S.H.B. 2818 includes specified federal regulations among specified federal law for purposes of the manner in which TDA is required to enforce a hemp grower's license holder's negligent violation of state hemp cultivation provisions or a rule adopted under those provisions. The bill establishes that a license holder is not subject to more than one negligent violation related to cultivation per calendar year. These provisions of the bill apply only to conduct that occurs on or after the bill's effective date.

C.S.H.B. 2818 authorizes TDA to do the following on determining that a person violated the hemp grower's licensing requirement:

- issue a written warning to the person;
- impose an administrative penalty in the amount of \$500; and
- require the person to obtain a license.

The bill creates a Class C misdemeanor offense for a person who violates the hemp grower's licensing requirement and has received an administrative penalty for a previous violation of such. The bill enhances the penalty to the following:

- a Class B misdemeanor for a single subsequent conviction of the offense; and

- a Class A misdemeanor for further subsequent convictions of the offense.

These provisions of the bill apply only to conduct that occurs on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of any conduct that occurred before that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2818 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced required TDA to issue a hemp grower's license to a public, private, or independent institution of higher education in Texas that requests the license and exempted a public institution of higher education conducting research involving hemp from being required to pay a fee collected by TDA under hemp cultivation provisions, the substitute does the following:

- requires TDA to issue a hemp research permit to a public, private, or independent institution of higher education or nonprofit research entity in Texas that requests the permit;
- requires the entity to submit to TDA a fee in an amount equal to the application fee for a hemp grower's license; and
- defines "nonprofit research entity."

Whereas the introduced prohibited a public, private, or independent institution of higher education from selling or transferring hemp to another person unless the institution complies with applicable preharvest testing, documentation, and shipping requirements, the substitute authorizes a hemp research permit holder to only sell or transfer hemp to another person if the variety of the hemp is certified or approved and the sale or transfer occurs at least six months after the hemp is harvested.

The substitute includes a provision absent in the introduced that prohibits a rule adopted by TDA to incorporate or implement a federal statute or federal regulation from being construed to conflict with state statutory provisions relating to hemp cultivation or the state hemp production plan.

With regard to the authorization for TDA by rule to adopt a shipping certificate or cargo manifest, different than that required by current state law, or other requirement for the shipment or transportation of a sample of hemp to a destination other than a testing laboratory if, among another requirement, the sample contains a certain amount of hemp, the introduced specified such amount as 15 grams of hemp, whereas the substitute specifies an amount of hemp as determined by TDA by rule.

The substitute does not include provisions present in the introduced that did the following:

- established that, for purposes of hemp cultivation provisions and with regard to laboratory testing, the delta-9 tetrahydrocannabinol concentration of a sample is the lowest possible value given a certain measurement of uncertainty; and
- required the delta-9 tetrahydrocannabinol concentration for a preharvest or postharvest test to be determined as provided by specified provisions of the bill.

With regard to the harvesting of hemp plants planted by a person whose hemp grower's license is suspended or revoked after planting the plants, the introduced required TDA, based on applicable TDA rules, to prohibit a person from selling or using the harvested plants while the person's license is suspended or revoked, whereas the substitute authorizes TDA, based on such

rules, to do so. The substitute does not include a provision present in the introduced that required TDA, based on such rules, if the delta-9 tetrahydrocannabinol concentration of the plants is not more than 0.3 percent on a dry weight basis, to allow a person to sell or use the harvested plants in the same manner as a license holder while the person's license is suspended or revoked.

Whereas the introduced provided a definition for "immature plant," the substitute requires TDA by rule to define "immature plant."

The substitute does not include provisions present in the introduced that authorized TDA to do the following on determining that a person violated the hemp grower's licensing requirement:

- if the person had not previously received an applicable penalty, allow the person to continue to cultivate or handle the hemp plants that are the subject of the violation, harvest those plants, and, after obtaining a license, sell or use those plants;
- if the person had received a penalty for a previous violation but had not previously received a subsequent penalty as provided in this bulleted provision, issue a second written warning to the person; impose an administrative penalty in the amount of \$500; require the person to obtain a license; seize and dispose of the hemp plants that are the subject of the violation; and require the person to reimburse TDA for reasonable costs of the disposal; and
- if the person had received a subsequent penalty as previously provided or as provided in this bulleted provision for a previous violation, refer the matter to the appropriate prosecuting attorney for criminal prosecution; seize and dispose of the hemp plants that are the subject of the violation; and require the person to reimburse TDA for reasonable costs of the disposal.

With regard to the offense for a person who violates the hemp grower's licensing requirement and has received an administrative penalty for a previous violation of such, the introduced provided for a Class B misdemeanor penalty, whereas the substitute does the following:

- provides for a Class C misdemeanor penalty; and
- enhances the penalty to the following:
 - a Class B misdemeanor for a single subsequent conviction of the offense; and
 - a Class A misdemeanor for further subsequent convictions of the offense.