

BILL ANALYSIS

C.S.H.B. 2857
By: Dutton
Youth Health & Safety, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2019, the Texas Legislature passed laws that legalized hemp and mandated a regulatory framework for the manufacture and sale of consumable hemp products, defined as food, drugs, devices, or cosmetics containing hemp or a hemp-derived cannabinoid such as CBD. Texas has decriminalized CBD that is extracted from hemp, which is defined by law as the plant *Cannabis sativa* L. and any part of that plant with a THC concentration of no more than 0.3 percent. Despite these legal advances, distinguishing between legal and illegal CBD is complicated and interpretations and enforcement among local public schools varies. Under state law, a minor under the age of 21 may not possess, purchase, consume, or accept an e-cigarette and school district board of trustees must prohibit smoking or using e-cigarettes at school or school-related campus activities. As such, a student's possession or use of CBD oil in any form intended to be used through an e-cigarette or other vaping device is a punishable offense that requires the student to be expelled, suspended, sent to a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program. However, some schools have expressed interest in having the discretion to take into account mitigating factors to determine the best course of action before deciding on any disciplinary measure. C.S.H.B. 2857 seeks to provide discretion to public schools regarding the removal of a student who possesses an e-cigarette containing THC or CBD from class and their placement in a DAEP.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2857 amends the Education Code to replace the requirement for the removal from class and placement in a disciplinary alternative education program (DAEP) of a student who engages in conduct that contains the elements of possession of a controlled substance in Penalty Group 2 or 2-A of the Texas Controlled Substances Act with an authorization for such removal from class and DAEP placement if the controlled substance contains less than one gram of tetrahydrocannabinols or cannabinol derivatives that is contained in:

- an electronic or other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver an applicable prohibited substance to the individual inhaling from the device; or
- a consumable liquid solution or other material aerosolized or vaporized during the use of such an electronic or other device.

The bill applies beginning with the 2023-2024 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2857 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.

The substitute omits a provision from the introduced replacing the statutory requirement for the removal from class and DAEP placement of a student who engages in conduct that contains the elements of the possession of marihuana in an amount that is two ounces or less with an authorization for such removal from class and DAEP placement.