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Despite setbacks 2020 was an exciting year for Texas farmers, as the state adopted hemp cultivation for the first time in over four decades. In its first year more than 1,400 licenses were issued and over 5,000 acres and 15 million square feet of greenhouse space was permitted.

We've witnessed an infusion of investment into the state's supply chain, including the announcement that the world's largest hemp fiber processing facility is under construction in Wichita Falls!

Texas Hemp Growers was formed to be a voice of integrity for the state's emerging hemp industry. In our first year, we've rapidly grown to represent over 250 industry professionals, including small family farms to large agriculture producers; processors, manufacturers, retailers, and enthusiasts. Additionally, we've traveled to all corners of the state teaching over 1,600 farmers the intricacies of hemp cultivation.

Besides education, one of our objectives is working with regulators so that rules are fair to the industry.

We found that most laws adopted by the 86th Legislature work fine for the industry; however, there are some provisions that harm the supply chain and put Texas at a disadvantage to other states.

Smokable Hemp Ban

Informally known as the "smokable hemp ban," statutory language found in the state's Agriculture Code and Health and Safety Code prohibits "processing" and "manufacturing" of hemp products for smoking.^{[1][2]}

In adopting its rules governing consumable hemp products, the Department of State Health Services (DSHS) expanded beyond the statutory language by prohibiting the "distribution" and "retail sale" of smokable hemp products.^[3]

Farmers, manufacturers, and retailers would have been devastated by this language, had it not been for a lawsuit that resulted in a temporary injunction.

Texas Hemp Growers raised \$15,000 to help fund an economic impact study that formed the foundation of the arguments used in that lawsuit. This study observed the impacts on manufacturers and the state's tax revenue.

The economic impact study concluded that between 2020 to 2024, the smokable hemp ban could cause Texas to lose as much as \$46.8 million in retail sales and \$2.9 million in tax revenue.^[4]

The ban would have forced existing manufacturers to shutter their Texas operations and send jobs out-of-state.

On Sep. 18. 2020, Judge Lora Livingston of the 345th District Court in Travis County issued a temporary injunction against the entire ban. She concluded that the smokable hemp ban would cause "immediate irreparable injury" and economic harm to a large

¹ Title 5. Production, Processing, And Sale Of Horticultural Products, Texas Agriculture Code § Chapter 122. Cultivation Of Hemp-Sec. 122.301 Subsection B (2019).

² Title 6. Food, Drugs, Alcohol, And Hazardous Substances, Health and Safety Code § Chapter 443. Manufacture, Distribution, And Sale Of Consumable Hemp Products-Sec. 443.204 Subsection 4 (2019).

³ Title 25 Health Services, Texas Administrative Code § Chapter 300 Manufacture, Distribution, and Retail Sale of Consumable Hemp Products-300.104 (2020).

⁴ Goldstein, R. (2020). Report on the economic impacts of HB 1325 and associated regulations (Tech.). Retrieved February 12, 2021, from <https://ritterspencer.com/wp-content/uploads/2020/08/Plaintiffs-Original-Ptn-and-App-for-TRO-TI-and-PI.pdf#page=47>

Dallas-based manufacturer.^[5] This temporary injunction is still active. The next hearing is scheduled for March 22.

The floral tops of the hemp plant -- which can be referred to as flower -- is the most profitable part of the plant for farmers to cultivate, harvest and sell. A farmer may net \$200 - \$400 per pound for this commodity. Hemp flower plays an important role in the profitability of hemp farms.

The current language effectively prohibits Texas' farmers from processing their own crop and selling it in state. But it does not -- and cannot -- stop hemp flower from being shipped directly to Texas consumers from out of state.

If enforced, the current framework would require Texas' farmers to sell their hemp flower in another state. Manufacturers and processors would have to pack up and relocate to other states. Retailers would lose significant revenue at a time of economic contraction. Moreover, consumers would be deprived of the freedom to choose.

Hemp grown legally in Texas should be allowed to be sold and enjoyed in Texas. Period.

The 87th Legislature can put an end to this confusion by adopting the following recommendations:

- Strike Sec. 122.301 Subsection B from Agriculture Code Title 5. Production, Processing, And Sale Of Horticultural Products Subtitle F. Hemp Chapter 122. Cultivation Of Hemp Subchapter A. General Provisions ^[1]
- Strike Sec. 443.204 Subsection 4 from Health And Safety Code Title 6. Food, Drugs, Alcohol, And Hazardous Substances Subtitle A. Food And Drug Health Regulations Chapter 443. Manufacture, Distribution, And Sale Of Consumable Hemp Products Subchapter A. General Provisions ^[2]

Fees

Texas Hemp Growers is pleased with the competitive fees for the state's hemp program. However, one fee doesn't add up and actually hurts our member farmers who can't absorb its high cost.

⁵ *Crown Distributing Llc; America Juice Co., Llc; Custom Botanical Dispensary, Llc; 1937 Apothecary, Llc v. Texas Department Of State Health Services*, <https://hemptx.org/wp-content/uploads/2021/02/temporary-injunction.pdf> (345th District Court September 18, 2020).

Sec. 122.052 subsection 4 authorizes a fee up to \$500 to modify a site boundary.^[6]

By definition, a facility's boundaries should include all areas of hemp production happening on a farm.^[7]

What we learned in 2020 is that many farmers applied for their license but forgot to include the area where they will dry/process/store their plants. This was a common mistake we fielded from our members.

These are honest mistakes. What doesn't add up is charging a fee that is five times the original license fee to adjust a boundary line. Such a high fee also has the potential to encourage producers to simply skirt the rules to avoid paying \$500.

Our recommendation is to **strike section 4 or reduce the fee to \$100**.^[6] We've seen no evidence that changing a boundary line puts a \$500 financial burden on regulators.

Transportation Manifests

The law concerning hemp transportation is colliding with the way manifests are being handled by regulators.

Texas Department of Agriculture is charging a \$75 fee for every transportation manifest.^[8] This is contrary to the law, which prohibits the department from setting or collecting any fees not outlined in Sec. 122.052.^[9]

Texas Hemp Growers strongly opposes any fees for the transportation of hemp.

We are also concerned with the broad language in Sec. 122.356, which technically requires every person in Texas to have a transportation manifest if they are in possession of hemp on the road.^[10] As written, this would include consumers who

⁶ Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.052 Subsection A-4 (2019).

⁷ Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.103 Subsection A-1 (2019).

⁸ Title 4 Agriculture, Texas Administrative Code § Chapter 24 Hemp Program-Sec. 24.7(a) (2020).

⁹ Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.052 Subsection C (2019).

¹⁰ Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.356 Subsection A (2019).

purchase a small amount of flower from a retailer.

Sec. 122.356 starts: "**A person** may not transport hemp plant material in this state..."^[10]

And Section 2 Subsection A says the cargo must be accompanied by "a shipping certificate or cargo manifest issued under Section 122.055 **if the hemp originated in this state.**"^[11]

Emphasis is added to point out the broad and restrictive nature of the current law.

Texas Hemp Growers recommends changing "a person" to "a license holder" in Sec. 122.356, so that it eliminates any confusion that the average consumer purchasing a small amount of flower from their local retailer also needs a manifest.

However, a more fundamental question the state should consider is at what point in the supply chain should the state stop requiring legal hemp be accompanied with a transportation manifest?

Legal hemp should be allowed to move as freely as corn, soybeans, and cotton.

Texas Hemp Growers believes a manifest should **not** be required to transport hemp that has already passed the official state test with the Texas Department of Agriculture.

Instead, a shipment of certified hemp should just require the letter of certification from TDA; a copy of the lab results used for that certification; and a copy of the license from the person or company transporting the hemp.

The additional requirement that a special manifest be purchased and accompany each shipment makes it harder for farmers to make a profit.

Consider this common scenario:

A farmer wanting to sell their crop to 10 different retailers will almost certainly have to send samples first. Retailers will not commit to buying any hemp, unless they've first received a sample for inspection.

In this scenario, and with the way manifests are currently managed by TDA, the farmer would be required to pay for 20 manifests to comply with the rules. That's 10 manifests

¹¹ Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.356 Subsection A-2(a) (2019).

to send samples and 10 manifests to send the purchased goods.

When presented with this same scenario, TDA's legal counsel confirmed that 20 manifests would be required.

At \$75 per manifest, this scenario would cost a farmer \$1,500 in manifest fees just to comply with the current state law.

A manifest should only be required when hemp is transported **before** it has been certified by the Texas Department of Agriculture as a legal hemp crop.

For example, farmers must send samples to third-party laboratories to determine if their crop is hemp. Logically, this would be a time when a manifest should be required, as there is no official certification from TDA or chemical analysis to prove the sample is hemp.

The state does not require hemp moving into or through Texas from another state to be accompanied with a manifest.^[12] The language dictates that hemp from out of state only need be accompanied by the name and address of the place where it was cultivated, along with a statement that it was produced in compliance with federal rules.

Why do we burden Texas farmers more than those bringing product in from out of state? The answer is we shouldn't burden either.

The manifest requirement does not appear to affect retailers, as they are governed by the Department of State Health Services, which does not appear to be issuing or dealing in transportation manifests. A retailer could order flower from out of state, receive it and transport it to their shops without a manifest.

The manifest requirement for legal hemp crops exclusively harms Texas' farmers and processors, while benefiting neighboring states that ship their hemp into Texas without the fees or red tape.

To achieve balance, Texas Hemp Growers recommends these amendments, or a similar approach:

First, amend Sec. 122.055 by adding: *Subsection E--This section shall not apply to hemp*

¹² Title 5. Production, Processing, And Sale Of Horticultural Products, Health And Safety Code § Chapter 122. Cultivation Of Hemp-Sec. 122.356 Subsection A-2(b) (2019).

plant material transported under Sec. 122.056

Add Sec. 122.056: *Transportation of state-tested hemp*

(a) Hemp plant material produced in the state may be freely transported in and out of the state if it has passed the preharvest test described in Sec. 122.153 and if the shipment is accompanied by a copy of:

(1) the Department-issued notification described in 122.151 section F;

(2) the test results described in 122.151 section E;

(3) the Department-issued license described in Subchapter C Sec. 122.103 Subsection B.

(b) The department may coordinate with the Department of Public Safety to determine whether information in this section may be made available to law enforcement personnel through the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the Department of Public Safety.

If the state will not recognize tested hemp from un-tested hemp, then we alternatively suggest the language should be structured so that one manifest may cover multiple shipments.

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In closing, Texas has a narrow window to establish itself as the largest producer of hemp in America – maybe even the world. However, this will only happen if the industry is supported by the state with fair and equitable laws.

By adopting Texas Hemp Growers' proposed amendments, the state will elevate its farmers and invite more participation from processors, manufacturers, retailers and consumers.

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