

# New Laws in Texas for Hemp

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**W**hile Texas is not yet known as a state friendly to cannabis, the state is not lagging behind on the hemp bandwagon. Hemp is rising even faster from the shadows of prohibition than cannabis. Products containing hemp extracts high in cannabidiol (CBD), such as oils, topicals, and infused products, gained such mainstream popularity and acceptance that in 2019 hemp became legal at the federal level and removed from the definition of “marihuana” under the Controlled Substances Act (CSA).<sup>1</sup> Under the 2018 Farm Bill,

effective Jan. 1, 2019, if Texas did not pass a hemp law during the 2019 session, the state would have been subject to the United States Department of Agriculture’s (USDA) default rules for growing hemp as an agricultural commodity.

On June 10, 2019, Gov. Greg Abbott signed HB 1325, legalizing hemp in Texas and directing the Texas Department of Agriculture (TDA) to devise rules from planting to harvest and the Department of State Health Services (DSHS) to devise rules from harvest to end consumable hemp product. The rules address licensing qualifications, testing and inspection requirements, and plans for disposal of “hot” crops (cannabis plants with >.3%

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tetrahydrocannabinol (THC)), among other issues. TDA and DSHS are currently promulgating these rules.

Hemp is a type of cannabis plant. In contrast to marijuana, which is tightly regulated from a law-enforcement perspective because of its status on Schedule 1 of the CSA, hemp contains low THC (< 0.3% THC) and currently is subject to much less regulation

—though regulation is coming from multiple federal agencies, including the USDA and the Food and Drug Administration (FDA). The FDA retains regulatory authority over CBD, another compound of the cannabis plant, now considered a drug rather than a dietary supplement because of FDA’s approval of a marijuana-derived CBD formulation to treat epilepsy.

The USDA released its proposed rules for farming under the 2018 Farm Bill on October 31, 2019, with a notice and comment period ending January

tion in the hemp trade), recently requested a status report and a timeline for draft rules. The FDA has already held public hearings and taken public comment on the regulation of hemp CBD.

Under the 2014 Agricultural Improvement Act (the 2014 Farm Bill), hemp was only permitted to be grown in two limited situations: in conjunction with a state’s industrial hemp program, or under a contract with a university’s research pilot program. In neither of these instances were hemp or extracts made from hemp allowed to leave those states’ lines. But they did, even on Amazon, and the word got out about CBD’s ability to relieve inflammation, pain, anxiety, sleeplessness, and other common ailments, without the side effects of synthetic drugs and opiates.



The main states to take advantage of the 2014 Farm Bill were Kentucky, Colorado, Oregon, and Montana. After the 2018 Farm Bill, most states are activating hemp programs—and some have not waited on the USDA.

Our founding fathers grew hemp, and growing hemp was a requirement of some early colonists. Before 1937, industrial hemp was legal and used for clothing, paper, rope, and fuel. But in 1937, Congress passed the Marihuana Tax Act, which made all species of the *Cannabis sativa* L. plant illegal, including hemp. While the purported purpose was to eliminate the use of cannabis as a drug, some theorists posit that the real intent of the Act was to eliminate the competition hemp posed to paper, steel, and textile manufacturers by referring to cannabis as “marihuana” as a scare tactic in relation to its use as a drug. But, the U.S. needed hemp during World War II for the strength of the product, and it was briefly relegalized. Since then, the U.S. has been importing hemp to use as fiber for the seats of BMW and Mercedes vehicles manufactured here. Hemp powders and other goods have been imported for years, found mostly in health stores such as Whole Foods. But now hemp CBD has become mainstream, sold in Kroger, other national retail chains, and even gas stations. (Pro tip: Do not try CBD from a gas station.)

There is a lot of confusion about hemp and the nuanced

new law. For example, state law enforcement often intervenes and is frequently unclear about the legality of the substance they may discover in a vehicle or a store shelf. The DPS raided People’s Pharmacy for it in 2017, and similar such raids continue, though usually at smoke or smoke accessory shops.

The latest issue surrounds hemp leaves that can be smoked, and there have been many seizures from smoke shops on the allegation that the leaves are marijuana. They look and smell the same, and you can find it all over Austin—for now. The Texas hemp bill indicates an intent to prohibit the smoking of hemp, and proposed rules issued by DSHS, which will regulate Texas’ hemp program from post-harvest to end consumable hemp product, would outright ban the smoking of hemp. This is another fascinating issue: Courts in the tobacco states have been using stretches of legal reasoning to ban the smoking of hemp, but a federal court in Indiana recently held it was unconstitutional to ban the smoking of hemp because the 2018 Farm Bill outright legalized hemp as an agricultural commodity. It did not create separate “forms” of hemp, and it is not just to treat someone with this federally legal commodity differently in one state while passing through another. But again, this, and other hemp-related litigation, could be the subject of another article.

Texas’ legalization of hemp has caused law enforcement some

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grief because the state crime labs are not equipped to measure percentages of THC, only whether THC is present or not—and the same goes for drug dogs. The alleged smell of marijuana is no longer automatic probable cause, and until the crime labs update their equipment, many prosecutors are shelving their low-level marijuana possession cases because they will not be able to prove beyond a reasonable doubt that the substance was marijuana rather than hemp. KVUE ran a story on January 3, 2020, demonstrating the sharp drop-off in the filing of marijuana possession charges since the Governor’s signing of Texas HB 1325. The Governor issued a memorandum to prosecutors in summer 2019, reminding them that marijuana is still illegal and to continue to prosecute. This is also somewhat of a regional issue as all major metropolitan cities in Texas have devised “cite and release” policies for small amounts of marijuana possession. But make no mistake, marijuana remains as illegal as it ever was, and the crime labs will have updated equipment soon.

The TDA is charged with promulgating rules for the planting, sampling, testing, harvesting, and disposal of hot hemp. This is

in progress right now, with a comment period ending on February 9, 2020 and the goal of adoption of the rules on February 17, with an effective date of March 8, 2020, to enable farmers to get a 2020 growing season to compete with the other states. A person or entity will have to have a license and pay permit and associated fees to grow hemp in Texas.

From an agricultural, industrial, and medicinal standpoint, the hemp movement—largely beleaguered by the crushing compliance and taxing obligations of cannabis businesses—is on an exponential rise in the United States and internationally. A leading trade publication states that in 2020, CBD will become a multi-billion dollar business. As a leading agricultural state, Texas is poised to become the new leader in hemp production, whether for medicinal or industrial purposes. This is an incredibly exciting time to participate in the change of major laws in the dawn of a new industry. 🍃

#### Footnote

- 1 Cannabis is defined as “marihuana” under the U.S. Controlled Substances Act, although its species name is *Cannabis sativa* L.