

# Consumable Cannabis in Texas

	<u>Marijuana (TCUP)</u>	<u>Hemp</u>
Legality	<p>Federally - illegal as a Sch 1 Controlled Substance</p> <p>Texas - illegal as a Penalty Group 2, 2A Controlled Substance in derivative or concentrate form and under Health &amp; Safety code 481.120 &amp; 481.121 as flower. Medical access is permitted in TX only via Texas Compassionate Use Program (TCUP) which is exempt from criminal statutes</p> <p>Any amount of a 'concentrate' is a felony; flower more than 4oz is a felony</p>	<p>Federally - legal</p> <p>State - legal</p> <p>Must comply with general food/safety laws in addition to hemp-specific regulations, which allow for both civil and criminal liability</p>
Regulatory Agency	<p>Federally: DEA</p> <p>Texas: DPS (including TCUP)</p>	<p>Federally: USDA, FDA, FTC, ...</p> <p>Texas: TDA, DSHS</p>
Application & Licensing Types, Fees, and Numbers	<p><u>Dispensing Organization License</u>: \$488,520 initial + \$318,511/biannual renewal + \$530 per each Director/Manager/Employee Registration</p> <p><u>Application Fee</u>: \$7,356</p> <p>*2023 round drew 132 paid applications for a total of \$970,992; no licenses issued as of yet</p> <p>LIMITED by choice not by law — currently there are 3 licensees</p> <p>Current Number of Registered Physicians: 804 Current Number of Registered Patients (who are largely not active): 90,348</p>	<p><u>Producer License (TDA)</u>: \$100 (up to 5 facilities)</p> <p><u>Facility Registration (TDA)</u>: \$100/facility</p> <p><u>Lot Permit (TDA)</u>: \$100/lot</p> <p><u>Sampler License (TDA)</u>: \$100</p> <p><u>Research License (TDA)</u>: \$100</p> <p><u>Testing Laboratory License (TDA)</u>: \$250</p> <p><u>Retail Registration (DSHS)</u>: \$155/year per location</p> <p><u>Manufacturing/Processing/Distribution (DSHS)</u>: \$258/year per location</p> <p>NO LICENSE CAPS</p> <p>TDA Producer Licenses: 480 DSHS CHP Manuf. Licenses: ~1300 DSHS Hemp Retail Registrations: ~9000</p>
Testing Requirements	<p>Full panel self-testing required with 2-year record-keeping</p> <p><b>*By DPS practice</b>, samples routinely submitted to DPS for third-party testing (because DPS not testing in-house). Currently sent out of state.</p> <p><b>*By DPS practice</b>, new products are sent to DPS for testing and approval prior to sale</p> <p>Subject to inspection</p>	<p>Full panel, third-party, ISO-certified lab testing required with 3-year record-keeping (pre-harvest samples must be tested by TDA-registered lab)</p> <p><i>Note</i>: Finished products not required to be tested in Texas or at Texas-approved labs</p> <p>Subject to inspection</p>

	<p>Must test products for THC, CBD, residual solvents, heavy metals, pesticides, and fungicides, fertilizers, and mold</p>	<p>Must test for THC potency, cannabinoid concentrations, heavy metals, microbial impurities, pesticides, harmful microorganisms, and residual solvents</p> <p><b>THC Metric:</b>  Plants: Total THC (adjusted for THCa)  Products: Delta-9 THC (as a legal omission)</p>
Facility Requirements	<p>General: fire, safety, and building code requirements</p> <p>Specific: requirements for extraction system, staffing, electrical systems, mechanical equipment, hazard safety, sanitation/waste disposal, security &amp; diversion control</p> <p>1000 feet buffer from any private or public school or day care center previously in existence</p>	<p>General: fire, safety, and building code requirements</p> <p>Warehouse licensing requirements, including cGMP in some cases</p> <p>Buffer from K-12 schools not required</p>
Inspections	<p>Routinely &amp; upon complaint/investigation; heavily staffed for frequent inspections</p>	<p>Routinely &amp; upon complaint/investigation; twelve inspectors for thousands of locations across the state. DSHS can only inspect a given location once every five years.</p>
Available Products	<p>All marijuana-derived cannabinoids + terpenes, THC's not to exceed 1% concentration by weight</p> <p>Tinctures, edibles, supplements, topicals</p> <p>Smoking (burning) is banned; other inhalables prohibited <b><i>*by DPS practice</i></b></p>	<p>All hemp-derived cannabinoids + terpenes, delta-9 THC not to exceed 0.3% concentration by dry weight (treated as 1% by law enforcement)</p> <p>Tinctures, edibles, supplements, topicals, flower, pre-rolls, vapes, concentrates, beverages</p> <p>"Smoking" defined as burning or heating (i.e., vapes) but permitted so long as they are not manufactured/processed in Texas</p>
Customer Base & Age Restrictions	<p>No age restrictions, but minors need approval of legal guardian</p> <p>Limited number of qualifying conditions determined by law, not doctor</p> <p>Patients must be Texas residents and receive Texas-licensed doctor diagnosis and dosage recommendation</p>	<p>No age restrictions</p> <p>Consumers have freedom to purchase any product for any reason at any dosage available</p> <p>Sold to consumers from smoke shops, gas stations, CBD stores, health &amp; wellness facilities, grocery stores, and other retail locations and via e-commerce</p>

	Produced, manufactured and sold only by TCUP Licensees to patients through very limited customer pickup locations and limited delivery availability	National & international distribution/supply chain
Packaging & Advertising Standards	<p>Rx-specific labeling requirements, including patient/doctor info, dispensary info, dosage, batch number, potency, required notices</p> <p>Seed-to-Sale Tracking</p> <p>Child-Resistant Packaging</p>	<p>Must include lot number/date and manufacturer name, email &amp; phone number and Certificate of Analysis (or url or QR Code link to the information)</p> <p>No Seed-to-Sale Tracking or other legally required ability to trace back problem products</p> <p>No child-resistant packaging requirement</p>
Taxes	None, but Internal Revenue Code Section 280E applies (cannot deduct costs of goods sold so extremely high federal taxes).	Sales tax of 6.25% to 8.25% depending on local jurisdiction but no 280E issues
Legally forced Business model	<p>Vertically integrated license but <b>*by DPS practice</b> limited to a single location.</p> <p><b>*By DPS practice</b>, licensees may not participate in the hemp market</p>	Multiple Licensing/Registration Options: Producer, Processor, Sampler/Handler, Testing Lab (for producers), Manufacturer, Distributor, Retail

Developed by **Andrea Steel**, The Banks Law Firm, **Katharine Harris, Ph.D.**, Fellow in Drug Policy at Rice University's Baker Institute for Public Policy, and **Susan Hays**, Law Office of Susan Hays, P.C. for a presentation on **State Cannabis Regulation, Enforcement, and Accountability**, at the 2024 **Texas Cannabis Policy Conference**. The information in this chart is not intended to nor does it constitute legal advice. This chart summarizes both the law as written and key agency practices where relevant.