



**TEXAS
CANNABIS
POLICY
CONFERENCE**

Hemp Regulations, Restrictions and Enforcement (CLE)

Friday, January 30 | 3:30–4:30pm



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TEXAS CANNABIS



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Hemp Regulations, Restrictions & Enforcement

Chelsie Spencer, J.D., Andrea Steel, J.D., Susan Hays, J.D.

January 30, 2026



Multiple State Agencies

- Tex. Dept. of Ag. (TDA) – hemp farmers and biomass
- Dept. of State Health Services (DSHS)
- Tex. Alcoholic Beverages Comm. (TABC)
- Department of Public Safety (DPS)
- Local governments & law enforcement

What just happened?

- SB3 – the ban bill from the Regular Session
- Gov. Abbott VETOS! And issues an Executive Order
- Emergency TABC Age Gating Rules (issued 10/10/25)
- Emergency DSHS Age Gating Rules (issued 10/17/25; eff. Until 3/30/25)
- Final TABC Age Gating Rules (Eff. 1/21/26)
- DSHS Proposed Rules (comment period ended 1/25/26)

Litigation Punches

- *Sky Marketing et al. v. DSHS*
 - Rulemaking authority v. *ultra vires*
 - Process and timing
- Future suits re:
 - TCUP licensing?
 - DSHS regulations ?
 - Federal rules or practices?



TCUP v. Hemp Laws

- Chart available online; link at the end
- 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. Updated by Steel, Harris, and Hays after the 2025 Regular Session. And again by Steel, Hays, and **Chelsie Spencer**, Ritter Spencer Cheng PLLC for this 2026 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.

Definitions

TCUP/Marijuana	Hemp
<p>Previously: "Low-THC cannabis" means the plant <i>Cannabis sativa</i> L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than <i>one percent by weight of THCs</i>.</p> <p>After H.B. 46, 89th R.S.: "Low-THC cannabis" means the plant <i>Cannabis sativa</i> L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than <i>10 milligrams of THCs in each dosage unit</i>.</p>	<p>"Hemp" means the plant <i>Cannabis sativa</i> L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis</p>

Statutes and Regulations

Marijuana	Hemp
Health & Safety Code, ch. 487; <i>see also</i> ch. 481 Occupation Code, ch. 169 37 T.A.C. ch. 12 (DPS) 25 T.A.C. §§ 1.61-.65 (DSHS)	Agric. Code chs. 121,122 Health & Safety Code, ch. 443, <i>see also</i> chs. 431 & 481 25 T.A.C. ch. 300 (DSHS)

Legality

Marijuana	Hemp
<p>Federally - illegal as a Sch. I Controlled Substance (Trump Administration announced rescheduling to III but of what exactly? and when?)</p> <p>Medical access is permitted in TX only via TCUP</p> <p>Decriminalized? No – Individuals not registered with TCUP or in possession of non-TCUP compliant products are subject to criminal charges. Outside TCUP, any amount of a concentrate is a felony.</p>	<p>Federally & State – descheduled if produced in accordance with 2018 Farm Bill</p> <p>Must comply with general food/safety laws in addition to hemp-specific regulations, which allow for both civil and criminal liability.</p> <p>“Hemp” and the tetrahydrocannabinols in hemp exempted from “controlled substance” definition. H&S § 481.002(5)</p>

Regulatory Agencies

Marijuana	Hemp
<p>Federally: DEA</p> <p>Texas: For TCUP, DPS/Regulatory Services Division</p> <p>For outside TCUP: DPS and local law enforcement</p>	<p>Federally: U.S. Dept. of Agriculture, Federal Drug Admin., Federal Trade Commission, ...</p> <p>Texas: Texas Dept. of Agriculture, Dept. of State Health Services, Texas Alcoholic Beverage Commission</p>

Application, Licensing Types & Fees (Previously)

Marijuana	Hemp
<p><u>Dispensing Organization License</u>: \$488,520 initial + \$318,511/biannual renewal + \$530 per each Director/Manager/Owner/Employee Registration</p> <p><u>Application Fee</u>: \$7,356</p> <p>*2023 Application Round drew 132 paid applications for a total of \$970,992</p> <p>3 licensed dispensing organizations since 2017</p> <p>Owners with direct control and owners with 10% ownership or more, directors, managers, members, and employees must be disclosed, fingerprinted, cleared, and registered</p>	<p><u>Cultivation (TDA):</u></p> <p><i>Producer License (TDA)</i>: \$100 (up to 5 facilities)</p> <p><i>Facility Registration (TDA)</i>: \$100/facility</p> <p><i>Lot Permit (TDA)</i>: \$100/lot</p> <p><i>Sampler License (TDA)</i>: \$100</p> <p><i>Research License (TDA)</i>: \$100</p> <p><i>Testing Laboratory License (TDA)</i>: \$250</p> <p><u>Manufacturing / Retail (DSHS)</u></p> <p><i>Retail Registration</i>: \$155/year per location</p> <p><i>Manufacturing/Processing/Distribution</i>: \$258/year per location</p> <p>NO LICENSE CAPS</p>

Application, Licensing Types & Fees (After 89th R.S.)

Marijuana	Hemp
<p>No changes in fees</p> <p>2023/25 Phase I = 132 applications 2025 Phase II = 14 applications</p> <p>Mandated a minimum of 12 new licensees; 9 conditional licensees named on 12/1/25 & 3 more required by 4/1/26</p> <p>Registered TCUP Physicians: 917 (flat the last three months) [12/25]</p> <p>Registered Patients (all-time; many are not active): 135,470 [12/25]</p>	<p><u>Proposed Rule:</u></p> <p><u>Retail Registration:</u> \$20,000/year per location</p> <p><u>Manufacturing/Processing/Distribution:</u> \$25,000/year per location</p> <p>TDA Producer Licenses: 480 [8/25] DSHS CHP Manuf. Licenses: ~720 [8/25] DSHS Hemp Retail Registrations: ~8400 [8/25]</p>

Testing Requirements

Marijuana	Hemp
<p>Full panel self-testing required with 2-year record-keeping</p> <p>*By DPS practice, samples routinely submitted to DPS for third-party testing (because DPS not testing in-house). Currently sent out of state.</p> <p>*By DPS practice, new products are sent to DPS for testing and approval prior to sale.</p> <p>Must test products for THC, CBD, residual solvents, heavy metals, pesticides, and fungicides, fertilizers, and mold.</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>Product test results must be made available to state inspectors upon request.</p> <p><i>Note:</i> Finished products are required to be tested, but not in Texas or at Texas-approved labs</p> <p>Must test for delta-9 THC potency, cannabinoid concentrations, heavy metals, microbial impurities, pesticides, harmful microorganisms, and residual solvents</p>

THC Metric & Quality Control

Marijuana	Hemp
<p>Previously: THC Metric capped at 1% THC by weight</p> <p>After 89th R.S.: THC Metric 10 mg THC “per dosage unit”</p>	<p>Previously: No standardized THC metric</p> <p><u>Proposed Rule:</u> adds concept of “Total THC” and “Total delta-9 THC” for CHPs using $0.887 * \text{THCA} + \text{D9}$ formula; <i>requires that COAs reflect no more than 0.3% Total D9-THC</i></p> <p><u>Proposed Rule:</u> significantly more recordkeeping, quality control and batch-tracing requirements</p>

Facility Requirements

Marijuana	Hemp
<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 & diversion control</p> <p>1000' buffer from any private or public school or day care center</p>	<p>General: fire, safety, and building code requirements</p> <p>Warehouse licensing requirements, including Current Good Manufacturing Practices (cGMP) in some cases</p> <p>Buffer from schools <u>not</u> required, BUT best stay at least 300' (alcoholic beverage distance) or 1000' (TCUP) away.</p>

Facility Requirements: Locations

Marijuana	Hemp
<p>After 89th R.S.: “Satellite locations” permitted, but DPS must approve each location (it has up to 180 days to do so). 37 T.A.C. 12.35</p> <p>No TCUP products visible to customer before dispensing.</p> <p>State divided into 11 Health Regions - A licensee cannot open a second satellite location in any one region until it has opened at least one satellite location in each of the 11 regions</p>	<p>No limits on number of stores or locations.</p> <p>Customers can browse and view product before buying.</p>

Inspections

Marijuana	Hemp
<p data-bbox="150 376 639 492">Routinely & upon complaint/investigation</p> <p data-bbox="150 576 832 692">DPS heavily staffed for frequent inspections</p>	<p data-bbox="981 365 1470 470">Routinely & upon complaint/investigation</p> <p data-bbox="981 540 1765 699">DSHS has had limited number of inspectors for thousands of locations across the state</p> <p data-bbox="981 769 1779 988">After GA-56 (2025): TABC will eventually be taking over inspections, including for hemp-only stores that are <i>not</i> TABC-licensed</p>

Available Products (Previously)

Marijuana	Hemp
<p>All marijuana-derived cannabinoids + terpenes, THCs not to exceed 1% concentration by weight</p> <p>Tinctures, edibles, supplements, topicals</p> <p>Smoking is banned; other inhalables prohibited *by DPS practice</p>	<p>All hemp-derived cannabinoids + terpenes, delta-9 THC not to exceed 0.3% concentration by dry weight. Unlimited purchasing and package size.</p> <p>Permitted product forms – tinctures, edibles, supplements, topicals, flower, pre-rolls , concentrates, and beverages.</p> <p>Sale/distribution of smokeables is permitted so long as smokeable products are not manufactured/processed in Texas. “Smoking” defined as burning or heating (i.e., pre-rolls, vapes).</p>

Available Products (Post 89th R.S.)

Marijuana	Hemp
<p>All phytocannabinoids + terpenes, THCs not to exceed 10 mg “per dosing unit” and 1 gram per package, container, or pulmonary inhalation medical device.</p> <p>Limited to a 90-day supply and four refills per Rx. No mg cap. No cap on number of packages a physician may prescribe in a 90-day period.</p> <p>Permitted product forms – tinctures, edibles, supplements, topicals, suppositories, vaporizers, and inhalers (“pulmonary inhalation”)</p>	<p>Hemp/cannabinoid vapes banned statewide as of 9/1/25 (but how’s that enforcement going?)</p> <p>No container or dosage cap.</p>

Age Restrictions & Customer Base (Previously)

Marijuana	Hemp
No age restrictions, but legal guardian approval	No age restrictions
Limited number of qualifying conditions determined by law, not a doctor	Consumers have freedom to purchase any product for any reason at any dosage available.
Patients must be Texas residents and receive Texas-licensed doctor diagnosis and dosage recommendation.	Sold to consumers at smoke shops, gas stations, hemp stores, health & wellness facilities, grocery stores, other retail locations, and via e-commerce
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

Age Restrictions & Customer Base (After 89th R.S. & GA-56)

Marijuana	Hemp
<p>New conditions: chronic pain, traumatic brain injury, Crohn’s disease or other inflammatory bowel diseases, terminal illness, or conditions for which the patient is receiving palliative or hospice care.</p> <p>“Satellite locations” added</p> <p>Physician may petition DSHS for new conditions to be added <u>but</u> the Legislature still has to approve</p>	<p>DSHS & TABC Emergency Rules: 21+ only; must verify/inspect ID (for TABC licensees: if customer appears under 40 years old)</p> <p>Proposed supply chain restriction: Substances with “Total Delta-9 THC” levels above 0.3% may not be transported into Texas for further processing (i.e., no cross-border works in progress transportation)</p>

Packaging and Advertising Standards (Previous)

Marijuana	Hemp
Rx-specific labeling requirements, including patient/doctor info, dispensary info, dosage, batch number, potency, pesticides, and required notices	Must include lot number/date and manufacturer name, email & phone number and Certificate of Analysis (COA) of lab results (or URL or QR Code link to the information)
Seed-to-Sale Tracking	No Seed-to-Sale Tracking or other legally required ability to trace back problem products
Child-Resistant Packaging	No child-resistant packaging requirement
No formal restrictions on advertising but DPS oversight <i>*by DPS practice</i>	No restrictions on where products can be advertised

Packaging and Advertising Standards (Proposed Rules)

Marijuana	Hemp
No changes	<p>Tamper evident, child-resistant, and resealable; 5 specific warnings (keep away from kids; drug-test failure risk; psychoactivity risk; pregnant/nursing consult doctor; no FDA approval)</p> <p>URL (not QR) for COA</p> <p>No imagery/packaging that is attractive to children, mimics trademarks, or includes images of celebrity</p> <p>No misleading packaging (leads consumers to believe <u>does not</u> contain hemp-derived cannabinoids or is intended for medical use)</p> <p>Required packaging/labeling quality controls</p>

Taxes

Marijuana	Hemp
<p data-bbox="142 364 794 470">Sales tax of 6.25% to 8.25% depending on local jurisdiction</p> <p data-bbox="142 539 948 820">Application of Internal Revenue Code Section 280E (cannot deduct costs of goods sold – results in federal taxes of ~70%; could change with rescheduling).</p>	<p data-bbox="975 364 1626 470">Sales tax of 6.25% to 8.25% depending on local jurisdiction</p> <p data-bbox="975 539 1315 579">No 280E issues</p>

Legally forced business model

Marijuana	Hemp
<p data-bbox="142 314 944 500">Vertically integrated license but <i>*by DPS practice</i> <u>limited to a single location with very limited pickup locations and no overnight storage allowed</u></p> <p data-bbox="142 554 913 691"><i>*By DPS practice</i>, licensees and certain participating physicians may <u>not</u> participate in the hemp market</p> <p data-bbox="142 745 894 1028">After 89th R.S.: Licensees may open satellite locations across the state in a geographically balanced manner for dispensing/storage; existing licensees' temporary dispensing site (TDS) locations approved for conversion to satellites</p>	<p data-bbox="975 314 1760 500">Multiple Licensing/Registration Options: Producer, Processor, Research, Sampler/Handler, Testing Lab (for producers), Manufacturer, Distributor, Retail</p> <p data-bbox="975 554 1590 642">Licensees may participate in other businesses</p>

Patient/Customer Legal Protections

Marijuana	Hemp
<p>Parental protections: providing THC to child pursuant to TCUP cannot be used as grounds to terminate parental rights, or to remove a child from the parent's custody. Dept. of Family and Protective Services cannot take a child from a TCUP-registered parent who tests positive for THC unless the agency can prove the cannabis use significantly impaired the child's development. Tex. Fam. Code §161.001(c) and §262.116(a).</p> <p>Probationers: no state policy. Registered TCUP patients may — and do — face additional sanctions if THC is detected on a drug screen</p>	<p>No parental, employment, or probationer protections.</p> <p>Use of products containing no or trace amounts of THC may still result in a drug screen that is positive for THC. No affirmative defense for consumers purchasing store-bought products they believe to be hemp.</p> <p>Inconsistent statewide law enforcement training on hemp creates a substantial risk of uneven and incorrect enforcement</p>



Enforcement and Raids

- DEA, DPS, and local law enforcement
- Warehouses/distributors, retail shops & personal homes
- Criminal defense lawyer costs
- Lots of headlines and photo ops
- But no convictions yet. Quiet dismissals . . .

Collateral consequences

- Arrest record even if charges dropped
- Assets frozen
- Loss of business cash flow (temporary or permanent)
- Travel restrictions/ limitations (airlines, cruise ships)
- Job opportunity losses





Regulators are **NOT** your enemy

- Build Relationships
- Ask questions
- What do regulators want to see? How can you make their lives easier? What makes them happy?
- Questions?

What happens next?

- DSHS reviews comments and publishes final rules (after consulting with the Governor's office)
- Interim charges/hearings in the summer & fall
- Election results: what effect on cannabis policy?
- Bills drafted for next Session
- Regular Session starts January 2027
- Meanwhile: what are the feds going to do?



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