

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

April 6, 2025

TO: Honorable Ken King, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB28 by King (Relating to the regulation of consumable hemp products and providing for the transfer of regulatory functions; requiring a registration; imposing fees; creating criminal offenses; providing an administrative penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB28, As Introduced: a negative impact of (\$22,463,000) through the biennium ending August 31, 2027.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2026	(\$10,421,500)
2027	(\$12,041,500)
2028	(\$12,691,500)
2029	(\$13,361,500)
2030	(\$14,031,500)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from General Revenue Fund 1	Probable Revenue (Loss) from Cities	Probable Revenue (Loss) from Transit Authorities	Probable Revenue (Loss) from Counties
2026	(\$9,890,000)	(\$2,210,000)	(\$730,000)	(\$550,000)
2027	(\$11,510,000)	(\$2,510,000)	(\$830,000)	(\$620,000)
2028	(\$12,160,000)	(\$2,630,000)	(\$870,000)	(\$650,000)
2029	(\$12,830,000)	(\$2,750,000)	(\$910,000)	(\$680,000)
2030	(\$13,500,000)	(\$2,870,000)	(\$950,000)	(\$710,000)

<i>Fiscal Year</i>	Probable (Cost) from General Revenue Fund 1
2026	(\$531,500)
2027	(\$531,500)
2028	(\$531,500)
2029	(\$531,500)
2030	(\$531,500)

Fiscal Analysis

The bill would amend the definition of consumable hemp products to mean a device or cosmetic that contains hemp or hemp-derived cannabinoids that only contain cannabidiol (CBD), cannabigerol (CBG), or delta-9 tetrahydrocannabinol (THC).

The bill would exempt low-THC cannabis from the Compassionate Use Program regulated by the Department of Public Safety (DPS).

The bill would set the initial consumable hemp product manufacturing license fee to \$5,000 per location and the renewal fee to \$2,500 per location limiting renewals to manufacturers that have not violated program statutes or rules.

The bill would prohibit the manufacturing of a consumable hemp product that contains synthesized cannabinoids and would require the use of good manufacturing practices as defined by the Department of State Health Services (DSHS) through rules.

The bill would require testing of the identity of cannabinoids in the plant, microbial contamination, and would require testing of all consumable hemp products sold at retail or introduced into commerce. The bill would require testing to be conducted by a lab located in Texas.

The bill would require a license holder to make available testing results to a seller of a consumable hemp product processed or manufactured by the license holder. If the results are not able to be made available, the seller may have testing performed on the product and make the results available to the consumer and DSHS.

The bill would prohibit the sale of consumable hemp products containing a cannabinoid without DSHS registration of each location owned, operated, and controlled by the person.

The bill would set consumable hemp product retail annual registration fees at \$2,000 for each location.

The bill would require retailers to provide DSHS the type and concentration of cannabinoids in consumable hemp products sold and requires DSHS to provide that information to DPS.

The bill would require a retailer to provide written consent for DPS, DSHS, and any other state or local law enforcement to enter on premises where consumable hemp products are sold for inspections and compliance.

The bill would prohibit deceptive trade practices for the selling, offering for sale, or distributing of a consumable hemp product that a person claims is processed and manufactured in compliance under the bill.

The bill would prohibit consumable hemp product packaging or advertising for medical use and would limit the serving size of Delta-9 THC to 10 milligrams.

The bill would require consumable hemp product labels to include the amount of cannabidiol, cannabigerol, or Delta-9 THC per serving or unit and certification of the serving size of Delta-9 THC to 10 milligrams.

The bill would require the product to be packaged or in a container that is temper-resistant, child-resistant, and individually packaged by serving.

The bill would require a warning label regarding positive drug tests.

The bill would prohibit marketing and packaging in a manner attractive to minors, or that it is intended for medical use.

The bill would require retailers to ensure consumable hemp products processed or manufactured out-of-state comply with that state's or jurisdiction's US Department of Agriculture's approved plan, that does not contain

more than 0.3 percent Delta-9 THC, and does not contain more than 10 milligrams of Delta-9 THC per serving.

The bill would prohibit a consumable hemp product manufacturer or retail registrant from selling, giving, or causing to be sold a consumable hemp product that contains more than 10 milligrams Delta-9 THC per container, and prohibits retail registrants from selling a consumable hemp product with more than 10 milligrams Delta-9 THC per transaction.

The bill would create the following criminal offenses:

- selling or offering for sale a consumable hemp product that contains or is marketed as containing hemp-derived cannabinoids in packaging that would indicate that the product does not contain a hemp-derived cannabinoid, or that the product is intended for medical use, would be a Class A misdemeanor;
- manufacturing, delivering, or possessing with intent to deliver, consumable hemp products that contain a Delta-9 THC concentration of more than 0.3 percent and contains more than 10 milligrams Delta-9 THC per serving would be a third degree felony;
- possessing a consumable hemp product that has a Delta-9 THC concentration of more than 0.3 percent and contains more than 10 milligrams Delta-9 THC per serving would be a Class A misdemeanor;
- selling or distributing a consumable hemp product to persons younger than 21 years of age would be a Class A misdemeanor;
- manufacturing, distributing, or selling consumable hemp products for smoking or inhaling would be a Class A misdemeanor;
- manufacturing, distributing, selling, or offering to sell consumable hemp products intended for eating would be a Class A misdemeanor;
- selling or delivering a consumable hemp product within 1,000 feet of the premises of a school would be a state jail felony;
- marketing or packaging a consumable hemp product in a manner attractive to minors would be a state jail felony;
- providing a consumable hemp product by courier, delivery, or mail service would be a Class A misdemeanor;
- forging, falsifying, or altering the results of a laboratory test would be a third degree felony; and
- growing, selling, or offering for sale a hemp flower in an unapproved manner would be a Class C misdemeanor.

The bill would authorize DSHS to receive and investigate complaints of violations by consumable hemp licensees and retail hemp registrants. Penalties may include revoking, suspension, or refusal to renew licenses or registration. DSHS may impose up to an administrative penalty not to exceed \$20,000 against a license holder or registrant for each violation.

The bill requires DSHS to enter a memorandum of understanding with Texas Alcoholic Beverage Commission (TABC) regarding:

- transfers of certain consumable hemp product regulatory functions from DSHS to TABC;
- changing the license structure to three-tiered structure that includes manufacturers, wholesalers, and retailers;
- locations where consumable hemp products are sold including on-premises consumption;
- regulations of locations where consumable hemp products are sold, including required signage informing consumers;
- licensing and permittee fees;
- funding mechanism for a consumable regulatory scheme, including taxation and disposition of taxation;
- synthetic cannabinoids and retail sale of hemp flower regulation;
- creating open container laws for consumable hemp products;
- testing facilities certifications;
- consumable hemp products with alcohol or caffeine regulations; and
- consumable hemp products packaging and labeling.

DSHS would be authorized to adopt rules under the bill.

Methodology

According to the Comptroller of Public Accounts (CPA), the analysis of the potential sales tax changes is based

on the sales tax returns of businesses with a retail hemp registration in the Austin area who are primarily engaged in the selling of vaping and/or smoking supplies. The analysis assumes that Austin sales represent one quarter of the total sales of these product types statewide. The statewide total was then extrapolated forward at the same rates of growth as forecast for the limited sales and use tax in the Comptroller's *2026-27 Biennial Revenue Estimate*, with a one-month lag in collections factored for fiscal year 2026 in view of the effective date of the bill.

The analysis of consumable hemp license and retail hemp registration fees assumes that 80 percent of the businesses with these licenses and registrations will not renew due to a combination of decreased product sales and higher fee rates. The higher fee rates paid by the continuing participants offset some portion of the fee losses from those ceasing operations.

Although not part of this analysis, DSHS estimates an increase in General Revenue of \$19,180,650 in each fiscal year based on new fee amounts in the bill applied to the licensing fee for manufacturers and the registration fee for retailers in fiscal year 2024. This estimate would assume the same number of licensees and registrants as fiscal year 2024 under this bill; however, the CPA methodology assumes a decrease in the number of licensees and registrants due to new regulations and increases in fees that would be authorized under the bill. The estimates in the five-year chart above are based on analysis from the CPA which assumes a loss of revenue to the state.

The number and amounts of any criminal fines and the number and amounts of any administrative penalties levied by DSHS are unknown, therefore those revenue implications cannot be determined.

According to the Office of Court Administration, the creation of 11 criminal offenses will increase demands on the state's criminal courts and on state and local correctional resources and facilities due to an increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement or imprisonment. The creation of new causes of actions will increase demands on the civil courts in this state also. The fiscal implications of the bill cannot be determined because the number of new actions or criminal cases that will be brought under the bill is unknown. Whether courts can manage the increase in their docket volumes will depend on the number of new cases filed in the courts.

According to TABC, there is an indeterminate but likely significant cost to the agency. TABC does not currently have the capacity to perform new duties and functions as required by the bill. Factors contributing to a significant but unknown cost are changing the online business portal to establish new licenses for manufacturers, wholesalers, and retailers, the unknown number of license applications and product registrations, and the unknown number of additional full-time-equivalent positions necessary to process the registrations, applications, tax reports, and payments.

DSHS estimates a cost of \$531,500 from the General Revenue Fund in each fiscal year due to requirements in the bill to include synthesized cannabinoids in its cannabinoid profile testing.

This estimate assumes that any costs associated with implementing the bill for DPS and the Health and Human Services Commission can be absorbed within existing resources.

Local Government Impact

There would be a corresponding loss of sales and use tax revenue from local taxing jurisdictions. The estimated losses are displayed in the above tables.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 529 Health and Human Services Commission, 537 State Health Services, Department of, 551 Department of Agriculture

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