



January 16, 2026

To the Department of State Health Services (the “Department”):

The Texas Hemp Business Council (THBC) was founded to unify and protect all parts of the hemp industry in Texas. THBC members include Texas farmers, processors, manufacturers, retailers, veterans-owned businesses, and small enterprises operating across urban and rural communities, many of which were induced by prior legislative action to invest, hire, and build compliant supply chains within Texas. The THBC appreciates the opportunity to offer formal comments on the Department’s proposed revisions to the Consumable Hemp Products rules (25 TAC Chapter 300), published in response to Governor Abbott’s Executive Order GA-56.

The THBC’s comments are offered constructively and in good faith, with full respect for the Department’s public health mission and a shared commitment to protecting minors, ensuring product safety, and maintaining alignment with both state and federal law. While the THBC supports thoughtful regulation, several provisions in the proposed rules impose disproportionate and economically destabilizing burdens, undermine lawful adult access, and conflict with fundamental principles of administrative and constitutional law. Moreover, as currently drafted, the proposed rules would have a material adverse impact on many of these Texas-based hemp businesses, particularly small, rural, minority-owned, and veteran-operated enterprises that lack the scale or capital cushion to absorb sudden regulatory cost increases or operational uncertainty. The Department’s acknowledgment of adverse economic impact in the rule preamble underscores the likelihood of business closures, reduced in-state production, job losses, and diminished tax receipts may result in a net fiscal loss to the State of Texas.

For example, the dramatic escalation in licensing and registration fees, by nearly 10,000% for licenses and over 13,000% for retail registrations (based on respective increases from \$250 to \$25,000 and from \$150 to \$20,000)—coupled with vague standards and discretionary enforcement mechanisms, risks driving otherwise compliant businesses out of the lawful market. These closures would not be a result of public health or product safety violations, but rather due to regulatory inaccessibility and economic infeasibility. Such draconian outcomes contradict GA-56’s direction to enact rules supporting a lawful

consumable hemp market and, instead, jeopardize local economic ecosystems. The arbitrariness of the proposed fees is underscored by comparison to other regulated consumer products in Texas. See Exhibit 1, attached. For example, alcohol manufacturers and wholesalers pay approximately \$3,000–\$4,000 every two years, and package stores pay \$1,800 every two years. Tobacco manufacturers pay \$300 per year and retailers \$180 every two years.

The proposed rules will also endanger the in-state supply chain, affecting growers, processors, testing laboratories, distributors, and retailers through new regulations like the following:

- Requirements extending to intermediate goods or work-in-progress materials, which create uncertainty in batching, testing, and production sequencing.
- Daily monetary penalties without cure periods, which may trigger compounding fines, even where operators are acting in good faith or are actively curing minor violations.
- Unclear extraterritorial application of rules to non-Texas operators, which will generate legal and logistical confusion for national commerce.

The language, while potentially well intentioned, carries significant regulatory burdens that will delay production, increase consumer costs, chill capital investment, and threaten the ability of lawful hemp businesses to compete against illicit or out-of-state operators. Critically, destabilizing Texas’s lawful supply chain does not reduce consumer demand, it merely pushes commerce into unregulated, out-of-state, or black-market channels, directly undermining the Department’s stated goal of public health and safety and contradicting GA-56.

The proposed rules also raise serious concerns for law-abiding adult consumers, including veterans who rely on hemp-derived products for wellness, sleep, anxiety management, and pain relief. GA-56 explicitly contemplates protecting minors while preserving the liberty of adults. However, regulatory structures that effectively reduce product availability, inflate prices, or eliminate local retail access function as de facto restrictions on adult choice regarding products otherwise deemed lawful. Veterans in particular represent a population that has consistently sought hemp-derived alternatives in the absence of accessible or desirable pharmaceutical options. Policies that indirectly restrict access without a clear nexus to public safety or the protection of minors would only serve to alienate a community that Texas has historically sought to support through pragmatic, liberty-respecting policy.

Legal and Administrative Concerns

Against this backdrop of real-world economic and consumer impact, the THBC believes several provisions of the proposed rules exceed the Department’s statutory authority, run afoul of both the Texas and United States Constitutions, and for those reasons, depart from the clear directives of GA-56. These concerns are identified below.

1. Exceeding Statutory Authority: Risk of Ultra Vires Regulation

The rulemaking authority delegated by the Legislature to the Department under Title 6 of the Texas Health and Safety Code (“HSC”) is not absolute. Rather, in accordance with the separation of powers doctrine, the Department’s authority is cabined by the substantive and procedural limitations provided by the governing statutes. It is well-established under Texas law that agency

actions taken in excess of or conflicting with the bounds of a legislative-grant of authority are considered ultra vires and not protected by sovereign immunity. See, e.g., *Van Boven v. Freshour*, 659 S.W.3d 396, 402 (Tex. 2022); *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 164, 169 (Tex. 2016); *Railroad Comm'n of Tex. v. Lone Star Gas Co.*, 844 S.W.2d 679 (Tex. 1992). For example:

- **Section 300.101(20)** defines “hemp” using a “total” delta-9 THC measurement, contrary to HSC § 481.002(26)(F), which incorporates the definition of “hemp” from Agriculture Code § 121.001, meaning “any part” of the *Cannabis sativa L.* plant “with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis.” Importantly, GA-56 did not direct DSHS to change the definition of hemp, but to “[r]evis[e] testing requirements under 25. T.A.C. §§ 300.301-300.303 to ensure that tests measure the total delta-9 THC content of a hemp-derived product” .

The Department cannot attempt to impliedly ban or control hemp-derived cannabinoids through agency rulemaking in a manner that conflicts with the express delegation of legislative authority. The proposed change to Rule 300.101(20) violates this standard.

- **Section 300.501(b)** deletes the limitation that retail registration applies only to products “containing CBD,” and instead requires registration to sell any consumable hemp products at retail. However, HSC § 443.2025(b) is narrower, requiring registration only for retail locations selling “consumable hemp products containing cannabidiol [CBD],” and the fee schedule authority in § 443.2025(f) is likewise tied to locations where “consumable hemp products containing cannabidiol [CBD] are sold.” Again, the Department cannot enact rules that exceed or conflict with the Legislature’s limited grant of authority.
- **Section 300.502(f)** sets a \$20,000 per location annual registration/renewal fee, but HSC § 443.2025(f) authorizes only a fee schedule establishing “reasonable fee amounts” for registration. Here too, the Department fails to adhere to the bounds of its legislatively delegated rulemaking authority.
- **Section 300.601(b)** purports to count each day a violation continues as a separate violation; however, HSC § 443.201 requires the Department to provide retailers fair notice of a potential violation and an opportunity to cure. The proposed rule may conflict with the statute insofar as there is no feasible method by which the Department could provide adequate notice and opportunity to cure on a daily basis.
- **Section 300.206(c)** exceeds Chapter 443 by imposing a border transport control on ingredients, which is a subject the legislature addressed through the Agriculture Code’s cultivation and handling framework, not through Chapter 443’s CHP product standards. Chapter 443 contains no clear delegation authorizing DSHS to prohibit the importation or transport of raw hemp-derived substances for further processing based on a DSHS-defined “acceptable hemp THC level,” particularly where the regulated material has not yet been offered for sale as a CHP.
- **Section 300.702** authorizes the Department to revoke a retail hemp registration based on a single sale to a minor, but the Legislature has separately mandated that, by rule, retailers must receive fair notice of a potential violation and an opportunity to cure made unintentionally or negligently. Accordingly, to the extent § 300.702 is applied to permit revocation of a retailer’s registration for an unintentional or negligent sale-to-minor

violation without first providing the statutory notice-and-cure opportunity, the rule conflicts with statute.

2. Constitutional Issues: Occupation Taxes, Excessive Fines, and Due Process

The Texas Constitution prohibits certain occupational taxes, particularly when imposed by a regulatory agency. *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997) (holding the primary distinction between a permissible regulatory fee and an unconstitutional occupation tax is whether or not the fee is assessed “only in an amount reasonably necessary to fund the State’s regulation of [the] industry.”) Accordingly, GA-56 directed DSHS to “[r]evis[e] application and renewal fees under 25 T.A.C. § 300.202 for hemp manufacturer and hemp retailer licenses to reflect the full regulatory and enforcement costs incurred by the State[.]” In addition, both the Texas and U.S. Constitutions prohibit excessive fines and guarantee due process. These protections are implicated by the proposed:

- **Section 300.202(c)** increases initial and renewal license fees from \$250 to \$25,000 with no reasonable relationship to the costs of the State’s regulation of the industry.
- **Section 300.502(f)** likewise increases retail registration and renewal fees from \$150 to \$20,000, an amount that exceeds what is reasonably needed for regulation.
- **Section 300.601** purports to count each day a violation continues as a separate violation, which could result in disproportionate and unconstitutionally excessive fines and violations of due process.

3. Federal Preemption and Interstate Commerce

The 2018 Farm Bill expressly protects interstate commerce in hemp and hemp products and forbids states from prohibiting the transportation or shipment of hemp or hemp products produced in accordance with federal law.

- **Section 300.206(c)** provides that substances with “total” delta-9 THC above the “acceptable hemp THC level” may not be transported into Texas for further processing, in violation of this federal protection. Additionally, as explained above, the modification on which this new rule is based (in proposed Rule 300.101(20)) further violates state law.

Conclusion

The THBC respectfully urges the Department to revise the proposed rules to bring them into clear alignment with the legal boundaries established under Chapter 443 of the Texas Health and Safety Code and the Texas and U.S. Constitutions. Further, permanent regulatory frameworks should not be tethered to temporary or evolving federal interpretations, such as those currently under review by the DEA or subject to executive discretion, as doing so would undermine regulatory certainty and expose Texas to unnecessary federal dependency.

Instead, the Department should ensure that enforcement mechanisms are grounded in objective, transparent, and proportional criteria, and that any determinations regarding fee reimbursement or licensing actions are not left to unfettered administrative discretion. In the interest of public accountability and economic transparency, the THBC also urges the Department to publish the specific

fiscal methodology and assumptions used to calculate the predicted fiscal impacts—both revenues and costs—of the proposed rules.

We respectfully urge DSHS to revise the draft rules to:

- Align with the statutory boundaries of Chapter 443 and the directives of GA-56;
- Avoid tethering long-term regulations to uncertain or temporary federal interpretations;
- Protect Texas’ regulatory autonomy and uphold constitutional guarantees;
- Use objective criteria for enforcement and reimbursement decisions; and
- Publish the fiscal methodology used to justify the \$200 million estimated annual economic impact.

The THBC appreciates the Department’s efforts thus far and welcomes the opportunity to collaborate on constructive revisions that ensure public safety, uphold the law, and support a robust Texas hemp economy.

Respectfully Submitted,

Mark Bordas, Executive Director, Texas Hemp Business Council

Comparative Fee Evidence (Exhibit 1)

Product Category	License Type	Current Fee	Proposed DSHS Fee	Governing Law
Consumable Hemp	Manufacturer / Distributor	\$258 / year	\$25,000 / year	HSC §443.102; 25 TAC §300.104
	Retail Registration	\$155 / year	\$20,000 / year	HSC §443.2025
Alcohol (TABC)	Manufacturer / Wholesaler	\$3,000–4,000 / 2 yrs	No change	Alcoholic Beverage Code
	Package Store Permit	\$1,800 / 2 yrs	No change	TABC
Tobacco	Manufacturer / Distributor	\$300 / year	No change	Tex. Tax Code §154
	Retailer	\$180 / 2 yrs	No change	Comptroller
Kratom	All	Covered by food permits	No special license	HSC Ch. 431