

House Bill 3227

Sponsored by Representative BARNHART; Representative V WALKER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits production and possession of industrial hemp and trade in industrial hemp commodities and products. Authorizes State Department of Agriculture to administer licensing and inspection program for growers and handlers of industrial hemp. Authorizes civil penalty not exceeding \$2,500.

A BILL FOR AN ACT

1
2 Relating to industrial hemp; creating new provisions; amending ORS 475.005, 475.992, 475.999 and
3 561.144; and appropriating money.

4 Whereas the Cannabis sativa plant used for the production of industrial hemp is separate and
5 distinct from forms of Cannabis used to produce marijuana; and

6 Whereas industrial hemp is used for products such as building materials, cloth, cordage, fiber,
7 food, floor coverings, fuel, industrial chemicals, paint, paper, particle board, plastics, seed meal, seed
8 oil and yarn; now, therefore,

9 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 3 of this 2001 Act:

10
11 **(1) "Agricultural hemp seed" means industrial hemp seed meeting any labeling, quality**
12 **and other standards set by the Director of Agriculture and intended for sale or sold to, or**
13 **purchased by, licensed growers for planting.**

14 **(2) "Crop" means any contiguous field of industrial hemp grown under a single license.**

15 **(3) "Grower" means a person, as defined in ORS 174.100, joint venture or cooperative that**
16 **produces industrial hemp.**

17 **(4) "Handler" means a person, as defined in ORS 174.100, joint venture or cooperative**
18 **that receives industrial hemp for processing into commodities, products or agricultural hemp**
19 **seed.**

20 **(5) "Industrial hemp" means all parts and varieties of the plant Cannabis sativa, whether**
21 **growing or not, that contain a crop-wide average tetrahydrocannabinol concentration that**
22 **does not exceed one percent on a dry weight basis. "Industrial hemp" includes seed that is**
23 **part of a growing crop, seed retained by a grower for future planting and agricultural hemp**
24 **seed. "Industrial hemp" does not include industrial hemp commodities or products.**

25 **SECTION 2. (1) Industrial hemp production and possession, and commerce in industrial**
26 **hemp commodities and products, are authorized in this state. Industrial hemp is an agricul-**
27 **tural product that is subject to regulation by the State Department of Agriculture.**

28 **(2) All growers or handlers of industrial hemp must have an industrial hemp license is-**
29 **sued by the department.**

30 **(3) Every grower or handler of industrial hemp must keep records as required by de-**
31 **partment rule. Upon not less than three days' notice, the department may subject required**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 records to inspection and audit during normal business hours. The department may make
 2 an inspection or audit for the purpose of ensuring compliance with:

- 3 (a) A provision of this section;
- 4 (b) Department rules;
- 5 (c) License or permit requirements, terms or conditions; or
- 6 (d) A final department order directed to grower or handler industrial hemp operations
 7 or activities.

8 (4) In addition to any inspections conducted pursuant to ORS 561.275, the department
 9 may inspect any industrial hemp crop during the crop's growth phase and take a represen-
 10 tative composite sample for field analysis. If a crop has an average tetrahydrocannabinol
 11 concentration exceeding one percent on a dry weight basis, the department may detain, seize
 12 or embargo the crop as provided under ORS 561.605 to 561.620.

13 (5) Subject to department guidelines, a grower may retain seeds from each crop to ensure
 14 a sufficient supply of seeds for that grower for the following year. A grower retaining seeds
 15 for future planting does not need an agricultural hemp seed production permit described
 16 under subsection (6) of this section. Seed retained by a grower may not be resold and does
 17 not need to meet agricultural hemp seed standards.

18 (6) The department may issue agricultural hemp seed production permits to allow
 19 growers and handlers of industrial hemp to produce agricultural hemp seed. A person offer-
 20 ing agricultural hemp seed for sale to growers shall ensure that the seed complies with any
 21 standards set by the Director of Agriculture under ORS 633.511 to 633.750. The department
 22 shall make available to growers information that identifies sellers of agricultural hemp seed.

23 (7) The department may charge growers and handlers reasonable fees as determined by
 24 the department. Fees charged under this subsection are continuously appropriated to the
 25 department for purposes of carrying out the duties of the department under this section and
 26 section 3 of this 2001 Act.

27 **SECTION 3.** (1) In addition to any other liability or penalty provided by law, the State
 28 Department of Agriculture may revoke or refuse to issue an industrial hemp license or an
 29 agricultural hemp seed production permit and may impose a civil penalty for:

- 30 (a) Violation of a license or permit requirement; or
- 31 (b) Violation of industrial hemp license or agricultural hemp seed production permit
 32 terms or conditions, department rules relating to industrial hemp growing or handling or of
 33 a final order of the department that is specifically directed to the grower's or handler's in-
 34 dustrial hemp operations or activities.

35 (2) The department may revoke or refuse to issue an industrial hemp license or an agri-
 36 cultural hemp seed production permit for violation of any rule of the department that per-
 37 tains to agricultural operations or activities other than industrial hemp growing or handling.

38 (3) The department may not impose a civil penalty under this section that exceeds \$2,500.
 39 Civil penalties under this section shall be imposed in the manner provided by ORS 183.090.

40 (4) A revocation of, or refusal to issue, an industrial hemp license or an agricultural
 41 hemp seed production permit is subject to ORS 183.310 to 183.550.

42 **SECTION 4.** ORS 475.005 is amended to read:

43 475.005. As used in ORS 475.005 to 475.285 and 475.940 to 475.995, unless the context requires
 44 otherwise:

- 45 (1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or

1 medical supervision, which may have a detrimental effect on the individual or society.

2 (2) "Administer" means the direct application of a controlled substance, whether by injection,
3 inhalation, ingestion or any other means, to the body of a patient or research subject by:

4 (a) A practitioner or an authorized agent thereof; or

5 (b) The patient or research subject at the direction of the practitioner.

6 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-
7 ment of Justice, or its successor agency.

8 (4) "Agent" means an authorized person who acts on behalf of or at the direction of a man-
9 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public
10 warehouseman or employee of the carrier or warehouseman.

11 (5) "Board" means the State Board of Pharmacy.

12 (6) "Controlled substance" means a drug or its immediate precursor classified in Schedules I
13 through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS
14 475.035. The use of the term "precursor" in this subsection does not control and is not controlled
15 by the use of the term "precursor" in ORS 475.940, 475.950 and 475.955. **"Controlled substance"**
16 **does not include industrial hemp, as defined in section 1 of this 2001 Act, or industrial hemp**
17 **commodities or products.**

18 (7) "Counterfeit substance" means a controlled substance or its container or labeling, which,
19 without authorization, bears the trademark, trade name, or other identifying mark, imprint, number
20 or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person
21 who in fact manufactured, delivered or dispensed the substance.

22 (8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by
23 administering or dispensing, from one person to another of a controlled substance, whether or not
24 there is an agency relationship.

25 (9) "Device" means instruments, apparatus or contrivances, including their components, parts
26 or accessories, intended:

27 (a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or
28 animals; or

29 (b) To affect the structure of any function of the body of humans or animals.

30 (10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject
31 by or pursuant to the lawful order of a practitioner, and includes the prescribing, administering,
32 packaging, labeling or compounding necessary to prepare the substance for that delivery.

33 (11) "Dispenser" means a practitioner who dispenses.

34 (12) "Distributor" means a person who delivers.

35 (13) "Drug" means:

36 (a) Substances recognized as drugs in the official United States Pharmacopoeia, official
37 Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement
38 to any of them;

39 (b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of
40 disease in humans or animals;

41 (c) Substances (other than food) intended to affect the structure or any function of the body of
42 humans or animals; and

43 (d) Substances intended for use as a component of any article specified in paragraph (a), (b) or
44 (c) of this subsection; however, the term does not include devices or their components, parts or ac-
45 cessories.

1 (14) "Manufacture" means the production, preparation, propagation, compounding, conversion
 2 or processing of a controlled substance, either directly or indirectly by extraction from substances
 3 of natural origin, or independently by means of chemical synthesis, or by a combination of extraction
 4 and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or
 5 relabeling of its container, except that this term does not include the preparation or compounding
 6 of a controlled substance:

7 (a) By a practitioner as an incident to administering or dispensing of a controlled substance in
 8 the course of professional practice; or

9 (b) By a practitioner, or by an authorized agent under the practitioner's supervision, for the
 10 purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

11 (15) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or
 12 not; the resin extracted from any part of the plant; and every compound, manufacture, salt, deriva-
 13 tive, mixture[,] or preparation of the plant or its resin[. *It* **except industrial hemp, as defined in**
 14 **section 1 of this 2001 Act, or industrial hemp commodities or products.** "Marijuana" does not
 15 include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the
 16 seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the
 17 mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the
 18 plant which is incapable of germination.

19 (16) "Person" includes a government subdivision or agency, business trust, estate, trust or any
 20 other legal entity.

21 (17) "Practitioner" means physician, dentist, veterinarian, scientific investigator, certified nurse
 22 practitioner, physician assistant or other person licensed, registered or otherwise permitted by law
 23 to dispense, conduct research with respect to or to administer a controlled substance in the course
 24 of professional practice or research in this state but does not include a pharmacist or a pharmacy.

25 (18) "Prescription" means a written or oral direction, given by a practitioner for the preparation
 26 and use of a drug. When the context requires, "prescription" also means the drug prepared under
 27 such written or oral direction. Any label affixed to a drug prepared under written or oral direction
 28 shall prominently display a warning that the removal thereof is prohibited by law.

29 (19) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a
 30 controlled substance.

31 (20) "Research" means an activity conducted by the person registered with the federal Drug
 32 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug
 33 Administration.

34 (21) "Ultimate user" means a person who lawfully possesses a controlled substance for the use
 35 of the person or for the use of a member of the household of the person or for administering to an
 36 animal owned by the person or by a member of the household of the person.

37 **SECTION 5.** ORS 475.992 is amended to read:

38 475.992. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.995, it is unlawful
 39 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
 40 section with respect to:

- 41 (a) A controlled substance in Schedule I, is guilty of a Class A felony.
- 42 (b) A controlled substance in Schedule II, is guilty of a Class B felony.
- 43 (c) A controlled substance in Schedule III, is guilty of a Class C felony.
- 44 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.
- 45 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

1 (2) Notwithstanding the placement of marijuana in a schedule of controlled substances under
 2 ORS 475.005 to 475.285 and 475.940 to 475.995:

3 (a) Any person who delivers marijuana for consideration is guilty of a Class B felony.

4 (b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried
 5 leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor,
 6 except that any person who delivers, for no consideration, less than five grams of the dried leaves,
 7 stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a
 8 fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be
 9 forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account
 10 established in ORS 137.300.

11 (3) Except as authorized in ORS 475.005 to 475.285 and 475.940 to 475.995, it is unlawful for any
 12 person to create or deliver a counterfeit substance. Any person who violates this subsection with
 13 respect to:

14 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

15 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

16 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

17 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

18 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

19 (4) It is unlawful for any person knowingly or intentionally to possess a controlled substance
 20 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
 21 practitioner while acting in the course of professional practice, or except as otherwise authorized
 22 by ORS 475.005 to 475.285 and 475.940 to 475.995. Any person who violates this subsection with re-
 23 spect to:

24 (a) A controlled substance in Schedule I, is guilty of a Class B felony.

25 (b) A controlled substance in Schedule II, is guilty of a Class C felony.

26 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

27 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

28 (e) A controlled substance in Schedule V, is guilty of a violation.

29 (f) Notwithstanding the placement of marijuana in a schedule of controlled substances under
 30 ORS 475.005 to 475.285 and 475.940 to 475.995, any person who knowingly or intentionally is in un-
 31 lawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the
 32 plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500
 33 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Depart-
 34 ment of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS
 35 137.300.

36 (5) In any prosecution under this section for manufacture, possession or delivery of that plant
 37 of the genus Lophophora commonly known as peyote, it is an affirmative defense that the peyote is
 38 being used or is intended for use:

39 (a) In connection with the good faith practice of a religious belief;

40 (b) As directly associated with a religious practice; and

41 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
 42 imity of the user.

43 (6) The affirmative defense created in subsection (5) of this section is not available to any person
 44 who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

45 **(7) Subsections (2)(b) and (4)(f) of this section do not prohibit the sale or possession of:**

1 **(a) Industrial hemp as defined in section 1 of this 2001 Act; or**

2 **(b) Industrial hemp commodities or products.**

3 **SECTION 6.** ORS 475.999 is amended to read:

4 475.999. Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.995 **and section 2**
5 **of this 2001 Act**, it is unlawful for any person to:

6 (1) Manufacture or deliver a schedule I, II or III controlled substance within 1,000 feet of the
7 real property comprising a public or private elementary, secondary or career school attended pri-
8 marily by minors.

9 (a) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is
10 a Class A felony.

11 (b) Notwithstanding the provisions of paragraph (a) of this subsection, delivery for no consider-
12 ation of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family
13 Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property
14 comprising a public or private elementary, secondary or career school attended primarily by minors
15 to a person who is 18 years of age or older is a Class C misdemeanor.

16 (2)(a) Possess less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant
17 Cannabis family Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of
18 the real property comprising a public or private elementary, secondary or career school attended
19 primarily by minors.

20 (b) Possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the
21 plant Cannabis family Moraceae in a public place that is within 1,000 feet of a school is a Class C
22 misdemeanor.

23 **SECTION 7.** ORS 561.144 is amended to read:

24 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which
25 shall be a trust fund separate from the General Fund and included under ORS 293.115 (6), and which
26 shall not be subject to ORS 293.105 and 293.110. The State Department of Agriculture shall deposit
27 all license and service fees paid to it under the provisions of the statutes identified in subsection (3)
28 of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian
29 of this trust fund which shall be deposited by the treasurer in such depositories as are authorized
30 to receive deposits of the General Fund, and which may be invested by the treasurer in the same
31 manner as authorized by ORS 293.701 to 293.820.

32 (2) Notwithstanding ORS 293.140, interest received on deposits credited to the Department of
33 Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Ser-
34 vice Fund.

35 (3) The license and service fees subject to this section are those described in ORS 561.400,
36 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580,
37 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 600.030, 601.040, 602.090, 603.025, 603.075,
38 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180,
39 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.361,
40 633.460, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and
41 635.030 **and section 2 of this 2001 Act.**

42