

Senate Bill 294

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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, permitting and inspection program for growers and handlers of industrial hemp. Allows department to impose civil penalty not exceeding \$2,500 for violation of license or permit requirements.

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:**

10 **SECTION 1. As used in sections 1 to 3 of this 2005 Act:**

11 (1) **"Agricultural hemp seed" means Cannabis sativa seed that meets any labeling, quality
12 and other standards set by the Director of Agriculture and that is intended for sale or is sold
13 to, or 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, joint venture or cooperative that produces industrial hemp.**

16 (4) **"Handler" means a person, joint venture or cooperative that receives industrial hemp
17 for processing into commodities, products or agricultural hemp seed.**

18 (5) **"Industrial hemp":**

19 (a) **Means all nonseed parts and varieties of the Cannabis sativa plant, whether growing
20 or not, that contain a cropwide average tetrahydrocannabinol concentration that does not
21 exceed one percent on a dry weight basis.**

22 (b) **Means any Cannabis sativa seed that is part of a growing crop, retained by a grower
23 for future planting or agricultural hemp seed.**

24 (c) **Does not mean 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 and handlers must have an industrial hemp license issued by the depart-
29 ment.**

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 (3) Every grower or handler must keep records as required by department rule. Upon not
2 less than three days' notice, the department may subject the required records to inspection
3 or audit during normal business hours. The department may make an inspection or audit for
4 the purpose of ensuring compliance with:

5 (a) A provision of this section;

6 (b) Department rules;

7 (c) Industrial hemp license or agricultural hemp seed production permit requirements,
8 terms or conditions; or

9 (d) A final department order directed to the grower's or handler's industrial hemp oper-
10 ations or activities.

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

16 (5) Subject to department guidelines, a grower may retain seeds from each industrial
17 hemp crop to ensure a sufficient supply of seeds for that grower for the following year. A
18 grower retaining seeds for future planting does not need an agricultural hemp seed pro-
19 duction permit described under subsection (6) of this section. Seed retained by a grower may
20 not be sold or transferred and does not need to meet the department's agricultural hemp
21 seed standards.

22 (6) The department may issue agricultural hemp seed production permits to allow
23 growers and handlers to produce agricultural hemp seed. A seller of agricultural hemp seed
24 shall ensure that the seed complies with any standards set by the Director of Agriculture
25 under ORS 633.511 to 633.750. The department shall make available to growers information
26 that identifies sellers of agricultural hemp seed.

27 (7) The department may charge growers and handlers reasonable fees as determined by
28 the department. Moneys from fees charged under this subsection shall be deposited to the
29 Department of Agriculture Service Fund and are continuously appropriated to the depart-
30 ment for purposes of carrying out the duties of the department under this section and sec-
31 tion 3 of this 2005 Act.

32 **SECTION 3.** (1) In addition to any other liability or penalty provided by law, the State
33 Department of Agriculture may revoke or refuse to issue or renew an industrial hemp li-
34 cense or an agricultural hemp seed production permit and may impose a civil penalty for
35 violation of:

36 (a) A license or permit requirement;

37 (b) License or permit terms or conditions;

38 (c) Department rules relating to growing or handling industrial hemp; or

39 (d) A final order of the department that is specifically directed to the grower's or han-
40 dler's industrial hemp operations or activities.

41 (2) The department may revoke or refuse to issue or renew an industrial hemp license
42 or an agricultural hemp seed production permit for violation of any rule of the department
43 that pertains to agricultural operations or activities other than industrial hemp growing or
44 handling.

45 (3) The department may not impose a civil penalty under this section that exceeds \$2,500.

1 **The department shall impose civil penalties under this section in the manner provided by**
 2 **ORS 183.745.**

3 **(4) A revocation of, or refusal to issue or renew, an industrial hemp license or an agri-**
 4 **cultural hemp seed production permit is subject to ORS chapter 183.**

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

6 475.005. As used in ORS 475.005 to 475.285 and 475.940 to 475.999, unless the context requires
 7 otherwise:

8 (1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or
 9 medical supervision, which may have a detrimental effect on the individual or society.

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

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

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

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

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

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

20 (6) "Controlled substance":

21 (a) Means a drug or its immediate precursor classified in Schedules I through V under the fed-
 22 eral Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the
 23 term "precursor" in this [subsection] **paragraph** does not control and is not controlled by the use
 24 of the term "precursor" in ORS 475.940 to 475.999.

25 **(b) Does not mean industrial hemp, as defined in section 1 of this 2005 Act, or industrial**
 26 **hemp commodities or products.**

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

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

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

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

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

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

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

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

44 (13) "Drug" means:

45 (a) Substances recognized as drugs in the official United States Pharmacopoeia, official

1 Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement
2 to any of them;

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

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

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

10 (14) "Electronically transmitted" or "electronic transmission" means a communication sent or
11 received through technological apparatuses, including computer terminals or other equipment or
12 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,
13 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

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

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

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

24 (16) "Marijuana":

25 (a) Means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin
26 extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture,
27 or preparation of the plant or its resin.

28 (b) [It] Does not include the mature stalks of the plant, fiber produced from the stalks, oil or
29 cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture,
30 or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the
31 sterilized seed of the plant which is incapable of germination.

32 (c) **Does not mean industrial hemp, as defined in section 1 of this 2005 Act, or industrial**
33 **hemp commodities or products.**

34 (17) "Person" includes a government subdivision or agency, business trust, estate, trust or any
35 other legal entity.

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

40 (19) "Prescription" means a written, oral or electronically transmitted direction, given by a
41 practitioner for the preparation and use of a drug. When the context requires, "prescription" also
42 means the drug prepared under such written, oral or electronically transmitted direction. Any label
43 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-
44 nently display a warning that the removal thereof is prohibited by law.

45 (20) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a

1 controlled substance.

2 (21) "Research" means an activity conducted by the person registered with the federal Drug
 3 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug
 4 Administration.

5 (22) "Ultimate user" means a person who lawfully possesses a controlled substance for the use
 6 of the person or for the use of a member of the household of the person or for administering to an
 7 animal owned by the person or by a member of the household of the person.

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

9 475.992. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful
 10 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
 11 section with respect to:

- 12 (a) A controlled substance in Schedule I, is guilty of a Class A felony.
- 13 (b) A controlled substance in Schedule II, is guilty of a Class B felony.
- 14 (c) A controlled substance in Schedule III, is guilty of a Class C felony.
- 15 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.
- 16 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

17 (2) Notwithstanding the placement of marijuana in a schedule of controlled substances under
 18 ORS 475.005 to 475.285 and 475.940 to 475.999:

- 19 (a) Any person who delivers marijuana for consideration is guilty of a Class B felony.
- 20 (b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried
 21 leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor,
 22 except that any person who delivers, for no consideration, less than five grams of the dried leaves,
 23 stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a
 24 fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be
 25 forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account
 26 established in ORS 137.300.

27 (3) Except as authorized in ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any
 28 person to create or deliver a counterfeit substance. Any person who violates this subsection with
 29 respect to:

- 30 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.
- 31 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 32 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 33 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 34 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

35 (4) It is unlawful for any person knowingly or intentionally to possess a controlled substance
 36 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
 37 practitioner while acting in the course of professional practice, or except as otherwise authorized
 38 by ORS 475.005 to 475.285 and 475.940 to 475.999. Any person who violates this subsection with re-
 39 spect to:

- 40 (a) A controlled substance in Schedule I, is guilty of a Class B felony.
- 41 (b) A controlled substance in Schedule II, is guilty of a Class C felony.
- 42 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.
- 43 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.
- 44 (e) A controlled substance in Schedule V, is guilty of a violation.
- 45 (f) Notwithstanding the placement of marijuana in a schedule of controlled substances under

1 ORS 475.005 to 475.285 and 475.940 to 475.999, any person who knowingly or intentionally is in un-
 2 lawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the
 3 plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500
 4 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Depart-
 5 ment of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS
 6 137.300.

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

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

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

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

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

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

17 **(a) Industrial hemp as defined in section 1 of this 2005 Act; or**

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

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

20 475.999. Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999 **and section 2**
 21 **of this 2005 Act**, it is unlawful for any person to:

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

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

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

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

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

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

40 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which
 41 shall be a trust fund separate and distinct from the General Fund. The State Department of Agri-
 42 culture shall deposit all license and service fees paid to it under the provisions of the statutes
 43 identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State
 44 Treasurer is the custodian of this trust fund which shall be deposited by the treasurer in such de-
 45 positories as are authorized to receive deposits of the General Fund, and which may be invested by

1 the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

2 (2) Interest received on deposits credited to the Department of Agriculture Service Fund shall
3 accrue to and become a part of the Department of Agriculture Service Fund.

4 (3) The license and service fees subject to this section are those described in ORS 561.400,
5 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580,
6 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706,
7 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240,
8 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362,
9 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212
10 and 635.030 **and section 2 of this 2005 Act.**

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