

# House Bill 2769

Sponsored by Representative PROZANSKI; Representative ACKERMAN (at the request of Living Tree Paper Co., University Lip Balm Co.)

## 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:**

### **SECTION 1. As used in sections 1 to 3 of this 2003 Act:**

10  
11 (1) **“Agricultural hemp seed” means industrial hemp 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, 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 Cannabis sativa plant, whether  
21 growing or not, that contain a cropwide 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 and handlers must have an industrial hemp license issued by the depart-  
29 ment.**

30 (3) **Every grower or handler must keep records as required by department rule. Upon not**

**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 less than three days' notice, the department may subject the required records to inspection  
 2 or audit during normal business hours. The department may make an inspection or audit for  
 3 the purpose of ensuring compliance with:

4 (a) A provision of this section;

5 (b) Department rules;

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

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

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

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

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

25 (7) The department may charge growers and handlers reasonable fees as determined by  
 26 the department. Fees charged under this subsection are continuously appropriated to the  
 27 department for purposes of carrying out the duties of the department under this section and  
 28 section 3 of this 2003 Act.

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

33 (a) A license or permit requirement;

34 (b) License or permit terms or conditions;

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

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

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

42 (3) The department may not impose a civil penalty under this section that exceeds \$2,500.  
 43 The department shall impose civil penalties under this section in the manner provided by  
 44 ORS 183.090.

45 (4) A revocation of, or refusal to issue or renew, an industrial hemp license or an agri-

1 **cultural hemp seed production permit is subject to ORS 183.310 to 183.550.**

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

3 475.005. As used in ORS 475.005 to 475.285 and 475.940 to 475.999, unless the context requires  
4 otherwise:

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

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

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

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

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

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

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

17 (6) "Controlled substance" means a drug or its immediate precursor classified in Schedules I  
18 through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS  
19 475.035. The use of the term "precursor" in this subsection does not control and is not controlled  
20 by the use of the term "precursor" in ORS 475.940 to 475.999. **"Controlled substance" does not**  
21 **include industrial hemp, as defined in section 1 of this 2003 Act, or industrial hemp com-**  
22 **modities or products.**

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

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

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

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

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

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

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

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

40 (13) "Drug" means:

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

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

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

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

6 (14) “Electronically transmitted” or “electronic transmission” means a communication sent or  
7 received through technological apparatuses, including computer terminals or other equipment or  
8 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,  
9 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

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

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

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

20 (16) “Marijuana” means all parts of the plant Cannabis family Moraceae, whether growing or  
21 not; the resin extracted from any part of the plant; and every compound, manufacture, salt, deriva-  
22 tive, mixture[,] or preparation of the plant or its resin[. *It*], **except industrial hemp, as defined**  
23 **in section 1 of this 2003 Act, or industrial hemp commodities or products. “Marijuana” does**  
24 **not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the**  
25 **seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the**  
26 **mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the**  
27 **plant which is incapable of germination.**

28 (17) “Person” includes a government subdivision or agency, business trust, estate, trust or any  
29 other legal entity.

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

34 (19) “Prescription” means a written, oral or electronically transmitted direction, given by a  
35 practitioner for the preparation and use of a drug. When the context requires, “prescription” also  
36 means the drug prepared under such written, oral or electronically transmitted direction. Any label  
37 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-  
38 nently display a warning that the removal thereof is prohibited by law.

39 (20) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a  
40 controlled substance.

41 (21) “Research” means an activity conducted by the person registered with the federal Drug  
42 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug  
43 Administration.

44 (22) “Ultimate user” means a person who lawfully possesses a controlled substance for the use  
45 of the person or for the use of a member of the household of the person or for administering to an

1 animal owned by the person or by a member of the household of the person.

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

3 475.992. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful  
 4 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-  
 5 section with respect to:

- 6 (a) A controlled substance in Schedule I, is guilty of a Class A felony.
- 7 (b) A controlled substance in Schedule II, is guilty of a Class B felony.
- 8 (c) A controlled substance in Schedule III, is guilty of a Class C felony.
- 9 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.
- 10 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

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

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

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

- 24 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.
- 25 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 26 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 27 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 28 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

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

- 34 (a) A controlled substance in Schedule I, is guilty of a Class B felony.
- 35 (b) A controlled substance in Schedule II, is guilty of a Class C felony.
- 36 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.
- 37 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.
- 38 (e) A controlled substance in Schedule V, is guilty of a violation.

39 (f) Notwithstanding the placement of marijuana in a schedule of controlled substances under  
 40 ORS 475.005 to 475.285 and 475.940 to 475.999, any person who knowingly or intentionally is in un-  
 41 lawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the  
 42 plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500  
 43 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Depart-  
 44 ment of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS  
 45 137.300.

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

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

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

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

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

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

11 **(a) Industrial hemp as defined in section 1 of this 2003 Act; or**

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

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

14 475.999. Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999 **and section 2**  
15 **of this 2003 Act**, it is unlawful for any person to:

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

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

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

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

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

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

34 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which  
35 shall be a trust fund separate from the General Fund and included under ORS 293.115 (6), and which  
36 shall not be subject to ORS 293.105 and 293.110. The State Department of Agriculture shall deposit  
37 all license and service fees paid to it under the provisions of the statutes identified in subsection (3)  
38 of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian  
39 of this trust fund which shall be deposited by the treasurer in such depositories as are authorized  
40 to receive deposits of the General Fund, and which may be invested by the treasurer in the same  
41 manner as authorized by ORS 293.701 to 293.820.

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

45 (3) The license and service fees subject to this section are those described in ORS 561.400,

1 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580,  
2 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706,  
3 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240,  
4 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362,  
5 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212  
6 and 635.030 **and section 2 of this 2003 Act.**

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