

# B-Engrossed House Bill 2646

Ordered by the House June 23  
Including House Amendments dated April 8 and June 23

Sponsored by Representatives POST, LIVELY, SMITH DB; Representatives BOSHART DAVIS, BREESE-IVERSON, EVANS, HAYDEN, LEIF, MOORE-GREEN, NOBLE, OWENS, PRUSAK, RESCHKE, SANCHEZ, SMITH G, Senator KNOPP (Presession filed.)

## 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.

Establishes regulations for kratom products, including testing standards, labeling requirements and minimum age for sale. Prohibits sale of kratom products unless kratom product derives from processor registered with State Department of Agriculture. Directs department to adopt rules to carry out regulations. Authorizes imposition of civil penalty for certain violations.

Creates crime of unlawful distribution, sale or exposure for sale to individual under 21 years of age. Punishes by maximum of 30 days' imprisonment, \$1,250 fine, or both.

**Appropriates moneys from General Fund to State Department of Agriculture for carrying out provisions of Act.**

**Increases limitation on expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Department of Justice for carrying out provisions of Act.**

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to kratom; and prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 5 of this 2021 Act shall be known and may be cited as the**  
5 **Oregon Kratom Consumer Protection Act.**

6 **SECTION 2. As used in sections 2 to 5 of this 2021 Act:**

7 (1) **"Kratom product" means a food, food product, food ingredient, dietary ingredient,**  
8 **dietary supplement or beverage for human consumption containing any part of the leaf of**  
9 **the plant *Mitragyna speciosa*.**

10 (2) **"Processor" means a person, excluding a retailer, that:**

11 (a) **Sells, prepares, processes, manufactures, distributes or maintains kratom products;**  
12 **or**

13 (b) **Advertises, represents or holds out as being a person that sells, prepares, processes,**  
14 **manufactures, distributes or maintains a kratom product.**

15 (3) **"Retailer" means a person that sells, distributes or exposes for sale kratom products**  
16 **to individuals for personal consumption.**

17 **SECTION 3. (1) A processor may not sell, prepare, process, manufacture, distribute,**  
18 **maintain or expose for sale a kratom product prior to registering with the State Department**  
19 **of Agriculture pursuant to section 5 of this 2021 Act.**

20 (2) **A retailer may not sell, distribute or expose for sale a kratom product sold, prepared,**  
21 **processed, manufactured, distributed or maintained by a processor that is not registered**

**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 with the department.

2 (3) The following kratom products may not be sold, distributed or exposed for sale by a  
3 processor or retailer:

4 (a) A kratom product that is adulterated with a dangerous nonkratom substance. A  
5 kratom product is adulterated with a dangerous nonkratom substance if the kratom product  
6 is mixed or packed with a nonkratom substance and that substance affects the quality or  
7 strength of the kratom product to such a degree as to render the kratom product injurious  
8 to a consumer.

9 (b) A kratom product that is contaminated with a dangerous nonkratom substance. A  
10 kratom product is contaminated with a dangerous nonkratom substance if the kratom  
11 product contains a poisonous or otherwise deleterious nonkratom ingredient, including, but  
12 not limited to, any of the substances listed in ORS 475.005 (6).

13 (c) A kratom product containing a level of 7-hydroxymitragynine in the alkaloid fraction  
14 that is greater than two percent of the overall alkaloid composition of the product.

15 (d) A kratom product containing any synthetic alkaloids including synthetic mitragynine,  
16 synthetic 7-hydroxymitragynine or any other synthetically derived compounds of the  
17 *Mitragyna speciosa* plant.

18 (4) A processor that violates subsection (1) of this section or a retailer that violates  
19 subsection (2) of this section is subject to a civil penalty of not more than \$500 for the first  
20 offense and not more than \$1,000 for the second or subsequent offense. Upon request by the  
21 processor or retailer to whom an administrative fine is issued, the Director of Agriculture  
22 shall conduct a hearing in accordance with contested case proceedings under ORS chapter  
23 183.

24 (5) A retailer does not violate subsection (2) of this section if it is shown by a prepon-  
25 derance of the evidence that the retailer relied in good faith upon the representation of a  
26 processor regarding the registration of the processor.

27 **SECTION 4.** (1) A retailer may not distribute, sell or expose for sale a kratom product  
28 to an individual under 21 years of age.

29 (2) A retailer that violates subsection (1) of this section is guilty of a Class C  
30 misdemeanor for each violation.

31 **SECTION 5.** The State Department of Agriculture shall adopt rules necessary to carry  
32 out sections 2 and 3 of this 2021 Act, including rules establishing:

33 (1) Standards for testing to ensure a kratom product is safe for human consumption;

34 (2) Standards for accurate labeling to ensure safe and effective use of a kratom product  
35 by consumers, including a recommended serving size;

36 (3) Procedures by which a processor may register with the department, including a re-  
37 quirement that the processor sign, under penalty of perjury, an affidavit certifying compli-  
38 ance with section 3 (1) and (3) of this 2021 Act and any rules adopted by the department  
39 under this section, including standards for testing and labeling;

40 (4) A model form for the affidavit described in subsection (3) of this section;

41 (5) A reasonable registration fee to be paid to the department by a processor, subject to  
42 annual adjustment not greater than the percentage increase in the general cost of living as  
43 measured by the Consumer Price Index for All Urban Consumers, West Region (All Items),  
44 as published by the Bureau of Labor Statistics of the United States Department of Labor;  
45 and

1 (6) Procedures by which a person may submit a complaint upon good-faith belief that:

2 (a) A processor has violated section 3 (1) or (3) of this 2021 Act or any rule adopted by  
3 the department under this section; or

4 (b) A retailer has violated section 3 (2) or (3) of this 2021 Act or any rule adopted by the  
5 department under this section.

6 **SECTION 6.** The State Department of Agriculture shall set the registration fee, pursuant  
7 to section 5 (5) of this 2021 Act, for the first year in an amount not to exceed \$2,500.

8 **SECTION 7.** Section 6 of this 2021 Act is repealed on January 2, 2023.

9 **SECTION 8.** (1) Sections 2 to 7 of this 2021 Act become operative on July 1, 2022.

10 (2) The State Department of Agriculture may take any action before the operative date  
11 specified in subsection (1) of this section that is necessary to enable the department to ex-  
12 ercise, on and after the operative date specified in subsection (1) of this section, all of the  
13 duties, functions and powers conferred on the department by sections 2 to 7 of this 2021 Act.

14 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-  
15 ated to the State Department of Agriculture, for the biennium beginning July 1, 2021, out  
16 of the General Fund, the amount of \$1,099,977, for implementing the Oregon Kratom Con-  
17 sumer Protection Act.

18 **SECTION 10.** Notwithstanding any other law limiting expenditures, the limitation on  
19 expenditures established by section 2 (6), chapter \_\_\_\_\_, Oregon Laws 2021 (Enrolled House  
20 Bill 5014), for the biennium beginning July 1, 2021, as the maximum limit for payment of ex-  
21 penses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding  
22 lottery funds and federal funds, collected or received by the Department of Justice, for the  
23 General Counsel Division, is increased by \$304,964, for the purpose of assisting the State  
24 Department of Agriculture with implementing the Oregon Kratom Consumer Protection Act.

25 **SECTION 11.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
26 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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