

**Enrolled**  
**House Bill 2646**

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

CHAPTER .....

AN ACT

Relating to kratom; and prescribing an effective date.

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

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

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

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

(2) **“Processor”** means a person, excluding a retailer, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Procedures by which a processor may register with the department, including a requirement that the processor sign, under penalty of perjury, an affidavit certifying compliance with section 3 (1) and (3) of this 2021 Act and any rules adopted by the department under this section, including standards for testing and labeling;

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

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

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

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

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

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

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

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

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

**SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Agriculture, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$1,099,977, for implementing the Oregon Kratom Consumer Protection Act.

**SECTION 10.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (6), chapter \_\_\_\_\_, Oregon Laws 2021 (Enrolled House

Bill 5014), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Justice, for the General Counsel Division, is increased by \$304,964, for the purpose of assisting the State Department of Agriculture with implementing the Oregon Kratom Consumer Protection Act.

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

**Passed by House June 24, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 26, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State