

HB 2646-A7  
(LC 1253)  
6/15/21 (JLM/vsr/ps)

Requested by JOINT COMMITTEE ON WAYS AND MEANS (at the request of Legislative Fiscal Office)

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2646**

1 On page 1 of the printed A-engrossed bill, delete lines 4 through 23 and  
2 delete pages 2 and 3 and insert:

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

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

6 **“(1) ‘Kratom product’ means a food, food product, food ingredient,  
7 dietary ingredient, dietary supplement or beverage for human con-  
8 sumption containing any part of the leaf of the plant *Mitragyna*  
9 *speciosa*.**

10 **“(2) ‘Processor’ means a person, excluding a retailer, that:**

11 **“(a) Sells, prepares, processes, manufactures, distributes or main-  
12 tains kratom products; or**

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

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

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

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

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

6       “(a) A kratom product that is adulterated with a dangerous  
7 nonkratom substance. A kratom product is adulterated with a dan-  
8 gerous nonkratom substance if the kratom product is mixed or packed  
9 with a nonkratom substance and that substance affects the quality or  
10 strength of the kratom product to such a degree as to render the  
11 kratom product injurious to a consumer.

12       “(b) A kratom product that is contaminated with a dangerous  
13 nonkratom substance. A kratom product is contaminated with a dan-  
14 gerous nonkratom substance if the kratom product contains a poi-  
15 sonous or otherwise deleterious nonkratom ingredient, including, but  
16 not limited to, any of the substances listed in ORS 475.005 (6).

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

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

23       “(4) A processor that violates subsection (1) of this section or a  
24 retailer that violates subsection (2) of this section is subject to a civil  
25 penalty of not more than \$500 for the first offense and not more than  
26 \$1,000 for the second or subsequent offense. Upon request by the  
27 processor or retailer to whom an administrative fine is issued, the  
28 Director of Agriculture shall conduct a hearing in accordance with  
29 contested case proceedings under ORS chapter 183.

30       “(5) A retailer does not violate subsection (2) of this section if it is

1 shown by a preponderance of the evidence that the retailer relied in  
2 good faith upon the representation of a processor regarding the regis-  
3 tration of the processor.

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

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

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

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

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

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

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

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

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

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

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

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

8       “SECTION 7. Section 6 of this 2021 Act is repealed on January 2,  
9 2023.

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

12       “(2) The State Department of Agriculture may take any action be-  
13 fore the operative date specified in subsection (1) of this section that  
14 is necessary to enable the department to exercise, on and after the  
15 operative date specified in subsection (1) of this section, all of the du-  
16 ties, functions and powers conferred on the department by sections 2  
17 to 7 of this 2021 Act.

18       “SECTION 9. In addition to and not in lieu of any other appropri-  
19 ation, there is appropriated to the State Department of Agriculture,  
20 for the biennium beginning July 1, 2021, out of the General Fund, the  
21 amount of \$1,099,977, for implementing the Oregon Kratom Consumer  
22 Protection Act.

23       “SECTION 10. Notwithstanding any other law limiting expenditures,  
24 the limitation on expenditures established by section 2 (6), chapter  
25 \_\_\_\_\_, Oregon Laws 2021 (Enrolled House Bill 5014), for the biennium  
26 beginning July 1, 2021, as the maximum limit for payment of expenses  
27 from fees, moneys or other revenues, including Miscellaneous Re-  
28 cepts, but excluding lottery funds and federal funds, collected or re-  
29 ceived by the Department of Justice, for the General Counsel Division,  
30 is increased by \$304,964, for the purpose of assisting the State Depart-

1 **ment of Agriculture with implementing the Oregon Kratom Consumer**  
2 **Protection Act.**

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

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