(6) Each state agency, including the department, required under subsection (2) of this section to submit or prepare anticipated or estimated capital construction requirements, shall submit a copy of the requirements that relate to construction or improvements within the areas described in ORS 276.028 to the Capitol Planning Commission at a time specified by the commission, but not later than August 1 of each even-numbered year. The commission shall review the capital construction requirements and, not later than November 1 of each even-numbered year, make recommendations to the department with respect to the requirements.

[(6)] **(7)** As used in this section, "capital construction program" does not include:

(a) The acquisition, repair, improvement, enlargement, construction or maintenance of highways and highway bridges by the Department of Transportation;

(b) Park improvements by the State Parks and Recreation Department; or

(c) Road infrastructure work performed under timber sale contracts entered into by the State Forester.

SECTION 12. ORS 276.033, 276.035 and 276.041 are repealed.

SECTION 13. The section captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

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CHAPTER 897

AN ACT SB 676

Relating to industrial hemp; creating new provisions; amending ORS 475.005 and 561.144; and appropriating money.

Whereas the Cannabis sativa plant used for the production of industrial hemp is separate and distinct from forms of Cannabis used to produce marijuana; and

Whereas industrial hemp is used for products such as building materials, cloth, cordage, fiber, food, floor coverings, fuel, industrial chemicals, paint, paper, particle board, plastics, seed meal, seed oil and yarn; now, therefore,

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

SECTION 1. As used in sections 1 to 3 of this 2009 Act:

(1) "Agricultural hemp seed" means Cannabis sativa seed that meets any labeling, quality and other standards set by the Director of Agriculture and that is intended for sale or is sold to, or purchased by, licensed growers for planting.

(2) "Crop" means any contiguous field of industrial hemp grown under a single license.

(3) "Grower" means a person, joint venture or cooperative that produces industrial hemp.

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

(5) "Industrial hemp":

(a) Means all nonseed parts and varieties of the Cannabis sativa plant, whether growing or not, that contain a cropwide average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(b) Means any Cannabis sativa seed that:

(A) Is part of a growing crop;

(B) Is retained by a grower for future planting; or

(C) Is for processing into, or use as, agricultural hemp seed.

(c) Does not mean industrial hemp commodities or products.

SECTION 2. (1) Industrial hemp production and possession, and commerce in industrial hemp commodities and products, are authorized in this state. Industrial hemp is an agricultural product that is subject to regulation by the State Department of Agriculture.

(2) All growers and handlers must have an industrial hemp license issued by the department. Growers and handlers engaged in the production of agricultural hemp seed must also have an agricultural hemp seed production permit.

(3) An application for an industrial hemp license or agricultural hemp seed production permit must include:

(a) The name and address of the applicant;

(b) The name and address of the industrial hemp operation of the applicant;

(c) The global positioning system coordinates and legal description for the property used for the industrial hemp;

(d) If the industrial hemp license or agricultural hemp seed production permit application is by a grower, information sufficient to establish that the industrial hemp crop of the applicant will be at least 2.5 acres in size; and

(e) Any other information required by the department by rule.

(4) An industrial hemp license or agricultural hemp seed production permit is valid for a three-year term unless revoked and may be renewed as provided by department rule. An industrial hemp license or agricultural hemp seed production permit is a personal privilege that is nontransferable.

(5) An agricultural hemp seed production permit authorizes a grower or handler to produce and handle agricultural hemp seed for sale to licensed industrial hemp growers and handlers. A seller of agricultural hemp seed shall ensure that the seed complies with any standards set by the Director of Agriculture under ORS 633.511 to 633.750. The department shall make available to growers information that identifies sellers of agricultural hemp seed.

(6) Subject to department guidelines, a grower may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year. A grower does not need an agricultural hemp seed production permit in order to retain seed for future planting. Seed retained by a grower may not be sold or transferred and does not need to meet the department's agricultural hemp seed standards.

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

(a) A provision of this section;

(b) Department rules;

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

(d) A final department order directed to the grower's or handler's industrial hemp operations or activities.

(8) In addition to any inspection conducted pursuant to ORS 561.275, the department may inspect any industrial hemp crop during the crop's growth phase and take a representative composite sample for field analysis. If a crop contains an average tetrahydrocannabinol concentration exceeding 0.3 percent on a dry weight basis, the department may detain, seize or embargo the crop as provided under ORS 561.605 to 561.620.

(9) The department may charge growers and handlers reasonable fees as determined by the department. Moneys from fees charged under this subsection shall be deposited to the Department of Agriculture Service Fund and are continuously appropriated to the department for purposes of carrying out the duties of the department under this section and section 3 of this 2009 Act.

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

(a) A license or permit requirement;

(b) License or permit terms or conditions;

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

(d) A final order of the department that is specifically directed to the grower's or handler's industrial hemp operations or activities.

(2) The department may not impose a civil penalty under this section that exceeds $2,500. The department shall impose civil penalties under this section in the manner provided by ORS 183.745.

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

(4) A revocation of, or a refusal to issue or renew, an industrial hemp license or an agricultural hemp seed production permit is subject to ORS chapter 183.

SECTION 4. ORS 475.005 is amended to read:

475.005. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires otherwise:

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

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

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

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

(3) "Administration" means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.

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

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

(6) "Controlled substance":

(a) Means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this [*subsection*] **paragraph** does not control and is not controlled by the use of the term "precursor" in ORS 475.840 to 475.980.

(b) Does not mean industrial hemp, as defined in section 1 of this 2009 Act, or industrial hemp commodities or products.

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

fact manufactured, delivered or dispensed the substance.

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

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

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

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

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

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

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

(13) "Drug" means:

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

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

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

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

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

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

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

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

(16) "Marijuana":

(a) Except as provided in this subsection, means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

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

(c) Does not mean industrial hemp, as defined in section 1 of this 2009 Act, or industrial hemp commodities or products.

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

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

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

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

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

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

SECTION 5. ORS 561.144 is amended to read:

561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund, which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in

subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund, which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

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

(3) The license and service fees subject to this section are those described in ORS 561.400, 561.740, 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580, 586.650, 596.030, 596.100, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030 **and section 2 of this 2009 Act.**

Approved by the Governor August 4, 2009
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CHAPTER 898

AN ACT SB 728

Relating to controlled substances; creating new provisions; and amending ORS 475.840.

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

SECTION 1. ORS 475.840 is amended to read:

475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise provided in ORS 475.860.

(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise provided in ORS 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 and 475.906.

(c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise provided in ORS 475.904 and 475.906.

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

(2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

(3) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.840 to 475.980. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise provided in ORS 475.864.

(b) A controlled substance in Schedule II, is guilty of a Class C felony.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

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

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

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

(c) In a manner that is not dangerous to the health of the user or others who are in the proximity of the user.

(5) The affirmative defense created in subsection (4) of this section is not available to any person who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

(6)(a) Notwithstanding subsection (1) of this section, a person who manufactures or delivers a controlled substance in Schedule IV and who thereby causes death to any person is guilty of a Class C felony.

(b) For purposes of this subsection, causation is established when the controlled substance plays a substantial role in the death of any person.

SECTION 2. The State Board of Pharmacy shall classify marijuana as a controlled substance in Schedule II, III, IV or V.