FISCAL IMPACT OF PROPOSED LEGISLATION **Measure: SB 434**
Seventy-Sixth Oregon Legislative Assembly – 2011 Regular Session
Legislative Fiscal Office

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Measure Description:
Prohibits licensees of Oregon Liquor Control Commission from manufacturing, importing, storing, delivering, distributing or selling alcoholic beverages containing caffeine or containing other substances used for increasing energy levels.

Government Unit(s) Affected:
Oregon Liquor Control Commission (OLCC)

Revenue Impact:
See Analysis

Expenditure Impact:
See Analysis

Local Government Mandate:
This bill may affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:
The proposed legislation includes all alcoholic beverages including products containing malt liquors, wine, and distilled spirits.

OLCC implemented rule OAR 845-010-0146 that states:

> *"Certain alcohol energy drinks were determined to be adulterated products by the U.S. Food and Drug Administration (FDA) on November 17, 2010. Based on the warnings issued to the manufacturers of these alcohol products by the FDA, as well as the Federal Trade Commission (FTC) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), the Commission found that there was a need to promptly prohibit the sale or offering for sale of the adulterated products to protect public safety."*

The rule went on to create a temporary ban on specifically named malt liquor based beverages from sale in Oregon in November of 2010. The ban does not make a generalized prohibition based on ingredients. These temporary provisions expire May 18, 2011. OLCC reports that FDA rulings have also caused most manufactures of these types to beverages to reformulate their products so that they would not fall under this statue. OLCC expects no or minimal impact from the proposed legislation on revenues from malt beverage based products.

The OLCC sells distilled spirits directly through OLCC retail liquor stores. The Commission has identified 80 distilled spirit products that contain the proposed prohibited ingredients that are currently being sold through these retail liquor stores. These products are estimated to generate over $6 million in annual net revenue after retail operator sales commission. The average gross margin (revenue after the paying the manufacturer for the product) of these sales is 52% of the net revenue. These funds are then deposited in to the OLCC account in the Treasury and are used to fund the operation of the agency and for distribution to the General Fund and local governments.

For the purpose of this analysis, the OLCC has assumed that the operating expenses of the agency are already absorbed by the revenues received from other sales and the impact to distributable revenue from the proposed legislation is on the marginal (additional) revenue received from sales of the subject products. There is also an assumed annual revenue growth rate of 3.25% for the withdrawn products. The following table provided by the OLCC details the estimated loss of revenue:

Fiscal Year	Gross Revenue Loss	Net Distributed Revenue Loss	Revenue Loss to General Fund	Revenue Loss to Cities	Revenue Loss to Counties	Revenue Loss to City Revenue Sharing	Total Other Funds
2012	$ 6,811,200	$ 3,541,824	$ 1,983,421	$ 708,365	$ 354,182	$ 495,855	$ 1,558,403
2013	$ 7,029,158	$ 3,655,162	$ 2,046,891	$ 731,032	$ 365,516	$ 511,723	$ 1,608,271
2014	$ 7,254,091	$ 3,772,128	$ 2,112,391	$ 754,426	$ 377,213	$ 528,098	$ 1,659,736
2015	$ 7,486,222	$ 3,892,836	$ 2,179,988	$ 778,567	$ 389,284	$ 544,997	$ 1,712,848
2011-13 Biennium Total	$ 13,840,358	$ 7,196,986	**$ 4,030,312**	$ 1,439,397	$ 719,699	$ 1,007,578	**$ 3,166,674**
2013-15 Biennium Total	$ 14,740,314	$ 7,664,963	**$ 4,292,379**	$ 1,532,993	$ 766,496	$ 1,073,095	**$ 3,372,584**

In addition to the estimated loss in revenue, the agency expects an unknown expenditure impact for the testing of product to ensure compliance with the proposed legislation.