

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 96 - 2

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office**Only Impacts on Original or Engrossed
Versions are Considered Official**

Prepared by: Michael Graham
 Reviewed by: Michelle Deister, Tom MacDonald, John Terpening, John Borden
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Measure Description:

Requires the Oregon Liquor Control Commission to regulate the testing and labeling of inhalant delivery systems that contain industrial hemp-derived vapor items that are sold in the State of Oregon by any person.

Government Unit(s) Affected:

Oregon Liquor Control Commission (OLCC), Oregon Department of Agriculture (ODA), Oregon Health Authority (OHA), Oregon Judicial Department (OJD), Department of Justice (DOJ)

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Summary of Expenditure Impact:**Oregon Liquor Control Commission**

Other Funds	2021-23 Biennium	2023-25 Biennium
Personal Services	\$294,547	\$342,331
Services and Supplies	51,600	22,800
Total Funds	\$346,147	\$365,131
Positions	2	2
FTE	1.50	2.00

Analysis:

Senate Bill 96, as amended by the -2 amendments, replaces the introduced version. The measure requires the Oregon Liquor Control Commission (OLCC) to regulate the testing and labeling of inhalant delivery systems containing industrial hemp-derived vapor items that are sold in the State of Oregon by any person. The Oregon Health Authority (OHA), in consultation with OLCC and the Oregon Department of Agriculture (ODA), shall adopt rules establishing testing standards and appropriate tests for industrial hemp-derived vapor items; establish batch size determination procedures for sampling; and establish minimum standards for different varieties of industrial hemp-derived vapor items. Any such testing must be conducted by a laboratory licensed by OLCC and accredited by OHA. OLCC, in consultation with ODA and OHA, shall adopt rules establishing standards for the labeling of inhalant delivery systems that contain industrial hemp-derived vapor items. OLCC may by rule require any person responsible for the labeling of an inhalant delivery system that contains an industrial hemp-derived vapor item, and OHA may by rule require a registrant, to submit a label intended for use on a inhalant delivery system that contains an industrial hemp-derived vapor item for preapproval by OLCC before the item is sold or transferred. OLCC and ODA may adopt administrative rules to carry out the measure and take any action necessary prior to its operative date. For violations of ORS 475B.550 to 475B.590 and ORS 475B.600 to 475B.655 or related administrative rules, ODA may take disciplinary action and impose civil penalties if the person is a registered grower or handler, and OLCC may impose civil penalties if the person is not registered grower or handler. The measure takes effect 91 days after adjournment *sine die* and its substantive changes become operative on January 1, 2022.

Potential Conflict with Senate Bill 35 (2021 Session)

Senate Bill 96, as amended by the -2 amendments, makes numerous references to “industrial hemp,” which is a statutorily defined term in ORS 571.269. Senate Bill 35, which has also been introduced this session, deletes the definition of “industrial hemp” in ORS 571.269 and replaces it with “hemp.” Consequently, if both measures were to become law, this would create conflicting statutory references, since this measure would refer to and rely on a statutory definition of “industrial hemp” that no longer exists in Oregon law.

Oregon Liquor Control Commission

OLCC, OHA and ODA cooperate in the regulation of various cannabis product value-chains in Oregon. Currently, marijuana and hemp products intended for human consumption are tested for tetrahydrocannabinol (THC) and cannabidiol (CBD) levels and the presence of certain solvents or pesticides. But once hemp has been tested and converted into an industrial hemp product, there is not any tracking or regulation of the product as it is introduced into the marketplace. The measure tasks OLCC with coordinating the regulation of hemp-derived vaping products and preventing retailers from furnishing hemp-derived vaping products to minors. It should also be noted that the measure is virtually identical to Policy Option Package #413 in OLCC’s budget request for the 2021-23 biennium.

To implement and comply with the measure, OLCC will need to adapt its rulemaking, regulatory, and adjudication processes to register and track hemp-derived vaping products and monitor compliance by retailers and possibly other market participants. To handle this additional workload of standing up a separate hemp-derived “vape” testing program and to manage and coordinate registration and help processors and product vendors manage their participation in tracking hemp-derived vaping products, OLCC is asking for two permanent, full-time positions: one Compliance Specialist 3 and one Administrative Specialist 2 (1.50 FTE in 2021-23, 2.00 FTE in 2023-25). Including related services and supplies, the agency estimates its total costs at \$346,147 Other Funds in 2021-23, and \$365,131 Other Funds in 2023-25. OLCC requests an increase in expenditure limitation to fund these new positions, which would be paid for with licensing fees. OLCC also believes it will need to adapt its cannabis tracking system (Metrc) or procure a new tracking software to track hemp-derived vaping products throughout the processing and laboratory testing processes.

Because OLCC may need an increase in expenditure limitation and additional position authority, the measure warrants a subsequent referral to the Joint Committee on Ways and Means for consideration of its impact on OLCC’s biennial budget.

Oregon Department of Agriculture

The measure directs ODA to consult with OHA and OLCC on their rules related to the testing of industrial hemp-derived vapor items and labeling. ODA estimates it would be able to assist in the development of these rules with existing staff resources. ODA also may take disciplinary action and impose civil penalties, which, while not expected to generate significant revenue, could lead to additional attorney general fees for legal services. Overall, these provisions would have a minimal fiscal impact on ODA.

However, while the measure does not direct ODA to conduct this testing, ODA’s laboratory may be responsible for testing these products for OLCC, as the department currently does for cannabis regulation. If ODA’s laboratory were to assume responsibility for this testing, the department would likely need to request additional resources from the Legislature, depending on the volume of testing required for purposes of enforcement and rule compliance. Additionally, a revenue source for conducting the testing on OLCC’s behalf would need to be identified, in order to fund any future ODA laboratory work related to this measure.

Oregon Health Authority

The Oregon Public Health Laboratory within the OHA Public Health Division administers the Oregon Environmental Laboratory Accreditation Program (ORELAP). Under current Oregon law, ORELAP accredits qualified laboratories for testing cannabis products. The measure clarifies that ORELAP would regulate the testing of hemp-derived vapor items, but not inhalant delivery systems. Based on conversations with OLCC regarding the

implementation of testing for industrial hemp-derived vapor items, OHA has determined that accredited laboratories would test hemp-derived vapor items in the same way that marijuana “vape” cartridges are tested. In other words, industrial hemp-derived vapor items would follow ORELAP’s existing standards and procedures. Consequently, any rulemaking required by this measure would be conducted as part of OHA’s normal business operations. Because the measure is not expected to have any other impact on ORELAP, it would have no fiscal impact on OHA’s Public Health Division.

Oregon Judicial Department

The measure authorizes OLCC, ODA, and OHA to adopt administrative rules relating to inhalant delivery systems and industrial hemp-derived vapor products. Administrative rules are subject to challenge in the Oregon Court of Appeals under ORS Chapter 183. The measure also authorizes OLCC and ODA to impose civil penalties for violations of ORS 475B.550 to 475B.590 and ORS 475B.600 to 475B.655. Orders in contested cases are subject to judicial review in the Oregon Court of Appeals under ORS Chapter 183.

Overall, the measure is anticipated to result in a small number of additional case filings in the Oregon Court of Appeals, which OJD anticipates the agency can absorb with its existing budgetary resources. The measure would thus have a minimal fiscal impact on OJD.

Department of Justice

DOJ’s General Counsel Division provides legal services to state agencies, including representing agencies in administrative hearings. Since the measure permits OLCC and ODA to impose civil penalties (in accordance with the Oregon Administrative Procedures Act), the General Counsel Division could potentially represent OLCC or ODA in contested case hearings (or related appeals) that concern these civil penalties. However, OLCC anticipates that most enforcement and compliance issues associated with this measure would be handled by OLCC’s administrative hearings division, so Attorney General costs are not assumed to be a significant component of this fiscal impact statement.

Nevertheless, the Legislative Fiscal Office requested, but has not received, fiscal impact information from DOJ. In absence of this information, the fiscal impact to DOJ is indeterminate.