

FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office

Measure: HB 2646 - A7

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Libby Chamberlin
Reviewed by: John Borden, Laurie Byerly, Julie Neburka, John Terpening
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Measure Description:

Establishes regulations for kratom products, including labeling requirements and minimum age for sale.

Government Unit(s) Affected:

Cities, Counties, Criminal Justice Commission (CJC), Department of Justice (DOJ), District Attorneys and their Deputies (DAs), Oregon Department of Agriculture (ODA), Oregon Judicial Department (OJD), Oregon State Police (OSP), Public Defense Services Commission (PDSC)

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Summary of Expenditure Impact:

See analysis

Analysis:

HB 2646 is the Oregon Kratom Consumer Protection Act, to become operative on July 1, 2022. The measure regulates processors and sellers of kratom, including labeling requirements and age restrictions for purchasing kratom products. Under this measure, distributing or selling kratom products to a person under 21 would be a Class C misdemeanor, while distributing or selling an unregistered kratom product would incur a civil penalty of up to \$500 for the first offense, and \$1,000 for a subsequent offense. The measure places a cap on the initial fee that ODA can charge to kratom processors at \$2,500 for the first year and ties annual adjustments of the fee to the Consumer Price Index.

Oregon Department of Agriculture (ODA)

ODA anticipates a fiscal impact from this measure, but the full cost of that impact is indeterminate. Because kratom is not presently federally regulated, and there is no use of the product that has been approved by the Federal Food and Drug Administration, the regulation of kratom will be a new role for the State of Oregon and ODA.

The Department would have significant start-up costs to establish rules related to regulation, development of lab test methods to determine safe usage and label accuracy, standard program development costs, and personnel costs. Specifically, ODA anticipates costs associated with developing labeling standards, product safety standards, and accuracy testing. Rulemaking costs are dependent on how complicated the rule process becomes for a previously unregulated product but are estimated to be around \$150,000. It is also anticipated that significant DOJ consultation will be required. Further, a licensing system and registration database would need to be created, estimated around \$50,000.

Because kratom is currently not federally approved for human consumption, ODA anticipates significant lab work to ensure public safety. Costs for developing lab testing standards are estimated to range from between \$100,000 and \$300,000 but may increase depending on the type and scope of testing required and what effect the product may have on laboratory equipment. Contracting out with third-party labs may also be required in order to determine appropriate two standard testing.

While the measure allows ODA to establish a registration fee for each processor, the exact number of registrations is unknown. Originally ODA had estimated the number in the hundreds. Recently, ODA has discovered only five known processors of kratom. Based on that information, without a large influx of additional processors, the revenue from this program would be insufficient to fund operations or the registration fee would need to be extremely high. Therefore, the start-up costs and almost all of the ongoing costs would need to be supported by the General Fund.

The measure becomes operative on July 1, 2022, but the agency is authorized to take action prior to the operative date in order to be able to carry out the requirements of the measure. To startup the program by January 1, it will need the following permanent full-time positions: two Natural Resource Specialist 3's (0.88 FTE each) and a Chemist 3 (0.88 FTE). Additionally, the Department anticipates a permanent halftime Operations and Policy Analyst 3 (0.50 FTE) to assist with ongoing implementation and oversight. The estimated cost of these four positions, including associated services and supplies costs, is \$774,977 General Fund in the 2021-23 biennium. The measure includes a General Fund appropriation to the Department for \$1,099,977.

Once the program is fully implemented, the Department may need to return to the Legislature for additional resources.

The Department of Justice (DOJ)

In addition to providing advice, DOJ will assist ODA in drafting rules to develop labeling standards, product safety standards, testing for label accuracy of kratom products, fees and fee schedules, as well as for governing the civil penalty matrix and standards for implementing and enforcing the prohibitions in the bill. In addition, DOJ may need to defend ODA in regulatory actions and contested cases. The agency anticipates needing one additional full time Assistant Attorney General (AAG) position (0.88 FTE) and associated services and supplies at a cost of \$304,964 Other Funds in the 2021-23 biennium, growing to \$359,961 Other Funds in 2023-25 as the position is fully biennialized. It is anticipated that these costs would be covered by hourly legal service billings to ODA and paid for from fee revenue instituted by ODA as provided for in the measure. The measure increases the Other Funds limitation for the Department to fund the additional AAG position in the General Counsel Division.

Oregon Judicial Department (OJD)

The measure allows ODA to issue civil penalties and directs the agency to adopt rules. Because administrative rules are subject to judicial review in the Court of Appeals, OJD anticipates a small number of additional case filings. The Class C misdemeanor created in this measure for selling kratom products to individuals under age 21 also may cause a small number of additional cases in circuit court. OJD anticipates that the costs associated with any additional case filings will have a relatively minor impact and can be absorbed with existing resources.

Other Agencies

The Oregon State Police anticipate a minimal fiscal impact from this measure due to educating sworn membership about the change in age requirement to purchase kratom products. The Criminal Justice Commission (CJC), District Attorneys and their Deputies (DAs), the Public Defense Services Commission (PDSC), and cities and counties anticipate no fiscal impact from this measure.