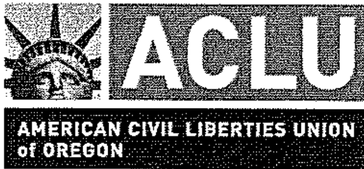

Testimony of Becky Straus, Legislative Director
In Opposition to HB 2115
House Judiciary Committee
February 4, 2013

Chair Barker and Members of the Committee:

Thank you for the opportunity to share some concerns regarding HB 2115, a bill the proposes to expand the definition of "intoxicant" for the purpose of DUI charges to include any drug "that adversely affects a person's physical or mental faculties to a noticeable or perceptible degree."

Government should have the tools it needs to keep our roads safe from people who are abusing drugs intentionally and getting behind the wheel, putting everyone at risk. Unfortunately, the proposal in HB 2115 casts a wide net over the problem, exposing innocent people to the risk of criminal charges. For this reason, we are opposed to the bill and urge that you do not advance it out of committee.

The definition of "drug" in ORS 475.005[1] is broad, covering virtually all substances that might be ingested by humans or animals. The qualifier – "adversely affects… to a noticeable or perceptible degree" – does not sufficiently limit the types of situation that might result in a DUI charge. For example, would too much coffee or consuming an energy drink meet this standard? How can we be sure that anything that is noticed or perceived by the officer was actually caused by the drug?

We recognize that Section 10b is an effort to address some of these concerns mentioned above, making available an affirmative defense for the defendant if he or she obtained and consumed the drug lawfully and in the correct dose. Affirmative defenses shift the burden from the state to prove guilt over to the defendant to prove his or her innocence. It is not unlikely that, faced with the prospect of this burden and the uncertainty of success, an otherwise innocent defendant may take a deal for diversion. Our sense of fairness might be upset knowing that, for example, an exhausted driver pulled over for a broken taillight could be faced with convincing the judge or jury that his extra dose of cold medicine was proper.

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[1] (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. (ORS 475.005)

Moreover, Subsection (3) of Section 10b requires that, in order to raise an affirmative defense, the defendant must consent to disclosure of his or her medical records, raising serious privacy concerns. It is unlikely that a medical condition that could be treated by cold medicine, for example, would be represented in a medical record. And, more importantly, a private medical record contains a wealth of information, both current and historical, about a patient that may have nothing at all to do with the drug at issue in the case.

Ironically, this bill that is intended to address the dangers of drug abuse and driving may actually make our roads less safe. A driver that fears prosecution for a DUI offense may refrain from treating a legitimate medical condition – whether it be a headache or a chronic mental illness, or anything in between – and arguably that driver is less equipped to pay appropriate attention to what is happening on the road.

We respectfully request that you do not move forward with HB 2115.

Thank you for the opportunity to share our concerns. Please feel free to contact me at any time with comments or questions.