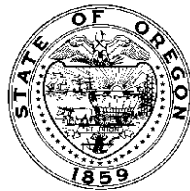


Legislative Fiscal Office

Oregon State Capitol
900 Court Street NE, H-178
Salem, OR 97301
503-986-1828



Joint Committee on Ways and Means

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To: Natural Resources Subcommittee

From: John Terpening, Legislative Fiscal Office

Date: June 16, 2021

Subject: HB 2646 – Relating to kratom
Work Session Recommendations

HB 2646 is the Oregon Kratom Consumer Protection Act. 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 requires the Department of Agriculture to adopt rules establishing standards for testing to ensure kratom product is safe for human consumption and standards for accurate labeling to ensure safe and effective use of a kratom product by consumers, including a recommended serving size. Because kratom is currently not approved for import into the United States, nor is it Food and Drug Administration-approved as safe for human consumption, it may be difficult for the Department and its lab to be able to develop standards such as “safe for human consumption” when that term is not defined by the measure.

The Department of Agriculture’s fiscal impact statement estimates the need for four positions for initial implementation of the program and to begin work in the lab. It is difficult to determine the extent of lab costs and will depend on the type and scope of testing required and what effect the product may have on lab equipment. Additionally, the rulemaking process is anticipated to be complicated for a previously unregulated product and significant consultation with the Department of Justice is anticipated.

There are currently five known processors of kratom in Oregon. The Legislative Fiscal Office notes that this is likely to be a complicated and expensive regulatory program that will not be able to be funded with registration fees like other regulatory programs within the Department.

Recommended Changes

LFO recommends adoption of the -A7 amendment which 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. The amendment also changes the operative date from January 1 to July 1, 2022.

Finally, the amendment provides a \$1,099,977 General Fund appropriation to the Department of Agriculture for initial funding of the program and \$304,964 Other Funds expenditure limitation to the Department of Justice to fund an Assistant Attorney General position.

It should be noted that with passage of the -A7 amendment, the ongoing costs of this program will be subsidized by the General Fund unless the number of registrations increases exponentially. The Department of Agriculture may need to return to the Legislature for additional resources.

Budget Note

Due to the lack federal regulation around kratom, and that there are currently no federal Food and Drug Administration-approved uses, there are concerns about the Department of Agriculture's ability to implement some aspects of the Oregon Kratom Consumer Protection Act, specifically the ability of ODA's laboratory to establish standards for testing to ensure a kratom product is safe for human consumption, and standards for recommended serving sizes. Additionally, the measure places restrictions on the fee that ODA may charge processors for licensure, and based on current information around known kratom processors, this will necessitate that the program to be subsidized with significant ongoing General Fund unless the number of licensees increases. The Department of Agriculture is directed to report to the Legislature on its progress in implementing the measure's requirements, including but not limited to, laboratory-related issues, challenges with rule-making or potential legal issues, recommended policy changes that would assist the Department in effectively implementing the state program, an update on program costs, and projections for operation of the program going forward, including the need for any additional resources. The Department is directed to provide this report to the Joint Committee on Ways and Means during the 2022 Legislative session.

Final Subcommittee Action

LFO recommends that HB 2646, as amended by the -A7 amendment, to be moved to the Ways and Means Full Committee.

Carriers

Full Committee: _____

House Floor: _____

Senate Floor: _____