

Enrolled House Bill 4053

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

CHAPTER

AN ACT

Relating to brewery licensees; creating new provisions; amending ORS 471.168, 471.311, 471.392, 471.402 and 471.501; and repealing ORS 471.220.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS chapter 471.

SECTION 2. (1) As used in this section, "common control" means:

(a) That a manufacturer, or any officer, director, substantial stockholder or other substantial equity holder in the manufacturer:

- (A) Directly or indirectly holds 50 percent or more interest in the brewery licensee; or**
- (B) Has authority to direct the management of the brewery licensee; or**

(b) That a brewery licensee, or any officer, director, substantial stockholder or other substantial equity holder in the brewery licensee:

- (A) Directly or indirectly holds 50 percent or more interest in another manufacturer; or**
- (B) Has authority to direct the management of another manufacturer.**

(2) A brewery license authorizes the licensee to:

- (a) Manufacture malt beverages on the licensed premises.**
- (b) Sell to wholesale malt beverage and wine licensees, import, store, transport or export:**

(A) Malt beverages produced on the licensed premises; or

(B) Malt beverages of a brand produced by a manufacturer that is under common control with the brewery licensee.

(c) Sell wine, malt beverages or cider on the licensed premises at retail for consumption on or off the licensed premises.

(d) Sell, in securely covered containers supplied by the consumer and having a capacity of not more than two gallons each, wine, malt beverages or cider for off-premises consumption.

(e) Obtain a special events brewery license that entitles the holder to conduct the activities allowed under paragraphs (c) and (d) of this subsection at a designated location other than the one set forth in the brewery license for a period not exceeding five days.

(f) Notwithstanding ORS 471.392 to 471.400, subject to ORS 471.175, hold a full on-premises sales license.

(g) Conduct any activities authorized under paragraph (c), (d) or (f) of this subsection at up to two additional locations approved by the commission.

(3) Subject to ORS 471.235, a brewery licensee may hold a wholesale malt beverage and wine license. A brewery licensee must hold a wholesale malt beverage and wine license if the brewery licensee:

(a) Imports, stores, transports or exports malt beverages of brands that are not produced by the licensee or a manufacturer under common control with the licensee; or

(b) Except as provided in this paragraph, sells or distributes malt beverages. This paragraph does not apply to malt beverages described in subsection (2)(a) or (b) of this section sold at a licensed premises described in subsection (2)(a) of this section.

(4) A brewery licensee and a winery licensee may not be under common control unless the winery licensee:

(a) Uses its premises to produce wine or cider; and

(b) Holds a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau.

(5) Notwithstanding any other provision of this chapter, a brewery licensee, a manufacturer that is under common control with the brewery licensee or any officer, director, substantial stockholder or other substantial equity holder in the brewery licensee or in a manufacturer that is under common control with the brewery licensee may not sell malt beverages at retail at more than three locations in this state regardless of the number or type of licenses held by the licensee, manufacturer, officer, director, stockholder or equity holder.

SECTION 3. ORS 471.168 is amended to read:

471.168. (1) For the purpose of providing coverage for injuries suffered by persons by reason of the conduct of intoxicated persons who were served alcoholic beverages on licensed premises while visibly intoxicated, all persons holding a license described in this section must either:

(a) Maintain liquor liability insurance of not less than \$300,000; or

(b) Maintain a bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

(2) The Oregon Liquor Control Commission may by rule require liquor liability insurance or bond in an amount larger than the minimum amount provided for in subsection (1) of this section.

(3) The requirements of this section apply to full on-premises sales licenses, limited on-premises sales licenses and brewery-public house licenses. The requirements of this section apply to temporary sales licenses, special events winery licenses, special events grower sales privilege licenses, special events brewery-public house licenses, **special events brewery licenses** and special events distillery licenses if the event that is licensed is open to the public and attendance at the event is anticipated to exceed 300 individuals per day.

(4) The requirements of this section apply to winery licenses, brewery licenses and grower sales privilege licenses unless an applicant for issuance of the license or renewal of the license submits with the application for issuance or renewal of the license an affidavit that states that the licensee will not allow consumption of alcoholic beverages on the premises.

(5) All licensees subject to the requirements of this section must supply proof of compliance at the time the license is issued or renewed. The commission by rule shall determine the manner in which proof of compliance may be made under the provisions of this subsection. The commission may require a licensee to present proof of compliance with liquor liability insurance and bond requirements at any time upon request of the commission.

(6) Failure of a licensee to comply with liquor liability insurance or bond requirements imposed under this section constitutes a serious threat to public health and safety. In addition to any action available to the commission under ORS 471.313 or 471.315, the commission may immediately suspend or refuse renewal of a license as provided under ORS 183.430 (2) if the licensee fails to comply with those insurance or bond requirements.

(7) If a licensee fails to provide proof of compliance with liquor liability insurance or bond requirements imposed under this section at the time of license renewal or when requested by the

commission, the failure is sufficient reason for the commission to find for purposes of ORS 183.430 (2) that the licensee has failed to comply with the insurance or bond requirements.

SECTION 4. ORS 471.311 is amended to read:

471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business that is to be operated under the license, and such other pertinent information as the commission may require. [No] **A** license [shall] **may not** be granted or renewed until the applicant has complied with the provisions of this chapter and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) The commission shall charge an application fee, not to exceed \$150, to process an application for the issuance of a new license under this chapter or a license following a change in ownership. The application fee applies only to an application for a class of license having an annual license fee. The application fee is nonrefundable, except that the commission shall refund the fee if the applicant completes, submits and maintains an application and the commission does not, on or before 75 days following receipt of the completed application, propose that the license be granted, granted with conditions or refused. The commission shall adopt rules to:

- (a) Establish application fees by class of license; and
- (b) Define a completed application for purposes of this subsection.

(4) Subject to subsection (5) of this section, the commission shall assess a nonrefundable fee for processing a renewal application for any license authorized by this chapter only if the renewal application is received by the commission less than 20 days before expiration of the license. If the renewal application is received prior to expiration of the license but less than 20 days prior to expiration, [this] **the** fee shall be 25 percent of the annual license fee. If a renewal application is received by the commission after expiration of the license but no more than 30 days after expiration, [this] **the** fee shall be 40 percent of the annual license fee. This subsection does not apply to a certificate of approval, a brewery-public house license or any license that is issued for a period of less than 30 days.

(5) The commission may waive the fee imposed under subsection (4) of this section if [it] **the commission** finds that failure to submit a timely application was due to unforeseen circumstances or to a delay in processing the application by the local governing authority that is no fault of the licensee.

(6) The license fee is nonrefundable and [shall] **must** be paid by each applicant upon the granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Fee	Minimum Bond
Brewery, including Certificate of Approval	\$ 500	\$ 1,000
Winery	\$ 250	\$ 1,000
Distillery	\$ 100	None
Wholesale Malt Beverage and Wine	\$ 275	\$ 1,000
Warehouse	\$ 100	\$ 1,000
[Special events winery] [license	\$ 10 per day]	
Brewery-Public House,		

including Certificate of Approval	\$ 250	\$ 1,000
Limited On-Premises Sales	\$ 200	None
Off-Premises Sales	\$ 100	None
Temporary Sales	\$ 50 per day	
Grower sales privilege license	\$ 250	\$ 1,000
Special events brewery license	\$ 10 per day	
Special events winery license	\$ 10 per day	
Special events grower sales privilege license	\$ 10 per day	
Special events brewery-public house license	\$ 10 per day	
Special events distillery license	\$ 10 per day	

(7) The fee for a certificate of approval or special certificate of approval granted under ORS 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is \$175. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is \$10.

(8) Except as provided in subsection (9) of this section, the annual license fee for a full on-premises sales license is \$400. No bond is required for any full on-premises sales license.

(9) The annual license fee for a full on-premises sales license held by a nonprofit private club as described in ORS 471.175 (8), or held by a nonprofit or charitable organization that is registered with the state, is \$200.

(10) The annual fee for a wine self-distribution permit is \$100, and the minimum bond is \$1,000.

SECTION 5. ORS 471.392 is amended to read:

471.392. For the purposes of ORS 471.392 to 471.400:

(1) "Manufacturer or wholesaler" means:

(a) A person holding a brewery license issued under [ORS 471.220] **section 2 of this 2016 Act**, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a distillery license issued under ORS 471.230, a wholesale malt beverage and wine license issued under ORS 471.235 or a warehouse license issued under ORS 471.242.

(b) Any manufacturer of alcoholic liquors whose products are sold in the State of Oregon.

(2) "Retail licensee" means the holder of a full or limited on-premises sales license, an off-premises sales license or a temporary sales license. "Retail licensee" does not include a bona fide trade association that represents retail licensees and that is open to all persons licensed under at least one type of retail license.

SECTION 6. ORS 471.402 is amended to read:

471.402. The holder of a brewery license issued under [ORS 471.220] **section 2 of this 2016 Act**, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a brewery-public house license issued under ORS 471.200, a warehouse license issued under

ORS 471.242 or a manufacturer certificate of approval issued under ORS 471.244 may provide or pay for sample tastings of wine, cider or malt beverages for the public on premises licensed under a full or limited on-premises sales license or under an off-premises sales license.

SECTION 7. ORS 471.501 is amended to read:

471.501. Nothing in this chapter prevents a brewery licensed under [ORS 471.220] **section 2 of this 2016 Act** or a brewery-public house licensed under ORS 471.200 from establishing a refund value for malt beverage containers under the provisions of ORS 459A.705 that is in excess of five cents, or in excess of 10 cents as described in ORS 459A.705 (2), per container for the purpose of encouraging purchasers to return the containers directly to the brewery or brewery-public house. A refund value in excess of five cents, or in excess of 10 cents as described in ORS 459A.705 (2), per container may be paid under this section only to persons who are not licensed under this chapter and who return the containers directly to the brewery or brewery-public house.

SECTION 8. (1) ORS 471.220 is repealed.

(2) Notwithstanding subsection (1) of this section, any brewery license issued under ORS 471.220 that is in effect immediately prior to the effective date of this 2016 Act is considered a brewery license issued under section 2 of this 2016 Act.

Passed by House February 5, 2016

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 18, 2016

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State