

Enrolled
Senate Bill 1044

Sponsored by Senator BEYER (at the request of Oregon Liquor Control Commission)

CHAPTER

AN ACT

Relating to alcohol; creating new provisions; amending ORS 279A.025, 471.037, 471.130, 471.162, 471.200, 471.223, 471.230, 471.292, 471.313, 471.315, 471.370, 471.375, 471.380, 471.385 and 471.805; repealing ORS 471.390; and declaring an emergency.

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

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 471.

SECTION 2. Notwithstanding the lapse, suspension or revocation of a certificate, license, permit or other form of authorization issued under this chapter, the Oregon Liquor Control Commission may:

(1) Proceed with any investigation of, or any action or disciplinary proceeding against, the person who held the certificate, license, permit or other authorization; or

(2) Revise or render void an order suspending or revoking the certificate, license, permit or other authorization.

SECTION 3. ORS 279A.025 is amended to read:

279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between a contracting agency and:

(A) Another contracting agency;

(B) The Oregon Health and Science University;

(C) A public university listed in ORS 352.002;

(D) The Oregon State Bar;

(E) A governmental body of another state;

(F) The federal government;

(G) An American Indian tribe or an agency of an American Indian tribe;

(H) A nation, or a governmental body in a nation, other than the United States; or

(I) An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

(iii) An American Indian tribe or an agency of an American Indian tribe;

(iv) A nation other than the United States; or

(v) A governmental body in a nation other than the United States;

(b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

(c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(d) Grants;

(e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(f) Acquisitions or disposals of real property or interest in real property;

(g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(h) Contracts for the procurement or distribution of textbooks;

(i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(j) The procurement, transportation, **sale** or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS **471.230 or** 471.750 by the Oregon Liquor Control Commission;

(k) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(m) Contracts for activities necessary or convenient for the sale of timber under paragraph (L) of this subsection, either separately from or in conjunction with contracts for the sale of timber, including but not limited to activities such as timber harvesting and sorting, transporting, gravel pit development or operation, and road construction, maintenance or improvement;

(n) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(o) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services is subject to ORS chapter 279B;

(p) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS 178.010 to 178.100 and ORS chapters 286A, 287A, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

(q) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565;

(s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

(t) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The legislative department;

- (c) The judicial department;
 - (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;
 - (e) Oregon Corrections Enterprises;
 - (f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;
 - (g) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;
 - (h) The Oregon 529 Savings Network and the Oregon 529 Savings Board;
 - (i) The Oregon Innovation Council;
 - (j) The Oregon Utility Notification Center; or
 - (k) Any other public body specifically exempted from the code by another provision of law.
- (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

SECTION 4. ORS 471.037 is amended to read:

471.037. (1) As used in this section and ORS 471.268:

(a)(A) "Financial consideration," except as provided in subparagraph (B) of this paragraph, means value that is given or received directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(B) "Financial consideration" does not mean any of the following:

(i) A tax deduction or credit for donating beer, wine or fermented fruit juice to a nonprofit organization.

(ii) An event admission charge or club or organization dues, if the amount of the admission charge or dues is independent of the amount of alcoholic beverages to be provided or consumed at the event or through club or organization activities.

(iii) A prize awarded at a state or county fair or other organized judging, tasting, exhibition, contest or competition at which consumption of a submitted beer, wine or fermented fruit juice is without charge and only by the entrants, submitters, judges, exhibitors, contestants or competitors.

(iv) Homemade beers, wines or fermented fruit juices made by other persons.

(v) Beer, wine or fermented fruit juice ingredients.

(vi) Wages and salaries paid by an educational organization for teaching brewing, winemaking, fermentation science or fermentation processes.

(vii) The receipt of donated homemade beers, wines or fermented fruit juices by a nonprofit or charitable organization registered in this state for sale at an auction under ORS 471.162 (6), or the proceeds received by the organization from selling those donated homemade beers, wines or fermented fruit juices at an auction under ORS 471.162 (6).

(b) "Homemade" means made for noncommercial purposes.

(c) "Noncommercial" means not dependent or conditioned upon the provision or receipt of financial consideration.

(2) Except as provided in subsection (3) of this section, the Liquor Control Act does not apply to the following:

(a) The making of homemade beer, wine or fermented fruit juice, if the total of beer, wine and fermented fruit juice produced during a calendar year does not exceed:

(A) One hundred gallons in a household having one person who is 21 years of age or older; or

(B) Two hundred gallons in a household having two or more persons who are 21 years of age or older.

(b) The keeping, storage or transportation of homemade beer, wine or fermented fruit juice.

(c) The possession of mash, wort or wash, for the purpose of making homemade beer, wine or fermented fruit juice.

(d) Except as provided in ORS 471.268, the noncommercial consumption at any location of homemade beer, wine or fermented fruit juice.

(3) Subsection (2) of this section does not exempt any person from ORS 471.410, 471.430 or 471.432.

SECTION 5. ORS 471.130 is amended to read:

471.130. (1) All licensees and permittees of the Oregon Liquor Control Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

(a) The person's passport.

(b) The person's motor vehicle operator's license[, *whether issued in this state or by any other state, so long as the license has a picture of the person*] **issued by this state or another state of the United States.**

(c) An identification card issued under ORS 807.400.

(d) A United States military identification card.

(e) An identification card issued by a federally recognized Indian tribe.

[(e)] **(f) Any other identification card issued by a state or territory of the United States** that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

(2) If a person does not have identification as described in subsection (1) of this section, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. The written statement of age shall be on a form furnished or approved by the commission, including but not limited to the following information:

Date _____

I am 21 years of age or over. _____

Signature

Description of evidence in support of age and identity:

_____ Identification No. (if any) _____

_____ Identification No. (if any) _____

(Fill in information pertaining to any two or more pieces of evidence submitted by the person.)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

Signature of permittee or licensee

[ORS 165.805 provides as follows:]

[165.805. (1) *A person commits the crime of misrepresentation of age by a minor if:*]

[(a) *Being less than a certain, specified age, the person knowingly purports to be of any age other than the person's true age with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or*]

[(b) *(Not applicable.)*]

[(2) *Misrepresentation of age by a minor is a Class C misdemeanor.*]

A person under 21 years of age who knowingly misrepresents the person's true age with the intent of obtaining alcohol in violation of ORS chapter 471 may be subject to criminal penalties under ORS 165.805.

SECTION 6. ORS 471.162 is amended to read:

471.162. (1) Hospitals, sanitariums, convalescent homes, rest homes, retirement homes and facilities for the care of the elderly that have been licensed or registered by the state may sell and serve alcoholic beverages to patients, inmates and residents, and to bona fide visitors and guests of patients, inmates and residents, without a license issued under this chapter. Facilities authorized to

sell and serve alcoholic beverages without a license under this subsection may not sell or serve alcoholic beverages after 10 p.m. except upon a physician's prescription.

(2) A person who operates a private residence that is not a boarding house but that accommodates transient guests for a limited duration may sell and serve wine, malt beverages and cider to registered overnight guests without a license. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection must have six or fewer guest units.

(3) A person who is an employee or agent of the holder of a license issued under this chapter that authorizes wholesale distribution of alcoholic beverages may, on behalf of the licensee, sell alcoholic beverages in factory-sealed containers to retail licensees and wholesalers.

(4) A pharmacist licensed under the laws of this state may sell alcoholic beverages without a license. Pharmacists may only sell alcoholic beverages under the provisions of this section if the alcoholic beverages are drugs as defined in ORS 689.005. A pharmacist may sell alcoholic beverages under the provisions of this subsection pursuant to a prescription, in containers of not more than one quart capacity.

(5) A wine collector, or the agent of a wine collector, may sell wine in factory-sealed containers at auction without a license. Any wine sold under this subsection must have been held by the collector for at least a six-month period. A wine collector must receive written approval from the Oregon Liquor Control Commission before conducting a sale under this subsection. No more than one sale in a 12-month period may be conducted by a wine collector under the provisions of this subsection.

(6) A nonprofit or charitable organization registered in this state may sell wine, malt beverages and cider, **including but not limited to donated homemade malt beverages, wine and fermented fruit juices**, and a total of not more than four liters of distilled liquor, in factory-sealed containers at an auction or through a raffle without a license. The organization must receive written approval from the commission before conducting an auction or raffle under this subsection. The organization may conduct no more than one auction or raffle under this subsection in a 12-month period. The auction or raffle may not have a duration of more than one day. The organization may sell under this subsection wine, malt beverages, cider and distilled liquor purchased by or donated to the organization. **Except for donated homemade malt beverages, wine and fermented fruit juices**, the purchased or donated wine, malt beverages, cider and distilled liquor must be imported into this state by the commission or be manufactured in or imported into this state under a brewery, brewery-public house, distillery, grower sales privilege, winery or wholesale malt beverage and wine license. **As used in this subsection, "homemade" has the meaning given that term in ORS 471.037.**

(7) A manufacturer may sell proprietary or patent medicines, perfumes, lotions, flavoring extracts, medicinal tinctures and other preparations unfit for beverage purposes without a license.

SECTION 7. ORS 471.200 is amended to read:

471.200. (1) A brewery-public house license allows the licensee:

(a) To manufacture on the licensed premises, store, transport, sell to wholesale malt beverage and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider at retail for consumption on or off the premises;

(f) To sell for consumption off the premises wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each;

(g) To conduct the activities, except manufacturing, described in paragraphs (a) to (f) of this subsection at one location other than the premises where the manufacturing occurs;

(h) To obtain a special events brewery-public house license entitling the holder to conduct the activities allowed under paragraphs (b) to (f) of this subsection at a designated location other than the location set forth in the brewery-public house license for a period not exceeding five days;

(i) To distribute malt beverages manufactured at the licensed premises to any other premises licensed to the same licensee, whether a manufacturer, wholesaler or retail premises; and

(j) To distribute for export, in any amount, malt beverages manufactured at the licensed premises.

(2) In addition to the privileges specified in subsection (1) of this section, in any calendar year a brewery-public house licensee may sell at wholesale and distribute to licensees of the commission no more than 7,500 barrels of malt beverages produced by the brewery-public house licensee.

(3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

(4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or indirectly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail businesses licensed to the same person under the provisions of this section.

(5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may also hold a warehouse license authorized by ORS 471.242.

(6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for limited on-premises sales licenses and temporary sales licenses.

(7)[(a)] Notwithstanding subsection (3) of this section, [*and except as provided in this subsection,*] a brewery-public house licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a brewery-public house license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and malt beverages manufactured under the brewery-public house license.

[(b) *The commission may not issue a full on-premises sales license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine annually.*]

(8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a distillery license. No provision of this chapter prevents a brewery-public house licensee that also holds a distillery license from being appointed by the commission as the distillery's retail outlet agent for the purpose of selling distilled liquors under ORS 471.230.

(9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a brewery-public house licensee to coproduce special events with other manufacturers.

(10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer's or wholesaler's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer.

SECTION 8. ORS 471.223 is amended to read:

471.223. (1) As used in this section, "control" means that the licensee:

(a) Owns the brand under which the wine or cider is labeled; or

(b) Performs or has the legal right to perform all of the acts common to a brand owner under the terms of a trademark license or similar agreement that for the brand under which the wine or cider is labeled has a term of at least three years.

(2) A winery license shall allow the licensee:

(a) To import wine or cider in containers that have a capacity of more than four liters.

(b) To import wine or cider in containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee.

(c) To bottle, produce, blend, store, transport or export wines or cider.

(d) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees of the commission.

(e) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(f) To sell malt beverages at retail for consumption on or off the licensed premises.

(g) To sell for consumption off the premises malt beverages, wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(h) To conduct any activities described in paragraphs (a) to (g) of this subsection at a second or third premises as may be designated by the commission.

(i) To purchase from or through the commission brandy or other distilled liquors for fortifying wines.

(j) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraphs (e) to (g) of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

(3) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

(4) In order to hold a winery license the licensee shall:

(a) Possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau; or

(b) Possess a valid wine blender or valid wholesaler basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau and have a written contract with a winery licensed under paragraph (a) of this subsection that authorizes the winery to produce for the licensee a brand of wine or cider that is under the control of the licensee.

(5) A winery licensee may sell and ship malt beverages, wine or cider directly to a resident of this state only if the licensee has a direct shipper permit issued under ORS 471.282.

~~[(6)(a)]~~ **(6)** ~~[Except as provided in paragraph (b) of this subsection,]~~ A winery licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a winery licensee, or a person having an interest in the licensee, also holds a full on-premises sales license, the provisions of this chapter do not prevent the licensee or person from both selling wine or cider

bottled and produced under the winery license and selling alcoholic liquor as authorized under the full on-premises sales license.

[(b) The commission may not issue a full on-premises sales license to a winery licensee under the provisions of this subsection if the winery licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually.]

(7) More than one winery licensee may exercise the privileges of a winery license at a single location. The commission may not refuse to issue a winery license to a person for the production of wine or cider on specified premises based on the fact that other winery licensees also produce wine or cider on those premises.

(8) If a winery licensee does not possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau, the licensee may exercise the privileges described in this section only for wine and cider brands that are under the control of the licensee.

SECTION 9. ORS 471.230 is amended to read:

471.230. (1) A distillery license allows the licensee to import, manufacture, distill, rectify, blend, denature and store [*spirits of*] **distilled liquor with** an alcoholic content greater than [17] **10** percent alcohol by [*weight*] **volume**, to sell the [*spirits*] **distilled liquor** to the Oregon Liquor Control Commission and to transport the [*spirits*] **distilled liquor** out of this state for sale outside this state. Distillery licensees may purchase and sell distilled liquor from or to another distillery licensee in containers having a capacity greater than one U.S. gallon for blending and manufacturing purposes. A distillery licensee may not sell any alcoholic beverage within this state except to the commission or as provided in this section. However, any agricultural producer or association of agricultural producers or the legal agents of an agricultural producer or association of agricultural producers that manufactures and converts agricultural surpluses, by-products and wastes into denatured ethyl and industrial alcohol for use in the arts and industry are not required to obtain a license from the commission.

(2) If a distillery licensee holds a valid distilled spirits plant basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau for the licensed premises, the distillery licensee may:

(a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee or by another distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. This paragraph does not authorize sales by the drink of distilled liquor. The tastings may be conducted on the licensed premises of the distillery and at no more than five other premises owned or leased by the licensee. The commission may allow more than one distillery licensee to use the same premises at the same time for conducting tastings if the premises are a primary production location and the licensees share the premises or are owned by the same entity. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Obtain a special events distillery license.

(c) Apply for appointment by the commission as a distillery retail outlet agent for purposes of retailing distilled liquor at locations where tastings are permitted under paragraph (a) of this subsection or subsection (4)(a) of this section. A distillery retail outlet agent may sell at locations where tastings are allowed under paragraph (a) of this subsection only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the distillery licensee or by another distillery licensee that uses the same premises as a primary production location or is owned by the same entity as the distillery licensee.

(3) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may also hold a full on-premises sales license for a location at the licensed premises of the distillery and a full on-premises sales li-

cense for one other location. All distilled [*spirits*] **liquor** sold under the full on-premises sales license must be purchased from the commission.

(4) A distillery licensee that holds a special events distillery license may conduct an event on premises designated in the special events distillery license. Except as provided in this subsection, a special events distillery license may be valid for a period not exceeding five days. The commission shall limit the approval of special events distillery licenses for a distillery licensee at the same location to not more than 62 days during a calendar year. A distillery licensee conducting a special event may:

(a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Permit sales by the drink of distilled liquor. A drink that a distillery licensee sells under this paragraph must include distilled liquor that the licensee manufactured in Oregon. Any distilled liquor contained in the drink must be on the list of products approved by the commission for retail sale in Oregon. The distillery licensee selling the drink must purchase all distilled liquor contained in the drink at the retail price set by the commission for the month in which the drink is sold.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent under subsection (2)(c) of this section, sell distilled liquor in factory-sealed containers for consumption off the licensed premises. A distillery retail outlet agent may sell at a location where tastings are allowed under paragraph (a) of this subsection only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the distillery licensee. The distillery retail outlet agent must sell the distilled liquor at the retail price set by the commission for the month of sale.

SECTION 10. ORS 471.292 is amended to read:

471.292. (1) A license granted under the Liquor Control Act [*or the Oregon Distilled Liquor Control Act*] shall:

(a) Be a purely personal privilege.

(b) Be valid for the period stated in the license.

(c) Be renewable in the manner provided in ORS 471.311, except for a cause which would be grounds for refusal to issue such license under ORS 471.313.

(d) Be [*revocable or suspendible*] **subject to cancellation, suspension or restriction** as provided in ORS 471.315.

(e) Be transferable from the place for which the license was originally issued to another location subject to the provisions of the Liquor Control Act, [*the Oregon Distilled Liquor Control Act,*] any rules of the Oregon Liquor Control Commission and any municipal ordinance or local regulation.

(f) Cease upon the death of the licensee, except as provided in subsection (2) of this section.

(g) Not constitute property.

(h) Not be alienable.

(i) Not be subject to attachment or execution.

(j) Not descend by the laws of testate or intestate devolution.

(2) The commission may, by order, provide for the manner and conditions under which:

(a) Alcoholic liquors left by any deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed of.

(b) The business of any deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(c) A business licensed pursuant to this chapter subject to a security interest may be continued in business by a secured party as defined in ORS 79.0102 for a reasonable period after default on the indebtedness by the debtor.

(d) A license granted under this chapter may be transferred from the place for which the license was originally issued to another location.

SECTION 11. ORS 471.313 is amended to read:

471.313. The Oregon Liquor Control Commission may refuse to **issue a license, or may issue a restricted license,** to any applicant under the provisions of this chapter if the commission has reasonable ground to believe any of the following to be true:

(1) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. In determining whether there are sufficient licensed premises in the locality, the commission shall consider seasonal fluctuations in the population of the locality and shall ensure that there are adequate licensed premises to serve the needs of the locality during the peak seasons.

(2) That the applicant has not furnished an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(3) That, except as allowed by ORS 471.392 to 471.400, any applicant to sell at retail for consumption on the premises has been financed or furnished with money or property by, or has any connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

(4) That the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.

(b) Has made false statements to the commission.

(c) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(d) Has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license.

(e) Has maintained an insanitary establishment.

(f) Is not of good repute and moral character.

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed.

(h) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed.

(i) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(j) Is unable to read or write the English language or to understand the laws of Oregon relating to alcoholic liquor or the rules of the commission.

(5) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for refusal of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Histories from premises currently or previously operated by the applicant may be considered when reasonable inference may be made that similar activities will occur as to the premises proposed to be licensed. The applicant may overcome the history by showing that the problems are not serious or persistent or that the applicant demonstrates a willingness and ability to control adequately the premises proposed to be licensed and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

SECTION 12. ORS 471.315 is amended to read:

471.315. (1) The Oregon Liquor Control Commission may cancel, [or] suspend, **restrict or require mandatory training for** any license issued under this chapter, or impose a civil penalty in

lieu of or in addition to a suspension as provided by ORS 471.322, if the commission finds or has reasonable ground to believe any of the following to be true:

(a) That the licensee:

(A) Has violated any provision of this chapter or ORS 474.115 or any rule of the commission adopted pursuant thereto.

(B) Has made any false representation or statement to the commission in order to induce or prevent action by the commission.

(C) Is not maintaining an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(D) Has maintained an insanitary establishment.

(E) Is insolvent or incompetent or physically unable to carry on the management of the establishment of the licensee.

(F) Is in the habit of using alcoholic liquor, habit-forming drugs or controlled substances to excess.

(G) Has knowingly sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale.

(H) Has allowed the consumption of alcoholic liquor on the licensed premises by a person who is visibly intoxicated at the time of consumption.

(I) Has misrepresented to a customer or the public any alcoholic liquor sold by the licensee.

(J) Since the granting of the license, has been convicted of a felony, of violating any of the liquor laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(b) That any person licensed to sell at retail for consumption on the premises is acting as an agent of, or is a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property, or has accepted gratuities or rebates, or has obtained the use of equipment from any manufacturer or wholesaler of alcoholic liquor or any agent thereof.

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior that is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by the licensee that the problems are not serious or persistent or that the licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

(d) That there is any other reason that, in the opinion of the commission, based on public convenience or necessity, warrants canceling or suspending such license.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 13. ORS 471.370 is amended to read:

471.370. Unless sooner suspended or revoked, a service permit expires five years after the date *[on which the permittee completed the approved alcohol server education course under ORS 471.542 that qualified the permittee for the permit]* **the Oregon Liquor Control Commission issues the permit.**

SECTION 14. ORS 471.375 is amended to read:

471.375. (1) Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic beverages as provided under subsection [(4)] (3) of this section if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic beverage for consumption on licensed premises. *[and the application is indorsed as required under subsection (2) of this section. A copy of the indorsed application must*

be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic beverages and must be made available for immediate inspection by any regulatory specialist or by any other peace officer until the applicant receives the service permit.] **Until a person who has prepared an application under this subsection receives a service permit, the licensee for the premises shall make a copy of the application available for immediate inspection by any regulatory specialist or by any other peace officer.**

[(2) An application for a service permit under subsection (1) of this section must be indorsed by one of the following persons:]

[(a) The licensee under whose license the applicant will mix, sell or serve alcoholic beverages. If a licensee indorses an application, the licensee must immediately transmit the application to the commission with the fee required by subsection (3) of this section.]

[(b) An officer or employee of a company that provides servers to licensees on a temporary basis. The commission must give a company written approval to indorse service permit applications before an application may be indorsed under this paragraph.]

[(c) An employee of the commission designated by the commission to accept and indorse applications under this section. The applicant must personally appear before the employee of the commission and provide identification as may be required by commission rule.]

[(d) An employee of an alcohol server education course provider that has been certified by the commission under ORS 471.542 (8). The employee must be specifically designated by the provider to indorse applications under this section.]

[(3)] **(2)** An applicant for a service permit must be 18 years of age or over. Application for a service permit shall be made on a form *[supplied by the]* **acceptable to the Oregon Liquor Control Commission**. The applicant shall truly answer all questions, provide any further information required[,] and pay a fee not to exceed *[\$10]* **\$50**. The commission shall either set the fee to cover only the administrative costs of the service permit program, or apply any excess to the Alcohol Education Program established under ORS 471.541.

[(4)] **(3)** An applicant *[for a service permit whose application has been indorsed as provided under]* **described in subsection (1) of this section** may:

(a) Participate in the mixing, selling or service of alcoholic beverages for consumption on the premises where served or sold; and

(b) Participate in the dispensing of malt beverages, wine or cider sold in securely covered containers provided by the consumer.

SECTION 15. ORS 471.380 is amended to read:

471.380. (1) The Oregon Liquor Control Commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

(a) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess.

(b) That the applicant has made false statements to the commission.

(c) That the applicant is incompetent or physically incapable of performing the duties of a permittee.

(d) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

[(e) That the application has not been indorsed as required by ORS 471.375.]

[(f)] **(e)** That the applicant has not completed the alcohol server education course and examination required by ORS 471.542.

(2) Notwithstanding ORS 183.435, an applicant who seeks review of the refusal of a service permit must request a hearing:

(a) Within 15 days after notification of the refusal, if the refusal is based on failure to complete the alcohol server education course and examination; or

(b) Within 30 days after notification of the refusal, if the refusal is based on any grounds other than failure to complete the alcohol server education course and examination.

SECTION 16. ORS 471.385 is amended to read:

471.385. (1) The Oregon Liquor Control Commission may revoke or suspend a service permit, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable grounds to believe any of the following to be true:

(a) That the permittee has made false statements to the commission.

(b) That the permittee has been convicted of a felony, of violating any of the liquor laws of the state, general or local, or any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(c) That the permittee has performed or permitted any act which would constitute a violation of any provision of this chapter or any rule of the commission, if the act were performed or permitted by any licensee of the commission.

(2) The issuance, suspension or revocation of a permit under ORS 471.360 to 471.390 does not relieve a licensee from responsibility for any act of an employee on the licensee's premises.

(3) When there has been a violation of this chapter or any rule adopted thereunder upon any premises licensed by the commission, the commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

[(4) The commission may revoke or suspend any license issued by the commission if the licensee knowingly indorses a person's application for a permit when the person has been refused a permit or has had a permit suspended or revoked, or when the licensee fails to comply with any provision to be performed by the licensee under ORS 471.360 to 471.390.]

[(5)] (4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 17. ORS 471.805 is amended to read:

471.805. (1) Except as otherwise provided in **subsection (3) of this section and** ORS 471.810 (2), all money collected by the Oregon Liquor Control Commission under this chapter and ORS chapter 473 and privilege taxes shall be remitted to the State Treasurer who shall credit it to a suspense account of the commission. Whenever the commission determines that moneys have been received by it in excess of the amount legally due and payable to the commission or that it has received money to which it has no legal interest, or that any license fee or deposit is properly refundable, the commission is authorized and directed to refund such money by check drawn upon the State Treasurer and charged to the suspense account of the commission. After withholding refundable license fees and such sum, not to exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items which are payable in cash immediately upon presentation, the commission shall direct the State Treasurer to transfer the money remaining in the suspense account to the Oregon Liquor Control Commission Account in the General Fund. Moneys in the Oregon Liquor Control Commission Account are continuously appropriated to the commission to be distributed and used as required or allowed by law.

(2) All necessary expenditures of the commission incurred in carrying out the purposes required of the commission by law, including the salaries of its employees, purchases made by the commission and such sums necessary to reimburse the \$250,000 revolving fund, shall be audited and paid from the Oregon Liquor Control Commission Account in the General Fund, upon warrants drawn by the Oregon Department of Administrative Services, pursuant to claims duly approved by the commission.

(3) Moneys from the retail sale of distilled liquor that are being held by an agent appointed under ORS 471.750 or by a distillery retail outlet agent appointed under ORS 471.230 are not subject to ORS 295.001 to 295.108 if the agent has on deposit with the commission an amount equalling or exceeding an amount the commission, in its discretion, deems to be reasonable and sufficient and to be not less than the average daily gross receipts from retail sales of distilled liquor by the agent. The commission shall remit moneys deposited with the commission under this subsection to the State Treasurer for deposit to a separate reserve account of the commission. Moneys in the reserve account are not revenue of the commission for purposes of ORS 221.770. The commission shall return the deposit, and any interest earned on the deposit, if the appointment of the agent terminates and the agent has for-

warded to the commission all moneys owed the commission from retail sales of distilled liquor by the agent.

SECTION 18. ORS 471.390 is repealed.

SECTION 19. (1) Section 2 of this 2017 Act applies to certificates, licenses, permits and other authorizations lapsing, suspended or revoked before, on or after the effective date of this 2017 Act.

(2) The amendments to ORS 471.370 by section 13 of this 2017 Act apply to service permits issued on or after the effective date of this 2017 Act.

(3) The amendments to ORS 471.375, 471.380 and 471.385 by sections 14 to 16 of this 2017 Act apply to service permit applications received by the Oregon Liquor Control Commission on or after the effective date of this 2017 Act.

SECTION 20. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate April 26, 2017

Received by Governor:

Repassed by Senate June 22, 2017

.....M.,....., 2017

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2017

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 13, 2017

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2017

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Dennis Richardson, Secretary of State