

A-Engrossed
Senate Bill 1044

Ordered by the Senate April 21
Including Senate Amendments dated April 21

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that lapse, suspension or revocation of certificate, license, permit or other form of Oregon Liquor Control Commission authorization related to alcoholic beverages does not divest commission of authority for investigation, disciplinary proceedings and changes to suspension or revocation of certificate, license, permit or other authorization.

Exempts sale of distilled liquor and commission appointment of distillery retail outlet agent from public contracting laws.

Changes expiration date for service permit. Eliminates requirement for indorsement of service permit application. Increases maximum fee that commission may charge for service permit. Eliminates requirement to obtain duplicate of lost, mutilated or destroyed service permit or to obtain new service permit following name change.

Exempts moneys from retail sale of distilled liquor held by appointed agent from laws regarding keeping of public moneys in financial institution if agent has deposited specified amount with commission. Requires commission to hold deposited amount in reserve account and to return deposited amount and *[accrued]* **earned** interest if appointment of agent terminates.

Allows donation of homemade malt beverages, wine and fermented fruit juices to nonprofit or charitable organization for sale at auction approved by commission. Allows nonprofit or charitable organization to sell donated homemade malt beverages, wine and fermented fruit juices at auction approved by commission.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to alcohol; creating new provisions; amending ORS 279A.025, 471.037, 471.162, 471.370,
3 471.375, 471.380, 471.385 and 471.805; repealing ORS 471.390; and declaring an emergency.

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

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

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

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

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

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

14 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
15 Code applies to all public contracting.

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

17 (a) Contracts between a contracting agency and:

18 (A) Another contracting agency;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (B) The Oregon Health and Science University;
- 2 (C) A public university listed in ORS 352.002;
- 3 (D) The Oregon State Bar;
- 4 (E) A governmental body of another state;
- 5 (F) The federal government;
- 6 (G) An American Indian tribe or an agency of an American Indian tribe;
- 7 (H) A nation, or a governmental body in a nation, other than the United States; or
- 8 (I) An intergovernmental entity formed between or among:
- 9 (i) Governmental bodies of this or another state;
- 10 (ii) The federal government;
- 11 (iii) An American Indian tribe or an agency of an American Indian tribe;
- 12 (iv) A nation other than the United States; or
- 13 (v) A governmental body in a nation other than the United States;
- 14 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or
- 15 other authority for establishing agreements between or among governmental bodies or agencies or
- 16 tribal governing bodies or agencies;
- 17 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
- 18 414.145 for purposes of source selection;
- 19 (d) Grants;
- 20 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony
- 21 relating to existing or potential litigation or legal matters in which a public body is or may become
- 22 interested;
- 23 (f) Acquisitions or disposals of real property or interest in real property;
- 24 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
- 25 lection;
- 26 (h) Contracts for the procurement or distribution of textbooks;
- 27 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- 28 (j) The procurement, transportation, **sale** or distribution of distilled liquor, as defined in ORS
- 29 471.001, or the appointment of agents under ORS **471.230 or** 471.750 by the Oregon Liquor Control
- 30 Commission;
- 31 (k) Contracts entered into under ORS chapter 180 between the Attorney General and private
- 32 counsel or special legal assistants;
- 33 (L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry
- 34 and the State Forestry Department;
- 35 (m) Contracts for activities necessary or convenient for the sale of timber under paragraph (L)
- 36 of this subsection, either separately from or in conjunction with contracts for the sale of timber,
- 37 including but not limited to activities such as timber harvesting and sorting, transporting, gravel
- 38 pit development or operation, and road construction, maintenance or improvement;
- 39 (n) Contracts for forest protection or forest related activities, as described in ORS 477.406, by
- 40 the State Forester or the State Board of Forestry;
- 41 (o) Contracts entered into by the Housing and Community Services Department in exercising the
- 42 department's duties prescribed in ORS chapters 456 and 458, except that the department's public
- 43 contracting for goods and services is subject to ORS chapter 279B;
- 44 (p) Contracts entered into by the State Treasurer in exercising the powers of that office pre-
- 45 scribed in ORS 178.010 to 178.100 and ORS chapters 286A, 287A, 289, 293, 294 and 295, including

1 but not limited to investment contracts and agreements, banking services, clearing house services
2 and collateralization agreements, bond documents, certificates of participation and other debt re-
3 payment agreements, and any associated contracts, agreements and documents, regardless of
4 whether the obligations that the contracts, agreements or documents establish are general, special
5 or limited, except that the State Treasurer's public contracting for goods and services is subject to
6 ORS chapter 279B;

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

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

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

13 (C) The investment of funds by a public body as authorized by law, and other financial trans-
14 actions of a public body that by their character cannot practically be established under the com-
15 petitive contractor selection procedures of ORS 279B.050 to 279B.085;

16 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
17 243.275, 243.291, 243.303 and 243.565;

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

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

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

22 (a) The Oregon State Lottery Commission;

23 (b) The legislative department;

24 (c) The judicial department;

25 (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to
26 279.855 and 279A.250 to 279A.290;

27 (e) Oregon Corrections Enterprises;

28 (f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to
29 279A.290;

30 (g) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

31 (h) The Oregon 529 Savings Network and the Oregon 529 Savings Board;

32 (i) The Oregon Innovation Council;

33 (j) The Oregon Utility Notification Center; or

34 (k) Any other public body specifically exempted from the code by another provision of law.

35 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with
36 qualified nonprofit agencies providing employment opportunities for individuals with disabilities un-
37 der ORS 279.835 to 279.855.

38 **SECTION 4.** ORS 471.037 is amended to read:

39 471.037. (1) As used in this section and ORS 471.268:

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

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

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

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

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

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

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

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

11 **(vii) The receipt of donated homemade beers, wines or fermented fruit juices by a**
12 **nonprofit or charitable organization registered in this state for sale at an auction under ORS**
13 **471.162 (6), or the proceeds received by the organization from selling those donated home-**
14 **made beers, wines or fermented fruit juices at an auction under ORS 471.162 (6).**

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

16 (c) "Noncommercial" means not dependent or conditioned upon the provision or receipt of fi-
17 nancial consideration.

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

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

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

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

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

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

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

30 (3) Subsection (2) of this section does not exempt any person from ORS 471.410, 471.430 or
31 471.432.

32 **SECTION 5.** ORS 471.162 is amended to read:

33 471.162. (1) Hospitals, sanitariums, convalescent homes, rest homes, retirement homes and facil-
34 ities for the care of the elderly that have been licensed or registered by the state may sell and serve
35 alcoholic beverages to patients, inmates and residents, and to bona fide visitors and guests of pa-
36 tients, inmates and residents, without a license issued under this chapter. Facilities authorized to
37 sell and serve alcoholic beverages without a license under this subsection may not sell or serve al-
38 coholic beverages after 10 p.m. except upon a physician's prescription.

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

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

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

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

12 (6) A nonprofit or charitable organization registered in this state may sell wine, malt beverages
13 and cider, **including but not limited to donated homemade malt beverages, wine and**
14 **fermented fruit juices**, and a total of not more than four liters of distilled liquor, in factory-sealed
15 containers at an auction or through a raffle without a license. The organization must receive written
16 approval from the commission before conducting an auction or raffle under this subsection. The or-
17 ganization may conduct no more than one auction or raffle under this subsection in a 12-month pe-
18 riod. The auction or raffle may not have a duration of more than one day. The organization may sell
19 under this subsection wine, malt beverages, cider and distilled liquor purchased by or donated to the
20 organization. **Except for donated homemade malt beverages, wine and fermented fruit juices**,
21 the purchased or donated wine, malt beverages, cider and distilled liquor must be imported into this
22 state by the commission or be manufactured in or imported into this state under a brewery,
23 brewery-public house, distillery, grower sales privilege, winery or wholesale malt beverage and wine
24 license. **As used in this subsection, "homemade" has the meaning given that term in ORS**
25 **471.037.**

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

28 **SECTION 6.** ORS 471.370 is amended to read:

29 471.370. Unless sooner suspended or revoked, a service permit expires five years after the date
30 *[on which the permittee completed the approved alcohol server education course under ORS 471.542*
31 *that qualified the permittee for the permit]* **the Oregon Liquor Control Commission issues the**
32 **permit.**

33 **SECTION 7.** ORS 471.375 is amended to read:

34 471.375. (1) Any person who has not had a permit refused or revoked or whose permit is not
35 under suspension may mix, sell or serve alcoholic beverages as provided under subsection [(4)] (3)
36 of this section if the person prepares in duplicate an application for a service permit prior to mixing,
37 selling or serving any alcoholic beverage for consumption on licensed premises. *[and the application*
38 *is indorsed as required under subsection (2) of this section. A copy of the indorsed application must*
39 *be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic*
40 *beverages and must be made available for immediate inspection by any regulatory specialist or by any*
41 *other peace officer until the applicant receives the service permit.]* **Until a person who has prepared**
42 **an application under this subsection receives a service permit, the licensee for the premises**
43 **shall make a copy of the application available for immediate inspection by any regulatory**
44 **specialist or by any other peace officer.**

45 *[(2) An application for a service permit under subsection (1) of this section must be indorsed by*

1 *one of the following persons:]*

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

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

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

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

14 **[(3)] (2)** An applicant for a service permit must be 18 years of age or over. Application for a
15 service permit shall be made on a form *[supplied by the]* **acceptable to the Oregon Liquor Control**
16 **Commission.** The applicant shall truly answer all questions, provide any further information
17 required[,] and pay a fee not to exceed *[\$10]* **\$50.** The commission shall either set the fee to cover
18 only the administrative costs of the service permit program, or apply any excess to the Alcohol
19 Education Program established under ORS 471.541.

20 **[(4)] (3)** An applicant *[for a service permit whose application has been indorsed as provided*
21 *under]* **described in subsection (1) of** this section may:

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

24 (b) Participate in the dispensing of malt beverages, wine or cider sold in securely covered con-
25 tainers provided by the consumer.

26 **SECTION 8.** ORS 471.380 is amended to read:

27 471.380. (1) The Oregon Liquor Control Commission may refuse to grant a service permit if it
28 has reasonable grounds to believe any of the following to be true:

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

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

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

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

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

37 **[(f)] (e)** That the applicant has not completed the alcohol server education course and exam-
38 ination required by ORS 471.542.

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

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

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

45 **SECTION 9.** ORS 471.385 is amended to read:

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

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

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

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

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

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

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

21 *[(5)]* (4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

22 **SECTION 10.** ORS 471.805 is amended to read:

23 471.805. (1) Except as otherwise provided in **subsection (3) of this section and** ORS 471.810 (2),
24 all money collected by the Oregon Liquor Control Commission under this chapter and ORS chapter
25 473 and privilege taxes shall be remitted to the State Treasurer who shall credit it to a suspense
26 account of the commission. Whenever the commission determines that moneys have been received
27 by it in excess of the amount legally due and payable to the commission or that it has received
28 money to which it has no legal interest, or that any license fee or deposit is properly refundable,
29 the commission is authorized and directed to refund such money by check drawn upon the State
30 Treasurer and charged to the suspense account of the commission. After withholding refundable li-
31 cense fees and such sum, not to exceed \$250,000, as it considers necessary as a revolving fund for
32 a working cash balance for the purpose of paying travel expenses, advances, other miscellaneous
33 bills and extraordinary items which are payable in cash immediately upon presentation, the com-
34 mission shall direct the State Treasurer to transfer the money remaining in the suspense account
35 to the Oregon Liquor Control Commission Account in the General Fund. Moneys in the Oregon Li-
36 quor Control Commission Account are continuously appropriated to the commission to be distributed
37 and used as required or allowed by law.

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

43 **(3) Moneys from the retail sale of distilled liquor that are being held by an agent ap-**
44 **pointed under ORS 471.750 or by a distillery retail outlet agent appointed under ORS 471.230**
45 **are not subject to ORS 295.001 to 295.108 if the agent has on deposit with the commission an**

1 amount equalling or exceeding an amount the commission, in its discretion, deems to be
2 reasonable and sufficient and to be not less than the average daily gross receipts from retail
3 sales of distilled liquor by the agent. The commission shall remit moneys deposited with the
4 commission under this subsection to the State Treasurer for deposit to a separate reserve
5 account of the commission. Moneys in the reserve account are not revenue of the commis-
6 sion for purposes of ORS 221.770. The commission shall return the deposit, and any interest
7 earned on the deposit, if the appointment of the agent terminates and the agent has for-
8 warded to the commission all moneys owed the commission from retail sales of distilled li-
9 quor by the agent.

10 **SECTION 11.** ORS 471.390 is repealed.

11 **SECTION 12.** (1) Section 2 of this 2017 Act applies to certificates, licenses, permits and
12 other authorizations lapsing, suspended or revoked before, on or after the effective date of
13 this 2017 Act.

14 (2) The amendments to ORS 471.370 by section 6 of this 2017 Act apply to service permits
15 issued on or after the effective date of this 2017 Act.

16 (3) The amendments to ORS 471.375, 471.380 and 471.385 by sections 7 to 9 of this 2017
17 Act apply to service permit applications received by the Oregon Liquor Control Commission
18 on or after the effective date of this 2017 Act.

19 **SECTION 13.** This 2017 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
21 on its passage.