

Enrolled House Bill 2171

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Liquor Control Commission)

CHAPTER

AN ACT

Relating to alcoholic beverages; creating new provisions; amending ORS 471.223, 471.229, 471.404, 471.810, 473.050, 473.060, 473.090, 473.100 and 473.170; repealing ORS 473.040 and 473.057; and prescribing an effective date.

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

SECTION 1. ORS 471.229 is amended to read:

471.229. [(1) Any resident of this state who is at least 21 years of age is entitled to receive not more than two cases of wine or cider per month for personal use, containing not more than nine liters per case, from another state without payment of additional state tax, fees or charges if the state from which the wine or cider is sent allows its residents to receive wine or cider from this state without imposition of state tax, fees or charges. For privilege tax purposes, receipt of a shipment into this state under this subsection shall not be considered to constitute a sale in this state. No person who transports wine or cider pursuant to this section shall deliver more than two cases of wine or cider to the same address at one time. No person who receives wine or cider pursuant to this section shall resell any of the wine or cider.]

[(2) A licensee who holds an off-premises sales license or any other license that authorizes retail sale of wine or cider for consumption off the licensed premises may ship not more than two cases of wine or cider, containing not more than nine liters per case, per shipment, for personal use and not for resale, directly to a resident of another state if the state to which the wine or cider is sent allows residents of this state to receive wine or cider sent from that state without payment of additional state tax, fees or charges. The sale shall be considered to have occurred in this state.]

[(3) The shipping container of any wine or cider sent into or out of this state under this section must be clearly labeled to indicate that the container contains alcoholic beverages and cannot be delivered to a person who is not at least 21 years of age or to a person who is visibly intoxicated.]

[(4) For purposes of ORS 471.305, an order for wine or cider that is received in writing is a bona fide order.]

[(5) Sales authorized by this section are sales made by a retailer who is not authorized to sell at wholesale or sales by a winery of wine or cider produced or bottled by the winery.]

[(6) Out-of-state wine or cider suppliers that supply wine or cider under subsection (1) of this section must obtain a license from the Oregon Liquor Control Commission under procedures prescribed by rule of the commission before selling or soliciting sales of wine or cider in Oregon.]

[(7) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under

the provisions of this section to a visibly intoxicated person, violates ORS 471.410, whether or not the person is licensed or appointed under the provisions of this chapter.]

(1) Notwithstanding any other provision of this chapter, a person may sell and ship wine or cider directly to a resident of Oregon only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue a direct shipper permit only to:

(a) A person that holds a license issued by this state or another state that authorizes the manufacture of wine or cider;

(b) A person that holds a license issued by this state or another state that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the person;

(c) A person that holds a license authorizing the sale of wine or cider at retail; or

(d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and that has a membership primarily composed of persons holding winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227.

(2) A person may apply for a direct shipper permit by filing an application with the commission. The application must be made in such form as may be prescribed by the commission. The person must include in the application the number of the license issued to the person by the commission, or a true copy of the license issued to the person by another state. If the application is based on a license issued by another state, or the application is by a nonprofit trade association described in subsection (1)(d) of this section, the person or association must pay a \$50 registration fee and maintain a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

(3) Sales and shipments under a direct shipper permit:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) May not exceed two cases, containing not more than nine liters per case, to any resident per month.

(4) Sales and shipments under a direct shipper permit must be made directly to a resident of this state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(5) A person holding a direct shipper permit must take all actions necessary to ensure that a carrier used by the permit holder does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(6)(a) A person holding a direct shipper permit must report to the commission all shipments of wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The report must be made in a form prescribed by the commission.

(b) A person holding a direct shipper permit must allow the commission to audit the permit holder's records upon request and shall make those records available to the commission in this state.

(c) A person holding a direct shipper permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this section and any related laws or rules.

(7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes imposed under ORS chapter 473 on wine and cider sold and shipped under the permit. For the purpose of the privilege tax imposed under ORS chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state.

(b) A person holding a direct shipper permit based on a license issued by another state must timely pay to the commission all taxes imposed under ORS chapter 473 on all wine or cider sold and shipped directly to Oregon residents under the permit. The permit holder, not the purchaser, is responsible for the tax.

(8) A direct shipper permit must be renewed annually. If the person holds the permit based on an annual license issued by another state, the permit may be renewed by paying a \$50 renewal fee and providing the commission with a true copy of a current license issued to the person by the other state. If the person holds the permit based on an annual license issued by this state, the permit may be renewed at the same time that the license is renewed.

(9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the permit holder fails to comply with the provisions of this section. A person may sell and ship wine or cider under a direct shipper permit only for as long as the person has the license issued by this state or another state that authorizes the person to hold a direct shipper permit.

(10) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(11) A person may not make sales and shipments of wine or cider directly to Oregon residents unless the person holds a direct shipper permit issued under this section. Any person who knowingly makes, participates in, transports, imports or receives a shipment of wine or cider that is in violation of this section commits a misdemeanor as provided in ORS 471.990 (1).

SECTION 2. ORS 471.223 is amended to read:

471.223. (1) A winery license shall allow the licensee:

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

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

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

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

(e) To conduct the activities allowed under paragraph (a), (b), (c) or (d), or all, of this subsection at a second or third premises as may be designated by the commission.

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

(g) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraph (c) 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.

(2) In order to hold a winery license the licensee shall principally produce wine or cider in this state.

(3) On and after July 1, 1990, a winery licensee is not authorized to import wine or cider in bottles unless the brand of wine or cider is owned by the licensee.

[(4) A winery licensee is authorized to ship not more than two cases of wine or cider per month for personal use and not for resale, containing not more than nine liters per case to any resident of this state who is at least 21 years of age. The shipping container of any wine or cider shipped under this subsection must be clearly labeled to indicate that the container contains alcoholic beverages and cannot be delivered to a person who is not at least 21 years of age or to a person who is visibly intoxicated. Orders for shipments under this subsection may be taken by phone, mail or any other form of communication.]

(4) A winery licensee may sell and ship wine or cider directly to a resident of this state only if the licensee has a direct shipper permit issued under ORS 471.229.

(5)(a) 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 person holds both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery 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 distillery, 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 or cider annually.

(6) 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.

SECTION 3. ORS 471.404 is amended to read:

471.404. (1) No alcoholic liquor shall be imported into this state by any person not holding a brewery, winery, distillery or wholesaler's license, except as follows:

(a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission.

(b) Wines for sacramental purposes according to rules adopted by the commission.

(c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

(d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a licensed brewery, winery or wholesaler.

(e) Imported alcoholic liquor pursuant to a permit issued under subsection (2) of this section.

(f) Wine or cider shipped directly to a resident of this state under a direct shipper permit issued pursuant to ORS 471.229.

(2) The commission may require importers of alcoholic liquor to secure a permit for each importation and may charge a reasonable fee based on quantity and type for the permit.

SECTION 4. ORS 471.810 is amended to read:

471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account, and after withholding such moneys as it may deem necessary to pay its outstanding obligations shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by the State Board of Higher Education last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by the State Board of Higher Education; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030[,] **and** 473.035 [*and* 473.040] to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month were reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or transferred under subsections

(1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section.

SECTION 5. ORS 473.050 is amended to read:

473.050. In computing any privilege tax imposed by ORS 473.030[,] **or** 473.035 [*or* 473.040]:

(1) No malt beverage, cider or wine is subject to tax more than once.

(2) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine sold to the Oregon Liquor Control Commission or exported from the state.

(3) No tax shall be levied, collected or imposed upon any malt beverage given away and consumed on the licensed premises of a brewery licensee, or sold to or by a voluntary nonincorporated organization of army, air corps or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the proper authority of each such service.

(4) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine determined by the commission to be unfit for human consumption or unsalable.

(5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon from a United States manufacturer of wines producing less than 100,000 gallons, or 379,000 liters, annually.

SECTION 6. ORS 473.060 is amended to read:

473.060. (1) The privilege taxes imposed by ORS 473.030[,] **and** 473.035 [*and* 473.040] shall be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by ORS 473.070 shall be paid before the time for filing such statements expires or, as concerns wines, on or before the 20th day of the month after such wines have been withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month shall be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee, and may waive the collection or refund the payment of any tax imposed and collected on wine, cider or malt beverages subsequently exported from this state, sold to a federal instrumentality or to the commission, or determined by the commission to be unfit for human consumption or unsalable.

(2) The commission may waive any interest or penalty assessed to a manufacturer subject to the tax imposed under ORS 473.030[,] **or** 473.035 [*or* 473.040] if the commission, in its discretion, determines that the manufacturer has made a good faith attempt to comply with the requirements of this chapter.

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under ORS 473.030[,] **or** 473.035 [*or* 473.040] following the expiration of 36 months from the date on which was filed the statement required under ORS 473.070 reporting the quantity of wine, cider or malt beverages upon which the tax is due.

(4) A manufacturer may appeal a tax imposed under ORS 473.030[,] **or** 473.035 [*or* 473.040] in the manner of a contested case under ORS chapter 183.

SECTION 7. ORS 473.090 is amended to read:

473.090. The privilege tax required to be paid by ORS 473.030[,] **and** 473.035 [*and* 473.040] constitutes a lien upon, and has the effect of an execution duly levied against, any and all property of the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased

or received, as the case may be, and remaining until the tax is paid or the property sold in payment thereof. The lien created by this section is paramount to all private liens or encumbrances.

SECTION 8. ORS 473.100 is amended to read:

473.100. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax provided for in ORS 473.030[,] **and** 473.035 [*and* 473.040], the Oregon Liquor Control Commission or its duly authorized representative shall seize any property subject to the tax and sell, at public auction, property so seized, or a sufficient portion thereof to pay the privilege tax due, together with any penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the seizure and sale.

(2) Written notice of the intended sale and the time and place thereof, shall be given to such delinquent manufacturer and to all persons appearing of record to have an interest in the property, at least 10 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the manufacturer at the last-known residence or place of business of the manufacturer in this state, if any; and in the case of any person appearing of record to have an interest in such property, addressed to such person at the last-known place of residence of the person, if any. The envelope shall be deposited in the United States mail, postage prepaid. In addition, notice shall be published for at least 10 days before the date set for such sale, in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in such county for the 10-day period. The notice shall contain a description of the property to be sold, a statement of the amount of the privilege taxes, penalties and costs, the name of the manufacturer and the further statement that, unless the privilege taxes, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

SECTION 9. ORS 473.170 is amended to read:

473.170. (1) No manufacturer shall:

(a) Fail to pay the privilege tax prescribed in ORS 473.030[,] **and** 473.035 [*and* 473.040] when it is due; or

(b) Falsify the statement required by ORS 473.070.

(2) No person shall:

(a) Refuse to permit the Oregon Liquor Control Commission or any of its representatives to make an inspection of the books and records authorized by ORS 473.140 to 473.160;

(b) Fail to keep books of account prescribed by the commission or required by this chapter;

(c) Fail to preserve the books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in the books of account for the purpose of falsifying any record required by this chapter to be made, maintained or preserved.

SECTION 10. ORS 473.040 and 473.057 are repealed.

SECTION 11. (1) **Except as provided in subsection (2) of this section, the amendments to ORS 471.223, 471.229, 471.404, 471.810, 473.050, 473.060, 473.090, 473.100 and 473.170 by sections 1 to 9 of this 2007 Act and the repeal of ORS 473.040 and 473.057 by section 10 of this 2007 Act become operative January 1, 2008.**

(2) **Prior to January 1, 2008, the Oregon Liquor Control Commission may adopt rules and take all other measures determined by the commission to be necessary for implementation of the amendments to ORS 471.223, 471.229, 471.404, 471.810, 473.050, 473.060, 473.090, 473.100 and 473.170 by sections 1 to 9 of this 2007 Act and the repeal of ORS 473.040 and 473.057 by section 10 of this 2007 Act on January 1, 2008.**

SECTION 12. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House May 15, 2007

Repassed by House June 25, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 24, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State