

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)

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 **as introduced**.

Allows manufacturer of wine or cider to sell and ship directly to Oregon resident if manufacturer holds direct shipper permit issued by Oregon Liquor Control Commission. Limits issuance of permit to persons with license issued by this state or another state that authorizes person to manufacture wine or cider.

Establishes procedure for issuance of permit. Imposes requirements for sales and shipments under permit.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to alcoholic beverages; creating new provisions; amending ORS 471.223, 471.229, 471.404,
3 471.810, 473.050, 473.060, 473.090, 473.100 and 473.170; repealing ORS 473.040 and 473.057; and
4 prescribing an effective date.

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

6 **SECTION 1.** ORS 471.229 is amended to read:

7 471.229. *[(1) Any resident of this state who is at least 21 years of age is entitled to receive not more*
8 *than two cases of wine or cider per month for personal use, containing not more than nine liters per*
9 *case, from another state without payment of additional state tax, fees or charges if the state from which*
10 *the wine or cider is sent allows its residents to receive wine or cider from this state without imposition*
11 *of state tax, fees or charges. For privilege tax purposes, receipt of a shipment into this state under this*
12 *subsection shall not be considered to constitute a sale in this state. No person who transports wine or*
13 *cider pursuant to this section shall deliver more than two cases of wine or cider to the same address*
14 *at one time. No person who receives wine or cider pursuant to this section shall resell any of the wine*
15 *or cider.]*

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

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

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

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

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

4 *[(7) Any person who knowingly or negligently delivers wine or cider under the provisions of this*
 5 *section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under*
 6 *the provisions of this section to a visibly intoxicated person, violates ORS 471.410, whether or not the*
 7 *person is licensed or appointed under the provisions of this chapter.]*

8 **(1) Notwithstanding any other provision of this chapter, a wine or cider manufacturer**
 9 **may sell and ship wine or cider directly to a resident of Oregon if the manufacturer holds a**
 10 **direct shipper permit. The Oregon Liquor Control Commission shall issue a direct shipper**
 11 **permit to a person only if the person has a license issued by this state or another state that**
 12 **authorizes the person to manufacture wine or cider.**

13 **(2) A person may apply for a direct shipper permit by filing an application with the**
 14 **commission. The application must be made in such form as may be prescribed by the com-**
 15 **mission. The person must include in the application the number of the manufacturer license**
 16 **issued to the person by the commission, or a true copy of the manufacturing license issued**
 17 **to the person by another state. If the application is based on a license issued by another**
 18 **state, the person must pay a \$50 registration fee.**

19 **(3) Sales and shipments under a direct shipper permit may be made only to a person who**
 20 **is at least 21 years of age. Sales and shipments under a direct shipper permit may be made**
 21 **only for personal use and not for the purpose of resale.**

22 **(4) Sales and shipments under a direct shipper permit must be made directly to a resident**
 23 **in this state in containers that are conspicuously labeled with the words: “CONTAINS AL-**
 24 **COHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIV-**
 25 **ERY.”**

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

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

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

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

32 **(6)(a) A person holding a direct shipper permit must report to the commission on or be-**
 33 **fore the 20th day of each month all shipments of wine or cider made to Oregon residents**
 34 **under the permit during the preceding calendar month. The report must be made in a form**
 35 **prescribed by the commission.**

36 **(b) A person holding a direct shipper permit must allow the commission to audit the**
 37 **permit holder’s records upon request.**

38 **(c) A person holding a direct shipper permit consents to the jurisdiction of the commis-**
 39 **sion and the courts of this state for the purpose of enforcing the provisions of this section**
 40 **and any related laws or rules.**

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

45 **(b) A person holding a direct shipper permit based on a manufacturing license issued by**

1 another state must pay taxes on all wine or cider sold and shipped directly to Oregon resi-
 2 dents under the permit. The permit holder, not the purchaser, is responsible for the tax.

3 (8) A direct shipper permit must be renewed annually. If the person holds the permit
 4 based on a manufacturing license issued by another state, the permit may be renewed by
 5 paying a \$50 renewal fee and providing the department with a true copy of a current license
 6 issued to the person by the other state. If the person holds the permit based on a manufac-
 7 turing license issued by this state, the permit may be renewed at the same time that the
 8 manufacturing license is renewed.

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

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

18 (11) A person may not make sales and shipments of wine or cider directly to Oregon
 19 residents unless the person holds a direct shipper permit issued under this section. Any
 20 person who knowingly makes, participates in, transports, imports or receives a shipment of
 21 wine or cider that is in violation of this section commits a misdemeanor as provided in ORS
 22 471.990 (1).

23 **SECTION 2.** ORS 471.223 is amended to read:

24 471.223. (1) A winery license shall allow the licensee:

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

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

28 (c) To sell wines or cider at retail directly to the consumer for consumption on or off the li-
 29 censed premises.

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

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

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

35 (g) To obtain a special events winery license that shall entitle the holder to conduct the activ-
 36 ities allowed under paragraph (c) of this subsection at a designated location other than the one set
 37 forth in the winery license for a period not to exceed five days.

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

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

42 [(4) A winery licensee is authorized to ship not more than two cases of wine or cider per month
 43 for personal use and not for resale, containing not more than nine liters per case to any resident of this
 44 state who is at least 21 years of age. The shipping container of any wine or cider shipped under this
 45 subsection must be clearly labeled to indicate that the container contains alcoholic beverages and can-

1 *not be delivered to a person who is not at least 21 years of age or to a person who is visibly*
 2 *intoxicated. Orders for shipments under this subsection may be taken by phone, mail or any other form*
 3 *of communication.]*

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

6 (5)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person
 7 having an interest in the licensee, may also hold a full on-premises sales license. If a person holds
 8 both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the
 9 sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery
 10 license.

11 (b) The commission may not issue a full on-premises sales license to a winery licensee under the
 12 provisions of this subsection if the winery licensee, or any person having an interest in the licensee
 13 or exercising control over the licensee, is a distillery, a brewery that brews more than 200,000 bar-
 14 rels of malt beverages annually or a winery that produces more than 200,000 gallons of wine or cider
 15 annually.

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

20 **SECTION 3.** ORS 471.404 is amended to read:

21 471.404. (1) No alcoholic liquor shall be imported into this state by any person not holding a
 22 brewery, winery, distillery or wholesaler’s license, except as follows:

- 23 (a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission.
- 24 (b) Wines for sacramental purposes according to rules adopted by the commission.
- 25 (c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.
- 26 (d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a
 27 licensed brewery, winery or wholesaler.
- 28 (e) Imported alcoholic liquor pursuant to a permit issued under subsection (2) of this section.

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

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

33 **SECTION 4.** ORS 471.810 is amended to read:

34 471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the
 35 amount of moneys available for distribution in the Oregon Liquor Control Commission Account, and
 36 after withholding such moneys as it may deem necessary to pay its outstanding obligations shall
 37 within 35 days of the month for which a distribution is made direct the State Treasurer to pay the
 38 amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as fol-
 39 lows:

- 40 (a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this
 41 section, credited to the General Fund available for general governmental purposes wherein it shall
 42 be considered as revenue during the quarter immediately preceding receipt;
- 43 (b) Twenty percent to the cities of the state in such shares as the population of each city bears
 44 to the population of the cities of the state, as determined by the State Board of Higher Education
 45 last preceding such apportionment, under ORS 190.510 to 190.610;

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

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

5 (2) The commission shall direct the Oregon Department of Administrative Services to transfer
 6 50 percent of the revenues from the taxes imposed by ORS 473.030[,] **and** 473.035 [*and 473.040*] to
 7 the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly
 8 as provided in ORS 430.380.

9 (3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding
 10 month were reduced as a result of credits claimed under ORS 473.047, the commission shall compute
 11 the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d)
 12 and (2) of this section and the amounts that would have been paid or transferred under subsections
 13 (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct
 14 the Oregon Department of Administrative Services to pay or transfer amounts equal to the differ-
 15 ences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to
 16 the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

17 (4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal
 18 year an amount less than the amount distributed to the city or county in accordance with ORS
 19 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the
 20 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census.
 21 If the population declined, the per capita distribution to the city or county shall be not less than
 22 the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to
 23 maintain the level of distribution under this subsection shall be paid from funds credited under
 24 subsection (1)(a) of this section.

25 **SECTION 5.** ORS 473.050 is amended to read:

26 473.050. In computing any privilege tax imposed by ORS 473.030[,] **or** 473.035 [*or 473.040*]:

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

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

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

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

36 (5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters,
 37 of wine sold annually in Oregon from a United States manufacturer of wines producing less than
 38 100,000 gallons, or 379,000 liters, annually.

39 **SECTION 6.** ORS 473.060 is amended to read:

40 473.060. (1) The privilege taxes imposed by ORS 473.030[,] **and** 473.035 [*and 473.040*] shall be paid
 41 to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are
 42 required to be rendered by ORS 473.070 shall be paid before the time for filing such statements ex-
 43 pires or, as concerns wines, on or before the 20th day of the month after such wines have been
 44 withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one
 45 percent a month or fraction of a month shall be added and collected. The commission may refund

1 any tax payment imposed upon or paid in error by any licensee, and may waive the collection or
 2 refund the payment of any tax imposed and collected on wine, cider or malt beverages subsequently
 3 exported from this state, sold to a federal instrumentality or to the commission, or determined by
 4 the commission to be unfit for human consumption or unsalable.

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

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

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

15 **SECTION 7.** ORS 473.090 is amended to read:

16 473.090. The privilege tax required to be paid by ORS 473.030[,] **and** 473.035 [*and 473.040*] con-
 17 stitutes a lien upon, and has the effect of an execution duly levied against, any and all property of
 18 the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased
 19 or received, as the case may be, and remaining until the tax is paid or the property sold in payment
 20 thereof. The lien created by this section is paramount to all private liens or encumbrances.

21 **SECTION 8.** ORS 473.100 is amended to read:

22 473.100. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax pro-
 23 vided for in ORS 473.030[,] **and** 473.035 [*and 473.040*], the Oregon Liquor Control Commission or its
 24 duly authorized representative shall seize any property subject to the tax and sell, at public auction,
 25 property so seized, or a sufficient portion thereof to pay the privilege tax due, together with any
 26 penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the
 27 seizure and sale.

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

43 **SECTION 9.** ORS 473.170 is amended to read:

44 473.170. (1) No manufacturer shall:

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

1 is due; or

2 (b) Falsify the statement required by ORS 473.070.

3 (2) No person shall:

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

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

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

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

10 **SECTION 10. ORS 473.040 and 473.057 are repealed.**

11 **SECTION 11. (1) Except as provided in subsection (2) of this section, the amendments to**
12 **ORS 471.223, 471.229, 471.404, 471.810, 473.050, 473.060, 473.090, 473.100 and 473.170 by sections**
13 **1 to 9 of this 2007 Act and the repeal of ORS 473.040 and 473.057 by section 10 of this 2007**
14 **Act become operative January 1, 2008.**

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

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

22