

House Bill 2488

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Oregon Winegrowers' Association)

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**.

Requires that person hold wine direct shipper permit to sell and ship wine or cider directly to individual. Provides that person receiving wine must be at least 21 years of age and receive wine for personal use and not for resale. Specifies persons who may apply for wine direct shipper permit. Establishes labeling requirements for wine or cider shipped directly to individual. Provides that person holding wine direct shipper permit is responsible for paying all privilege taxes on wine or cider shipped under permit. Establishes fee and bond amount for permit.

Allows certain nonprofit trade associations with members holding wholesale licenses to also hold retail licenses as long as sales under retail license are primarily for purpose of promoting sale of wines produced by members of association or containing grapes or other fruit produced by members of association.

A BILL FOR AN ACT

1
2 Relating to alcoholic beverages; creating new provisions; amending ORS 471.311, 471.396, 471.810,
3 473.050, 473.060, 473.090, 473.100, 473.150 and 473.170; and repealing ORS 471.229, 473.040 and
4 473.057.

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

6 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 471.**

7 **SECTION 2. (1) A person may sell and ship wine or cider directly to an individual in this**
8 **state only if the person holds a wine direct shipper permit.**

9 **(2) A person holding a wine direct shipper permit may sell and ship wine or cider directly**
10 **to an individual in this state who is at least 21 years of age for the individual's personal use**
11 **and not for resale. A wine direct shipper permit may be issued only to:**

12 **(a) A person that holds a winery license under ORS 471.223 or a license issued by another**
13 **state that is the equivalent of a winery license under ORS 471.223.**

14 **(b) A person that holds a grower sales privilege license under ORS 471.227 or a license**
15 **issued by another state that is the equivalent of a grower sales privilege license under ORS**
16 **471.227.**

17 **(c) A person that holds an off-premises sales license under ORS 471.186 or a license is-**
18 **sued by another state that is the equivalent of an off-premises sales license under ORS**
19 **471.186.**

20 **(d) A nonprofit trade association that has a membership primarily comprised of persons**
21 **described in paragraphs (a) and (b) of this subsection and that holds a temporary sales li-**
22 **cence under ORS 471.190, an off-premise sales license under ORS 471.186 or a license issued**
23 **by another state that is the equivalent of a temporary sales license under ORS 471.190 or an**
24 **off-premises sales license under ORS 471.186.**

25 **(3)(a) In addition to the information required by ORS 471.311, an applicant for a wine di-**
26 **rect shipper permit that holds a license issued by the Oregon Liquor Control Commission**
27 **shall provide the commission with the number of the license held by the applicant.**

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) In addition to the information required by ORS 471.311, an applicant for a wine direct
 2 shipper permit that holds a license issued by another state that is the equivalent of a winery
 3 license under ORS 471.223, a grower sales privilege license under ORS 471.227 or an off-
 4 premises sales license under ORS 471.186 shall provide the commission with a copy of the
 5 license held by the applicant and any information required by the commission to establish
 6 that the license held by the applicant is the equivalent of a winery license under ORS 471.223,
 7 a grower sales privilege license under ORS 471.227 or an off-premises sales license under ORS
 8 471.186.

9 (c) In addition to the information required by ORS 471.311, an applicant for a wine direct
 10 shipper permit that is a nonprofit trade association and that holds a license issued by the
 11 commission shall provide the commission with the number of the license held by the appli-
 12 cant and any information required by the commission to establish that the association's
 13 membership consists primarily of persons holding winery licenses under ORS 471.223 or
 14 grower sales privilege licenses under ORS 471.227.

15 (d) In addition to the information required by ORS 471.311, an applicant for a wine direct
 16 shipper permit that is a nonprofit trade association and that holds a license issued by an-
 17 other state shall provide the commission with a copy of the license and any information re-
 18 quired by the commission to establish that the license held by the applicant is the equivalent
 19 of a temporary sales license under ORS 471.190 or an off-premises sales license under ORS
 20 471.186, and to establish that the association's membership consists primarily of persons
 21 holding licenses issued by another state that are the equivalent of winery licenses under ORS
 22 471.223 or grower sales privilege licenses under ORS 471.227.

23 (4) A person holding a wine direct shipper permit that ships wine or cider directly to an
 24 individual shall label the container of the wine or cider in a conspicuous manner with the
 25 phrase "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER RE-
 26 QUIRED FOR DELIVERY." The person must ensure that the carrier delivers the container
 27 only if the carrier:

28 (a) Obtains the signature of the individual who receives the container;

29 (b) Verifies through inspecting a government-issued photo identification that the indi-
 30 vidual who receives the container is at least 21 years of age; and

31 (c) Verifies that the individual who receives the container is not visibly intoxicated.

32 (5) A person may not cause the delivery of wine or cider to an individual if the person
 33 knows that the individual will be intoxicated or under 21 years of age at the time the wine
 34 or cider is delivered.

35 (6) A person holding a wine direct shipper permit is responsible for paying all taxes and
 36 complying with all reporting requirements imposed by ORS chapter 473.

37 (7) A wine direct shipper permit that is held by a person that holds a license issued by
 38 the commission is renewable when the person renews the license.

39 **SECTION 3.** ORS 471.311 is amended to read:

40 471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make
 41 application to the Oregon Liquor Control Commission upon forms to be furnished by the commission
 42 showing the name and address of the applicant, location of the place of business that is to be op-
 43 erated under the license, and such other pertinent information as the commission may require. No
 44 license shall be granted or renewed until the applicant has complied with the provisions of the Li-
 45 quor Control Act, the provisions of the Oregon Distilled Liquor Control Act and the rules of the

1 commission. **A person who applies for issuance or renewal of a license or permit under this**
 2 **chapter consents to the jurisdiction of the commission and the courts of this state for the**
 3 **purpose of all matters relating to the license and for the enforcement of all laws relating to**
 4 **alcoholic beverages.**

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

9 (3) Subject to subsection (4) of this section, the commission shall assess a nonrefundable fee for
 10 processing a renewal application for any license authorized by this chapter only if the renewal ap-
 11 plication is received by the commission less than 20 days before expiration of the license. If the
 12 renewal application is received prior to expiration of the license but less than 20 days prior to ex-
 13 piration, this fee shall be 25 percent of the annual license fee. If a renewal application is received
 14 by the commission after expiration of the license but no more than 30 days after expiration, this fee
 15 shall be 40 percent of the annual license fee. This subsection does not apply to a certificate of ap-
 16 proval, a brewery-public house license or any license that is issued for a period of less than 30 days.

17 (4) The commission may waive the fee imposed under subsection (3) of this section if it finds that
 18 failure to submit a timely application was due to unforeseen circumstances or to a delay in pro-
 19 cessing the application by the local governing authority that is no fault of the licensee.

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

License	Fee	Minimum Bond
Brewery, including		
Certificate of Approval	\$ 500	\$ 1,000
Winery	250	1,000
Distillery	100	None
Wholesale Malt		
Beverage and Wine	275	1,000
Warehouse	100	1,000
Special events winery		
license may be		
issued to a		
winery licensee at	\$ 10 per day	
Brewery-Public House,		
including Certificate		
of Approval	\$ 250	\$ 1,000
Limited On-Premises Sales	\$ 200	None
Off-Premises Sales	\$ 100	None
Temporary Sales	\$ 25 for events	
	lasting five hours	
	or less and	

1		\$25 for each	
2		additional period	
3		of five hours	
4		or less	
5	Grower sales privilege		
6	license	\$ 250	\$ 1,000
7	Special events grower		
8	sales privilege		
9	license	\$ 10 per day	

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12 (6) The fee for a certificate of approval or special certificate of approval granted under ORS
13 471.289 is nonrefundable and must be paid by each applicant upon the granting or committing of a
14 certificate of approval or special certificate of approval. No bond is required for the granting of a
15 certificate of approval or special certificate of approval. Certificates of approval are valid for a pe-
16 riod commencing on the date of issuance and ending on December 31 of the fifth calendar year fol-
17 lowing the calendar year of issuance. The fee for a certificate of approval is \$175. Special
18 certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval
19 is \$10.

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

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

25 **(9) The annual fee for a wine direct shipper permit is \$50, and the minimum bond is**
26 **\$1,000. The fee and bond are not required for any person who holds a winery license under**
27 **ORS 471.223, a grower sales privilege license under ORS 471.227 or an off-premises sales li-**
28 **cence under ORS 471.186.**

29 **SECTION 4.** ORS 471.396 is amended to read:

30 471.396. (1) The prohibitions of ORS 471.394 (1) do not apply to persons holding winery licenses,
31 **wine direct shipper permits**, grower sales privilege licenses, brewery-public house licenses or
32 brewery licenses, to the extent that retail sales are authorized by the statutes establishing the
33 privileges of each license.

34 (2)(a) The prohibitions of ORS 471.394 (2) and (3) do not apply to a person who wholesales al-
35 coholic liquor and who is not required to be licensed under the provisions of this chapter if the re-
36 tail licensee does not sell any brand of alcoholic liquor sold or distributed by the person and does
37 not sell any brand of alcoholic liquor produced by any manufacturer doing business with the person
38 selling at wholesale.

39 (b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of alcoholic liquor
40 if the retail licensee does not sell any brand of alcoholic liquor sold, distributed or produced by the
41 manufacturer and does not sell any brand of alcoholic liquor sold, distributed or produced by any
42 subsidiary or other business entity that the manufacturer owns or manages, or that the manufac-
43 turer exercises control over.

44 **(c) The prohibitions of ORS 471.394 (2) do not apply to a nonprofit trade association that**
45 **has a membership primarily composed of persons that hold winery licenses under ORS**

1 **471.223 or grower sales privilege licenses under ORS 471.227 if the association makes sales**
 2 **under the retail license primarily for the purpose of promoting the sale of wines produced**
 3 **by members of the association or containing grapes or other fruit produced by members of**
 4 **the association.**

5 (3) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of
 6 a spouse or family member to a manufacturer or wholesaler if:

7 (a) The manufacturer or wholesaler is licensed by the Oregon Liquor Control Commission to sell
 8 alcoholic liquor at wholesale;

9 (b) The license authorizing sale of alcoholic liquor at wholesale was first issued before January
 10 1, 1965, and has been held continuously since that date;

11 (c) The spouse or family member holds or seeks a license that authorizes the retail sale of al-
 12 coholic liquor for off-premises consumption only; and

13 (d) The manufacturer or wholesaler does not directly or indirectly sell alcoholic liquor to the
 14 spouse or family member.

15 (4) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of
 16 a spouse or family member to the retail licensee if the manufacturer or wholesaler is licensed by the
 17 commission to sell alcoholic liquor at wholesale and does not directly or indirectly sell alcoholic
 18 liquor to the spouse or family member.

19 (5) Notwithstanding ORS 471.394, a manufacturer or wholesaler, and any officer, director or
 20 substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indi-
 21 rectly, an interest in a full or limited on-premises sales licensee, provided that the interest does not
 22 result in exercise of control over, or participation in the management of, the licensee's business or
 23 business decisions, and does not result in exclusion of any competitor's brand of alcoholic liquor.

24 (6) Notwithstanding ORS 471.394, a full or limited on-premises sales licensee, and any officer,
 25 director or substantial stockholder of any corporate full or limited on-premises sales licensee, may
 26 hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest
 27 does not result in exercise of control over, or participation in the management of, the manufactur-
 28 er's or wholesaler's business or business decisions, and does not result in exclusion of any compet-
 29 itor's brand of alcoholic liquor.

30 (7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a whole-
 31 saler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless the
 32 institutional investor controls, is controlled by, or is under common control with, a wholesaler or
 33 manufacturer. Notwithstanding ORS 471.394, an institutional investor with a financial interest in
 34 a retail licensee may hold, directly or indirectly, an interest in a wholesaler or manufacturer unless
 35 the institutional investor controls, is controlled by, or is under common control with, a retail
 36 licensee. The provisions of this subsection apply only to an institutional investor that is a state or
 37 federally chartered bank, a state or federally chartered mutual savings bank, a mutual fund or
 38 pension fund, or a private investment firm. The principal business activity of the institutional in-
 39 vestor must be the investment of capital provided by depositors, participants or investors. The in-
 40 stitutional investor must maintain a diversified portfolio of investments. The majority of the
 41 institutional investor's investments may not be in businesses that manufacture, distribute or other-
 42 wise sell alcoholic beverages. The institutional investor, and the officers, directors, substantial
 43 shareholders, partners, employees and agents of the institutional investor, may not participate in
 44 management decisions relating to the sale or purchase of alcoholic beverages made by a licensee in
 45 which the institutional investor holds an interest.

1 (8) Notwithstanding ORS 471.394, a member of the board of directors of a parent company of a
 2 corporation that is a manufacturer may serve on the board of directors of a parent company of a
 3 corporation that is a retail licensee if:

4 (a) The manufacturer or parent company of a manufacturer is listed on a national security ex-
 5 change;

6 (b) All purchases of alcoholic beverages by the retail licensee are made from holders of whole-
 7 sale malt beverage and wine licenses, brewery licenses or winery licenses in this state;

8 (c) The interest of the member of the board of directors does not result in the exclusion of any
 9 competitor's brand of alcoholic beverages on the licensed premises of the retail licensee; and

10 (d) The sale of goods and services other than alcoholic beverages by the retail licensee exceeds
 11 50 percent of the gross receipts of the business conducted by the retail licensee on the licensed
 12 premises.

13 **SECTION 5.** ORS 473.150 is amended to read:

14 473.150. (1) The Oregon Liquor Control Commission may, at any time, examine the books and
 15 records of **a holder of a wine direct shipper permit or of** any manufacturer of wine, cider or malt
 16 beverages, and may appoint [*such*] auditors, investigators and other employees [*as it deems*] **that the**
 17 **commission considers** necessary to enforce its powers and perform its duties under this section.

18 (2) Every **holder of a wine direct shipper permit and every** manufacturer shall maintain and
 19 keep, within this state for two years, all records, books and accounts required by this chapter.

20 **SECTION 6.** ORS 471.810 is amended to read:

21 471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the
 22 amount of moneys available for distribution in the Oregon Liquor Control Commission Account, and
 23 after withholding such moneys as it may deem necessary to pay its outstanding obligations shall
 24 within 35 days of the month for which a distribution is made direct the State Treasurer to pay the
 25 amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as fol-
 26 lows:

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

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

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

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

37 (2) The commission shall direct the Oregon Department of Administrative Services to transfer
 38 50 percent of the revenues from the taxes imposed by ORS 473.030[,] **and** 473.035 [*and 473.040*] to
 39 the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly
 40 as provided in ORS 430.380.

41 (3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding
 42 month were reduced as a result of credits claimed under ORS 473.047, the commission shall compute
 43 the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d)
 44 and (2) of this section and the amounts that would have been paid or transferred under subsections
 45 (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct

1 the Oregon Department of Administrative Services to pay or transfer amounts equal to the differ-
 2 ences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to
 3 the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

4 (4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal
 5 year an amount less than the amount distributed to the city or county in accordance with ORS
 6 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the
 7 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census.
 8 If the population declined, the per capita distribution to the city or county shall be not less than
 9 the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to
 10 maintain the level of distribution under this subsection shall be paid from funds credited under
 11 subsection (1)(a) of this section.

12 **SECTION 7.** ORS 473.050 is amended to read:

13 473.050. In computing any privilege tax imposed by ORS 473.030[,] **or** 473.035 [*or* 473.040]:

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

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

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

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

23 (5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters,
 24 of wine sold annually in Oregon from a United States manufacturer of wines producing less than
 25 100,000 gallons, or 379,000 liters, annually.

26 **SECTION 8.** ORS 473.060 is amended to read:

27 473.060. (1) The privilege taxes imposed by ORS 473.030[,] **and** 473.035 [*and* 473.040] shall be paid
 28 to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are
 29 required to be rendered by ORS 473.070 shall be paid before the time for filing such statements ex-
 30 pires or, as concerns wines, on or before the 20th day of the month after such wines have been
 31 withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one
 32 percent a month or fraction of a month shall be added and collected. The commission may refund
 33 any tax payment imposed upon or paid in error by any licensee, and may waive the collection or
 34 refund the payment of any tax imposed and collected on wine, cider or malt beverages subsequently
 35 exported from this state, sold to a federal instrumentality or to the commission, or determined by
 36 the commission to be unfit for human consumption or unsalable.

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

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

45 (4) A manufacturer may appeal a tax imposed under ORS 473.030, 473.035 or 473.040 in the

1 manner of a contested case under ORS chapter 183.

2 **SECTION 9.** ORS 473.090 is amended to read:

3 473.090. The privilege tax required to be paid by ORS 473.030[,] **and** 473.035 [*and 473.040*] con-
 4 stitutes a lien upon, and has the effect of an execution duly levied against, any and all property of
 5 the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased
 6 or received, as the case may be, and remaining until the tax is paid or the property sold in payment
 7 thereof. The lien created by this section is paramount to all private liens or encumbrances.

8 **SECTION 10.** ORS 473.100 is amended to read:

9 473.100. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax pro-
 10 vided for in ORS 473.030[,] **and** 473.035 [*and 473.040*], the Oregon Liquor Control Commission or its
 11 duly authorized representative shall seize any property subject to the tax and sell, at public auction,
 12 property so seized, or a sufficient portion thereof to pay the privilege tax due, together with any
 13 penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the
 14 seizure and sale.

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

30 **SECTION 11.** ORS 473.170 is amended to read:

31 473.170. (1) No manufacturer shall:

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

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

35 (2) No person shall:

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

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

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

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

42 **SECTION 12.** ORS 471.229, 473.040 **and** 473.057 are repealed.

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