

House Bill 2878

Sponsored by Representatives HOLVEY, SCHAUFLEER; Representatives BARKER, FLORES, GIROD, HUNT, MERKLEY, ROBLAN, ROSENBAUM, WITT (at the request of United Food and Commercial Workers, Local 555)

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**.

Modifies penalties for providing alcoholic beverages to person under 21 years of age or to another person with knowledge that other person will provide alcoholic beverages to person under 21 years of age. Establishes mandatory minimum sentences and fines. Authorizes diversion for first offense. Authorizes civil penalties for providing alcoholic beverages to person under 21 years of age if offender was not aware that person was under 21 years of age.

A BILL FOR AN ACT

1
2 Relating to alcoholic beverages; creating new provisions; and amending ORS 471.410.

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

4 **SECTION 1.** ORS 471.410 is amended to read:

5 471.410. [(1) *No person shall sell, give or otherwise make available any alcoholic liquor to any*
6 *person who is visibly intoxicated.*]

7 [(2) *No one other than the person's parent or guardian shall sell, give or otherwise make available*
8 *any alcoholic liquor to a person under the age of 21 years. A person violates this subsection who sells,*
9 *gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to*
10 *whom the liquor is made available will violate this subsection.*]

11 [(3) *No person who exercises control over private real property may knowingly allow any other*
12 *person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic*
13 *liquor on the property, or allow any other person under the age of 21 years who is not a child or minor*
14 *ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic*
15 *liquor on the property. The prohibitions of this subsection apply only to a person who is present and*
16 *in control of the location at the time the consumption occurs. The prohibitions of this subsection do not*
17 *apply to the owner of rental property, or the agent of an owner of rental property, unless the con-*
18 *sumption occurs in the individual unit in which the owner or agent resides.*]

19 [(4) *A person who violates subsection (1) or (2) of this section commits a Class A misdemeanor.*
20 *Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum*
21 *sentence as follows:*]

22 [(a) *Upon a first conviction, a fine of \$350.*]

23 [(b) *Upon a second conviction, a fine of \$1,000.*]

24 [(c) *Upon a third or subsequent conviction, a fine of \$1,000 and not less than 30 days of*
25 *imprisonment.*]

26 [(5) *The court shall not waive or suspend imposition or execution of the mandatory minimum sen-*
27 *tence required by subsection (4) of this section. In addition to the mandatory sentence the court may*
28 *require the violator to make restitution for any damages to property where the alcoholic liquor was il-*

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 *legally consumed or may require participation in volunteer service to a community service agency.]*

2 *[(6) The mandatory minimum penalty provisions of subsection (4) of this section shall not apply to*
 3 *persons licensed or appointed under the provisions of this chapter.]*

4 *[(7) A person who violates subsection (3) of this section commits a violation. Upon violation of*
 5 *subsection (3) of this section, the court shall impose at least a mandatory minimum fine as follows:]*

6 *[(a) Upon a first conviction, a fine of \$350.]*

7 *[(b) Upon a second or subsequent conviction, a fine of \$1,000.]*

8 *[(8) Nothing in this section prohibits any licensee under this chapter from allowing a person who*
 9 *is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or*
 10 *served any alcoholic liquor.]*

11 **(1) A person may not sell, give or otherwise make available alcoholic beverages to any**
 12 **person who is visibly intoxicated.**

13 **(2) A court shall give written notice to the Oregon Liquor Control Commission of a con-**
 14 **viction under this section if:**

15 **(a) The person is a licensee or an agent appointed under ORS 471.750, or is an employee**
 16 **of a licensee or agent; and**

17 **(b) The offense is committed in the course of the person's occupation or employment.**

18 **(3) Nothing in this section prohibits any licensee under this chapter from allowing a**
 19 **person who is visibly intoxicated from remaining on licensed premises so long as the person**
 20 **is not sold or served any alcoholic beverages.**

21 **(4) A person who violates subsection (1) of this section commits a Class A misdemeanor.**

22 **SECTION 2. Sections 3 and 5 of this 2007 Act are added to and made a part of ORS**
 23 **chapter 471.**

24 **SECTION 3. (1) A person may not sell, give or otherwise make available alcoholic**
 25 **beverages to a person under 21 years of age.**

26 **(2) A person may not sell, give or otherwise make available alcoholic beverages to an-**
 27 **other person with the knowledge that the other person will sell, give or otherwise make**
 28 **available the alcoholic beverages to a person under 21 years of age.**

29 **(3) Subsection (1) of this section does not apply to a parent or guardian who gives or**
 30 **otherwise makes available alcoholic beverages to a child or ward of the parent or guardian.**

31 **(4) This section does not apply to sacramental wine given or provided as part of a reli-**
 32 **gious rite or service.**

33 **(5) A person who knowingly violates subsection (1) or (2) of this section commits a Class**
 34 **C misdemeanor and is subject to a fine of not less than \$500. A court shall order a person**
 35 **who is convicted under this subsection to complete a program that addresses the personal**
 36 **and social impacts of alcohol consumption.**

37 **(6) A person who knowingly violates subsection (1) or (2) of this section a second time is**
 38 **guilty of a Class B misdemeanor and is subject to a mandatory minimum fine of \$1,500.**

39 **(7) A person who knowingly violates subsection (1) or (2) of this section a third or sub-**
 40 **sequent time is guilty of a Class A misdemeanor and is subject to a mandatory minimum**
 41 **sentence of 30 days' imprisonment and a minimum fine of \$2,000. A court may not waive or**
 42 **suspend the imposition or execution of the mandatory minimum period of incarceration**
 43 **prescribed by this subsection.**

44 **(8) In addition to the mandatory minimum penalty provisions of subsections (5), (6) and**
 45 **(7) of this section, the court may require the violator to make restitution for any damages**

1 to property where the alcoholic beverage was illegally consumed or may require the violator
 2 to participate in volunteer service to a community service agency.

3 (9) The mandatory minimum penalty provisions of subsections (5), (6) and (7) of this
 4 section do not apply to a person licensed under the provisions of this chapter, to an agent
 5 appointed under ORS 471.750 or to an employee of the licensee or agent.

6 (10) If a person is charged with knowingly violating subsection (1) or (2) of this section,
 7 and the person has not previously been convicted of violating subsection (1) or (2) of this
 8 section, the district attorney shall propose a diversion agreement to the defendant under
 9 ORS 135.891, 135.896 and 135.901. Diversion agreements under this section are not subject
 10 to ORS 135.905. As a condition of entering into a diversion agreement under this subsection,
 11 the defendant must pay a filing fee of \$350, which shall be distributed as follows:

12 (a) \$112 to the Department of Revenue for deposit in the Criminal Fine and Assessment
 13 Account;

14 (b) \$100 to be distributed as provided for the disposition of costs under ORS 153.630; and

15 (c) \$138 to be paid into the Mental Health Alcoholism and Drug Services Account.

16 (11) The Oregon Liquor Control Commission may order a person who violates subsection
 17 (1) of this section to complete training approved by the commission if the person did not
 18 know that the person receiving the alcoholic beverages was under 21 years of age. The
 19 commission may impose a civil penalty of up to \$200 on any person who violates subsection
 20 (1) of this section a second time if the person did not know that the person receiving the
 21 alcoholic beverages was under 21 years of age. The commission may impose a civil penalty
 22 of up to \$500 on any person who violates subsection (1) of this section a third or subsequent
 23 time if the person did not know that the person receiving the alcoholic beverages was under
 24 21 years of age. A civil penalty imposed under this section shall be imposed in the manner
 25 provided in ORS 183.745.

26 SECTION 4. The provisions of section 3 (11) of this 2007 Act apply to persons who sell,
 27 give or otherwise make available alcoholic beverages to a person under 21 years of age on
 28 or after the effective date of this 2007 Act.

29 SECTION 5. (1) A person who exercises control over private real property may not
 30 knowingly allow any other person under 21 years of age who is not a child or minor ward of
 31 the person to consume alcoholic beverages on the property, or allow any other person under
 32 21 years of age who is not a child or ward of the person to remain on the property if the
 33 person under 21 years of age consumes alcoholic beverages on the property. The prohibitions
 34 of this subsection apply only to a person who is present and in control of the location at the
 35 time the consumption occurs. The prohibitions of this subsection do not apply to the owner
 36 of rental property, or the agent of an owner of rental property, unless the consumption oc-
 37 curs in the individual unit in which the owner or agent resides.

38 (2) This section does not apply to sacramental wine given or provided as part of a reli-
 39 gious rite or service.

40 (3) A person who violates this section commits a violation. Upon conviction for a vio-
 41 lation of this section, the court shall impose a mandatory minimum fine as follows:

42 (a) Upon a first conviction, a fine of at least \$350.

43 (b) Upon a second or subsequent conviction, a fine of at least \$1,000.