

Senate Bill 882

Sponsored by Senator L GEORGE; Senators CARTER, JOHNSON, WESTLUND, Representatives BARKER, ESQUIVEL, SHIELDS, WITT (at the request of Fred Meyer and Safeway stores)

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 or wholesaler of alcoholic beverages to enter into agreement with retail licensee that provides for delayed payment for alcoholic beverages, after delivery, by check or electronic fund transfer.

A BILL FOR AN ACT

1
2 Relating to the manner in which retail licensees pay for alcoholic beverages; creating new pro-
3 visions; amending ORS 166.715, 471.038, 471.200 and 471.500; and repealing ORS 471.485.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 471.392 to**
6 **471.400.**

7 **SECTION 2. (1) Nothing in ORS 471.392 to 471.400 or any other provision of this chapter**
8 **prevents a manufacturer or wholesaler from entering into an agreement with a retail**
9 **licensee that provides for payment for alcoholic beverages by check or electronic fund**
10 **transfer after the alcoholic beverages are delivered to the licensed premises of the retail**
11 **licensee.**

12 **(2) If a manufacturer or wholesaler has delivered alcoholic beverages to a retail licensee**
13 **and allowed delayed payment under the provisions of this section, and the retail licensee fails**
14 **to make payment for the alcoholic beverages when due, the manufacturer or wholesaler may**
15 **not deliver any other alcoholic beverages to the retail licensee unless full payment for a**
16 **subsequent delivery is made, either before or at the time of delivery. The prohibition on al-**
17 **lowing delayed payment imposed by this subsection remains in effect until all amounts that**
18 **are owed are paid by the retail licensee.**

19 **SECTION 3. ORS 166.715 is amended to read:**

20 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

21 (1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart,
22 photograph, phonograph record, magnetic tape, computer printout, other data compilation from
23 which information can be obtained or from which information can be translated into usable form,
24 or other tangible item.

25 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business
26 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
27 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
28 vernmental and nongovernmental entities.

29 (3) "Investigative agency" means the Department of Justice or any district attorney.

30 (4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering

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 activity that have the same or similar intents, results, accomplices, victims or methods of commis-
 2 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same
 3 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after
 4 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-
 5 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other
 6 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct
 7 that constitutes an incident of racketeering activity may be used to establish a pattern of
 8 racketeering activity without regard to whether the conduct previously has been the subject of a
 9 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted
 10 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within
 11 the jurisdiction of the juvenile court.

12 (5) "Person" means any individual or entity capable of holding a legal or beneficial interest in
 13 real or personal property.

14 (6) "Racketeering activity" includes conduct of a person committed both before and after the
 15 person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to
 16 commit, or to solicit, coerce or intimidate another person to commit:

17 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following
 18 provisions of the Oregon Revised Statutes:

19 (A) ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, relating to securities;

20 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

21 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing
 22 governmental administration;

23 (D) ORS 162.405 to 162.425, relating to abuse of public office;

24 (E) ORS 162.455, relating to interference with legislative operation;

25 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

26 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

27 (H) ORS 163.225 and 163.235, relating to kidnapping;

28 (I) ORS 163.275, relating to coercion;

29 (J) ORS 163.670 to 163.693, relating to sexual conduct of children;

30 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.125, 164.135, 164.140,
 31 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related of-
 32 fenses;

33 (L) ORS 164.315 to 164.335, relating to arson and related offenses;

34 (M) ORS 164.345 to 164.365, relating to criminal mischief;

35 (N) ORS 164.395 to 164.415, relating to robbery;

36 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a
 37 recording;

38 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
 39 related offenses;

40 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;

41 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;

42 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
 43 to firearms and other weapons;

44 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.062 to
 45 167.080, 167.087, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365,

1 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, gambling, computer crimes
2 involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related
3 offenses;

4 (U) ORS 171.990, relating to legislative witnesses;

5 (V) ORS 260.575 and 260.665, relating to election offenses;

6 (W) ORS 314.075, relating to income tax;

7 (X) ORS 180.440 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and
8 the directory developed under ORS 180.425;

9 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
10 411.990 (2) and (3);

11 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

12 (AA) ORS 463.995, relating to boxing and wrestling, as defined in ORS 463.015;

13 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
14 471.446, [471.485,] 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
15 chapter 471 relating to licenses issued under the Liquor Control Act;

16 (CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;

17 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

18 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

19 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;

20 (GG) ORS chapter 706, relating to banking law administration;

21 (HH) ORS chapter 714, relating to branch banking;

22 (II) ORS chapter 716, relating to mutual savings banks;

23 (JJ) ORS chapter 723, relating to credit unions;

24 (KK) ORS chapter 726, relating to pawnbrokers;

25 (LL) ORS 166.382 and 166.384, relating to destructive devices;

26 (MM) ORS 165.074;

27 (NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;

28 (OO) ORS chapter 496, 497 or 498, relating to wildlife;

29 (PP) ORS 163.355 to 163.427, relating to sexual offenses;

30 (QQ) ORS 166.015, relating to riot;

31 (RR) ORS 166.155 and 166.165, relating to intimidation;

32 (SS) ORS chapter 696, relating to real estate and escrow;

33 (TT) ORS chapter 704, relating to outfitters and guides;

34 (UU) ORS 165.692, relating to making a false claim for health care payment;

35 (VV) ORS 162.117, relating to public investment fraud;

36 (WW) ORS 164.170 or 164.172;

37 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

38 (YY) ORS 164.877;

39 (ZZ) ORS 167.312 and 167.388;

40 (AAA) ORS 164.889; or

41 (BBB) ORS 165.800.

42 (b) Any conduct defined as "racketeering activity" under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

43 (7) "Unlawful debt" means any money or other thing of value constituting principal or interest
44 of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred
45 or contracted:

- 1 (a) In violation of any one of the following:
- 2 (A) ORS chapter 462, relating to racing;
- 3 (B) ORS 167.108 to 167.164, relating to gambling; or
- 4 (C) ORS 82.010 to 82.170, relating to interest and usury.

5 (b) In gambling activity in violation of federal law or in the business of lending money at a rate
6 usurious under federal or state law.

7 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute
8 in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions
9 from what the statute was when this section was enacted, the reference shall extend to and include
10 amendments to the statute.

11 **SECTION 4.** ORS 471.038 is amended to read:

12 471.038. (1) Nonbeverage food products described in subsection (6) of this section may be sold
13 at retail by any holder of a license issued by the Oregon Liquor Control Commission that authorizes
14 the sale of alcoholic liquor at retail, or in any store operated by the commission under the pro-
15 visions of ORS 471.750. Any nonbeverage food product containing more than one-half of one percent
16 of alcohol by volume must be clearly labeled to reflect the alcohol content of the product and clearly
17 labeled on the front of the package to indicate that the product may not be sold to persons under
18 21 years of age.

19 (2) Except as provided by this section, sales of nonbeverage food products described in sub-
20 section (6) of this section are subject to all provisions of this chapter, including the prohibitions on
21 sales to persons under 21 years of age and the prohibitions on sales to persons who are visibly
22 intoxicated.

23 (3) Nonbeverage food products described in subsection (6) of this section may be imported,
24 stored and distributed in this state without a license issued by the commission. Nonbeverage food
25 products described in subsection (6) of this section are not subject to the privilege taxes imposed
26 by ORS chapter 473.

27 (4) Manufacturers of nonbeverage food products described in subsection (6) of this section are
28 not subject to the provisions of ORS 471.392 to 471.400, [471.485,] 471.490 or 471.495 or any other
29 provision of this chapter relating to manufacturers of alcoholic liquor. A manufacturer of
30 nonbeverage food products described in subsection (6) of this section may sell and deliver the
31 product directly to a licensee authorized under this section to sell the product at retail.

32 (5) The holder of a distillery license issued under ORS 471.230 who is also a manufacturer of
33 nonbeverage food products described in subsection (6) of this section may purchase distilled liquor
34 directly from other distilleries.

35 (6) The provisions of this section apply only to nonbeverage food products that contain not more
36 than five percent alcohol by weight or 10 percent alcohol by volume, whichever is greater.

37 **SECTION 5.** ORS 471.200 is amended to read:

38 471.200. (1) A brewery-public house license allows the licensee:

39 (a) To manufacture on the licensed premises, store, transport, sell to wholesale malt beverage
40 and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

41 (b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption
42 on or off the premises;

43 (c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for
44 consumption off the premises;

45 (d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed

1 premises in unpasteurized or pasteurized form directly to the consumer for consumption off the
2 premises, delivery of which may be made in a securely covered container supplied by the consumer;

3 (e) To sell wine and cider at retail for consumption on or off the premises; and

4 (f) To conduct the activities described in paragraphs (b) to (e) of this subsection at one location
5 other than the premises where the manufacturing occurs.

6 (2) In addition to the privileges specified in subsection (1) of this section, in any calendar year
7 a brewery-public house licensee may sell at wholesale to licensees of the commission malt beverages
8 produced by the brewery-public house licensee if the brewery-public house licensee produced 1,000
9 barrels or less of malt beverages in the immediately preceding calendar year.

10 (3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail
11 licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS
12 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise,
13 in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler,
14 as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the
15 licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided
16 by this section and ORS 471.400 **and section 2 of this 2007 Act**, may not acquire or hold any right,
17 title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment,
18 business or merchandise of any other retail licensee, as defined in ORS 471.392.

19 (4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail
20 licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS
21 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from
22 any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any
23 person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398
24 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or in-
25 directly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS
26 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance
27 between manufacturing and retail businesses licensed to the same person under the provisions of
28 this section.

29 (5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person
30 having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A
31 brewery-public house licensee, or any person having an interest in the licensee, may also hold a
32 warehouse license authorized by ORS 471.242.

33 (6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for
34 limited on-premises sales licenses and temporary sales licenses.

35 (7)(a) Notwithstanding subsection (3) of this section, and except as provided in this subsection,
36 a brewery-public house licensee, or any person having an interest in the licensee, may also hold a
37 full on-premises sales license. If a person holds both a brewery-public house license and a full on-
38 premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled
39 liquor and malt beverages manufactured under the brewery-public house license.

40 (b) The commission may not issue a full on-premises sales license to a brewery-public house
41 licensee under the provisions of this subsection if the brewery-public house licensee, or any person
42 having an interest in the licensee or exercising control over the licensee, is a brewery that brews
43 more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000
44 gallons of wine annually.

45 (c) The commission may not issue a full on-premises sales license to a brewery-public house

1 licensee under the provisions of this subsection if the brewery-public house licensee, or any person
 2 having an interest in the licensee or exercising control over the licensee, is a distillery, unless the
 3 distillery produces only pot distilled liquor and produces no more than 12,000 gallons of pot distilled
 4 liquor annually.

5 (8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any
 6 person having an interest in the licensee, may also hold a distillery license if the licensee produces
 7 only pot distilled liquor, and produces no more than 12,000 gallons of pot distilled liquor annually.
 8 No provision of this chapter prevents a brewery-public house licensee from becoming a retail sales
 9 agent of the commission for the purpose of selling distilled liquors.

10 (9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a
 11 brewery-public house licensee to coproduce special events with other manufacturers.

12 (10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold,
 13 directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does
 14 not result in exercise of control over, or participation in the management of, the manufacturer's or
 15 wholesaler's business or business decisions and does not result in exclusion of any competitor's
 16 brand of alcoholic liquor.

17 (b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer,
 18 director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly
 19 or indirectly, an interest in a brewery-public house licensee, provided that the interest does not re-
 20 sult in exercise of control over, or participation in the management of, the licensee's business or
 21 business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

22 (11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to
 23 be a manufacturer.

24 **SECTION 6.** ORS 471.500 is amended to read:

25 471.500. The provisions of ORS [471.485,] 471.490 and 471.495 [shall] **do** not apply to [any] **a**
 26 common carrier licensed by the Oregon Liquor Control Commission.

27 **SECTION 7. ORS 471.485 is repealed.**

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