

# House Bill 3201

Sponsored by Representatives KOTEK, ESQUIVEL; Representative SHIELDS

## 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 Oregon Liquor Control Commission to refuse issuance of license if commission has reasonable grounds for refusal. Requires commission to cancel or suspend license upon finding, or having reasonable belief of, grounds for cancellation or suspension. Changes nature of problems caused by licensed premises that are grounds for commission to refuse issuance of license or to cancel or suspend license.

## A BILL FOR AN ACT

1  
2 Relating to Oregon Liquor Control Commission licensees; creating new provisions; and amending  
3 ORS 471.313, 471.315 and 471.329.

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

5 **SECTION 1.** ORS 471.313 is amended to read:

6 471.313. The Oregon Liquor Control Commission [*may*] **shall** refuse to license any applicant un-  
7 der the provisions of this chapter if the commission has reasonable [*ground*] **grounds** to believe any  
8 of the following to be true:

9 (1) That there are sufficient licensed premises in the locality set out in the application, or that  
10 the granting of a license in the locality set out in the application is not demanded by public interest  
11 or convenience. In determining whether there are sufficient licensed premises in the locality, the  
12 commission shall consider seasonal fluctuations in the population of the locality and shall ensure  
13 that there are adequate licensed premises to serve the needs of the locality during the peak seasons.

14 (2) That the applicant has not furnished an acceptable bond as required by ORS 471.311 or is  
15 not maintaining the insurance or bond required by ORS 471.168.

16 (3) That, except as allowed by ORS 471.392 to 471.400, any applicant to sell at retail for con-  
17 sumption on the premises has been financed or furnished with money or property by, or has any  
18 connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

19 (4) That the applicant:

20 (a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to  
21 excess.

22 (b) Has made false statements to the commission.

23 (c) Is incompetent or physically unable to carry on the management of the establishment pro-  
24 posed to be licensed.

25 (d) Has been convicted of violating any of the alcoholic liquor laws of this state, general or lo-  
26 cal, or has been convicted at any time of a felony.

27 (e) Has maintained an insanitary establishment **and has been convicted or found in violation**  
28 **as described in ORS 471.333 (2) or (3).**

29 (f) Is not of good repute and moral character.

30 (g) Did not have a good record of compliance with the alcoholic liquor laws of this state and

**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 the rules of the commission when previously licensed.

2 (h) Is not the legitimate owner of the business proposed to be licensed, or other persons have  
3 ownership interests in the business which have not been disclosed.

4 (i) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately  
5 meet the requirements of the business proposed to be licensed.

6 (j) Is unable to read or write the English language or to understand the laws of Oregon relating  
7 to alcoholic liquor or the rules of the commission.

8 (5)(a) That there is a history of serious [*and*] **or** persistent problems involving disturbances,  
9 lewd or unlawful activities or noise either in the premises proposed to be licensed or involving pa-  
10 trons of the establishment in the immediate vicinity of the premises if the [*activities*] **problems** in  
11 the immediate vicinity of the premises are related to the sale or service of alcohol under the exer-  
12 cise of the license privilege. [*Behavior which is*] **Problems that are** grounds for refusal of a license  
13 under this section, where so related to the sale or service of alcohol, [*includes, but is*] **include, but**  
14 **are** not limited to:

15 (A) Obtrusive or excessive noise, music or sound vibrations;

16 (B) Public drunkenness;

17 (C) Fights;

18 (D) Altercations;

19 (E) Harassment;

20 (F) Unlawful drug sales;

21 (G) Alcohol or related litter;

22 (H) Trespassing on private property; and

23 (I) Public urination.

24 (b) **For purposes of this subsection**, histories from premises currently or previously operated  
25 by the applicant may be considered when reasonable inference may be made that similar activities  
26 will occur as to the premises proposed to be licensed. The applicant may overcome the history by  
27 [*showing that the problems are not serious or persistent or that the applicant demonstrates*] **demon-**  
28 **strating** a willingness and ability to control adequately the premises proposed to be licensed and  
29 patrons' behavior in the immediate vicinity of the premises [*which*] **that** is related to the licensee's  
30 sale or service of alcohol under the licensee's exercise of the license privilege.

31 **SECTION 2.** ORS 471.315 is amended to read:

32 471.315. (1) The Oregon Liquor Control Commission [*may*] **shall** cancel or suspend any license  
33 issued under this chapter, or impose a civil penalty in lieu of or in addition to suspension as pro-  
34 vided by ORS 471.322, if [*it*] **the commission** finds or has reasonable [*ground*] **grounds** to believe  
35 any of the following to be true:

36 (a) That the licensee:

37 (A) Has violated any provision of this chapter or ORS 474.115 or any rule of the commission  
38 adopted pursuant thereto.

39 (B) Has made any false representation or statement to the commission in order to induce or  
40 prevent action by the commission.

41 (C) Is not maintaining an acceptable bond as required by ORS 471.311 or is not maintaining the  
42 insurance or bond required by ORS 471.168.

43 (D) Has maintained an insanitary establishment **and has been convicted or found in violation**  
44 **as described in ORS 471.333 (2) or (3).**

45 (E) Is insolvent or incompetent or physically unable to carry on the management of the estab-

1 lishment of the licensee.

2 (F) Is in the habit of using alcoholic liquor, habit-forming drugs or controlled substances to ex-  
3 cess.

4 (G) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly  
5 intoxicated at the time of sale or has knowingly allowed the consumption of alcoholic liquor on the  
6 licensed premises by a person who is visibly intoxicated at the time of consumption.

7 (H) Has misrepresented to a customer or the public any alcoholic liquor sold by the licensee.

8 (I) Since the granting of the license, **subject to ORS 471.333 and 471.700**, has been convicted  
9 of a felony, of violating any of the liquor laws of this state, general or local, or of any misdemeanor  
10 or violation of any municipal ordinance committed on the licensed premises.

11 (b) That any person licensed to sell at retail for consumption on the premises is acting as an  
12 agent of, or is a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or prop-  
13 erty, or has accepted gratuities or rebates, or has obtained the use of equipment from any man-  
14 ufacturer or wholesaler of alcoholic liquor or any agent thereof.

15 (c)(A) That there is a history of serious [*and*] **or** persistent problems involving disturbances,  
16 lewd or unlawful activities or noise either in the premises or involving patrons of the establishment  
17 in the immediate vicinity of the premises if the [*activities*] **problems** in the immediate vicinity of the  
18 premises are related to the sale or service of alcohol under the exercise of the license privilege.  
19 [*Behavior which is*] **Problems that are** grounds for cancellation or suspension of a license under  
20 this section, where so related to the sale or service of alcohol, [*includes, but is*] **include, but are**  
21 not limited to:

22 (i) Obtrusive or excessive noise, music or sound vibrations;

23 (ii) Public drunkenness;

24 (iii) Fights;

25 (iv) Altercations;

26 (v) Harassment [*or unlawful drug sales*];

27 (vi) **Unlawful drug sales;**

28 (vii) Alcohol or related litter;

29 (viii) Trespassing on private property; and

30 (ix) Public urination.

31 (B) **For purposes of this paragraph**, mitigating factors include a showing by the licensee that  
32 [*the problems are not serious or persistent or that*] the licensee has demonstrated a willingness and  
33 ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity  
34 of the premises [*which*] **that** is related to the licensee's sale or service of alcohol under the  
35 licensee's exercise of the license privilege.

36 (d) That there is any other reason [*which*] **that**, in the opinion of the commission, based on  
37 public convenience or necessity, warrants canceling or suspending [*such*] **the** license.

38 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

39 **SECTION 3.** ORS 471.329 is amended to read:

40 471.329. (1) For the purpose of determining whether there is a history of serious [*and*] **or** per-  
41 sistent problems involving noise under the provisions of ORS 471.313 (5) and 471.315 (1)(c), or  
42 whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425:

43 (a) Noise from the inside of a licensed premises located within the boundaries of a city or county  
44 that has an ordinance regulating excessive noise may be considered obtrusive or excessive only if  
45 the noise violates the ordinance;

1 (b) Noise caused by patrons outside a licensed premises located within the boundaries of a city  
2 or county that has an ordinance regulating excessive noise may be considered obtrusive or excessive  
3 only if the noise violates the ordinance or if the noise is of a type that a reasonable person would  
4 not expect to hear outside a premises licensed for the sale of alcoholic beverages; and

5 (c) Noise caused by patrons inside or outside a licensed premises located within the boundaries  
6 of a city or county that does not have an ordinance regulating excessive noise may be considered  
7 obtrusive or excessive only if the noise is of the type that a reasonable person would not expect to  
8 hear inside or outside a premises licensed for the sale of alcoholic beverages.

9 (2) For the purpose of determining whether noise is obtrusive under the provisions of ORS  
10 471.313 (5) and 471.315 (1)(c), or whether the licensee maintains a noisy establishment in violation  
11 of the provisions of ORS 471.425, the Oregon Liquor Control Commission shall consider whether  
12 persons complaining about the noise have taken any action to mitigate the disturbance alleged to  
13 have been caused by the noise.

14 **SECTION 4. The amendments to ORS 471.313, 471.315 and 471.329 by sections 1 to 3 of this**  
15 **2009 Act apply to Oregon Liquor Control Commission decisions:**

16 (1) **Issued on or after the effective date of this 2009 Act refusing the issuance of a license;**  
17 **or**

18 (2) **Canceling or suspending a license based on conditions, behavior, events or problems**  
19 **occurring on or after the effective date of this 2009 Act.**

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