

Enrolled Senate Bill 1039

Sponsored by Senator TELFER; Senators ATKINSON, FERRIOLI, KRUSE, WHITSETT, Representative WHISNANT (Presession filed.)

CHAPTER

AN ACT

Relating to alcoholic liquor licenses for private clubs; creating new provisions; amending ORS 461.300, 471.001, 471.175 and 471.311; and declaring an emergency.

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

SECTION 1. ORS 471.001 is amended to read:

471.001. As used in this chapter and ORS chapter 473:

(1) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) *"Commercial establishment" means a place of business where food is cooked and served and having adequate kitchen facilities for the preparation and serving of meals and having for that purpose proper dining space. "Commercial establishment" includes athletic clubs and golf clubs operated for profit. A commercial establishment must serve meals to the general public or, if the commercial establishment is an athletic club or golf club, must serve meals to the club's members and guests.*

(2) "Commercial establishment" means a place of business:

(a) Where food is cooked and served;

(b) That has kitchen facilities adequate for the preparation and serving of meals;

(c) That has dining facilities adequate for the serving and consumption of meals; and

(d) That:

(A) If not a for-profit private club, serves meals to the general public; or

(B) If a for-profit private club, serves meals to the club's members and guests and complies with any minimum membership and food service requirements established by Oregon Liquor Control Commission rules.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Distilled liquor" means any alcoholic beverage other than a wine, cider or malt beverage. "Distilled liquor" includes distilled spirits.

(5) "Licensee" means any person holding a license issued under this chapter.

(6)(a) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume.

(b) "Malt beverage" includes:

(A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume;

(B) Malt beverages containing six percent or less alcohol by volume and that contain at least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49

percent of the beverage's overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; and

(C) Malt beverages containing more than six percent alcohol by volume that derive not more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

(7) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(8) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.390.

(9) "Premises" or "licensed premises" means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Premises" or "licensed premises" includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

(10) "Wine" means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. "Wine" includes fortified wine. "Wine" does not include cider.

SECTION 2. ORS 471.175 is amended to read:

471.175. (1) The holder of a full on-premises sales license may sell by the drink at retail wine, malt beverages, cider and distilled liquor. Except as provided in this section, all alcoholic beverages sold under a full on-premises sales license must be consumed on the licensed premises.

(2) A full on-premises sales license may be issued only to:

(a) [*Private clubs*] **A nonprofit private club**, as described in subsection (8) of this section.

(b) **A public passenger [*carriers*] carrier** as provided in ORS 471.182.

(c) **A commercial [*establishments*] establishment**, as defined in ORS 471.001 (2).

(d) [*Public locations, other than those described in*] **A public location that does not qualify for licensing under paragraphs (a) to (c) of this subsection[, where] if:**

(A) Food is cooked and served[, and other food service amenities are provided, as prescribed by rules of the Oregon Liquor Control Commission] at the location;

(B) The predominant business activity at the location is other than the preparation or serving of food or the serving of alcohol; and

(C) The location meets any minimum food service requirements established by Oregon Liquor Control Commission rule.

(e) A caterer, subject to the requirements of ORS 471.184.

(3) The holder of a full on-premises sales license shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

(4) The holder of a full on-premises sales license is entitled to purchase any distilled liquor from an agent of the commission appointed pursuant to ORS 471.750 at a discount of not more than five percent off the regular listed price fixed by the commission, together with all taxes, in a manner prescribed by commission rule. For purposes of compensation by the commission, the appointed agent shall be credited with such sales at full retail cost.

(5) The holder of a full on-premises sales license may purchase distilled liquor only from a retail sales agent of the commission or from another person licensed under this section who has purchased the distilled liquor from a retail sales agent of the commission.

(6) The holder of a full on-premises sales license may sell factory-sealed containers of wine to a person who organizes a private gathering on the licensee's premises if the wine was acquired as part of a larger purchase of wine by the licensee for the purpose of the gathering and only part of

the larger purchase was consumed at the gathering. Wine sold under this subsection may be sold only for an amount adequate to compensate the licensee for the amounts paid by the licensee for the wine.

(7) The holder of a full on-premises sales license may sell malt beverages for consumption off the licensed premises in securely covered containers provided by the purchaser. Containers that hold beverages sold under this subsection may not hold more than two gallons.

(8) A **nonprofit** private club, including **but not limited to a** fraternal [*and*] **or** veterans [*organizations*] **organization**, may qualify for a full on-premises sales license under this section only if the club meets **any** minimum membership, [*charter time*] **nonprofit status** and food service requirements [*set*] **established** by commission rule [*and the club is an association of persons, whether incorporated or unincorporated, for the promotion of some common object, not including associations organized for any commercial or business purpose the object of which is money profit, owning, hiring or leasing a building or space in a building, of such extent and character as in the judgment of the commission may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate space and equipment, implements and facilities, and employing a sufficient number of servants or employees for serving food and meals for its members and their guests; provided that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the disposition or sale of alcoholic liquor to the club or to the members of the club or its guests introduced by members, beyond the amount of such salary as may be fixed and voted on at annual meetings by the members, directors or other governing body of the club, and that, in the judgment of the commission, shall be reasonable and proper compensation for the services of such member, officer, agent or employee*].

SECTION 3. ORS 461.300 is amended to read:

461.300. (1) The Oregon State Lottery Commission shall adopt rules specifying the terms and conditions for contracting with lottery game retailers so as to provide adequate and convenient availability of tickets or shares to prospective buyers of each lottery game as appropriate for each such game. Nothing in this subsection is intended to preclude the lottery from selling tickets or shares directly to the public.

(2)(a) The Director of the Oregon State Lottery shall, pursuant to this chapter, and the rules of the commission, select as lottery game retailers such persons as deemed to best serve the public convenience and promote the sale of tickets or shares. A person under the age of 18 may not be a lottery game retailer. In the selection of a lottery game retailer, the director shall consider factors such as financial responsibility, integrity, reputation, accessibility of the place of business or activity to the public, security of the premises, the sufficiency of existing lottery game retailers for any particular lottery game to serve the public convenience and the projected volume of sales for the lottery game involved.

(b) Except when the director recommends, and the commission concludes, that it is reasonable and prudent to waive disclosure requirements under this section and that to do so will not jeopardize the fairness, integrity, security and honesty of the lottery, prior to the execution of any contract with a lottery game retailer, the lottery game retailer shall disclose to the lottery the names and addresses of the following:

(A) If the lottery game retailer is a corporation but not a **nonprofit** private club as described in ORS 471.175, the officers, each director who owns or controls three percent or more of the voting stock and each stockholder who owns 10 percent or more of the outstanding stock in such corporation.

(B) If the lottery game retailer is a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(C) If the lottery game retailer is an association but not a **nonprofit** private club as described in ORS 471.175, the members, officers and directors.

(D) If the lottery game retailer is a subsidiary but not a **nonprofit** private club as described in ORS 471.175, the officers, each director who owns or controls three percent or more of the voting

stock and each stockholder who owns 10 percent or more of the outstanding stock of the parent corporation thereof.

(E) If the lottery game retailer is a partnership, joint venture or limited liability company, all of the general partners, limited partners, joint venturers, members of a limited liability company whose investment commitment or membership interest is 10 percent or more, and managers of a limited liability company.

(F) If the parent company, general partner, limited partner, joint venturer, stockholder, member or manager of a limited liability company is itself a corporation, trust, association, subsidiary, partnership, joint venture or limited liability company, then the director may require that all of the information required by this paragraph be disclosed for such other entity as if it were itself a lottery game retailer to the end that full disclosure of ultimate ownership be achieved.

(G) If any member, 18 years of age or older, of the immediate family of any video lottery game retailer, or any member, 18 years of age or older, of the immediate family of any individual whose name is required to be disclosed under this paragraph, is involved in the video lottery game retailer's business in any capacity, then all of the information required in this paragraph shall be disclosed for such immediate family member as if the family member were a video lottery game retailer.

(H) If any immediate family member, 18 years of age or older, of any lottery game retailer, other than a video lottery game retailer, or of any person whose name is required to be disclosed under this paragraph is involved in the lottery game retailer's business in any capacity, then the lottery game retailer shall identify the immediate family member to the Oregon State Lottery, and shall report the capacity in which the immediate family member is involved in the lottery game retailer's business if requested by the director. Full disclosure of immediate family members working in the business may be required only if the director has just cause for believing the immediate family member may be a threat to the fairness, integrity, security or honesty of the lottery.

(I) If the lottery game retailer is a **nonprofit** private club as described in ORS 471.175, the treasurer, officers, directors and trustees who oversee or direct the operation of the food, beverage, lottery or other gambling-related activities of the **nonprofit** private club and each manager in charge of the food, beverage, lottery or other gambling-related activities of the **nonprofit** private club.

(J) Any other person required by rule of the commission.

(c) Any person required to disclose information under paragraph (b) of this subsection shall disclose additional information for retail contract approval that the director determines to be appropriate.

(d) The commission may refuse to grant a lottery game retail contract to any lottery game retailer or any natural person whose name is required to be disclosed under paragraph (b) of this subsection, who has been convicted of violating any of the gambling laws of this state, general or local, or has been convicted at any time of any crime. The lottery may require payment by each lottery game retailer to the lottery of an initial nonrefundable application fee or an annual fee, or both, to maintain the contract to be a lottery game retailer.

(e) A person who is a lottery game retailer may not be engaged exclusively in the business of selling lottery tickets or shares. A person lawfully engaged in nongovernmental business on state or political subdivision property or an owner or lessee of premises which lawfully sells alcoholic beverages may be selected as a lottery game retailer. State agencies, except for the state lottery, political subdivisions or their agencies or departments may not be selected as a lottery game retailer. The director may contract with lottery game retailers on a permanent, seasonal or temporary basis.

(3) The authority to act as a lottery game retailer is not assignable or transferable.

(4) The director may terminate a contract with a lottery game retailer based on the grounds for termination included in the contract or commission rules governing the contract. The grounds for termination must include, but are not limited to, the knowing sale of lottery tickets or shares to any

person under the age of 18 years or knowingly permitting a person under the age of 21 years to operate a video lottery game terminal.

(5) Notwithstanding subsection (4) of this section, when a lottery game retail contract requires the lottery game retailer to maintain a minimum weekly sales average, the lottery game retailer may avoid termination of the contract for failure to meet the minimum weekly sales average by agreeing, prior to termination, to pay the state lottery the difference between the actual weekly cost incurred by the lottery to maintain the contract and the weekly proceeds that are collected by the lottery from the sales of that lottery game retailer, less expenses that are dedicated by statute, rule or contract to other purposes. The director may not terminate the contract of a lottery game retailer for failure to meet a minimum weekly sales average unless the director first allows the lottery game retailer an opportunity to make the payment described in this subsection.

(6) The commission shall adopt by rule an alternative dispute resolution process for disputes arising from a contract with a lottery game retailer that must be included in every contract between the commission and lottery game retailers. The commission shall develop the dispute resolution process required by this section in conformity with ORS 183.502.

SECTION 4. ORS 471.311 is amended to read:

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

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

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

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

(5) The license fee is nonrefundable and shall be paid by each applicant upon the granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and 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	\$ 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	\$ 50 per day		
Grower sales privilege license	\$ 250	\$ 1,000	
Special events grower sales privilege license	\$ 10 per day		
Special events brewery-public house license	\$ 10 per day		
Special events distillery license	\$ 10 per day		

(6) The fee for a certificate of approval or special certificate of approval granted under ORS 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is \$175. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is \$10.

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

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

(9) The annual fee for a wine self-distribution permit is \$100, and the minimum bond is \$1,000.

SECTION 5. The amendments to ORS 471.001 and 471.175 by sections 1 and 2 of this 2010 Act apply to licenses issued or renewed on or after 90 days following the effective date of this 2010 Act.

SECTION 6. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 10, 2010

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Secretary of Senate

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President of Senate

Passed by House February 19, 2010

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Speaker of House

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M,....., 2010

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Secretary of State