

Senate Bill 1039

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

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 for-profit private club to qualify for full on-premises sales license for alcoholic liquor.

Eliminates statutory criteria for nonprofit private club to qualify for full on-premises sales license. Allows issuance of full on-premises sales license to nonprofit private club qualifying under Oregon Liquor Control Commission rules.

Applies to licenses issued or renewed 90 or more days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to alcoholic liquor licenses for private clubs; creating new provisions; amending ORS
3 461.300, 471.001, 471.175 and 471.311; and declaring an emergency.

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

5 **SECTION 1.** ORS 471.001 is amended to read:

6 471.001. As used in this chapter and ORS chapter 473:

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

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

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

15 **(a) Where food is cooked and served;**

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

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

18 **(d) That:**

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

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

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

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

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

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

29 (b) "Malt beverage" includes:

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

3 (B) Malt beverages containing six percent or less alcohol by volume and that contain at least
4 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49
5 percent of the beverage's overall alcohol content is obtained from flavors and other added
6 nonbeverage ingredients containing alcohol; and

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

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

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

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

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

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

26 **SECTION 2.** ORS 471.175 is amended to read:

27 471.175. (1) The holder of a full on-premises sales license may sell by the drink at retail wine,
28 malt beverages, cider and distilled liquor. Except as provided in this section, all alcoholic beverages
29 sold under a full on-premises sales license must be consumed on the licensed premises.

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

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

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

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

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

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

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

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

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

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

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

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

9 (6) The holder of a full on-premises sales license may sell factory-sealed containers of wine to
 10 a person who organizes a private gathering on the licensee's premises if the wine was acquired as
 11 part of a larger purchase of wine by the licensee for the purpose of the gathering and only part of
 12 the larger purchase was consumed at the gathering. Wine sold under this subsection may be sold
 13 only for an amount adequate to compensate the licensee for the amounts paid by the licensee for
 14 the wine.

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

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

35 **SECTION 3.** ORS 461.300 is amended to read:

36 461.300. (1) The Oregon State Lottery Commission shall adopt rules specifying the terms and
 37 conditions for contracting with lottery game retailers so as to provide adequate and convenient
 38 availability of tickets or shares to prospective buyers of each lottery game as appropriate for each
 39 such game. Nothing in this subsection is intended to preclude the lottery from selling tickets or
 40 shares directly to the public.

41 (2)(a) The Director of the Oregon State Lottery shall, pursuant to this chapter, and the rules
 42 of the commission, select as lottery game retailers such persons as deemed to best serve the public
 43 convenience and promote the sale of tickets or shares. A person under the age of 18 may not be a
 44 lottery game retailer. In the selection of a lottery game retailer, the director shall consider factors
 45 such as financial responsibility, integrity, reputation, accessibility of the place of business or activ-

1 ity to the public, security of the premises, the sufficiency of existing lottery game retailers for any
2 particular lottery game to serve the public convenience and the projected volume of sales for the
3 lottery game involved.

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

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

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

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

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

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

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

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

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

44 (I) If the lottery game retailer is a **nonprofit** private club as described in ORS 471.175, the
45 treasurer, officers, directors and trustees who oversee or direct the operation of the food, beverage,

1 lottery or other gambling-related activities of the **nonprofit** private club and each manager in
2 charge of the food, beverage, lottery or other gambling-related activities of the **nonprofit** private
3 club.

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

5 (c) Any person required to disclose information under paragraph (b) of this subsection shall
6 disclose additional information for retail contract approval that the director determines to be ap-
7 propriate.

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

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

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

22 (4) The director may terminate a contract with a lottery game retailer based on the grounds for
23 termination included in the contract or commission rules governing the contract. The grounds for
24 termination must include, but are not limited to, the knowing sale of lottery tickets or shares to any
25 person under the age of 18 years or knowingly permitting a person under the age of 21 years to
26 operate a video lottery game terminal.

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

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

40 **SECTION 4.** ORS 471.311 is amended to read:

41 471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make
42 application to the Oregon Liquor Control Commission upon forms to be furnished by the commission
43 showing the name and address of the applicant, location of the place of business that is to be op-
44 erated under the license, and such other pertinent information as the commission may require. No
45 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	Minimum	
	Fee	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		

1	license	\$ 10 per day
2	Special events	
3	distillery	
4	license	\$ 10 per day

6

7 (6) The fee for a certificate of approval or special certificate of approval granted under ORS
8 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a
9 certificate of approval or special certificate of approval. No bond is required for the granting of a
10 certificate of approval or special certificate of approval. Certificates of approval are valid for a pe-
11 riod commencing on the date of issuance and ending on December 31 of the fifth calendar year fol-
12 lowing the calendar year of issuance. The fee for a certificate of approval is \$175. Special
13 certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval
14 is \$10.

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

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

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

21 **SECTION 5. The amendments to ORS 471.001 and 471.175 by sections 1 and 2 of this 2010**
22 **Act apply to licenses issued or renewed on or after 90 days following the effective date of this**
23 **2010 Act.**

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