

# House Bill 2150

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Liquor Control Commission)

## 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**.

Creates winery custom crush license. Specifies powers and duties of winery custom crush licensee.

Requires winery licensee to possess federal wine producer and blender permit to conduct some activities of licensee. Requires winery custom crush licensee to possess federal wine wholesaler permit to conduct some activities of licensee. Requires applicant for winery license or winery custom crush license to provide Oregon Liquor Control Commission with proof of federal permit status. Allows commission to cancel or suspend license or impose civil penalty if winery licensee or winery custom crush licensee does not maintain valid federal permit.

Makes winery custom crush licensee manufacturer for purposes of tied-house prohibitions. Creates exceptions.

## A BILL FOR AN ACT

1  
2 Relating to alcoholic beverages; creating new provisions; and amending ORS 471.168, 471.223,  
3 471.242, 471.282, 471.311, 471.313, 471.315, 471.329, 471.331, 471.392, 471.396, 471.402, 471.404 and  
4 473.065.

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

6 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 471.**

7 **SECTION 2. (1) Subject to subsections (3) and (4) of this section, a winery custom crush**  
8 **license allows the licensee:**

9 (a) **To import, store, transport or export wine or cider.**

10 (b) **To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to**  
11 **commission licensees.**

12 (c) **To sell wines or cider at retail directly to consumers for consumption on or off of the**  
13 **licensed premises.**

14 (d) **To conduct activities described in paragraphs (a) to (c) of this subsection at not more**  
15 **than two additional premises as designated by the commission.**

16 (2) **A winery custom crush licensee may obtain a special events winery custom crush li-**  
17 **cence to conduct activities described in subsection (1)(c) of this section at a designated lo-**  
18 **cation other than a premises designated in the winery custom crush license. A special events**  
19 **winery custom crush license may not be valid for more than five days.**

20 (3) **A winery custom crush licensee may conduct activities described in subsections (1)**  
21 **and (2) of this section only with regard to wine or cider:**

22 (a) **That is sold under a brand name owned by the licensee; and**

23 (b) **Released from coverage under federally required tax bonds and considered to have**  
24 **tax-paid status for federal excise tax purposes.**

25 (4) **A winery custom crush licensee may sell and ship wine or cider directly to a resident**  
26 **of this state only if the licensee has a direct shipper permit issued under ORS 471.282.**

**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 (5) A winery custom crush licensee must possess a valid wine wholesaler basic permit  
 2 issued by the federal Alcohol and Tobacco Tax and Trade Bureau at all licensed premises  
 3 used by the licensee to conduct activities described in subsection (1)(a) of this section.

4 (6)(a) Except as provided in paragraph (b) of this subsection, for purposes of privilege tax  
 5 reporting, payment and record keeping under ORS chapter 473, a winery custom crush  
 6 licensee has the same duties as a manufacturer.

7 (b) A winery custom crush licensee does not qualify for the tax exemption granted to  
 8 manufacturers under ORS 473.050 (5).

9 **SECTION 3.** ORS 471.168 is amended to read:

10 471.168. (1) For the purpose of providing coverage for injuries suffered by persons by reason of  
 11 the conduct of intoxicated persons who were served alcoholic beverages on licensed premises while  
 12 visibly intoxicated, all persons holding a license described in this section must either:

13 (a) Maintain liquor liability insurance of not less than \$300,000; or

14 (b) Maintain a bond with a corporate surety authorized to transact business in this state in the  
 15 amount of not less than \$300,000.

16 (2) The Oregon Liquor Control Commission may by rule require liquor liability insurance or  
 17 bond in an amount larger than the minimum amount provided for in subsection (1) of this section.

18 (3) The requirements of this section apply to full on-premises sales licenses, limited on-premises  
 19 sales licenses and brewery-public house licenses. The requirements of this section apply to tempo-  
 20 rary sales licenses, special events winery licenses, **special events winery custom crush licenses**,  
 21 special events grower sales privilege licenses, special events brewery-public house licenses and  
 22 special events distillery licenses if the event that is licensed is open to the public and attendance  
 23 at the event is anticipated to exceed 300 individuals per day.

24 (4) The requirements of this section apply to winery licenses, **winery custom crush licenses**,  
 25 brewery licenses and grower sales privilege licenses unless an applicant for issuance of the license  
 26 or renewal of the license submits with the application for issuance or renewal of the license an af-  
 27 fidavit that states that the licensee will not allow consumption of alcoholic beverages on the prem-  
 28 ises.

29 (5) All licensees subject to the requirements of this section must supply proof of compliance at  
 30 the time the license is issued or renewed. The commission by rule shall determine the manner in  
 31 which proof of compliance may be made under the provisions of this subsection. The commission  
 32 may require a licensee to present proof of compliance with liquor liability insurance and bond re-  
 33 quirements at any time upon request of the commission.

34 (6) Failure of a licensee to comply with liquor liability insurance or bond requirements imposed  
 35 under this section constitutes a serious threat to public health and safety. In addition to any action  
 36 available to the commission under ORS 471.313 or 471.315, the commission may immediately suspend  
 37 or refuse renewal of a license as provided under ORS 183.430 (2) if the licensee fails to comply with  
 38 those insurance or bond requirements.

39 (7) If a licensee fails to provide proof of compliance with liquor liability insurance or bond re-  
 40 quirements imposed under this section at the time of license renewal or when requested by the  
 41 commission, the failure is sufficient reason for the commission to find for purposes of ORS 183.430  
 42 (2) that the licensee has failed to comply with the insurance or bond requirements.

43 **SECTION 4.** ORS 471.223 is amended to read:

44 471.223. (1) A winery license shall allow the licensee:

45 (a) To import, bottle, produce, blend, store, transport or export wines or cider.

1 (b) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees  
2 of the commission.

3 (c) To sell wines or cider at retail directly to the consumer for consumption on or off the li-  
4 censed premises.

5 (d) To sell malt beverages at retail for consumption on or off the licensed premises.

6 (e) To conduct the activities allowed under paragraph (a), (b), (c) or (d), or all, of this subsection  
7 at a second or third premises as may be designated by the commission.

8 (f) To purchase from or through the commission brandy or other distilled liquors for fortifying  
9 wines.

10 (g) To obtain a special events winery license that shall entitle the holder to conduct the activ-  
11 ities allowed under paragraphs (c) and (d) of this subsection at a designated location other than the  
12 one set forth in the winery license for a period not to exceed five days.

13 *[(2) In order to hold a winery license the licensee shall principally produce wine or cider in this  
14 state.]*

15 **(2) A winery licensee must possess a valid wine producer and blender basic permit issued  
16 by the federal Alcohol and Tobacco Tax and Trade Bureau at all licensed premises used by  
17 the licensee to conduct activities described in subsection (1)(a) of this section.**

18 (3) *[On and after July 1, 1990,]* A winery licensee *[is not authorized to]* **may not** import wine or  
19 cider in bottles unless the brand of wine or cider is owned by the licensee.

20 (4) A winery licensee may sell and ship wine or cider directly to a resident of this state only  
21 if the licensee has a direct shipper permit issued under ORS 471.282.

22 (5)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person  
23 having an interest in the licensee, may also hold a full on-premises sales license. If a person holds  
24 both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the  
25 sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery  
26 license.

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

31 (6) More than one winery licensee may exercise the privileges of a winery license at a single  
32 location. The commission may not refuse to issue a winery license to a person for the production  
33 of wine or cider on specified premises based on the fact that other winery licensees also produce  
34 wine or cider on those premises.

35 **SECTION 5.** ORS 471.242 is amended to read:

36 471.242. (1) A warehouse license shall allow the licensee to store, import, bottle, produce, blend,  
37 transport and export nontax paid, bonded wine or wine on which the tax is paid and to store, import  
38 and export nontax paid malt beverages and cider, or malt beverages and cider on which the tax is  
39 paid. Wine, cider and malt beverages may be removed from the licensed premises only for:

40 (a) Sale for export;

41 (b) Sale or shipment to a wholesale malt beverage and wine licensee;

42 (c) Sale or shipment to another warehouse licensee;

43 (d) Sale or shipment to a winery licensee;

44 (e) Shipment of wine or cider *[produced by]* **on behalf of** a winery licensee **or winery custom  
45 crush licensee** to a licensee of the Oregon Liquor Control Commission authorized to sell wine or

1 cider at retail if the shipment is made pursuant to a sale to the retail licensee by the holder of a  
 2 winery license issued under ORS 471.223, **a winery custom crush license issued under section 2**  
 3 **of this 2011 Act**, a grower sales privilege license issued under ORS 471.227 or a wholesale malt  
 4 beverage and wine license issued under ORS 471.235; or

5 (f) Shipment of wine or cider to a person for personal use, as described in subsection (7) of this  
 6 section.

7 (2) A license applicant must hold an approved registration for a bonded wine cellar or winery  
 8 under federal law.

9 (3) For the purposes of tax reporting, payment and record keeping, the provisions that shall  
 10 apply to a manufacturer under ORS chapter 473 shall apply to a warehouse licensee.

11 (4) A warehouse must be physically secure in an area zoned for the intended use and be phys-  
 12 ically separated from any other use.

13 (5) For purposes of ORS 471.392 to 471.400, a warehouse licensee shall be considered a man-  
 14 ufacturer.

15 (6) For purposes of ORS 473.045, a warehouse licensee shall be considered a winery licensee.

16 (7) Wine or cider may be removed from the premises licensed under this section for shipment  
 17 pursuant to a sale under ORS 471.282. The warehouse licensee shall take reasonable steps to ensure  
 18 that shipments are made in containers that are conspicuously labeled with the words: "CONTAINS  
 19 ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR  
 20 DELIVERY." In addition, the warehouse licensee shall take reasonable steps to ensure that any  
 21 carrier used by the licensee does not deliver any wine or cider unless the carrier:

22 (a) Obtains the signature of the recipient of the wine or cider upon delivery;

23 (b) Verifies by inspecting government-issued photo identification that the recipient is at least  
 24 21 years of age; and

25 (c) Determines that the recipient is not visibly intoxicated at the time of delivery.

26 **SECTION 6.** ORS 471.282 is amended to read:

27 471.282. (1) Notwithstanding any other provision of this chapter and except as provided by ORS  
 28 471.186 (5), a person may sell and ship wine or cider directly to a resident of Oregon only if the  
 29 person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue a direct  
 30 shipper permit only to:

31 (a) A person that holds a license issued by this state or another state that authorizes the man-  
 32 ufacture of wine or cider;

33 (b) A person that holds a license issued by this state or another state that authorizes the sale  
 34 of wine or cider produced only from grapes or other fruit grown under the control of the person;

35 (c) A person that holds a license authorizing the sale of wine or cider at retail; [or]

36 (d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and  
 37 that has a membership primarily composed of persons holding winery licenses issued under ORS  
 38 471.223 or grower sales privilege licenses issued under ORS 471.227[.]; **or**

39 **(e) A person that holds a winery custom crush license issued under section 2 of this 2011**  
 40 **Act.**

41 (2) A person may apply for a direct shipper permit by filing an application with the commission.  
 42 The application must be made in such form as may be prescribed by the commission. The person  
 43 must include in the application the number of the license issued to the person by the commission,  
 44 or a true copy of the license issued to the person by another state. If the application is based on a  
 45 license issued by another state, or the application is by a nonprofit trade association described in

1 subsection (1)(d) of this section, the person or association must pay a \$50 registration fee and  
 2 maintain a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

3 (3) Sales and shipments under a direct shipper permit:

4 (a) May be made only to a person who is at least 21 years of age;

5 (b) May be made only for personal use and not for the purpose of resale; and

6 (c) May not exceed two cases, containing not more than nine liters per case, to any resident per  
 7 month.

8 (4) Sales and shipments under a direct shipper permit must be made directly to a resident of this  
 9 state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIG-  
 10 NATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

11 (5) A person holding a direct shipper permit must take all actions necessary to ensure that a  
 12 carrier used by the permit holder does not deliver any wine or cider unless the carrier:

13 (a) Obtains the signature of the recipient of the wine or cider upon delivery;

14 (b) Verifies by inspecting government-issued photo identification that the recipient is at least  
 15 21 years of age; and

16 (c) Determines that the recipient is not visibly intoxicated at the time of delivery.

17 (6)(a) A person holding a direct shipper permit must report to the commission all shipments of  
 18 wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The re-  
 19 port must be made in a form prescribed by the commission.

20 (b) A person holding a direct shipper permit must allow the commission to audit the permit  
 21 holder's records upon request and shall make those records available to the commission in this state.

22 (c) A person holding a direct shipper permit consents to the jurisdiction of the commission and  
 23 the courts of this state for the purpose of enforcing the provisions of this section and any related  
 24 laws or rules.

25 (7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes im-  
 26 posed under ORS chapter 473 on wine and cider sold and shipped under the permit. For the purpose  
 27 of the privilege tax imposed under ORS chapter 473, all wine or cider sold and shipped pursuant to  
 28 a direct shipper permit is sold in this state.

29 (b) A person holding a direct shipper permit based on a license issued by another state must  
 30 timely pay to the commission all taxes imposed under ORS chapter 473 on all wine or cider sold and  
 31 shipped directly to Oregon residents under the permit. The permit holder, not the purchaser, is re-  
 32 sponsible for the tax.

33 (8) A direct shipper permit must be renewed annually. If the person holds the permit based on  
 34 an annual license issued by another state, the permit may be renewed by paying a \$50 renewal fee  
 35 and providing the commission with a true copy of a current license issued to the person by the other  
 36 state. If the person holds the permit based on an annual license issued by this state, the permit may  
 37 be renewed at the same time that the license is renewed.

38 (9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the  
 39 permit holder fails to comply with the provisions of this section. A person may sell and ship wine  
 40 or cider under a direct shipper permit only for as long as the person has the license issued by this  
 41 state or another state that authorizes the person to hold a direct shipper permit.

42 (10) Any person who knowingly or negligently delivers wine or cider under the provisions of this  
 43 section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider  
 44 under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

45 (11) A person may not make sales and shipments of wine or cider directly to Oregon residents

1 unless the person holds a direct shipper permit issued under this section. Any person who knowingly  
 2 makes, participates in, transports, imports or receives a shipment of wine or cider that is in vio-  
 3 lation of this section commits a misdemeanor as provided in ORS 471.990 (1).

4 **SECTION 7.** ORS 471.311, as amended by section 4, chapter 33, Oregon Laws 2010, is amended  
 5 to read:

6 471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make  
 7 application to the Oregon Liquor Control Commission upon forms to be furnished by the commission  
 8 showing the name and address of the applicant, location of the place of business that is to be op-  
 9 erated under the license, and such other pertinent information as the commission may require. No  
 10 license shall be granted or renewed until the applicant has complied with the provisions of this  
 11 chapter and the rules of the commission.

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

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

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

27 (5) The license fee is nonrefundable and shall be paid by each applicant upon the granting or  
 28 committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and the  
 29 minimum bond required of each class of license under this chapter are as follows:

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License	Fee	Minimum Bond
Brewery, including Certificate		
of Approval	\$ 500	\$ 1,000
Winery	250	1,000
<b>Winery Custom Crush</b>	<b>250</b>	<b>1,000</b>
Distillery	100	None
Wholesale Malt Beverage		
and Wine	275	1,000
Warehouse	100	1,000
Special events winery		
license	\$ 10 per day	
<b>Special events winery</b>		
<b>custom crush license</b>	<b>\$ 10 per day</b>	

1	Brewery-Public House,		
2	including Certificate		
3	of Approval	\$ 250	\$ 1,000
4	Limited On-Premises Sales	\$ 200	None
5	Off-Premises Sales	\$ 100	None
6	Temporary Sales	\$ 50 per day	
7	Grower sales privilege		
8	license	\$ 250	\$ 1,000
9	Special events grower		
10	sales privilege		
11	license	\$ 10 per day	
12	Special events		
13	brewery-public house		
14	license	\$ 10 per day	
15	Special events		
16	distillery		
17	license	\$ 10 per day	

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20       (6) The fee for a certificate of approval or special certificate of approval granted under ORS  
21 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a  
22 certificate of approval or special certificate of approval. No bond is required for the granting of a  
23 certificate of approval or special certificate of approval. Certificates of approval are valid for a pe-  
24 riod commencing on the date of issuance and ending on December 31 of the fifth calendar year fol-  
25 lowing the calendar year of issuance. The fee for a certificate of approval is \$175. Special  
26 certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval  
27 is \$10.

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

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

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

34       **SECTION 8.** ORS 471.313 is amended to read:

35       471.313. The Oregon Liquor Control Commission may refuse to license any applicant under the  
36 provisions of this chapter if the commission has reasonable ground to believe any of the following  
37 to be true:

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

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

45       (3) That, except as allowed by ORS 471.392 to 471.400, any applicant to sell at retail for con-

1 sumption on the premises has been financed or furnished with money or property by, or has any  
 2 connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

3 (4) That the applicant:

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

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

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

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

11 (e) Has maintained an insanitary establishment.

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

13 (g) Did not have a good record of compliance with the alcoholic liquor laws of this state and  
 14 the rules of the commission when previously licensed.

15 (h) Is not the legitimate owner of the business proposed to be licensed, or other persons have  
 16 ownership interests in the business [*which*] **that** have not been disclosed.

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

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

21 (5) That there is a history of serious and persistent problems involving disturbances, lewd or  
 22 unlawful activities or noise either in the premises proposed to be licensed or involving patrons of  
 23 the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity  
 24 of the premises are related to the sale or service of alcohol under the exercise of the license privi-  
 25 lege. Behavior [*which*] **that** is grounds for refusal of a license under this section, where so related  
 26 to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music  
 27 or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alco-  
 28 hol or related litter; trespassing on private property; and public urination. Histories from premises  
 29 currently or previously operated by the applicant may be considered when reasonable inference may  
 30 be made that similar activities will occur as to the premises proposed to be licensed. The applicant  
 31 may overcome the history by showing that the problems are not serious or persistent or that the  
 32 applicant demonstrates a willingness and ability to control adequately the premises proposed to be  
 33 licensed and patrons' behavior in the immediate vicinity of the premises [*which*] **that** is related to  
 34 the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

35 **(6) If the application is for a winery license, that the applicant has not presented suffi-**  
 36 **cient proof that the applicant possesses a valid wine producer and blender basic permit is-**  
 37 **ssued by the federal Alcohol and Tobacco Tax and Trade Bureau.**

38 **(7) If the application is for a winery custom crush license, that the applicant has not**  
 39 **presented sufficient proof that the applicant possesses a valid wine wholesaler basic permit**  
 40 **issued by the federal Alcohol and Tobacco Tax and Trade Bureau.**

41 **SECTION 9.** ORS 471.315 is amended to read:

42 471.315. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued  
 43 under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by  
 44 ORS 471.322, if it finds or has reasonable ground to believe any of the following to be true:

45 (a) That the licensee:



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

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

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

7 (D) Has maintained an insanitary establishment.

8 (E) Is insolvent or incompetent or physically unable to carry on the management of the estab-  
9 lishment of the licensee.

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

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

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

16 (I) Since the granting of the license, has been convicted of a felony, of violating any of the liquor  
17 laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance  
18 committed on the licensed premises.

19 **(b) If the license is a winery license, that the licensee does not possess a valid wine  
20 producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade  
21 Bureau.**

22 **(c) If the license is a winery custom crush license, that the licensee does not possess a  
23 valid wine wholesaler basic permit issued by the federal Alcohol and Tobacco Tax and Trade  
24 Bureau.**

25 [(b)] **(d)** That any person licensed to sell at retail for consumption on the premises is acting as  
26 an agent of, or is a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or  
27 property, or has accepted gratuities or rebates, or has obtained the use of equipment from any  
28 manufacturer or wholesaler of alcoholic liquor or any agent thereof.

29 [(c)] **(e)** That there is a history of serious and persistent problems involving disturbances, lewd  
30 or unlawful activities or noise either in the premises or involving patrons of the establishment in  
31 the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are  
32 related to the sale or service of alcohol under the exercise of the license privilege. Behavior  
33 [which] **that** is grounds for cancellation or suspension of a license under this section, where so re-  
34 lated to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise,  
35 music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug  
36 sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating  
37 factors include a showing by the licensee that the problems are not serious or persistent or that the  
38 licensee has demonstrated a willingness and ability to control adequately the licensed premises and  
39 patrons' behavior in the immediate vicinity of the premises [which] **that** is related to the licensee's  
40 sale or service of alcohol under the licensee's exercise of the license privilege.

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

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

44 **SECTION 10.** ORS 471.329 is amended to read:

45 471.329. (1) For the purpose of determining whether there is a history of serious and persistent

1 problems involving noise under the provisions of ORS 471.313 (5) and 471.315 [(1)(c)] (1)(e), or  
 2 whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425:

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

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

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

14 (2) For the purpose of determining whether noise is obtrusive under the provisions of ORS  
 15 471.313 (5) and 471.315 [(1)(c)] (1)(e), or whether the licensee maintains a noisy establishment in vi-  
 16 olation of the provisions of ORS 471.425, the Oregon Liquor Control Commission shall consider  
 17 whether persons complaining about the noise have taken any action to mitigate the disturbance al-  
 18 leged to have been caused by the noise.

19 **SECTION 11.** ORS 471.331 is amended to read:

20 471.331. (1) Whenever the Oregon Liquor Control Commission proposes to refuse to renew or to  
 21 suspend or cancel any license issued under this chapter because of adverse neighborhood impact of  
 22 the licensee's operation, notwithstanding ORS 183.435, the commission shall grant the affected  
 23 licensee 20 days from notification of the proposed commission action to request a hearing.

24 (2) Notwithstanding ORS 183.482 (3), the Oregon Liquor Control Commission [shall] **may** not  
 25 stay any order refusing a license or suspending or canceling any license if the order was entered  
 26 on grounds stated in ORS 471.313 (5) or 471.315 [(1)(c)] (1)(e).

27 **SECTION 12.** ORS 471.392 is amended to read:

28 471.392. For the purposes of ORS 471.392 to 471.400:

29 (1) "Manufacturer or wholesaler" means:

30 (a) A person holding a brewery license issued under ORS 471.220, a winery license issued under  
 31 ORS 471.223, **a winery custom crush license issued under section 2 of this 2011 Act**, a grower  
 32 sales privilege license issued under ORS 471.227, a distillery license issued under ORS 471.230, a  
 33 wholesale malt beverage and wine license issued under ORS 471.235 or a warehouse license issued  
 34 under ORS 471.242.

35 (b) Any manufacturer of alcoholic liquors whose products are sold in the State of Oregon.

36 (2) "Retail licensee" means the holder of a full or limited on-premises sales license, an off-  
 37 premises sales license or a temporary sales license. "Retail licensee" does not include a bona fide  
 38 trade association that represents retail licensees and that is open to all persons licensed under at  
 39 least one type of retail license.

40 **SECTION 13.** ORS 471.396 is amended to read:

41 471.396. (1) The prohibitions of ORS 471.394 (1) do not apply to persons holding winery licenses,  
 42 **winery custom crush licenses**, grower sales privilege licenses, brewery-public house licenses,  
 43 distillery licenses or brewery licenses, to the extent that retail sales are authorized by the statutes  
 44 establishing the privileges of each license.

45 (2)(a) The prohibitions of ORS 471.394 (2) and (3) do not apply to a person who wholesales al-

1   coholic liquor and who is not required to be licensed under the provisions of this chapter if the re-  
 2   tail licensee does not sell any brand of alcoholic liquor sold or distributed by the person and does  
 3   not sell any brand of alcoholic liquor produced by any manufacturer doing business with the person  
 4   selling at wholesale.

5       (b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of alcoholic liquor  
 6   if the retail licensee does not sell any brand of alcoholic liquor sold, distributed or produced by the  
 7   manufacturer and does not sell any brand of alcoholic liquor sold, distributed or produced by any  
 8   subsidiary or other business entity that the manufacturer owns or manages, or that the manufac-  
 9   turer exercises control over.

10       (3) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of  
 11   a spouse or family member to a manufacturer or wholesaler if:

12       (a) The manufacturer or wholesaler is licensed by the Oregon Liquor Control Commission to sell  
 13   alcoholic liquor at wholesale;

14       (b) The license authorizing sale of alcoholic liquor at wholesale was first issued before January  
 15   1, 1965, and has been held continuously since that date;

16       (c) The spouse or family member holds or seeks a license that authorizes the retail sale of al-  
 17   coholic liquor for off-premises consumption only; and

18       (d) The manufacturer or wholesaler does not directly or indirectly sell alcoholic liquor to the  
 19   spouse or family member.

20       (4) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of  
 21   a spouse or family member to the retail licensee if the manufacturer or wholesaler is licensed by the  
 22   commission to sell alcoholic liquor at wholesale and does not directly or indirectly sell alcoholic  
 23   liquor to the spouse or family member.

24       (5) Notwithstanding ORS 471.394, a manufacturer or wholesaler, and any officer, director or  
 25   substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indi-  
 26   rectly, an interest in a full or limited on-premises sales licensee, provided that the interest does not  
 27   result in exercise of control over, or participation in the management of, the licensee's business or  
 28   business decisions, and does not result in exclusion of any competitor's brand of alcoholic liquor.

29       (6) Notwithstanding ORS 471.394, a full or limited on-premises sales licensee, and any officer,  
 30   director or substantial stockholder of any corporate full or limited on-premises sales licensee, may  
 31   hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest  
 32   does not result in exercise of control over, or participation in the management of, the  
 33   manufacturer's or wholesaler's business or business decisions, and does not result in exclusion of  
 34   any competitor's brand of alcoholic liquor.

35       (7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a whole-  
 36   saler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless the  
 37   institutional investor controls, is controlled by, or is under common control with, a wholesaler or  
 38   manufacturer. Notwithstanding ORS 471.394, an institutional investor with a financial interest in  
 39   a retail licensee may hold, directly or indirectly, an interest in a wholesaler or manufacturer unless  
 40   the institutional investor controls, is controlled by, or is under common control with, a retail  
 41   licensee. The provisions of this subsection apply only to an institutional investor that is a state or  
 42   federally chartered bank, a state or federally chartered mutual savings bank, a mutual fund or  
 43   pension fund, or a private investment firm. The principal business activity of the institutional in-  
 44   vestor must be the investment of capital provided by depositors, participants or investors. The in-  
 45   stitutional investor must maintain a diversified portfolio of investments. The majority of the

1 institutional investor's investments may not be in businesses that manufacture, distribute or other-  
 2 wise sell alcoholic beverages. The institutional investor, and the officers, directors, substantial  
 3 shareholders, partners, employees and agents of the institutional investor, may not participate in  
 4 management decisions relating to the sale or purchase of alcoholic beverages made by a licensee in  
 5 which the institutional investor holds an interest.

6 (8) Notwithstanding ORS 471.394, a member of the board of directors of a parent company of a  
 7 corporation that is a manufacturer may serve on the board of directors of a parent company of a  
 8 corporation that is a retail licensee if:

9 (a) The manufacturer or parent company of a manufacturer is listed on a national security ex-  
 10 change;

11 (b) All purchases of alcoholic beverages by the retail licensee are made from holders of whole-  
 12 sale malt beverage and wine licenses, brewery licenses or winery licenses in this state;

13 (c) The interest of the member of the board of directors does not result in the exclusion of any  
 14 competitor's brand of alcoholic beverages on the licensed premises of the retail licensee; and

15 (d) The sale of goods and services other than alcoholic beverages by the retail licensee exceeds  
 16 50 percent of the gross receipts of the business conducted by the retail licensee on the licensed  
 17 premises.

18 **SECTION 14.** ORS 471.402 is amended to read:

19 471.402. The holder of a brewery license issued under ORS 471.220, a winery license issued un-  
 20 der ORS 471.223, **a winery custom crush license issued under section 2 of this 2011 Act**, a  
 21 grower sales privilege license issued under ORS 471.227, a brewery-public house license issued under  
 22 ORS 471.200, a warehouse license issued under ORS 471.242 or a manufacturer certificate of ap-  
 23 proval issued under ORS 471.244 may provide or pay for sample tastings of wine, cider or malt  
 24 beverages for the public on premises licensed under a full or limited on-premises sales license or  
 25 under an off-premises sales license.

26 **SECTION 15.** ORS 471.404 is amended to read:

27 471.404. (1) Alcoholic liquor may not be imported into this state by any person other than a  
 28 holder of a brewery, winery, **winery custom crush**, distillery or wholesaler's license, except as  
 29 follows:

30 (a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission, under  
 31 a certificate of approval issued by the commission.

32 (b) Wines for sacramental purposes according to rules adopted by the commission.

33 (c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

34 (d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a  
 35 licensed brewery, winery or wholesaler **or a winery custom crush licensee**.

36 (e) Grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical or indus-  
 37 trial use, under a certificate of approval issued by the commission.

38 (f) Wine or cider that is sold and transported by the holder of a wine self-distribution permit to  
 39 a retail licensee that has the endorsement described in ORS 471.274 (5).

40 (g) Wine or cider shipped directly to a resident of this state under a direct shipper permit issued  
 41 pursuant to ORS 471.282.

42 (2) The commission may require importers of alcoholic liquor to pay a reasonable handling fee  
 43 based on the quantity and type of alcoholic liquor being imported.

44 **SECTION 16.** ORS 473.065 is amended to read:

45 473.065. (1) If a manufacturer's total tax liability under ORS 473.030 (1) in the previous calendar

1 year was less than \$1,000, the manufacturer may deposit with the Oregon Liquor Control Commis-  
 2 sion an amount in cash equal to the manufacturer's total tax liability under ORS 473.030 (1) for the  
 3 previous calendar year in lieu of the bond required by ORS 471.155 (1).

4 (2) If a manufacturer's actual tax liability under ORS 473.030 (1) is less than the amount de-  
 5 posited under subsection (1) of this section, the manufacturer may request that the commission re-  
 6 fund the excess funds or may apply those funds toward the manufacturer's tax liability under ORS  
 7 473.030 (1) for the next calendar year.

8 (3) If a manufacturer's actual tax liability under ORS 473.030 (1) is greater than the amount  
 9 deposited under subsection (1) of this section, the manufacturer shall pay to the commission the  
 10 additional amount owed in the manner required under ORS 473.060.

11 (4) Unless the commission determines that a winery, **winery custom crush**, grower sales priv-  
 12 ilege or warehouse licensee or direct shipper or wine self-distribution permit holder presents an  
 13 unusual risk for nonpayment of any license fees, privilege taxes, agricultural products taxes or other  
 14 tax, penalty or interest imposed under this chapter or ORS chapter 471, the commission shall waive  
 15 the bond required under ORS 471.155 (1) for the licensee or permit holder if:

16 (a) The licensee or permit holder was not liable for a privilege tax under this chapter in the  
 17 immediately preceding calendar year and does not expect to be liable for a privilege tax under this  
 18 chapter in the current calendar year; or

19 (b) The licensee or permit holder of a business established during the current calendar year does  
 20 not expect to be liable for a privilege tax under this chapter in the current calendar year. As used  
 21 in this paragraph, "business" means:

22 (A) A winery.

23 **(B) A winery custom crush business operated pursuant to a license issued under section**  
 24 **2 of this 2011 Act.**

25 ~~[(B)] (C) A business operated pursuant to a license issued under ORS 471.227.~~

26 ~~[(C)] (D) A warehouse.~~

27 ~~[(D)] (E) A business operated pursuant to a permit issued under ORS 471.274.~~

28 ~~[(E)] (F) A business operated pursuant to a permit issued under ORS 471.282.~~

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