

House Bill 3295

Sponsored by Representatives KOTEK, ESQUIVEL, Senators ATKINSON, DINGFELDER; Representatives BARKER, BREWER, CANNON, DOHERTY, THOMPSON, TOMEI, Senators MONNES ANDERSON, MONROE, VERGER

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 city to order cessation of alcoholic beverage sales or other operations at premises licensed for full or limited on-premises sales or as brewery-public house upon reasonable belief that continued sales or operation are immediate threat to public safety.

Allows Oregon Liquor Control Commission to place restrictions on activities at licensed premises if commission has grounds to believe certain conditions exist. Allows commission to refuse license if commission reasonably believes granting license would pose threat to public safety. Allows commission to suspend or revoke license upon finding or having grounds for believing continued operations at licensed premises would pose threat to public safety.

Requires that one member of Oregon Liquor Control Commission have expertise in law enforcement or public safety.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to addressing the impacts of alcoholic beverages; creating new provisions; amending ORS
3 471.313, 471.315 and 471.705; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**
6 **chapter 471.**

7 **SECTION 2. (1) Notwithstanding ORS 471.730, a city governing body or an authorized**
8 **representative or designee of a city governing body may order the cessation of alcoholic**
9 **beverage sales or of other operations at a premises licensed for full or limited on-premises**
10 **sales or as a brewery-public house for a period not exceeding 72 hours if the governing body,**
11 **representative or designee determines that the continuation of sales or operations at the**
12 **premises would constitute an immediate threat to public safety based upon a reasonable be-**
13 **lief that an offense listed in subsection (2) of this section involved patrons of the premises,**
14 **occurred in the immediate vicinity of the premises, was related to the sale or service of al-**
15 **cohol at the premises and occurred within 24 hours prior to issuance of the order.**

16 **(2) Subsection (1) of this section applies for the following offenses:**

17 **(a) ORS 163.005 or 163.095;**

18 **(b) ORS 163.165, 163.175 or 163.185;**

19 **(c) ORS 163.225 or 163.235;**

20 **(d) ORS 163.375, 163.405 or 163.411;**

21 **(e) ORS 166.220, 166.250 or 166.270; or**

22 **(f) Any provision of ORS 475.840 or 475.846 to 475.894.**

23 **(3) The power of a city under subsection (1) of this section is in addition to any other**
24 **regulatory action or sanctions that may lawfully be taken by the city or by the Oregon Li-**
25 **quor Control Commission.**

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 **SECTION 3.** (1) As used in this section, “serious physical injury” has the meaning given
 2 that term in ORS 161.015.

3 (2) Notwithstanding ORS 471.175, 471.178, 471.186, 471.200, 471.220, 471.223, 471.230 or
 4 471.242, the Oregon Liquor Control Commission may issue an order placing restrictions on
 5 the activities at a premises licensed under ORS 471.175, 471.178, 471.186, 471.200, 471.220,
 6 471.223, 471.230 or 471.242 if the commission has reasonable grounds to believe any of the
 7 following to be true:

8 (a) That the premises location does not comply with local or state laws or rules related
 9 to public safety or the fire and life safety code or with regulations of a governmental subdi-
 10 vision described in ORS 476.030.

11 (b) That problems related to noise, disturbances or unlawful activity exist in the area of
 12 the premises location.

13 (c) That there is a past history of or current presence of problems related to noise, dis-
 14 turbances or unlawful activity connected with the sale or service of alcoholic beverages:

15 (A) At the premises;

16 (B) At other premises of the licensee; or

17 (C) At other premises under the same management.

18 (3) In determining whether a problem described in subsection (2)(b) of this section exists
 19 in an area or whether a problem in the area may be aggravated by the sale of alcoholic
 20 beverages at the premises, the commission may consider any recommendations made by a
 21 local government having jurisdiction in that area. However, the commission shall allow the
 22 applicant or licensee the opportunity to respond to a recommendation by local government
 23 that is considered by the commission.

24 (4) For purposes of subsection (2)(c) of this section, it is reasonable grounds for inferring
 25 that a premises has a past history of or current presence of problems related to noise, dis-
 26 turbances or unlawful activity if any of the following occurs at that premises within a one-
 27 year period:

28 (a) Six or more incidents involving injuries that do not create a substantial risk of death;

29 (b) Twelve or more incidents involving unruly or unlawful behavior;

30 (c) One or more incidents involving serious physical injury or death, plus three or more
 31 incidents involving injuries that do not create a substantial risk of death;

32 (d) One or more incidents involving serious physical injury or death, plus six or more
 33 incidents involving unruly or unlawful behavior;

34 (e) Two or more incidents involving injuries that do not create a substantial risk of
 35 death, plus eight or more incidents involving unruly or unlawful behavior;

36 (f) One or more incidents involving injuries that do not create a substantial risk of death,
 37 plus 10 or more incidents involving unruly or unlawful behavior; or

38 (g) One or more incidents involving serious physical injury or death, plus two or more
 39 incidents involving injuries that do not create a substantial risk of death, and three or more
 40 incidents involving unruly or unlawful behavior.

41 (5) Any restriction that the commission places on activities at a licensed premises under
 42 this section must be narrowly tailored to address the noncompliance or problem identified
 43 by the commission.

44 **SECTION 4.** ORS 471.313 is amended to read:

45 471.313. The Oregon Liquor Control Commission may refuse to license any applicant under the

1 provisions of this chapter if the commission has reasonable ground to believe any of the following
 2 to be true:

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

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

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

13 (4) That the applicant:

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

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

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

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

21 (e) Has maintained an insanitary establishment.

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

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

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

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

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

31 (5) That there is a history of serious and persistent problems involving disturbances, lewd or
 32 unlawful activities or noise either in the premises proposed to be licensed or involving patrons of
 33 the establishment in the immediate vicinity of the premises if the *[activities]* **problems** in the im-
 34 mediate vicinity of the premises are related to the sale or service of alcohol under the exercise of
 35 the license privilege.

36 (a) *[Behavior which is]* **Problems that are** grounds for refusal of a license under this *[section]*
 37 **subsection**, where so related to the sale or service of alcohol, *[includes, but is]* **include, but are**
 38 not limited to:

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

40 (B) Public drunkenness;

41 (C) Fights;

42 (D) Altercations;

43 (E) Harassment;

44 (F) Unlawful drug sales;

45 (G) Alcohol or related litter;

1 (H) Trespassing on private property; and

2 (I) Public urination.

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

10 (6) **That granting the license would pose a threat to public safety.**

11 (a) **In addition to any other reasonable grounds for belief, the commission has reasonable**
 12 **grounds to believe that granting the license would pose a threat to public safety if two or**
 13 **more incidents described in paragraph (b) of this subsection:**

14 (A) **Have occurred at the premises since 12 months prior to the license application date;**
 15 **or**

16 (B) **Involved patrons of the premises, occurred in the immediate vicinity of the premises,**
 17 **were related to the sale or service of alcohol at the premises and have occurred since 12**
 18 **months prior to the license application date.**

19 (b) **Incidents are grounds for a reasonable belief under this subsection if the incidents**
 20 **involved one or more of the following offenses:**

21 (A) **ORS 163.005 or 163.095;**

22 (B) **ORS 163.165, 163.175 or 163.185;**

23 (C) **ORS 163.225 or 163.235;**

24 (D) **ORS 163.375, 163.405 or 163.411;**

25 (E) **ORS 166.220, 166.250 or 166.270; or**

26 (F) **Any provision of ORS 475.840 or 475.846 to 475.894.**

27 **SECTION 5.** ORS 471.315 is amended to read:

28 471.315. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued
 29 under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by
 30 ORS 471.322, if *[it]* **the commission** finds or has reasonable *[ground]* **grounds** to believe any of the
 31 following to be true:

32 (a) That the licensee:

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

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

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

39 (D) Has maintained an insanitary establishment.

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

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

44 (G) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly
 45 intoxicated at the time of sale or has knowingly allowed the consumption of alcoholic liquor on the

1 licensed premises by a person who is visibly intoxicated at the time of consumption.

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

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

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

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

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

18 (ii) Public drunkenness;

19 (iii) Fights;

20 (iv) Altercations;

21 (v) Harassment; *[or]*

22 (vi) Unlawful drug sales;

23 (vii) Alcohol or related litter;

24 (viii) Trespassing on private property; and

25 (ix) Public urination.

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

31 (d) **That continued operations at the licensed premises would pose a threat to public**
32 **safety.**

33 (A) **In addition to any other basis for a finding or belief, the commission has grounds to**
34 **find or believe that continued operations would pose a threat to public safety if two or more**
35 **incidents described in subparagraph (B) of this paragraph:**

36 (i) **Have occurred at the premises since 12 months prior to action by the commission, or**
37 **later; or**

38 (ii) **Involved patrons of the premises, occurred in the immediate vicinity of the premises,**
39 **were related to the sale or service of alcohol at the premises and have occurred since 12**
40 **months prior to action by the commission.**

41 (B) **Incidents are grounds for a finding or belief under this paragraph if the incidents**
42 **involved one or more of the following offenses:**

43 (i) **ORS 163.005 or 163.095;**

44 (ii) **ORS 163.165, 163.175 or 163.185;**

45 (iii) **ORS 163.225 or 163.235;**

- 1 (iv) **ORS 163.375, 163.405 or 163.411;**
- 2 (v) **ORS 166.220, 166.250 or 166.270; or**
- 3 (vi) **Any provision of ORS 475.840 or 475.846 to 475.894.**

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

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

7 **SECTION 6.** ORS 471.705 is amended to read:

8 471.705. (1) There is created the Oregon Liquor Control Commission, consisting of five persons
 9 appointed by the Governor. One member shall be from among the bona fide residents of each con-
 10 gressional district of the state. [*One member shall be from the food and alcoholic beverage retail in-*
 11 *dustry.*] Not more than three commissioners shall be of the same political party. [*and one shall be*
 12 *designated by the Governor*] **The Governor shall designate one member** to be chairperson of the
 13 commission.

14 **(2) The membership of the commission must include:**

15 **(a) One member from the food and alcoholic beverage retail industry; and**

16 **(b) One member with expertise in law enforcement or public safety.**

17 (3) The commissioners are entitled to compensation and expenses as provided in ORS 292.495.

18 (4) Each commissioner at the time of appointment and qualification shall be a resident of this
 19 state and shall have resided in this state for at least five years next preceding appointment and
 20 qualification. The commissioner shall be an elector therein and not less than 30 years of age. A
 21 commissioner shall cease to hold office if the commissioner ceases to possess the residency or [*in-*
 22 *dustry*] **occupational** qualification for appointment and the Governor shall appoint a qualified indi-
 23 vidual to complete the unexpired term.

24 [(2)] (5) The term of office of a commissioner shall be four years from the time of appointment
 25 and qualification and until a successor qualifies. The terms of the commissioners shall commence
 26 April 1. [*In case*] **If** any commissioner is allowed to hold over after the expiration of the term, the
 27 successor shall be appointed for the balance of the unexpired term. Vacancies in the commission
 28 shall be filled by the Governor for the unexpired term. Each commissioner is eligible for reappoint-
 29 ment but no person shall be eligible to serve for more than two full terms.

30 [(3)] (6) All appointments of commissioners by the Governor are subject to confirmation by the
 31 Senate pursuant to section 4, Article III, Oregon Constitution.

32 **SECTION 7. Section 2 of this 2011 Act applies to offenses that a city governing body,**
 33 **authorized representative or designee reasonably believes to have occurred on or after the**
 34 **effective date of this 2011 Act.**

35 **SECTION 8. Section 3 of this 2011 Act and the amendments to ORS 471.313 and 471.315**
 36 **by sections 4 and 5 of this 2011 Act apply with regard to incidents occurring before, on or**
 37 **after the effective date of this 2011 Act.**

38 **SECTION 9. The amendments to ORS 471.705 by section 6 of this 2011 Act do not termi-**
 39 **nate or shorten the term of office for any member of the Oregon Liquor Control Commission**
 40 **appointed before the effective date of this 2011 Act. The Governor shall appoint an individual**
 41 **with expertise in law enforcement or public safety to the first member position on the com-**
 42 **mission that becomes vacant on or after the effective date of this 2011 Act, other than the**
 43 **position of the member from the food and alcoholic beverage retail industry.**

44 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**
 45 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**

1 **on its passage.**

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