

Senate Bill 700

Sponsored by Senator DINGFELDER, Representative KOTEK; Senators MONNES ANDERSON, MONROE

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 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.

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 and 471.315; and declaring an emergency.

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

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

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

8 **(2) Notwithstanding ORS 471.175, 471.178, 471.186, 471.200, 471.220, 471.223, 471.230 or**
9 **471.242, the Oregon Liquor Control Commission may issue an order placing restrictions on**
10 **the activities at a premises licensed under ORS 471.175, 471.178, 471.186, 471.200, 471.220,**
11 **471.223, 471.230 or 471.242 if the commission has reasonable grounds to believe any of the**
12 **following to be true:**

13 **(a) That the premises location does not comply with local or state laws or rules related**
14 **to public safety or the fire and life safety code or with regulations of a governmental subdivi-**
15 **vision described in ORS 476.030.**

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

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

20 **(A) At the premises;**

21 **(B) At other premises of the licensee; or**

22 **(C) At other premises under the same management.**

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

29 **(4) For purposes of subsection (2)(c) of this section, it is reasonable grounds for inferring**

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 that a premises has a past history of or current presence of problems related to noise, dis-
 2 turbances or unlawful activity if any of the following occurs at that premises within a one-
 3 year period:

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

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

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

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

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

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

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

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

20 **SECTION 3.** ORS 471.313 is amended to read:

21 471.313. The Oregon Liquor Control Commission may refuse to license any applicant under the
 22 provisions of this chapter if the commission has reasonable ground to believe any of the following
 23 to be true:

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

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

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

34 (4) That the applicant:

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

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

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

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

42 (e) Has maintained an insanitary establishment.

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

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

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

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

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

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

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

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

16 (B) Public drunkenness;

17 (C) Fights;

18 (D) Altercations;

19 (E) Harassment;

20 (F) Unlawful drug sales;

21 (G) Alcohol or related litter;

22 (H) Trespassing on private property; and

23 (I) Public urination.

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

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

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

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

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

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

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

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

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

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

1 (E) ORS 166.220, 166.250 or 166.270; or

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

3 **SECTION 4.** ORS 471.315 is amended to read:

4 471.315. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued
5 under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by
6 ORS 471.322, if [it] **the commission** finds or has reasonable [ground] **grounds** to believe any of the
7 following to be true:

8 (a) That the licensee:

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

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

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

15 (D) Has maintained an insanitary establishment.

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

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

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

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

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

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

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

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

39 (ii) Public drunkenness;

40 (iii) Fights;

41 (iv) Altercations;

42 (v) Harassment; [or]

43 (vi) Unlawful drug sales;

44 (vii) Alcohol or related litter;

45 (viii) Trespassing on private property; and

1 (ix) Public urination.

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

7 (d) That continued operations at the licensed premises would pose a threat to public
8 safety.

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

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

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

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

19 (i) ORS 163.005 or 163.095;

20 (ii) ORS 163.165, 163.175 or 163.185;

21 (iii) ORS 163.225 or 163.235;

22 (iv) ORS 163.375, 163.405 or 163.411;

23 (v) ORS 166.220, 166.250 or 166.270; or

24 (vi) Any provision of ORS 475.840 or 475.846 to 475.894.

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

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

28 **SECTION 5.** Section 2 of this 2011 Act and the amendments to ORS 471.313 and 471.315
29 by sections 3 and 4 of this 2011 Act apply with regard to incidents occurring before, on or
30 after the effective date of this 2011 Act.

31 **SECTION 6.** This 2011 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
33 on its passage.

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