

Enrolled
Senate Bill 795

Sponsored by Senator PROZANSKI, Representatives WEIDNER, HOLVEY

CHAPTER

AN ACT

Relating to alcoholic beverages; amending ORS 471.157, 471.190, 471.200, 471.223, 471.227, 471.375 and 471.401; and declaring an emergency.

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

SECTION 1. ORS 471.157 is amended to read:

471.157. The licenses described in this chapter may be issued by the Oregon Liquor Control Commission, subject to its regulations and restrictions and the provisions of the Liquor Control Act [*and the Oregon Distilled Liquor Control Act*].

SECTION 2. ORS 471.190 is amended to read:

471.190. (1) The holder of a temporary sales license may:

(a) Sell at retail by the drink wine, malt beverages, cider and distilled liquor.

(b) Sell for consumption off the licensed premises wine, malt beverages and cider in factory-sealed containers.

(c) Sell for consumption off the licensed premises wine, malt beverages and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(2) Distilled liquor served by the holder of a temporary sales license must be purchased from a retail sales agent of the Oregon Liquor Control Commission. The holder of a temporary sales license must provide food service as required by commission rule.

[2] (3) A temporary sales license may be issued only to:

(a) Nonprofit or charitable organizations that are registered with the state.

(b) A political committee that has filed a statement of organization under ORS 260.039 or 260.042.

(c) State agencies.

(d) Local governments, and agencies and departments of local governments.

(e) Persons not otherwise described in this subsection, as long as the applicant submits a plan that is approved by the commission detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors under ORS 471.430 (3) or any rule adopted by the commission.

[3] *The holder of a temporary sales license may sell wine, malt beverages or cider in factory-sealed containers for consumption off the licensed premises.*

(4) The commission may by rule establish additional eligibility requirements for temporary sales licenses.

(5) Subject to such qualifications as the commission may establish by rule, persons who hold a full or limited on-premises sales license are eligible for temporary sales licenses.

(6) A person holding a temporary sales license is not required to obtain an intermittent temporary restaurant, seasonal temporary restaurant, single-event temporary restaurant license or mobile unit license under ORS chapter 624 if only wine, malt beverages and cider in single-service containers are served and only nonperishable food items that are exempted from licensure by the Oregon Health Authority are served.

(7) Employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization licensed under this section are not required to have service permits or to complete an alcohol server education program and examination under ORS 471.542. The commission by rule may establish education requirements for servers described in this subsection.

(8) Notwithstanding ORS 471.392 to 471.400, a temporary sales license may be issued to a nonprofit trade association that has a membership primarily composed of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227.

SECTION 3. ORS 471.200, as amended by section 4, chapter 32, Oregon Laws 2013, is amended to read:

471.200. (1) A brewery-public house license allows the licensee:

(a) To manufacture on the licensed premises, store, transport, sell to wholesale malt beverage and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider at retail for consumption on or off the premises;

(f) To sell for consumption off the premises wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each;

(g) To conduct the activities, **except manufacturing**, described in paragraphs [(b)] (a) to (f) of this subsection at one location other than the premises where the manufacturing occurs; and

(h) To obtain a special events brewery-public house license entitling the holder to conduct the activities allowed under paragraphs (b), (c) and (e)] **to (f)** of this subsection at a designated location other than the location set forth in the brewery-public house license for a period not exceeding five days.

(2) In addition to the privileges specified in subsection (1) of this section, in any calendar year a brewery-public house licensee may sell at wholesale to licensees of the commission malt beverages produced by the brewery-public house licensee if the brewery-public house licensee produced 5,000 barrels or less of malt beverages in the immediately preceding calendar year.

(3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

(4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or in-

directly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail businesses licensed to the same person under the provisions of this section.

(5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may also hold a warehouse license authorized by ORS 471.242.

(6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for limited on-premises sales licenses and temporary sales licenses.

(7)(a) Notwithstanding subsection (3) of this section, and except as provided in this subsection, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a brewery-public house license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and malt beverages manufactured under the brewery-public house license.

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

(8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a distillery license. No provision of this chapter prevents a brewery-public house licensee that also holds a distillery license from being appointed by the commission as the distillery's retail outlet agent for the purpose of selling distilled liquors under ORS 471.230.

(9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a brewery-public house licensee to coproduce special events with other manufacturers.

(10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer's or wholesaler's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer.

SECTION 4. ORS 471.223, as amended by section 5, chapter 32, Oregon Laws 2013, is amended to read:

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

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

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

(c) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

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

(e) To sell for consumption off the premises malt beverages, wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(f) To conduct the activities allowed under paragraphs (a) to (e) of this subsection at a second or third premises as may be designated by the commission.

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

(h) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraphs (c) [and (d)] **to (e)** of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

(2) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

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

[3)] **(4)** A winery licensee is not authorized to import wine or cider in bottles unless the brand of wine or cider is owned by the licensee.

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

[5(a)] **(6)(a)** Except as provided in paragraph (b) of this subsection, a winery licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery license.

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

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

SECTION 5. ORS 471.223, as amended by section 1, chapter 364, Oregon Laws 2011, and section 6, chapter 32, Oregon Laws 2013, is amended to read:

471.223. (1) As used in this section, "control" means that the licensee:

(a) Owns the brand under which the wine or cider is labeled; or

(b) Performs or has the legal right to perform all of the acts common to a brand owner under the terms of a trademark license or similar agreement that for the brand under which the wine or cider is labeled has a term of at least three years.

(2) A winery license shall allow the licensee:

(a) To import wine or cider in containers that have a capacity of more than four liters.

(b) To import wine or cider in containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee.

(c) To bottle, produce, blend, store, transport or export wines or cider.

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

(e) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

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

(g) To sell for consumption off the premises malt beverages, wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(h) To conduct any activities described in paragraphs (a) to (g) of this subsection at a second or third premises as may be designated by the commission.

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

(j) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraphs (e) [*and (f)*] **to (g)** of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

(3) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

[~~(3)~~] **(4)** In order to hold a winery license the licensee shall:

(a) Possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau; or

(b) Possess a valid wine blender or valid wholesaler basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau and have a written contract with a winery licensed under paragraph (a) of this subsection that authorizes the winery to produce for the licensee a brand of wine or cider that is under the control of the licensee.

[~~(4)~~] **(5)** A winery licensee may sell and ship wine or cider directly to a resident of this state only if the licensee has a direct shipper permit issued under ORS 471.282.

[~~(5)(a)~~] **(6)(a)** Except as provided in paragraph (b) of this subsection, a winery licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery license.

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

[~~(6)~~] **(7)** More than one winery licensee may exercise the privileges of a winery license at a single location. The commission may not refuse to issue a winery license to a person for the production of wine or cider on specified premises based on the fact that other winery licensees also produce wine or cider on those premises.

[~~(7)~~] **(8)** If a winery licensee does not possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau, the licensee may exercise the privileges described in this section only for wine and cider brands that are under the control of the licensee.

SECTION 6. ORS 471.227, as amended by section 7, chapter 32, Oregon Laws 2013, is amended to read:

471.227. (1) A grower sales privilege license shall allow the licensee to perform the following activities only for fruit or grape wine or cider where all of the fruit or grapes used to make the wine or cider are grown in Oregon under the control of the licensee:

(a) To import, store, transport or export such wines or cider.

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

(c) To sell such wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(d) To sell at retail for consumption off the licensed premises malt beverages and such wines and cider in securely covered containers provided by the consumer and having capacities of not more than two gallons each.

(e) To conduct some or all of the activities allowed under paragraphs (a) to (d) of this subsection at a second or third premises as may be designated by the commission.

(f) To obtain a special events grower sales privilege license which shall entitle the holder to conduct the activities allowed under [*paragraph (c)*] **paragraphs (c) and (d)** of this subsection at a designated location other than the one set forth in the grower sales privilege license for a period not to exceed five days.

(2) A grower sales privilege licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

[2)] **(3)** For purposes of ORS 471.392 to 471.400, a grower sales privilege licensee shall be considered a manufacturer.

[3)] **(4)** A person holding a winery license in another state is not eligible for a license under this section.

[4)] **(5)** A person licensed under this section is not eligible for a limited on-premises sales license or an off-premises sales license.

[5)] **(6)** As used in this section, "control" means the grower either owns the land upon which the fruit or grapes are grown or has a legal right to perform or does perform all of the acts common to fruit farming or viticulture under terms of a lease or similar agreement of at least three years' duration.

[6)] **(7)** For the purposes of tax reporting, payment and record keeping, the provisions of law that shall apply to a manufacturer under ORS chapter 473 shall apply to a grower sales privilege licensee, but such a licensee is not a manufacturer for purposes of ORS 473.050 (5).

SECTION 7. ORS 471.375, as amended by section 3, chapter 54, Oregon Laws 2012, is amended to read:

471.375. (1) Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic beverages *[for consumption on licensed premises]* **as provided under subsection (4) of this section** if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic beverage for consumption on licensed premises and the application is indorsed as required under subsection (2) of this section. A copy of the indorsed application must be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic beverages and must be made available for immediate inspection by any liquor enforcement inspector or by any other peace officer until the applicant receives the service permit.

(2) An application for a service permit under subsection (1) of this section must be indorsed by one of the following persons:

(a) The licensee under whose license the applicant will mix, sell or serve alcoholic beverages. If a licensee indorses an application, the licensee must immediately transmit the application to the commission with the fee required by subsection (3) of this section.

(b) An officer or employee of a company that provides servers to licensees on a temporary basis. The commission must give a company written approval to indorse service permit applications before an application may be indorsed under this paragraph.

(c) An employee of the commission designated by the commission to accept and indorse applications under this section. The applicant must personally appear before the employee of the commission and provide identification as may be required by commission rule.

(d) An employee of an alcohol server education course provider that has been certified by the commission under ORS 471.542 (8). The employee must be specifically designated by the provider to indorse applications under this section.

(3) An applicant for a service permit must be 18 years of age or over. Application for a service permit shall be made on a form supplied by the commission. The applicant shall truly answer all questions, provide any further information required, and pay a fee not to exceed \$10. The commission shall either set the fee to cover only the administrative costs of the service permit program, or apply any excess to the Alcohol Education Program established under ORS 471.541.

(4) An applicant for a service permit whose application has been indorsed as provided under this section may:

(a) Participate in the mixing, selling or service of alcoholic beverages for consumption on the premises where served or sold; and

(b) Participate in the dispensing of malt beverages, wine or cider sold in securely covered containers provided by the consumer.

SECTION 8. ORS 471.401 is amended to read:

471.401. (1) Notwithstanding any other provision of this chapter, a manufacturer or wholesaler of alcoholic liquor may purchase advertising space or time from a licensee authorized to sell alcoholic liquors at retail if the retail licensee:

(a) Holds a full or limited on-premises sales license and has on the licensed premises at least one room or area for which the maximum occupancy approved by the State Fire Marshal or a governmental subdivision granted an exemption under ORS 476.030 is 3,000 or more persons;

(b) Holds a full or limited on-premises sales license and the licensed premises is owned by the United States Government or a public body as defined in ORS 174.109;

(c) Holds a full or limited on-premises sales license and is a foreign corporation or nonprofit corporation, both as defined in ORS 65.001, that possesses a certificate of authorization or certificate of existence issued under ORS 65.027; or

(d) Holds a temporary sales license and is an entity described in ORS 471.190 [(2)(a)] **(3)(a)**, (c) or (d).

(2) A manufacturer or wholesaler may purchase advertising space or time under this section only in connection with events to be held on the licensed premises.

(3) A retail licensee that sells advertising space or time under this section must serve other brands of distilled liquors, malt beverages, cider or wine in addition to the brand manufactured or sold by the manufacturer or wholesaler purchasing advertising space or time.

(4) A purchase of advertising space or time under the provisions of this section must be made by written agreement.

SECTION 9. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate April 17, 2013

Received by Governor:

Repassed by Senate June 18, 2013

.....M.,....., 2013

Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2013

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 13, 2013

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2013

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Kate Brown, Secretary of State