

Senate Bill 1049

Sponsored by Senator GELSER

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**.

Increases maximum container capacity for dispensing alcoholic beverages into securely covered containers supplied by consumer.

A BILL FOR AN ACT

1
2 Relating to the dispensing of alcoholic beverages into containers supplied by consumers; amending
3 ORS 471.175, 471.178, 471.186, 471.190, 471.200, 471.223 and 471.227 and section 2, chapter 3,
4 Oregon Laws 2016.

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

6 **SECTION 1.** ORS 471.175 is amended to read:

7 471.175. (1) The holder of a full on-premises sales license may sell by the drink at retail wine,
8 malt beverages, cider and distilled liquor. Except as provided in this section, all alcoholic beverages
9 sold under a full on-premises sales license must be consumed on the licensed premises.

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

11 (a) A nonprofit private club, as described in subsection (8) of this section.

12 (b) A public passenger carrier as provided in ORS 471.182.

13 (c) A commercial establishment, as defined in ORS 471.001 (2).

14 (d) A public location that does not qualify for licensing under paragraphs (a) to (c) of this sub-
15 section if:

16 (A) Food is cooked and served at the location;

17 (B) The predominant business activity at the location is other than the preparation or serving
18 of food or the serving of alcohol; and

19 (C) The location meets any minimum food service requirements established by Oregon Liquor
20 Control Commission rule.

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

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

25 (4) The holder of a full on-premises sales license is entitled to purchase any distilled liquor from
26 an agent of the commission appointed pursuant to ORS 471.750 at a discount of not more than five
27 percent off the regular listed price fixed by the commission, together with all taxes, in a manner
28 prescribed by commission rule. For purposes of compensation by the commission, the appointed
29 agent shall be credited with such sales at full retail cost. The commission may not require the
30 licensee to purchase more than one container of distilled liquor at a time if the distilled liquor:

31 (a) Except as provided in subsection (9) of this section, has a retail sales price of \$30 or more

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 per container;

2 (b) Is available through a distributor in the United States that does not require the commission
3 to acquire more than one case of the distilled liquor in a single transaction;

4 (c) Is not regularly stocked by the commission; and

5 (d) Is ordered in a 750 milliliter container size if available in that size.

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

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

15 (7) The holder of a full on-premises sales license may sell for consumption off the licensed
16 premises malt beverages, wines and cider in securely covered containers provided by the consumer
17 and having capacities of not more than *[two]* **5.16** gallons each.

18 (8) A nonprofit private club, including but not limited to a fraternal or veterans organization,
19 may qualify for a full on-premises sales license under this section only if the club meets any mini-
20 mum membership, nonprofit status and food service requirements established by commission rule.

21 (9) The commission may annually adjust the price threshold established in subsection (4)(a) of
22 this section by a percentage equal to the percentage change in the Portland-Salem, OR-WA Con-
23 sumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor
24 Statistics of the United States Department of Labor. However, the commission may not adjust the
25 price threshold to be less than \$30.

26 **SECTION 2.** ORS 471.178 is amended to read:

27 471.178. (1) The holder of a limited on-premises sales license may sell by the drink at retail wine,
28 malt beverages and cider. Except as provided in this section, all alcoholic beverages sold under a
29 limited on-premises sales license must be consumed on the licensed premises.

30 (2) The holder of a limited on-premises sales license may sell malt beverages in factory-sealed
31 containers for consumption off the licensed premises. Containers sold under this subsection may not
32 hold less than seven gallons per container.

33 (3) The holder of a limited on-premises sales license may sell for consumption off the licensed
34 premises malt beverages, wines and cider in securely covered containers provided by the consumer
35 and having capacities of not more than *[two]* **5.16** gallons each.

36 (4) The holder of a limited on-premises sales license shall allow a patron to remove a partially
37 consumed bottle of wine from the licensed premises if the wine is served in conjunction with the
38 patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

39 (5) Sales of alcoholic beverages under a limited on-premises sales license must consist princi-
40 pally of sales by the drink for consumption on the licensed premises.

41 **SECTION 3.** ORS 471.186 is amended to read:

42 471.186. (1) The holder of an off-premises sales license may sell factory-sealed containers of malt
43 beverages, wine and cider. Factory-sealed containers of malt beverages sold under the license may
44 not hold more than two and one-quarter gallons.

45 (2) The holder of an off-premises sales license may sell for consumption off the licensed premises

1 malt beverages, wines and cider in securely covered containers supplied by the consumer and having
2 capacities of not more than [two] **5.16** gallons each.

3 (3) The holder of an off-premises sales license may provide sample tasting of alcoholic beverages
4 on the licensed premises if the licensee makes written application to the Oregon Liquor Control
5 Commission and receives approval from the commission to conduct tastings on the premises.
6 Tastings must be limited to the alcoholic beverages that may be sold under the privileges of the li-
7 cense.

8 (4) An off-premises sales license may not be issued for use at a premises that is mobile.

9 (5) Except as provided in ORS 471.402, a manufacturer or wholesaler may not provide or pay for
10 sample tastings of alcoholic beverages for the public on premises licensed under an off-premises
11 sales license.

12 (6) The holder of an off-premises sales license may deliver malt beverages, wine or cider that is
13 sold under the privileges of the license to retail customers in this state without a direct shipper
14 permit issued under ORS 471.282. Any deliveries by the holder of an off-premises sales license are
15 subject to any rules adopted by the commission relating to deliveries made under this subsection.
16 Deliveries under this subsection:

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

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

19 (c) Must be made in containers that are conspicuously labeled with the words: "CONTAINS
20 ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR
21 DELIVERY."

22 (7) The holder of an off-premises sales license that makes deliveries of malt beverages, wine or
23 cider under subsection (6) of this section must take all actions necessary to ensure that a carrier
24 used by the licensee does not deliver any malt beverages, wine or cider unless the carrier:

25 (a) Obtains the signature of the recipient of the malt beverages, wine or cider upon delivery;

26 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
27 21 years of age; and

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

29 (8) Any person who knowingly or negligently delivers malt beverages, wine or cider under the
30 provisions of this section to a person under 21 years of age, or who knowingly or negligently de-
31 livers malt beverages, wine or cider under the provisions of this section to a visibly intoxicated
32 person, violates ORS 471.410.

33 (9) If a court determines that deliveries of malt beverages, wine or cider under subsection (6)
34 of this section cannot be restricted to holders of off-premises sales licenses, and the decision is a
35 final judgment that is no longer subject to appeal, the holder of an off-premises sales license may
36 not make deliveries of malt beverages, wine or cider under the provisions of subsection (6) of this
37 section after entry of the final judgment.

38 **SECTION 4.** ORS 471.190 is amended to read:

39 471.190. (1) The holder of a temporary sales license may:

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

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

43 (c) Sell for consumption off the licensed premises wine, malt beverages and cider in securely
44 covered containers supplied by the consumer and having capacities of not more than [two] **5.16**
45 gallons each.

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

4 (3) A temporary sales license may be issued only to:

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

6 (b) A political committee that has filed a statement of organization under ORS 260.039 or
7 260.042.

8 (c) State agencies.

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

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

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

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

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

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

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

30 **SECTION 5.** ORS 471.200 is amended to read:

31 471.200. (1) A brewery-public house license allows the licensee:

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

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

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

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

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

42 (f) To sell for consumption off the premises wines and cider in securely covered containers
43 supplied by the consumer and having capacities of not more than [two] **5.16** gallons each;

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

1 (h) To obtain a special events brewery-public house license entitling the holder to conduct the
2 activities allowed under paragraphs (b) to (f) of this subsection at a designated location other than
3 the location set forth in the brewery-public house license for a period not exceeding five days;

4 (i) To distribute malt beverages manufactured at the licensed premises to any other premises
5 licensed to the same licensee, whether a manufacturer, wholesaler or retail premises; and

6 (j) To distribute for export, in any amount, malt beverages manufactured at the licensed prem-
7 ises.

8 (2) In addition to the privileges specified in subsection (1) of this section, in any calendar year
9 a brewery-public house licensee may sell at wholesale and distribute to licensees of the commission
10 no more than 7,500 barrels of malt beverages produced by the brewery-public house licensee.

11 (3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail
12 licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS
13 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise,
14 in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler,
15 as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the
16 licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided
17 by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or other in-
18 terest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of
19 any other retail licensee, as defined in ORS 471.392.

20 (4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail
21 licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS
22 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from
23 any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any
24 person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398
25 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or in-
26 directly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS
27 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance
28 between manufacturing and retail businesses licensed to the same person under the provisions of
29 this section.

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

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

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

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

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

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

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

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

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

20 **SECTION 6.** ORS 471.223 is amended to read:

21 471.223. (1) As used in this section, "control" means that the licensee:

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

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

26 (2) A winery license shall allow the licensee:

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

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

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

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

33 (e) To sell wines or cider at retail directly to the consumer for consumption on or off the li-
 34 censed premises.

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

36 (g) To sell for consumption off the premises malt beverages, wines and cider in securely covered
 37 containers supplied by the consumer and having capacities of not more than [two] 5.16 gallons each.

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

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

42 (j) To obtain a special events winery license that shall entitle the holder to conduct the activ-
 43 ities allowed under paragraphs (e) to (g) of this subsection at a designated location other than the
 44 one set forth in the winery license for a period not to exceed five days.

45 (3) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from

1 the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

2 (4) In order to hold a winery license the licensee shall:

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

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

9 (5) A winery licensee may sell and ship malt beverages, wine or cider directly to a resident of
10 this state only if the licensee has a direct shipper permit issued under ORS 471.282.

11 (6)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person
12 having an interest in the licensee, may also hold a full on-premises sales license. If a winery
13 licensee, or a person having an interest in the licensee, also holds a full on-premises sales license,
14 the provisions of this chapter do not prevent the licensee or person from both selling wine or cider
15 bottled and produced under the winery license and selling alcoholic liquor as authorized under the
16 full on-premises sales license.

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

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

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

29 **SECTION 7.** ORS 471.227 is amended to read:

30 471.227. (1) A grower sales privilege license shall allow the licensee to perform the following
31 activities only for fruit or grape wine or cider where all of the fruit or grapes used to make the
32 wine or cider are grown in Oregon under the control of the licensee:

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

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

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

38 (d) To sell at retail for consumption off the licensed premises malt beverages and such wines
39 and cider in securely covered containers provided by the consumer and having capacities of not
40 more than [two] 5.16 gallons each.

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

43 (f) To obtain a special events grower sales privilege license which shall entitle the holder to
44 conduct the activities allowed under paragraphs (c) and (d) of this subsection at a designated lo-
45 cation other than the one set forth in the grower sales privilege license for a period not to exceed

1 five days.

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

5 (3) For purposes of ORS 471.392 to 471.400, a grower sales privilege licensee shall be considered
6 a manufacturer.

7 (4) A person holding a winery license in another state is not eligible for a license under this
8 section.

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

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

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

18 **SECTION 8.** Section 2, chapter 3, Oregon Laws 2016, is amended to read:

19 **Sec. 2.** (1) As used in this section, "common control" means:

20 (a) That a manufacturer, or any officer, director, substantial stockholder or other substantial
21 equity holder in the manufacturer:

22 (A) Directly or indirectly holds 50 percent or more interest in the brewery licensee; or

23 (B) Has authority to direct the management of the brewery licensee; or

24 (b) That a brewery licensee, or any officer, director, substantial stockholder or other substantial
25 equity holder in the brewery licensee:

26 (A) Directly or indirectly holds 50 percent or more interest in another manufacturer; or

27 (B) Has authority to direct the management of another manufacturer.

28 (2) A brewery license authorizes the licensee to:

29 (a) Manufacture malt beverages on the licensed premises.

30 (b) Sell to wholesale malt beverage and wine licensees, import, store, transport or export:

31 (A) Malt beverages produced on the licensed premises; or

32 (B) Malt beverages of a brand produced by a manufacturer that is under common control with
33 the brewery licensee.

34 (c) Sell wine, malt beverages or cider on the licensed premises at retail for consumption on or
35 off the licensed premises.

36 (d) Sell, in securely covered containers supplied by the consumer and having a capacity of not
37 more than [two] 5.16 gallons each, wine, malt beverages or cider for off-premises consumption.

38 (e) Obtain a special events brewery license that entitles the holder to conduct the activities al-
39 lowed under paragraphs (c) and (d) of this subsection at a designated location other than the one
40 set forth in the brewery license for a period not exceeding five days.

41 (f) Notwithstanding ORS 471.392 to 471.400, subject to ORS 471.175, hold a full on-premises sales
42 license.

43 (g) Conduct any activities authorized under paragraph (c), (d) or (f) of this subsection at up to
44 two additional locations approved by the commission.

45 (3) Subject to ORS 471.235, a brewery licensee may hold a wholesale malt beverage and wine

1 license. A brewery licensee must hold a wholesale malt beverage and wine license if the brewery
2 licensee:

3 (a) Imports, stores, transports or exports malt beverages of brands that are not produced by the
4 licensee or a manufacturer under common control with the licensee; or

5 (b) Except as provided in this paragraph, sells or distributes malt beverages. This paragraph
6 does not apply to malt beverages described in subsection (2)(a) or (b) of this section sold at a li-
7 censed premises described in subsection (2)(a) of this section.

8 (4) A brewery licensee and a winery licensee may not be under common control unless the
9 winery licensee:

10 (a) Uses its premises to produce wine or cider; and

11 (b) Holds a valid producer and blender basic permit issued by the federal Alcohol and Tobacco
12 Tax and Trade Bureau.

13 (5) Notwithstanding any other provision of this chapter, a brewery licensee, a manufacturer that
14 is under common control with the brewery licensee or any officer, director, substantial stockholder
15 or other substantial equity holder in the brewery licensee or in a manufacturer that is under com-
16 mon control with the brewery licensee may not sell malt beverages at retail at more than three lo-
17 cations in this state regardless of the number or type of licenses held by the licensee, manufacturer,
18 officer, director, stockholder or equity holder.

19