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TO: Senate Committee on Business and Transportation
FROM: Hood River Distillers
DATE: February 5, 2018
RE: **Opposition to SB 1564**

Chair Beyer and members of the Senate Committee on Business and Transportation, thank you for the opportunity to provide testimony in opposition to SB 1564.

BACKGROUND

Hood River Distillers was established in 1934 shortly after the Oregon Liquor Control Commission (OLCC) was established in 1933. We are the oldest distillery in Oregon and have been in operation under OLCC longer than any other distillery in Oregon. From the fruit wines and brandy of Hood River Distillers' beginnings to the recent success of our Pendleton Whisky, Hood River Distillers has thrived under the OLCC control state system.

As you know OLCC's mission statement is "to support businesses, public safety, and community livability through education and the enforcement of liquor and marijuana laws." OLCC has supported the growth of the distillery industry through administrative rule and statutory revisions. In 2015, ORS 471.230 (HB 2567) was amended to allow distillery tasting rooms to offer tastings that included other distilled liquors. This change allowed distilleries to showcase how their products can shine when mixed and increased the likelihood that a customer would purchase a bottle of liquor. The 2015 changes also allowed bulk alcohol transactions to occur between Oregon distilleries. Previously all alcohol purchases were required to go through the OLCC; this change reduced the complications of bulk alcohol purchases and allowed Oregon distilleries to work directly with one another. These statutory changes are excellent examples of how statutes developed in collaboration can be enacted to support local businesses.

SB 1564 attempts to support Oregon distilleries, however, we believe the proposal's benefits do not outweigh the potential cost to the current system.

SENATE BILL 1564

SB 1564 creates a new type of permit (Tasting Room Permit). Oregon's licensed distilleries would be eligible for one Tasting Room Permit per distillery license at one of the licensee's retail locations. The Tasting Room Permit allows the licensee to provide tastings and to sell distilled spirits for off-premise consumption.

Under the provisions of the bill a Tasting Room Permit licensee must be the sole owner of the tasting room and the distilled spirit sold in the tasting room must be from a single distillery premise of the licensee (it cannot be sold at retail at more than one tasting room).



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Under the Tasting Room Permit a distillery sells its distilled liquor at the OLCC retail price, but not as an OLCC retail agent until a total of \$500,000 in distilled liquor sales are reached. SB 1564 allows distilleries to profit from the initial sale to the OLCC and retain the entire markup margin.

In addition, SB 1564 creates a Special Events Tasting Room license. This license is similar to the existing Special Events Distillery license that permits a distillery to exercise its tasting and retail privileges temporarily at an off-premise location. The Special Events Tasting Room license would allow distilleries with a Tasting Room Permit to provide tastes and sell distilled liquor not as a retail agent at off-premise locations. The fee for a Special Events Tasting Room license mirrors the current \$10 fee for a Special Events Distillery license. A Tasting Room Permit licensee can be allotted for no more than 62 days a calendar year per location for the Special Events Tasting Room license. This provision is in addition to a distillery's ability to have a Special Events Distillery license 62 days a year per location.

SB 1564 LACKS CLARITY

Section 2 (1) states that, "A distillery licensee under ORS 471.230 may apply to the Oregon Liquor Control Commission for a Tasting Room Permit for ONE retail location of the licensee." Even though a distillery licensee may have multiple distillery licenses, this sentence purports one Tasting Room Permit per licensee. This provision is in direct conflict with Section 2 (2) which indicates that the number of tasting room permits held by the licensee may not exceed the number of distillery premises of the licensee.

Currently the OLCC must approve a distillery to permit tastings. Upon that approval a distillery may apply to be a distillery retail outlet. Under the provisions of SB 1564 a distillery's retail outlet must exist in order for OLCC to approve it as a Tasting Room Permit location. This seems to create an unnecessary redundancy. The location already has tasting room privileges and a distillery gains nothing new through the tasting privileges under the Tasting Room Permit. The rules of the tastings are no different. It's called a Tasting Room Permit, but it has little to do with tastes and almost everything to do with selling distilled liquor at retail.

Throughout the bill the terms "tasting room permit" and "tasting room" are used, but it is unclear if they are interchangeable, or if this bill is meant to create restrictions on existing distillery's tasting rooms. Section 2(2) states, "Distilled liquor manufactured at a distillery premise may not be sold at retail at more than one tasting room." This provision appears to imply that all distillery licensees tasting rooms cannot have common distilled liquors.

Under the provisions of SB 1564, "Distilled liquor sold at retail at a tasting room must be from a single distillery premises of the licensee." This term has great consequences for distilleries that produce product at multiple distillery premises. Hood River Distillers bottles products from its other premises and other distillery premises. This term would prevent Hood River Distillers and its Oregon contract bottling customers from selling a number of products under a Tasting Room Permit because multiple distillery premises are involved in the production of the liquor.

DISTILLERS RECENTLY RECEIVED A FEDERAL TAX WINDFALL

Financial hardships for small craft distillers are much less of an issue with the federal government's recent passing of the Tax Cuts and Jobs Act of 2017. The Act reduced the Federal Excise Tax (FET) on

distilled spirits from \$13.50 a proof gallon to \$2.70 a proof gallon for the first 100,000 proof gallons removed during a calendar year. Most Oregon distilleries will not exceed the 100,000 proof gallon threshold, but even if they do there is a second tier of FET reduced rates that only the very largest national distilleries will exceed.

For example, a common 12-pack case of 750ml bottles of 80 proof spirits would cost a distillery \$25.68 last year under the old rate. Today that distillery would owe \$5.14 in Federal Excise Tax. That's a savings of \$20.54 or 80% per case. This is \$1.72 of return per bottle that was unavailable last year. If a distillery were to remove 100,000 proof gallons, it would experience a savings up to \$1,080,000 annually for at least two years.

CONCLUSION

Hood River Distillers is a proponent for the growth of the distilled spirits industry in Oregon. Since 1934 Hood River Distillers has been an example of the longevity and success a distillery can experience while operating under the control state system that OLCC regulates. SB 1564 erodes that control state system's foundation. Other types of licensees under the Commission may see SB 1564's passage as an opportunity to also request an exception to operate outside of the state control system and no longer sell distilled spirits as agents of the OLCC.

SB 1564 as written discourages the growth of Oregon distilleries. Most Oregon distilleries have one retail location. This retail location would become their Tasting Room Permit premise. The distillery would profit from keeping the entire OLCC markup on their product. If the distillery grows and wants to expand into another location it would be dissuaded because the second location is not entitled to the same privileges.

The bill would be a detriment to Hood River Distiller's production process and damage its contract packaging relationships with other Oregon Distilleries. The bill requires that the distilled liquor in a Tasting Room Permit must be from a single distillery premise of the licensee. Hood River Distillers and its contract packaging clientele produce product at distillery premises in addition to the Hood River Distillery main location where the product is blended and bottled.

SB 1564 does not make transactional sense within the three tier system. In every other state, Oregon distilleries must sell their product to a distributor. The distributor then sells the distillery's product to retailers in that state. The Oregon distillery is not entitled to the difference between what the wholesaler bought the product for and the amount the distributor sold it.

For these reasons, Hood River Distillers opposes SB 1564. The financial health of the distillery community is a concern, but with the passing of The Tax and Jobs Act of 2017 it is no longer an immediate concern. An alternate method for economic benefit can be explored that doesn't chip at the structural integrity of our current system. In light of the recent federal excise tax cut the industry just received from the Tax Cuts and Jobs Act signed by the President a month and a half ago, we respectfully ask that you reject SB 1564.