

A-Engrossed Senate Bill 111

Ordered by the Senate April 18
Including Senate Amendments dated April 18

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation)

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.

[Provides that wine meeting certain criteria is deceptively labeled or branded.]

[Requires manufacturers of certain wines to provide Oregon Liquor Control Commission with annual statement of compliance with certain laws regarding wine. Makes violation subject to civil penalty, not to exceed \$25,000, and unlawful trade practice.]

[Requires commission to evaluate manufacturer compliance, as of December 31, 2025, with rules regarding certain wines. Requires commission to report results of evaluation to interim committee of Legislative Assembly on or before September 15, 2026.]

Prohibits certain certificate and permit holders from transactions involving improperly sealed or deceptively labeled alcoholic beverages. Authorizes Oregon Liquor Control Commission to suspend or revoke license, certificate or permit and to impose civil penalty not exceeding \$25,000 for violations. Authorizes commission to adopt rules establishing content requirements for wine using Oregon American viticultural area on labeling, packaging, advertising or marketing.

Provides that commission may not sanction holder of wholesale malt beverage and wine license or retail seller for improperly sealed containers or deceptive labeling caused by wine manufacturer.

Requires commission to determine number and type of complaints received between effective date of Act and December 31, 2021, regarding wine labeling and to report information and recommendations to interim committee of Legislative Assembly no later than September 15, 2022.

Revises responsibility and method for remitting tax on wine grapes. Creates exemption from wine grape tax. Makes exemption applicable for qualifying purchases made on or after January 1, 2021.

Authorizes commission to enter into agreements with counterpart agencies in other states for reciprocal support to enforce laws regarding wine labeling, packaging, advertising and marketing and regarding taxation of wine grapes.

Authorizes commission to adopt rules to prevent importation and sale of wine that is deceptively labeled, packaged, advertised or marketed. Provides that holder of wine self-distribution permit consents to commission jurisdiction. Authorizes commission to prohibit transporting or resale of product violating laws or rules regarding wine. Authorizes commission to prohibit delivery of wine sold or shipped by holder of direct shipper permit in violation of laws or rules regarding wine.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to wine; creating new provisions; amending ORS 471.040, 471.274, 471.282, 471.446 and
3 473.045; and prescribing an effective date.

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

WINE STANDARDS

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8 **SECTION 1.** ORS 471.446 is amended to read:

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.

1 471.446. (1) [No] A retail licensee [shall], or a holder of a certificate of approval, direct
2 shipper permit or wine self-distribution permit, may not purchase any wine or cider for resale
3 except in sealed containers, the seals of which shall remain unbroken when it is sold for consump-
4 tion off the premises.

5 (2) The Oregon Liquor Control Commission may refuse to sell, or may prohibit any licensee or
6 holder of a certificate of approval, direct shipper permit or wine self-distribution permit from
7 importing, distributing or selling, any brand of alcoholic liquor which in its judgment is
8 deceptively labeled or branded as to content, origin or geographic designation, or contains
9 injurious or adulterated ingredients.

10 (3) The commission may suspend or revoke any license issued under this chapter, or any
11 certificate of approval, direct shipper permit or wine self-distribution permit, held by a per-
12 son that violates subsection (1) or (2) of this section.

13 (4) In addition to or in lieu of a suspension under subsection (3) of this section, the
14 commission may assess a person that violates subsection (1) or (2) of this section a civil
15 penalty of not more than \$25,000 per occurrence. The commission shall assess civil penalties
16 under this subsection according to a schedule of penalties developed by the commission and
17 adopted by rule. Factors that the commission shall consider when developing the schedule
18 of civil penalties include, but need not be limited to, the nature of the violation and any
19 history of violations by the person.

20 (5) The commission may adopt rules to establish content standards for wine and for the
21 use of an Oregon appellation of origin on wine labeling, packaging, advertising or marketing.

22 **SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS chapter 471.

23 **SECTION 3.** The Oregon Liquor Control Commission may not hold a person licensed un-
24 der ORS 471.235, or exercising retail privileges under a license issued under this chapter,
25 responsible for a violation of ORS 471.446 caused by the actions of a wine manufacturer.

26 **SECTION 4.** The Oregon Liquor Control Commission shall determine the number and
27 type of complaints received during the period beginning on the effective date of this 2019 Act
28 and ending December 31, 2021, relating to wine labeling and shall describe the dispositions
29 of the complaints. The commission shall report its findings to an interim committee of the
30 Legislative Assembly related to business, in the manner provided by ORS 192.245, no later
31 than September 15, 2022. The report may include any recommendations by the commission
32 for legislation to improve manufacturer compliance with ORS 471.446 and commission rules,
33 including but not limited to any recommendation to require that wine be bottled or packaged
34 in this state if the wine label, packaging, advertising or marketing:

35 (1) States or implies a federally approved American viticultural area located wholly
36 within this state, or a derivative name thereof; or

37 (2) Uses "Oregon," the name of an Oregon county, another geographic designation of
38 Oregon or a derivative name thereof.

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40 **WINE GRAPES**

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42 **SECTION 5.** ORS 473.045 is amended to read:

43 473.045. (1) A tax is hereby imposed upon the sale or use of all agricultural products used in a
44 winery for making wine.

45 (2) The amount of the tax shall be \$25 per ton of grapes of the vinifera varieties, whether true

1 or hybrid.

2 (3) An equivalent tax is imposed upon the sale or use of vinifera or hybrid grape products im-
3 ported for use in a winery licensed under ORS chapter 471 for making wine. Such tax shall be \$25
4 per ton of grapes used to produce the imported grape product. The tax shall be determined on the
5 basis of one ton of grapes for each 150 gallons of wine made from such vinifera or hybrid grape
6 products.

7 (4) A tax on the sale or use of products that are not subject to subsection (2) or (3) of this
8 section that are used to make wine in this state shall be imposed at a rate of \$.021 per gallon of
9 wine made from those products.

10 (5)(a) In the case of vinifera or hybrid grape products harvested in this state, \$12.50 of [*such*]
11 **the** tax shall be levied and assessed against the person selling or providing [*such*] **the** grape pro-
12 ducts to the winery **and, except as provided in section 7 of this 2019 Act, \$12.50 shall be levied**
13 **and assessed against the winery purchasing the grape products.** [*If the purchasing winery is li-*
14 *icensed under ORS chapter 471, that winery shall deduct the tax levied under this subsection from the*
15 *price paid to the seller. If the purchasing winery is not licensed under ORS chapter 471, the seller shall*
16 *report all sales on forms provided by the Oregon Liquor Control Commission and pay \$12.50 per ton*
17 *as a tax directly to the commission.*]

18 (b) **If the purchasing winery is licensed under ORS chapter 471 or holds a wine self-**
19 **distribution permit, direct shipper permit or certificate of approval, the purchasing winery**
20 **shall pay the \$25 per ton tax and deduct \$12.50 per ton from the price paid to the person**
21 **selling or providing the grape products to the winery.**

22 (c) **If the purchasing winery is not licensed under ORS chapter 471, and does not hold a**
23 **wine self-distribution permit, direct shipper permit or certificate of approval, the person**
24 **selling or providing the grape products to the winery shall report the sale on forms provided**
25 **by the Oregon Liquor Control Commission and pay \$12.50 per ton as a tax directly to the**
26 **commission.**

27 (6) [*Taxes paid by sellers under subsection (5) of this section*] **Moneys that a winery deducts**
28 **for taxes described in subsection (5) of this section and forwards to the commission** shall be
29 collected by the [*Oregon Liquor Control*] commission on behalf of the Oregon Wine Board. The
30 commission may retain an amount sufficient to cover the cost of collecting the taxes paid under
31 subsection (5) of this section and shall transfer the remainder of those taxes to the board for deposit
32 as provided in ORS 576.775. Failure to pay a tax imposed under subsection (5) of this section sub-
33 jects the violator to the penalty provided in ORS 473.992.

34 (7) **If a winery deducts and pays the tax imposed on an item under this section, resale**
35 **of the item in bulk to an out-of-state buyer does not subject the out-of-state buyer to the**
36 **imposition of tax under this section.**

37 [(7)] (8) Except for the tax specified in subsection (4) of this section the taxes specified under
38 this section shall be levied and assessed to the [*licensed*] winery at the time of purchase of the
39 product by the winery or of importation of the product, whichever is later. The tax specified in
40 subsection (4) of this section shall be levied and assessed to the licensed winery at the time the wine
41 is made.

42 [(8)] (9) The taxes imposed by this section shall be paid [*by the licensed winery*] **to** and collected
43 by the commission subject to the same powers as taxes imposed and collected under ORS chapter
44 473. The tax obligation for a calendar year shall be paid in two installments. Half shall be due on
45 December 31 of the current calendar year. The remaining half shall be due the following June 30.

1 (10) The commission may adopt rules for carrying out this section.

2 **SECTION 6.** The amendments to ORS 473.045 by section 5 of this 2019 Act become oper-
3 ative January 1, 2021. The Oregon Liquor Control Commission may take any actions prior to
4 January 1, 2021, the commission deems necessary to allow the commission to exercise on or
5 after January 1, 2021, the duties, functions and powers conferred on the commission by the
6 amendments to ORS 473.045 by section 5 of this 2019 Act.

7 **SECTION 7.** A purchase of vinifera or hybrid grapes harvested in this state is exempt
8 from the tax under ORS 473.045 (5) levied and assessed against persons purchasing grape
9 products, if the grapes are used for wine that:

10 (1) Is produced within a federally approved American viticultural area located partially
11 within this state; and

12 (2) Does not use Oregon designations or use and American viticultural area located
13 wholly within Oregon, on its label or packaging or in its advertising or marketing.

14 **SECTION 8.** Section 7 of this 2019 Act applies to taxes on grape purchases made on or
15 after January 1, 2021.

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17 **ENFORCEMENT AUTHORITY**
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19 **SECTION 9.** The Oregon Liquor Control Commission, with the advice and consent of the
20 Attorney General, may enter into agreements with agencies of other states in which the
21 participating agencies agree to provide reciprocal support to enforce the laws of Oregon and
22 the other states with regard to wine labeling, wine packaging, wine advertising and market-
23 ing and the taxation of wine, wine grapes or other wine ingredients.

24 **SECTION 10.** ORS 471.040 is amended to read:

25 471.040. (1) The Oregon Liquor Control Commission has the powers and duties specified in this
26 chapter and ORS 474.105 and 474.115, and also the powers necessary or proper to enable it to carry
27 out fully and effectually all the purposes of this chapter and ORS 474.105 and 474.115. It shall make
28 such rules and regulations pertaining to natural and fortified wines as will prevent the importation
29 and sale in Oregon of blended, rectified, adulterated or low-quality wines **or wines that are labeled,**
30 **packaged, advertised or marketed in a deceptive manner.** The jurisdiction, supervision, powers
31 and duties of the commission extend to any person who buys, sells, manufactures, imports or trans-
32 ports any alcoholic liquor within this state. The commission may sue and be sued.

33 (2) Except for the power to adopt rules, the commission may delegate any of the commission's
34 powers or duties to the administrator appointed under ORS 471.720.

35 **SECTION 11.** ORS 471.274 is amended to read:

36 471.274. (1) The Oregon Liquor Control Commission may issue a wine self-distribution permit to
37 a United States manufacturer of wine or cider. The commission may issue a wine self-distribution
38 permit only to a manufacturer of wine or cider that:

- 39 (a) Holds a license issued by another state that authorizes the manufacture of wine or cider; and
40 (b) Holds a certificate of approval issued under ORS 471.244.

41 (2) The holder of a wine self-distribution permit may sell at wholesale and transport wine or
42 cider that the manufacturer produces directly to the commission, or to retail licensees in the manner
43 provided by this section. A wine self-distribution permit allows the holder to sell wine or cider that
44 the holder produces only to retail licensees who hold a valid endorsement issued by the commission
45 authorizing receipt of wine or cider from the holder of a wine self-distribution permit.

1 (3) In addition to the information required by ORS 471.311 for licenses, an applicant for a wine
2 self-distribution permit shall provide the commission with a copy of the license held by the applicant
3 or with sufficient information to allow verification of the license by electronic means or other means
4 acceptable to the commission. The applicant also shall provide the commission with any information
5 required by the commission to establish that the license held by the applicant authorizes the man-
6 ufacture of wine or cider.

7 (4) A person holding a wine self-distribution permit is responsible for paying all taxes imposed
8 under ORS chapter 473, and for complying with all reporting requirements imposed by ORS chapter
9 473, for all wine and cider sold and transported to retail licensees in this state. The commission may
10 revoke, or refuse to issue, a wine self-distribution permit if the holder of a permit fails to pay taxes
11 or make reports as required by ORS chapter 473.

12 (5) A retail licensee may receive wine or cider from the holder of a wine self-distribution permit
13 only if the licensee has received prior authorization from the commission. Prior authorization under
14 this subsection must be made by an endorsement to the license for the premises where the wine or
15 cider will be received. The commission may not charge or collect a fee for an endorsement under
16 this subsection.

17 (6)(a) Except as provided in paragraph (b) of this subsection, a retail licensee that receives wine
18 or cider from holders of wine self-distribution permits must make a monthly report to the commis-
19 sion, using a form prescribed by the commission, listing the amount of all wine or cider received
20 from permit holders in the previous month, and the names of the permit holders from whom the wine
21 or cider was received. Retail licensees shall retain such purchase records for products received from
22 permit holders as may be required by the commission.

23 (b) The holder of a full or limited on-premises sales license is not required to file a report under
24 this subsection for any month in which the licensee receives two or fewer cases of wine from holders
25 of wine self-distribution permits.

26 (7) A manufacturer that is not licensed by the commission may sell and transport wine or cider
27 directly to a retail licensee, and a retail licensee may receive wine or cider directly from a man-
28 ufacturer that is not licensed by the commission, only if the manufacturer holds a wine self-
29 distribution permit issued under this section.

30 (8) The holder of a wine self-distribution permit consents to the jurisdiction of the commission
31 and the courts of this state for the purpose of enforcing the provisions of this chapter, ORS chapter
32 473 and any related laws or rules **including, but not limited to, laws or rules regarding the la-
33 beling and packaging of wine. In addition to or in lieu of any action described in subsection
34 (10) of this section, the commission may prohibit the transporting or resale of any product
35 sold at wholesale by a holder of a wine self-distribution permit that violates any provision
36 of this chapter, ORS chapter 473 or any related laws or rules with regard to wine.**

37 (9) The holder of a wine self-distribution permit must post a bond or other security, as described
38 in ORS 471.155.

39 (10) The commission may revoke, or refuse to issue, a wine self-distribution permit if the holder
40 of a permit fails to comply with any provision of this section.

41 **SECTION 12.** ORS 471.282 is amended to read:

42 471.282. (1) Notwithstanding any other provision of this chapter and except as provided by ORS
43 471.186 (6), a person may sell and ship malt beverages, wine or cider directly to a resident of Oregon
44 only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue
45 a direct shipper permit only to:

1 (a) A person that holds a license issued by this state or another state that authorizes the man-
2 ufacture of malt beverages, wine or cider;

3 (b) A person that holds a license issued by this state or another state that authorizes the sale
4 of wine or cider produced only from grapes or other fruit grown under the control of the person;

5 (c) A person that holds a license authorizing the sale of malt beverages, wine or cider at retail;
6 or

7 (d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and
8 that has a membership primarily composed of persons holding winery licenses issued under ORS
9 471.223 or grower sales privilege licenses issued under ORS 471.227.

10 (2) The holder of a direct shipper permit that is a licensee of another state may deliver malt
11 beverages under the permit only if that other state makes direct shipper permits, or the equivalent,
12 available for the delivery of malt beverages by persons holding a license issued by the commission
13 authorizing the manufacture or retail sale of malt beverages.

14 (3)(a) A person may apply for a direct shipper permit by filing an application with the commis-
15 sion. The application must be made in such form as may be prescribed by the commission.

16 (b) If the application is based on a license issued by this state, the person must include in the
17 application the number of the license issued to the person.

18 (c) If the application is based on a license issued by another state, the person must include in
19 the application a true copy of the license issued to the person by the other state or include sufficient
20 information to allow verification of the license by electronic means or other means acceptable to the
21 commission.

22 (d) If the application is based on a license issued by another state, or the application is by a
23 nonprofit trade association described in subsection (1)(d) of this section, the person or association
24 must pay a \$50 registration fee and maintain a bond or other security described in ORS 471.155 in
25 the minimum amount of \$1,000.

26 (4) Sales and shipments under a direct shipper permit:

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

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

29 (c) May not exceed two cases, containing not more than nine liters per case, to any resident per
30 month.

31 (5) Sales and shipments under a direct shipper permit must be made directly to a resident of this
32 state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIG-
33 NATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

34 (6) A person holding a direct shipper permit must take all actions necessary to ensure that a
35 carrier used by the permit holder does not deliver any malt beverages, wine or cider unless the
36 carrier:

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

38 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
39 21 years of age; and

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

41 (7)(a) A person holding a direct shipper permit must report to the commission on a quarterly
42 basis all shipments of malt beverages, wine or cider made to Oregon residents under the permit. The
43 report must be made in a form prescribed by the commission.

44 (b) A person holding a direct shipper permit must allow the commission to audit the permit
45 holder's records upon request and shall make those records available to the commission in this state.

1 (c) A person holding a direct shipper permit consents to the jurisdiction of the commission and
2 the courts of this state for the purpose of enforcing the provisions of this section and any related
3 laws or rules **including, but not limited to, laws or rules regarding the labeling and packaging**
4 **of wine. In addition to or in lieu of any other action described in this section, the commission**
5 **may prohibit the delivery of wine sold or shipped by a holder of a direct shipper permit that**
6 **violates any provision of this chapter or ORS chapter 473 with regard to wine or any related**
7 **laws or rules with regard to wine.**

8 (8)(a) A person holding a direct shipper permit must timely pay to the commission all taxes im-
9 posed under ORS chapter 473 on malt beverages, wine and cider sold and shipped under the permit.
10 For the purpose of the privilege tax imposed under ORS chapter 473, all malt beverages, wine or
11 cider sold and shipped pursuant to a direct shipper permit is sold in this state.

12 (b) A person holding a direct shipper permit based on a license issued by another state must
13 timely pay to the commission all taxes imposed under ORS chapter 473 on all malt beverages, wine
14 or cider sold and shipped directly to Oregon residents under the permit. The permit holder, not the
15 purchaser, is responsible for the tax.

16 (9) A direct shipper permit must be renewed annually. If the person holds the permit based on
17 an annual license issued by another state, the person may renew the permit by paying a \$50 renewal
18 fee and providing the commission with a true copy of a current license issued to the person by the
19 other state or with sufficient information to allow verification of the license by electronic means
20 or other means acceptable to the commission. If the person holds the permit based on an annual li-
21 cense issued by this state, the person may renew the permit at the same time that the person renews
22 the license.

23 (10) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the
24 permit holder fails to comply with the provisions of this section. A person may sell and ship malt
25 beverages, wine or cider under a direct shipper permit only for as long as the person has the license
26 issued by this state or another state that authorizes the person to hold a direct shipper permit. A
27 direct shipper permit does not authorize the shipment of malt beverages by a permit holder de-
28 scribed in subsection (1)(b) of this section or lacking authority as provided under subsection (2) of
29 this section.

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

34 (12) A person may not make sales and shipments of malt beverages, wine or cider directly to
35 Oregon residents unless the person holds a direct shipper permit issued under this section. Any
36 person who knowingly makes, participates in, transports, imports or receives a shipment of malt
37 beverages, wine or cider that is in violation of this section commits a misdemeanor as provided in
38 ORS 471.990 (1).

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40 **CAPTIONS**

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42 **SECTION 13. The unit captions used in this 2019 Act are provided only for the conven-**
43 **ience of the reader and do not become part of the statutory law of this state or express any**
44 **legislative intent in the enactment of this 2019 Act.**

EFFECTIVE DATE

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SECTION 14. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.
