

Enrolled
Senate Bill 590

Sponsored by Senator PROZANSKI, Representative HOLVEY; Representative HAYDEN (at the request of Oregon Brewers Guild) (Pre-session filed.)

CHAPTER

AN ACT

Relating to beverages; creating new provisions; amending ORS 471.182, 471.200 and 471.221; repealing ORS 471.448; and declaring an emergency.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 459A.700 to 459A.740.

SECTION 2. For purposes of ORS 459A.710 and 459A.715, the space that a dealer occupies equals the retail space if:

- (1) The retail space is less than 5,000 square feet;**
- (2) The retail space occupies less than 50 percent of the leased or owned space where retail operations are located; and**
- (3) The nonretail space is used in whole or in part for the manufacturing of beverages.**

SECTION 3. ORS 471.182 is amended to read:

471.182. (1) The Oregon Liquor Control Commission may grant a full or limited on-premises sales license to the owner or operator of a licensed public passenger carrier only as specified in this section. A public passenger carrier licensed by the commission under this section must serve food as required by rules of the commission.

(2) The commission may issue a full on-premises sales license to:

- (a) An airline for use in operating aircraft that are licensed to carry at least 40 passengers and that arrive at or depart from an airport in this state.
- (b) A railroad corporation for use in operating passenger trains in this state.
- (c) The owner or operator of one or more tour boats that are licensed to carry at least 40 passengers to or from any port of this state and that are primarily used for nonfishing purposes.

(3) The commission may issue a limited on-premises sales license to any of the persons specified in subsection (2) of this section. In addition, the commission may issue a limited on-premises sales license to the owner or operator of a licensed public passenger carrier not described in subsection (2) of this section if the carrier is a mobile vehicle that is licensed to carry at least 40 passengers.

(4) A license issued to a commercial airline under this section grants the licensee the privilege of accepting delivery and storing alcoholic liquor at designated storage facilities in this state for subsequent retail sale to the airline's ticketed passengers while aboard a commercial airplane. Storage facilities described in this subsection are subject to the prior written approval of the commission if at a location other than the primary premises address listed on the license certificate.

SECTION 4. ORS 471.200 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 (a) to (f) of this subsection at two locations other than the premises where the manufacturing occurs;

(h) To obtain a special events brewery-public house license entitling the holder to conduct the activities allowed under paragraphs (b) 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;

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

(j) To distribute for export, in any amount, malt beverages manufactured at the licensed premises.

(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 and distribute to licensees of the commission no more than 7,500 barrels of malt beverages produced by the brewery-public house licensee.

(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] ~~471.394~~ and, except as otherwise provided by this section and ORS [471.400] ~~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 other retail licensee, as defined in ORS 471.392.

(4)(a) **Except as provided in this subsection**, 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 indirectly 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.

(b) The commission may issue more than one brewery-public house license at a single premises if each licensee:

(A) Has a valid Brewer's Notice issued by the federal Alcohol and Tobacco Tax and Trade Bureau at the premises address; and

(B) Otherwise complies with ORS 471.398.

(c) A brewery-public house licensee may produce malt beverages for another brewery-public house licensee under a custom order agreement. The commission may adopt rules regarding the contents of custom order agreements.

(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) Notwithstanding subsection (3) of this section, 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.

(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 5. ORS 471.221 is amended to read:

471.221. (1) As used in this section, "common control" means:

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

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

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

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

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

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

(2) A brewery license authorizes the licensee to:

(a) Manufacture malt beverages on the licensed premises.

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

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

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

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

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

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

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

(g) Conduct any activities authorized under paragraph (c), (d) or (f) of this subsection at up to two additional locations approved by the **Oregon Liquor Control** Commission.

(3) Subject to ORS 471.235, a brewery licensee may hold a wholesale malt beverage and wine license. A brewery licensee must hold a wholesale malt beverage and wine license if the brewery licensee:

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

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

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

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

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

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

(6) A brewery licensee may produce malt beverages for a brewery-public house licensee under a custom order agreement. The commission may adopt rules regarding the contents of custom order agreements.

SECTION 6. ORS 471.448 is repealed.

SECTION 7. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate April 9, 2019

Repassed by Senate June 5, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 30, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State