

Requested by Senator Judiciary Committee

**PROPOSED AMENDMENTS TO
SENATE BILL 111**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and insert “amending ORS 471.040, 471.274, 471.282, 471.446 and
3 473.045; and prescribing an effective date.”.

4 Delete lines 4 through 27 and delete page 2 and insert:

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6

“WINE STANDARDS

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

9 “471.446. (1) [No] **A retail licensee [shall], or a holder of a certificate**
10 **of approval, direct shipper permit or wine self-distribution permit, may**
11 **not** purchase any wine or cider for resale except in sealed containers, the
12 seals of which shall remain unbroken when it is sold for consumption off the
13 premises.

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

20 **“(3) The commission may suspend or revoke any license issued un-**
21 **der this chapter, or any certificate of approval, direct shipper permit**

1 or wine self-distribution permit, held by a person that violates sub-
2 section (1) or (2) of this section.

3 “(4) In addition to or in lieu of a suspension under subsection (3)
4 of this section, the commission may assess a person that violates
5 subsection (1) or (2) of this section a civil penalty of not more than
6 \$25,000 per occurrence. The commission shall assess civil penalties
7 under this subsection according to a schedule of penalties developed
8 by the commission and adopted by rule. Factors that the commission
9 shall consider when developing the schedule of civil penalties include,
10 but need not be limited to, the nature of the violation and any history
11 of violations by the person.

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

15 “SECTION 2. Sections 3 of this 2019 Act is added to and made a part
16 of ORS chapter 471.

17 “SECTION 3. The Oregon Liquor Control Commission may not hold
18 a person licensed under ORS 471.235, or exercising retail privileges
19 under a license issued under this chapter, responsible for a violation
20 of ORS 471.446 caused by the actions of a wine manufacturer.

21 “SECTION 4. The Oregon Liquor Control Commission shall deter-
22 mine the number and type of complaints received during the period
23 beginning on the effective date of this 2019 Act and ending December
24 31, 2021, relating to wine labeling and shall describe the dispositions
25 of the complaints. The commission shall report its findings to an in-
26 terim committee of the Legislative Assembly related to business, in
27 the manner provided by ORS 192.245, no later than September 15, 2022.
28 The report may include any recommendations by the commission for
29 legislation to improve manufacturer compliance with ORS 471.446 and
30 commission rules, including but not limited to any recommendation

1 to require that wine be bottled or packaged in this state if the wine
2 label, packaging, advertising or marketing:

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

5 (b) Uses ‘Oregon,’ the name of an Oregon county, another ge-
6 ographic designation of Oregon or a derivative name thereof.

7
8 “WINE GRAPES

9
10 “**SECTION 5.** ORS 473.045 is amended to read:

11 “473.045. (1) A tax is hereby imposed upon the sale or use of all agricul-
12 tural products used in a winery for making wine.

13 “(2) The amount of the tax shall be \$25 per ton of grapes of the vinifera
14 varieties, whether true or hybrid.

15 “(3) An equivalent tax is imposed upon the sale or use of vinifera or hy-
16 brid grape products imported for use in a winery licensed under ORS chapter
17 471 for making wine. Such tax shall be \$25 per ton of grapes used to produce
18 the imported grape product. The tax shall be determined on the basis of one
19 ton of grapes for each 150 gallons of wine made from such vinifera or hybrid
20 grape products.

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

24 “(5)(a) In the case of vinifera or hybrid grape products harvested in this
25 state, \$12.50 of [*such*] **the** tax shall be levied and assessed against the person
26 selling or providing [*such*] **the** grape products to the winery **and, except**
27 **as provided in section 7 of this 2019 Act, \$12.50 shall be levied and as-**
28 **sessed against the winery purchasing the grape products.** [*If the pur-*
29 *chasing winery is licensed under ORS chapter 471, that winery shall deduct*
30 *the tax levied under this subsection from the price paid to the seller. If the*

1 *purchasing winery is not licensed under ORS chapter 471, the seller shall re-*
2 *port all sales on forms provided by the Oregon Liquor Control Commission and*
3 *pay \$12.50 per ton as a tax directly to the commission.]*

4 **“(b) If the purchasing winery is licensed under ORS chapter 471 or**
5 **holds a wine self-distribution permit, direct shipper permit or certif-**
6 **icate of approval, the purchasing winery shall pay the \$25 per ton tax**
7 **and deduct \$12.50 per ton from the price paid to the person selling or**
8 **providing the grape products to the winery.**

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

15 **“(6) [Taxes paid by sellers under subsection (5) of this section] Moneys**
16 **that a winery deducts for taxes described in subsection (5) of this**
17 **section and forwards to the commission shall be collected by the [Oregon**
18 **Liquor Control] commission on behalf of the Oregon Wine Board. The com-**
19 **mission may retain an amount sufficient to cover the cost of collecting the**
20 **taxes paid under subsection (5) of this section and shall transfer the re-**
21 **mainder of those taxes to the board for deposit as provided in ORS 576.775.**
22 **Failure to pay a tax imposed under subsection (5) of this section subjects the**
23 **violator to the penalty provided in ORS 473.992.**

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

28 **“[(7)] (8) Except for the tax specified in subsection (4) of this section the**
29 **taxes specified under this section shall be levied and assessed to the**
30 **[licensed] winery at the time of purchase of the product by the winery or of**

1 importation of the product, whichever is later. The tax specified in sub-
2 section (4) of this section shall be levied and assessed to the licensed winery
3 at the time the wine is made.

4 “[8] (9) The taxes imposed by this section shall be paid [*by the licensed*
5 *winery*] **to** and collected by the commission subject to the same powers as
6 taxes imposed and collected under ORS chapter 473. The tax obligation for
7 a calendar year shall be paid in two installments. Half shall be due on De-
8 cember 31 of the current calendar year. The remaining half shall be due the
9 following June 30.

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

11 **“SECTION 6. The amendments to ORS 473.045 by section 5 of this**
12 **2019 Act become operative January 1, 2021. The Oregon Liquor Control**
13 **Commission may take any actions prior to January 1, 2021, the com-**
14 **mission deems necessary to allow the commission to exercise on or**
15 **after January 1, 2021, the duties, functions and powers conferred on**
16 **the commission by the amendments to ORS 473.045 by section 5 of this**
17 **2019 Act.**

18 **“SECTION 7. A purchase of vinifera or hybrid grapes harvested in**
19 **this state is exempt from the tax under ORS 473.045 (5) levied and as-**
20 **essed against persons purchasing grape products, if the grapes are**
21 **used for wine that:**

22 **“(1) Is produced within a federally approved American viticultural**
23 **area located partially within this state; and**

24 **“(2) Does not use Oregon designations or use and American**
25 **viticultural area located wholly within Oregon, on its label or pack-**
26 **aging or in its advertising or marketing.**

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

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“ENFORCEMENT AUTHORITY

1 **“SECTION 9. The Oregon Liquor Control Commission, with the ad-**
2 **vice and consent of the Attorney General, may enter into agreements**
3 **with agencies of other states in which the participating agencies agree**
4 **to provide reciprocal support to enforce the laws of Oregon and the**
5 **other states with regard to wine labeling, wine packaging, wine ad-**
6 **vertising and marketing and the taxation of wine, wine grapes or other**
7 **wine ingredients.**

8 **“SECTION 10.** ORS 471.040 is amended to read:

9 “471.040. (1) The Oregon Liquor Control Commission has the powers and
10 duties specified in this chapter and ORS 474.105 and 474.115, and also the
11 powers necessary or proper to enable it to carry out fully and effectually all
12 the purposes of this chapter and ORS 474.105 and 474.115. It shall make such
13 rules and regulations pertaining to natural and fortified wines as will pre-
14 vent the importation and sale in Oregon of blended, rectified, adulterated or
15 low-quality wines **or wines that are labeled, packaged, advertised or**
16 **marketed in a deceptive manner.** The jurisdiction, supervision, powers and
17 duties of the commission extend to any person who buys, sells, manufactures,
18 imports or transports any alcoholic liquor within this state. The commission
19 may sue and be sued.

20 “(2) Except for the power to adopt rules, the commission may delegate any
21 of the commission’s powers or duties to the administrator appointed under
22 ORS 471.720.

23 **“SECTION 11.** ORS 471.274 is amended to read:

24 “471.274. (1) The Oregon Liquor Control Commission may issue a wine
25 self-distribution permit to a United States manufacturer of wine or cider. The
26 commission may issue a wine self-distribution permit only to a manufacturer
27 of wine or cider that:

28 “(a) Holds a license issued by another state that authorizes the manufac-
29 ture of wine or cider; and

30 “(b) Holds a certificate of approval issued under ORS 471.244.

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

8 “(3) In addition to the information required by ORS 471.311 for licenses,
9 an applicant for a wine self-distribution permit shall provide the commission
10 with a copy of the license held by the applicant or with sufficient informa-
11 tion to allow verification of the license by electronic means or other means
12 acceptable to the commission. The applicant also shall provide the commis-
13 sion with any information required by the commission to establish that the
14 license held by the applicant authorizes the manufacture of wine or cider.

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

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

27 “(6)(a) Except as provided in paragraph (b) of this subsection, a retail
28 licensee that receives wine or cider from holders of wine self-distribution
29 permits must make a monthly report to the commission, using a form pre-
30 scribed by the commission, listing the amount of all wine or cider received

1 from permit holders in the previous month, and the names of the permit
2 holders from whom the wine or cider was received. Retail licensees shall
3 retain such purchase records for products received from permit holders as
4 may be required by the commission.

5 “(b) The holder of a full or limited on-premises sales license is not re-
6 quired to file a report under this subsection for any month in which the
7 licensee receives two or fewer cases of wine from holders of wine self-
8 distribution permits.

9 “(7) A manufacturer that is not licensed by the commission may sell and
10 transport wine or cider directly to a retail licensee, and a retail licensee may
11 receive wine or cider directly from a manufacturer that is not licensed by
12 the commission, only if the manufacturer holds a wine self-distribution per-
13 mit issued under this section.

14 “(8) The holder of a wine self-distribution permit consents to the jurisdic-
15 tion of the commission and the courts of this state for the purpose of
16 enforcing the provisions of this chapter, ORS chapter 473 and any related
17 laws or rules **including, but not limited to, laws or rules regarding the**
18 **labeling and packaging of wine. In addition to or in lieu of any action**
19 **described in subsection (10) of this section, the commission may pro-**
20 **hibit the transporting or resale of any product sold at wholesale by a**
21 **holder of a wine self-distribution permit that violates any provision**
22 **of this chapter, ORS chapter 473 or any related laws or rules with re-**
23 **gard to wine.**

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

26 “(10) The commission may revoke, or refuse to issue, a wine self-
27 distribution permit if the holder of a permit fails to comply with any pro-
28 vision of this section.

29 **“SECTION 12.** ORS 471.282 is amended to read:

30 “471.282. (1) Notwithstanding any other provision of this chapter and ex-

1 cept as provided by ORS 471.186 (6), a person may sell and ship malt
2 beverages, wine or cider directly to a resident of Oregon only if the person
3 holds a direct shipper permit. The Oregon Liquor Control Commission shall
4 issue a direct shipper permit only to:

5 “(a) A person that holds a license issued by this state or another state
6 that authorizes the manufacture of malt beverages, wine or cider;

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

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

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

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

21 “(3)(a) A person may apply for a direct shipper permit by filing an appli-
22 cation with the commission. The application must be made in such form as
23 may be prescribed by the commission.

24 “(b) If the application is based on a license issued by this state, the per-
25 son must include in the application the number of the license issued to the
26 person.

27 “(c) If the application is based on a license issued by another state, the
28 person must include in the application a true copy of the license issued to
29 the person by the other state or include sufficient information to allow ver-
30 ification of the license by electronic means or other means acceptable to the

1 commission.

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

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

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

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

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

13 “(5) Sales and shipments under a direct shipper permit must be made di-
14 rectly to a resident of this state in containers that are conspicuously labeled
15 with the words: ‘CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE
16 21 YEARS OR OLDER REQUIRED FOR DELIVERY.’

17 “(6) A person holding a direct shipper permit must take all actions nec-
18 essary to ensure that a carrier used by the permit holder does not deliver
19 any malt beverages, wine or cider unless the carrier:

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

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

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

26 “(7)(a) A person holding a direct shipper permit must report to the com-
27 mission on a quarterly basis all shipments of malt beverages, wine or cider
28 made to Oregon residents under the permit. The report must be made in a
29 form prescribed by the commission.

30 “(b) A person holding a direct shipper permit must allow the commission

1 to audit the permit holder's records upon request and shall make those re-
2 cords available to the commission in this state.

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

12 “(8)(a) A person holding a direct shipper permit must timely pay to the
13 commission all taxes imposed under ORS chapter 473 on malt beverages, wine
14 and cider sold and shipped under the permit. For the purpose of the privi-
15 lege tax imposed under ORS chapter 473, all malt beverages, wine or cider
16 sold and shipped pursuant to a direct shipper permit is sold in this state.

17 “(b) A person holding a direct shipper permit based on a license issued
18 by another state must timely pay to the commission all taxes imposed under
19 ORS chapter 473 on all malt beverages, wine or cider sold and shipped di-
20 rectly to Oregon residents under the permit. The permit holder, not the
21 purchaser, is responsible for the tax.

22 “(9) A direct shipper permit must be renewed annually. If the person holds
23 the permit based on an annual license issued by another state, the person
24 may renew the permit by paying a \$50 renewal fee and providing the com-
25 mission with a true copy of a current license issued to the person by the
26 other state or with sufficient information to allow verification of the license
27 by electronic means or other means acceptable to the commission. If the
28 person holds the permit based on an annual license issued by this state, the
29 person may renew the permit at the same time that the person renews the
30 license.

1 “(10) The commission may refuse to issue or may suspend or revoke a
2 direct shipper permit if the permit holder fails to comply with the provisions
3 of this section. A person may sell and ship malt beverages, wine or cider
4 under a direct shipper permit only for as long as the person has the license
5 issued by this state or another state that authorizes the person to hold a
6 direct shipper permit. A direct shipper permit does not authorize the ship-
7 ment of malt beverages by a permit holder described in subsection (1)(b) of
8 this section or lacking authority as provided under subsection (2) of this
9 section.

10 “(11) Any person who knowingly or negligently delivers malt beverages,
11 wine or cider under the provisions of this section to a person under 21 years
12 of age, or who knowingly or negligently delivers malt beverages, wine or
13 cider under the provisions of this section to a visibly intoxicated person,
14 violates ORS 471.410.

15 “(12) A person may not make sales and shipments of malt beverages, wine
16 or cider directly to Oregon residents unless the person holds a direct shipper
17 permit issued under this section. Any person who knowingly makes, partic-
18 ipates in, transports, imports or receives a shipment of malt beverages, wine
19 or cider that is in violation of this section commits a misdemeanor as pro-
20 vided in ORS 471.990 (1).

21

22

“CAPTIONS

23

24 **“SECTION 13. The unit captions used in this 2019 Act are provided**
25 **only for the convenience of the reader and do not become part of the**
26 **statutory law of this state or express any legislative intent in the**
27 **enactment of this 2019 Act.**

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29

“EFFECTIVE DATE

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