

A-Engrossed
House Bill 3245

Ordered by the House April 19
Including House Amendments dated April 19

Sponsored by Representative WILDE

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.

[Authorizes eligible business to deliver malt beverages, wine or cider to final consumer through use of delivery person. Authorizes Oregon Liquor Control Commission retail sales agent to deliver distilled liquor to final consumer through use of delivery person. Defines "delivery person" and "eligible business."]

[Authorizes commission to develop, implement and maintain electronic platform for ordering of distilled liquor. Authorizes registered third party provider to facilitate ordering and payment by final consumer of alcoholic beverages and delivery of alcoholic beverages from eligible business or retail sales agent to final consumer.]

[Imposes requirements for individual acting as third party provider or delivery person.]

[Requires that service permit training include training in making delivery to final consumer.]

[Requires that shipment of alcoholic beverages to final consumer made under direct shipper permit be delivered to final consumer by individual having qualifications required of delivery person.]

[Eliminates requirements for certain information in application to commission for license or permit.]

[Eliminates restriction on visibility of liquor store advertising or display.]

[Takes effect on 91st day following adjournment sine die.]

Requires Oregon Liquor Control Commission to develop uniform standards for minor decoy operations to investigate persons delivering alcoholic beverages to consumers in this state for violations of laws prohibiting deliveries to minors. Becomes operative January 1, 2022.

Expands categories of persons prohibited from selling, giving or otherwise making available alcoholic liquor to person under 21 years of age. Punishes by maximum of \$2,000 fine.

Establishes Task Force on the Regulation and Enforcement of Alcohol Delivery by Third-Party E-commerce Providers. Requires task force to report to interim committee of Legislative Assembly related to business not later than June 20, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to alcohol; creating new provisions; amending ORS 471.346 and 471.410; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 471.346 is amended to read:

6 471.346. (1)(a) The Oregon Liquor Control Commission shall by rule develop uniform standards
7 for minor decoy operations used to investigate licensees, *[and]* agents operating stores on behalf of
8 the commission under ORS 471.750 **and any person delivering alcoholic beverages to consumers**
9 **in this state** for violations of the laws of this state prohibiting sales **and deliveries** of alcoholic
10 beverages to minors.

11 (b) Uniform standards established by the commission under this section apply to all investi-
12 gations conducted by the commission that use minor decoys. The commission shall encourage all law
13 enforcement agencies of this state to use the uniform standards established under this section for
14 minor decoy operations conducted by the law enforcement agencies.

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 (2) To the greatest extent possible, the uniform standards established by the commission under
2 this section:

3 (a) [Shall] **Must** be the same for minor decoy operations conducted by the commission and for
4 minor decoy operations conducted by law enforcement agencies of this state; and

5 (b) [Shall] **Must** provide for coordination between the commission and law enforcement agencies
6 of this state in conducting minor decoy operations.

7 (3)(a) The uniform standards established by the commission under **subsection (1) of this section**
8 **[shall] for investigating sales by licensees occurring on licensed premises and in-store sales**
9 **by agents operating stores on behalf of the commission under ORS 471.750 must** provide that
10 minor decoy operations must be conducted on either a random or a targeted basis in cities with
11 populations of 20,000 or more. Random minor decoy operations **[shall] must** cover a range of retail
12 outlets. Targeted minor decoy operations may be conducted for a single licensee or agent, but may
13 be used only if there is a documented compliance problem with the specific licensee or agent that
14 is the target of the operation. For the purpose of implementing standards for random minor decoy
15 operations under this subsection, the commission shall by rule adopt a methodology that produces,
16 to the greatest extent possible, an equal chance that any licensee or agent will be subject to a minor
17 decoy operation.

18 (b) **The uniform standards established by the commission under subsection (1) of this**
19 **section for investigating deliveries of alcoholic beverages to consumers in this state are not**
20 **required to include the random or targeted minor decoy operations described in paragraph**
21 **(a) of this subsection.**

22 (4) Except as provided in subsection (5) of this section, the failure of the commission or of a law
23 enforcement agency to follow uniform standards established by the commission under this section
24 is not grounds for challenging any complaint, citation or conviction for violation of the laws pro-
25 hibiting the sale **or delivery** of alcoholic beverages to minors.

26 (5) In determining whether to impose sanctions based on multiple violations of the laws of this
27 state prohibiting sales **or deliveries** of alcoholic beverages to minors, the commission may not
28 consider any complaint filed against, **citation issued to or conviction of** a licensee **or person**
29 **delivering alcoholic beverages to consumers** for selling **or delivering** alcoholic beverages to a
30 minor[, *citation issued to a licensee for selling alcoholic beverages to a minor or conviction of a licensee*
31 *for selling alcoholic beverages to a minor*] if the complaint, citation or conviction arose out of a mi-
32 nor decoy operation that was not conducted pursuant to the uniform standards established by the
33 commission under this section.

34 (6) Notwithstanding any other provision of this chapter, the commission may not consider any
35 sale **or delivery** of alcoholic beverages to a minor that results from a minor decoy operation that
36 is not conducted in compliance with the standards established under this section for the purpose of
37 imposing any civil penalty against a licensee **or person delivering alcoholic beverages to con-**
38 **sumers in this state**, making a decision on the renewal, suspension or cancellation of a license
39 **or the carrier approval of a person delivering alcoholic beverages to consumers in this state**
40 issued under this chapter **or rules adopted pursuant to this chapter** or otherwise sanctioning a
41 licensee **or person delivering alcoholic beverages to consumers** for the sale **or delivery** of al-
42 coholic beverages to a minor.

43 (7) The commission shall give notice of the uniform standards established under this section to
44 all law enforcement agencies of this state that conduct minor decoy operations.

45 **SECTION 2.** ORS 471.410 is amended to read:

1 471.410. (1) A person may not sell, give or otherwise make available any alcoholic liquor to any
2 person who is visibly intoxicated.

3 (2) No one other than the person's parent or guardian may sell, give or otherwise make available
4 any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or oth-
5 erwise make alcoholic liquor available to a person under the age of 21 years only if the person is
6 in a private residence and is accompanied by the parent or guardian. A person violates this sub-
7 section *[who]* **if the person** sells, gives or otherwise makes available alcoholic liquor to a person
8 with the knowledge that the person to whom the liquor is made available will violate this sub-
9 section.

10 (3)(a) A person who exercises control over private real property may not knowingly allow any
11 other person under the age of 21 years who is not a child or minor ward of the person to consume
12 alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a
13 child or minor ward of the person to remain on the property if the person under the age of 21 years
14 consumes alcoholic liquor on the property.

15 (b) This subsection:

16 (A) Applies only to a person who is present and in control of the location at the time the con-
17 sumption occurs;

18 (B) Does not apply to the owner of rental property, or the agent of an owner of rental property,
19 unless the consumption occurs in the individual unit in which the owner or agent resides; and

20 (C) Does not apply to a person who exercises control over a private residence if the liquor
21 consumed by the person under the age of 21 years is supplied only by an accompanying parent or
22 guardian.

23 (4) This section does not apply to sacramental wine given or provided as part of a religious rite
24 or service.

25 (5) Except as provided in *[subsections (6) and (7)]* **subsection (6)** of this section, a person who
26 violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of
27 subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as
28 follows:

29 (a) Upon a first conviction, a fine of at least \$500.

30 (b) Upon a second conviction, a fine of at least \$1,000.

31 (c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days
32 of imprisonment.

33 (6)(a) A person who violates subsection (2) of this section is subject to the provisions of this
34 subsection if the person does not act knowingly or intentionally and:

35 (A) Is licensed or appointed under this chapter; *[or]*

36 (B) Is an employee of a person licensed or appointed under this chapter and holds a valid service
37 permit *[or has attended a program approved by the Oregon Liquor Control Commission that provides*
38 *training to avoid violations of this section.]*;

39 **(C) Is an employee of a person that is licensed or appointed under this chapter and that**
40 **has the privilege of selling factory-sealed containers of alcoholic beverages for off-premises**
41 **consumption; or**

42 **(D) Is an individual who delivers alcoholic beverages to the physical possession of con-**
43 **sumers at delivery addresses that are in this state and not regulated by the Oregon Liquor**
44 **Control Commission under this chapter or ORS 475B.010 to 475B.545, 475B.550 to 475B.590 or**
45 **475B.600 to 475B.655.**

1 (b) For a person described in paragraph (a) of this subsection:

2 (A) A first conviction is a Class A violation.

3 (B) A second conviction is a specific fine violation, and the presumptive fine for the violation
4 is \$860.

5 (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of
6 not less than \$1,000.

7 (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a
8 mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of
9 imprisonment.

10 *[(7) For an employee of an off-premises sales licensee who violates subsection (2) of this section*
11 *while operating a checkout device and does not act knowingly or intentionally, a first conviction is a*
12 *Class A violation.]*

13 *[(8)] (7)* The court may waive an amount that is at least \$200 but not more than one-third of the
14 fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of com-
15 munity service.

16 *[(9)] (8)* Except as provided in subsection *[(8)] (7)* of this section, the court may not waive or
17 suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or
18 (6) of this section. In addition to the mandatory sentence, the court may require the violator to make
19 restitution for any damages to property where the alcoholic liquor was illegally consumed or may
20 require participation in volunteer service to a community service agency.

21 *[(10)(a)] (9)(a)* Except as provided in paragraph (b) of this subsection, a person who violates
22 subsection (3) of this section commits a Class A violation.

23 (b) A second or subsequent violation of subsection (3) of this section is a specific fine violation,
24 and the presumptive fine for the violation is \$1,000.

25 *[(11)] (10)* Nothing in this section prohibits any licensee under this chapter from allowing a
26 person who is visibly intoxicated from remaining on the licensed premises so long as the person is
27 not sold or served any alcoholic liquor.

28 **SECTION 3. (1) The Task Force on the Regulation and Enforcement of Alcohol Delivery**
29 **by Third-Party E-commerce Providers is established.**

30 **(2) The task force consists of 14 members as follows:**

31 **(a) The President of the Senate shall appoint:**

32 **(A) One member from among members of the Senate.**

33 **(B) Five members as follows:**

34 **(i) One member who represents law enforcement agencies in this state;**

35 **(ii) One member who represents businesses licensed under ORS 471.175 and 471.178 that**
36 **sell alcoholic beverages through third-party electronic commerce providers in this state;**

37 **(iii) One member who represents businesses licensed under ORS 471.186 that sell alcoholic**
38 **beverages through third-party electronic commerce providers in this state;**

39 **(iv) One member who represents an organization that focuses on public health; and**

40 **(v) One member who is a retail sales agent appointed by the Oregon Liquor Control**
41 **Commission under ORS 471.750.**

42 **(b) The Speaker of the House of Representatives shall appoint:**

43 **(A) One member from among members of the House of Representatives.**

44 **(B) Four members as follows:**

45 **(i) Two members who represent trade associations whose members include third-party**

1 **delivery services operating in this state;**

2 **(ii) One member who represents an organization that has expertise in training in the**
3 **delivery of alcoholic beverages; and**

4 **(iii) One member who represents local government.**

5 **(c) In addition to the members described in paragraphs (a) and (b) of this subsection, one**
6 **representative from each of the following state agencies shall be members of the task force:**

7 **(A) The Alcohol and Drug Policy Commission;**

8 **(B) The Oregon Health Authority; and**

9 **(C) The Oregon Liquor Control Commission.**

10 **(3) The task force shall conduct a study, with a focus on at least the following:**

11 **(a) Best practices for verifying the age of consumers to whom alcoholic beverages are**
12 **delivered;**

13 **(b) The effectiveness of consumer age verification systems currently used by third-party**
14 **electronic commerce providers that operate in this state;**

15 **(c) The transaction process flow on third-party electronic commerce provider platforms**
16 **for the purpose of modernizing the use of “sale of alcoholic beverages,” and similar terms,**
17 **in ORS 471.405 and 471.406;**

18 **(d) Communication relating to consumer age verification between different entities and**
19 **actors that operate through a third-party electronic commerce provider platform;**

20 **(e) Data collection and retention related to alcohol delivery records; and**

21 **(f) The appropriate structure and impact of regulation by the Oregon Liquor Control**
22 **Commission on independent contractors that make deliveries of alcoholic beverages.**

23 **(4) The task force shall not consider in the study described in subsection (3) of this sec-**
24 **tion a person that transports or delivers alcohol in this state and that is:**

25 **(a) Regulated as a motor carrier or freight forwarder, as defined in 49 U.S.C. 13102, and**
26 **subject to the registration requirements under 49 U.S.C. 13902 or 13903; or**

27 **(b) Regulated as an air carrier, as defined in 49 U.S.C. 40102.**

28 **(5) Any information requested by or provided to the Oregon Liquor Control Commission**
29 **under this section may be used only to inform the regulation and enforcement of deliveries**
30 **of alcoholic beverages completed by third-party electronic commerce providers for purposes**
31 **of the study described in subsection (3) of this section.**

32 **(6) A majority of the voting members of the task force constitutes a quorum for the**
33 **transaction of business.**

34 **(7) Official action by the task force requires the approval of a majority of the voting**
35 **members of the task force.**

36 **(8) The task force shall elect one of its members to serve as chairperson.**

37 **(9) If there is a vacancy for any cause, the appointing authority shall make an appoint-**
38 **ment to become immediately effective.**

39 **(10) The task force shall meet at times and places specified by the call of the chairperson**
40 **or of a majority of the voting members of the task force.**

41 **(11) The task force may adopt rules necessary for the operation of the task force.**

42 **(12) The task force shall submit a report in the manner provided by ORS 192.245, and**
43 **may include recommendations for legislation, to an interim committee of the Legislative**
44 **Assembly related to business no later than June 20, 2022.**

45 **(13) The Oregon Liquor Control Commission shall provide staff support to the task force.**

1 **(14) Members of the Legislative Assembly and the Oregon Liquor Control Commission**
2 **appointed to the task force are nonvoting members of the task force and may act in an ad-**
3 **visory capacity only.**

4 **(15) Members of the task force who are not members of the Legislative Assembly are not**
5 **entitled to compensation or reimbursement for expenses and serve as volunteers on the task**
6 **force.**

7 **(16) All agencies of state government, as defined in ORS 174.111, are directed to assist**
8 **the task force in the performance of the duties of the task force and, to the extent permitted**
9 **by laws relating to confidentiality, to furnish information and advice the members of the task**
10 **force consider necessary to perform their duties.**

11 **SECTION 4. Section 3 of this 2021 Act is repealed on July 1, 2022.**

12 **SECTION 5. (1) The amendments to ORS 471.346 by section 1 of this 2021 Act become**
13 **operative on January 1, 2022.**

14 **(2) The Oregon Liquor Control Commission may take any action before the operative date**
15 **specified in subsection (1) of this section that is necessary to enable the commission to ex-**
16 **ercise, on and after the operative date specified in subsection (1) of this section, all of the**
17 **duties, functions and powers conferred on the commission by the amendments to ORS 471.346**
18 **by section 1 of this 2021 Act.**

19 **SECTION 6. This 2021 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
21 **on its passage.**