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 the 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

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

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

SECTION 1. ORS 471.346 is amended to read:

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

(b) Uniform standards established by the commission under this section apply to all investigations conducted by the commission that use minor decoys. The commission shall encourage all law enforcement agencies of this state to use the uniform standards established under this section for 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.

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

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

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

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

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

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

(5) In determining whether to impose sanctions based on multiple violations of the laws of this state prohibiting sales or deliveries of alcoholic beverages to minors, the commission may not consider any complaint filed against, citation issued to or conviction of a licensee or person delivering alcoholic beverages to consumers for selling or delivering alcoholic beverages to a minor, citation issued to a licensee for selling alcoholic beverages to a minor or conviction of a licensee for selling alcoholic beverages to a minor if the complaint, citation or conviction arose out of a minor decoy operation that was not conducted pursuant to the uniform standards established by the commission under this section.

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

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

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 other-
5 wise 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.
(b) For a person described in paragraph (a) of this subsection:
   (A) A first conviction is a Class A violation.
   (B) A second conviction is a specific fine violation, and the presumptive fine for the violation is $860.
   (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than $1,000.
   (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than $1,000 and a mandatory sentence of not less than 30 days of imprisonment.

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

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

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

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

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

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

SECTION 3. (1) The Task Force on the Regulation and Enforcement of Alcohol Delivery by Third-Party E-commerce Providers is established.
(2) The task force consists of 14 members as follows:
(a) The President of the Senate shall appoint:
   (A) One member from among members of the Senate.
   (B) Five members as follows:
      (i) One member who represents law enforcement agencies in this state;
      (ii) One member who represents businesses licensed under ORS 471.175 and 471.178 that sell alcoholic beverages through third-party electronic commerce providers in this state;
      (iii) One member who represents businesses licensed under ORS 471.186 that sell alcoholic beverages through third-party electronic commerce providers in this state;
      (iv) One member who represents an organization that focuses on public health; and
      (v) One member who is a retail sales agent appointed by the Oregon Liquor Control Commission under ORS 471.750.
(b) The Speaker of the House of Representatives shall appoint:
   (A) One member from among members of the House of Representatives.
   (B) Four members as follows:
      (i) Two members who represent trade associations whose members include third-party
delivery services operating in this state;
(ii) One member who represents an organization that has expertise in training in the
delivery of alcoholic beverages; and
(iii) One member who represents local government.
(c) In addition to the members described in paragraphs (a) and (b) of this subsection, one
representative from each of the following state agencies shall be members of the task force:
(A) The Alcohol and Drug Policy Commission;
(B) The Oregon Health Authority; and
(C) The Oregon Liquor Control Commission.
(3) The task force shall conduct a study, with a focus on at least the following:
(a) Best practices for verifying the age of consumers to whom alcoholic beverages are
delivered;
(b) The effectiveness of consumer age verification systems currently used by third-party
electronic commerce providers that operate in this state;
(c) The transaction process flow on third-party electronic commerce provider platforms
for the purpose of modernizing the use of “sale of alcoholic beverages,” and similar terms,
in ORS 471.405 and 471.406;
(d) Communication relating to consumer age verification between different entities and
actors that operate through a third-party electronic commerce provider platform;
(e) Data collection and retention related to alcohol delivery records; and
(f) The appropriate structure and impact of regulation by the Oregon Liquor Control
Commission on independent contractors that make deliveries of alcoholic beverages.
(4) The task force shall not consider in the study described in subsection (3) of this sec-
tion a person that transports or delivers alcohol in this state and that is:
(a) Regulated as a motor carrier or freight forwarder, as defined in 49 U.S.C. 13102, and
subject to the registration requirements under 49 U.S.C. 13902 or 13903; or
(b) Regulated as an air carrier, as defined in 49 U.S.C. 40102.
(5) Any information requested by or provided to the Oregon Liquor Control Commission
under this section may be used only to inform the regulation and enforcement of deliveries
of alcoholic beverages completed by third-party electronic commerce providers for purposes
of the study described in subsection (3) of this section.
(6) A majority of the voting members of the task force constitutes a quorum for the
transaction of business.
(7) Official action by the task force requires the approval of a majority of the voting
members of the task force.
(8) The task force shall elect one of its members to serve as chairperson.
(9) If there is a vacancy for any cause, the appointing authority shall make an appoint-
ment to become immediately effective.
(10) The task force shall meet at times and places specified by the call of the chairperson
or of a majority of the voting members of the task force.
(11) The task force may adopt rules necessary for the operation of the task force.
(12) The task force shall submit a report in the manner provided by ORS 192.245, and
may include recommendations for legislation, to an interim committee of the Legislative
Assembly related to business no later than June 20, 2022.
(13) The Oregon Liquor Control Commission shall provide staff support to the task force.
(14) Members of the Legislative Assembly and the Oregon Liquor Control Commission appointed to the task force are nonvoting members of the task force and may act in an advisory capacity only.

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

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

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

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

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

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