

Senate Bill 1520

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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 **as introduced**.

Modifies definition of "dealer" and defines "direct distributor" for purposes of Bottle Bill. Establishes fees for distributors not participating in distributor cooperative. Requires distributors, other than direct distributors, to establish program for processing and paying refund value for beverage containers.

Modifies requirements for notices displayed by dealers.

Modifies civil penalties for distributors for violations of certain provisions of Bottle Bill.

Requires distributor cooperative to report to Legislative Assembly no later than February 15 of each year regarding expansion activities for previous calendar year and expansion priorities for current year.

Requires payment of refund value for wine in cans beginning January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to Oregon's program for redemption of beverage container refund values; creating new
3 provisions; amending ORS 459A.700, 459A.702, 459A.705, 459A.715, 459A.717 and 459A.718; and
4 prescribing an effective date.

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

6 **SECTION 1.** ORS 459A.700 is amended to read:

7 459A.700. As used in ORS [*459.992 (3) and (4) and*] 459A.700 to 459A.744, unless the context re-
8 quires otherwise:

9 (1) "Beverage" means a fluid described in ORS 459A.702.

10 (2) "Beverage container" means a container described in ORS 459A.702.

11 (3) "Commission" means the Oregon Liquor and Cannabis Commission.

12 (4) "Consumer" means every person who purchases a beverage in a beverage container for use
13 or consumption.

14 (5)(a) "Dealer" means every person in this state who engages in the sale of beverages in
15 beverage containers to a consumer, or means a full-service redemption center approved under ORS
16 459A.735.

17 **(b) "Dealer" does not include a person that is exempt from the requirements of ORS**
18 **459A.700 to 459A.744 pertaining to dealers, as established by the commission by rule.**

19 (6) "Dealer redemption center" means a location that meets the requirements of ORS 459A.741,
20 at which any person may return empty beverage containers and receive payment of the refund value
21 of the beverage containers.

22 (7) **"Direct distributor" means a manufacturer that:**

23 **(a) Sells directly, to one or more dealers in this state, beverages in beverage containers**
24 **filled by the manufacturer; and**

25 **(b) Does not sell to dealers beverages manufactured by others.**

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 [(7)] (8) “Distributor” means every person who engages in the sale of beverages in beverage
 2 containers to a dealer in this state, including [*any manufacturer who engages in such sales*] **direct**
 3 **distributors.**

4 [(8)] (9) “Full-service redemption center” means a location that meets the requirements of ORS
 5 459A.737, at which any person may return empty beverage containers and receive payment of the
 6 refund value of the beverage containers.

7 [(9)] (10) “Hard seltzer” means any sugar-based alcoholic beverage that contains carbonated
 8 water or any malt-based alcoholic beverage that contains carbonated water and is not a malt
 9 beverage, as defined in ORS 471.001.

10 [(10)] (11) “Importer” means any dealer or manufacturer who directly imports beverage con-
 11 tainers into this state.

12 [(11)] (12) “In this state” means within the exterior limits of the State of Oregon and includes
 13 all territory within these limits owned by or ceded to the United States of America.

14 [(12)] (13) “Kombucha” means a fermented beverage that is made from tea and contains not
 15 more than 21 percent of alcohol by volume.

16 [(13)] (14) “Manufacturer” means every person bottling, canning or otherwise filling beverage
 17 containers for sale to distributors, importers or dealers.

18 [(14)] (15) “Place of business of a dealer” means the location at which a dealer sells or offers
 19 for sale beverages in beverage containers to consumers.

20 [(15)] (16) “Redemption center” means a full-service redemption center or a dealer redemption
 21 center.

22 [(16)] (17) “Use or consumption” includes the exercise of any right or power over a beverage
 23 incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for
 24 the purposes of sale.

25 [(17)] (18) “Water and flavored water” means any beverage identified through the use of letters,
 26 words or symbols on its product label as a type of water.

27 [(18)] (19) “Wine” has the meaning given that term in ORS 471.001, except that “wine” does not
 28 mean hard seltzer or kombucha.

29 **SECTION 2. Sections 3 and 4 of this 2022 Act are added to and made a part of ORS**
 30 **459A.700 to 459A.744.**

31 **SECTION 3. (1) A direct distributor that does not participate in a distributor cooperative**
 32 **under ORS 459A.718 shall pay to the Oregon Liquor and Cannabis Commission the fee de-**
 33 **scribed in subsection (2) of this section for each calendar year, or part thereof, that the di-**
 34 **rect distributor operates in this state. A direct distributor shall pay the fee no later than**
 35 **January 1 of each year for which the fee applies.**

36 **(2) The fee required under subsection (1) of this section is:**

37 **(a) \$25,000 for a direct distributor that sells in total to one or more dealers, or to con-**
 38 **sumers for off-premises consumption, fewer than two million individual beverage containers**
 39 **in the preceding calendar year.**

40 **(b) \$150,000 for a direct distributor that sells in total to one or more dealers, or to con-**
 41 **sumers for off-premises consumption, two million or more individual beverage containers in**
 42 **the preceding calendar year.**

43 **(3) Notwithstanding subsections (1) and (2) of this section, a direct distributor that re-**
 44 **ceives notice from the commission that the direct distributor is in violation of this section**
 45 **may cure the violation by paying the fee or participating in a distributor cooperative under**

1 **ORS 459A.718 within:**

2 (a) **30 days from the date of the notice, if the direct distributor sold in total to one or**
 3 **more dealers, or to consumers for off-premise consumption, 15,000 or more individual**
 4 **beverage containers in the preceding calendar year; or**

5 (b) **One year from the date of the notice, if the direct distributor sold in total to a dealer,**
 6 **or to consumers for off-premises consumption, fewer than 15,000 individual beverage con-**
 7 **tainers in the preceding calendar year.**

8 (4) **Fees collected by the commission under this section shall be deposited in the Bottle**
 9 **Bill Fund established under ORS 459A.744.**

10 **SECTION 4. (1) A distributor, other than a direct distributor, that does not participate**
 11 **in a distributor cooperative under ORS 459A.718 shall establish a program for:**

12 (a) **Paying the refund value specified in ORS 459A.705 for beverage containers sold in this**
 13 **state; and**

14 (b) **Processing beverage containers sold in this state.**

15 (2) **The program established under this section must provide a level of redemption ser-**
 16 **vices in the distributor's distribution area that is comparable to services provided by the**
 17 **dealer cooperative under ORS 459A.718. Redemption services must include:**

18 (a) **Operation of a redemption center;**

19 (b) **Drop off service for beverage containers;**

20 (c) **Retail pick-up service; and**

21 (d) **Any other services required by the Oregon Liquor and Cannabis Commission by rule.**

22 (3) **A distributor, other than a direct distributor, that does not participate in a distribu-**
 23 **tor cooperative under ORS 459A.718 shall pay to the commission a fee in an amount equal**
 24 **to \$3,000 for each redemption center operated in this state, regardless of the person that**
 25 **operates the redemption center. Fees collected by the commission under this subsection shall**
 26 **be deposited in the Bottle Bill Fund established under ORS 459A.744.**

27 **SECTION 5. ORS 459A.717 is amended to read:**

28 459A.717. (1) **The Oregon Liquor and Cannabis Commission may impose a civil penalty of at**
 29 **least \$50, but not more than \$500, for a violation of any provision of ORS 459A.700 to 459A.744.**
 30 **Each day a violation occurs constitutes a separate violation. The authority to impose a civil penalty**
 31 **under this section is in addition to and not in lieu of the revocation and suspension authority under**
 32 **ORS 459.992 (5) and the criminal penalty authorized by ORS 459.992.**

33 (2) **Notwithstanding subsection (1) of this section, if a dealer violates a provision of ORS**
 34 **459A.738, or if a distributor or importer violates a provision of ORS 459A.718, the commission shall**
 35 **provide the dealer, distributor or importer with written notice informing the dealer, distributor or**
 36 **importer of the violation and stating that the dealer, distributor or importer may avoid civil penalty**
 37 **for the violation by curing the violation within 60 days after issuance of the notice. If the dealer,**
 38 **distributor or importer fails to cure the violation within 60 days after issuance of the notice, the**
 39 **commission shall impose a civil penalty of at least \$200 for the violation. Each day after the 60-day**
 40 **period that the dealer continues to violate a provision of ORS 459A.738, or that the distributor or**
 41 **importer continues to violate a provision of ORS 459A.718, is a separate offense subject to a sepa-**
 42 **rate civil penalty. The commission is not required to provide the dealer, distributor or importer with**
 43 **an opportunity to cure a continuing violation before imposing a civil penalty for the continuing vi-**
 44 **olation.**

45 (3) **Notwithstanding subsection (1) of this section, if a direct distributor violates a pro-**

1 vision of ORS 458A.700 to 459A.744, the commission shall provide the direct distributor with
 2 written notice informing the direct distributor of the violation and stating that the direct
 3 distributor may avoid civil penalty for the violation by curing the violation within 30 days
 4 after issuance of the notice. If the direct distributor fails to cure the violation within 30 days
 5 after issuance of the notice, the commission shall impose a civil penalty as provided in sub-
 6 section (1) of this section.

7 (4)(a) Notwithstanding subsection (1) of this section, if a distributor violates the pro-
 8 visions of section 4 of this 2022 Act, the commission shall provide the distributor with writ-
 9 ten notice informing the distributor of the violation and stating that the distributor may
 10 avoid civil penalty for the violation by curing the violation within:

11 (A) 60 days after issuance of the notice, the commission shall impose a civil penalty of
 12 at least \$200 for the violation.

13 (B) 160 days after issuance of the notice, the commission shall impose a civil penalty of
 14 at least \$400 for the violation.

15 (C) 260 days after issuance of the notice, the commission shall impose a civil penalty of
 16 at least \$1,000 for the violation.

17 (b) Each day after the 60-day period following the issuance of a notice under paragraph
 18 (a) of this subsection that the distributor continues to violate a provision of section 4 of this
 19 2022 Act is a separate offense subject to a separate civil penalty. The commission is not re-
 20 quired to provide the distributor with an opportunity to cure a continuing violation before
 21 imposing a civil penalty for the continuing violation.

22 [(3)] (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

23 [(4)] (6) All penalties recovered under this section shall be paid into the State Treasury and
 24 credited to the General Fund and are available for general governmental expenses.

25 **SECTION 6.** ORS 459A.715 is amended to read:

26 459A.715. (1) A dealer may refuse to accept from any person, and a distributor or importer may
 27 refuse to accept from a dealer, any empty beverage container that does not state thereon a refund
 28 value as established by ORS 459A.705.

29 (2) A dealer may refuse to accept and to pay the refund value of:

30 (a) Empty beverage containers if the place of business of the dealer and the kind of empty
 31 beverage containers are included in an order of the Oregon Liquor and Cannabis Commission ap-
 32 proving a full-service redemption center under ORS 459A.735.

33 (b) Any beverage container visibly containing or contaminated by a substance other than water,
 34 residue of the original contents or ordinary dust.

35 (c)(A) More than 144 individual beverage containers returned by any one person during one day,
 36 if the dealer occupies a space of 5,000 or more square feet in a single area.

37 (B) More than 50 individual beverage containers returned by any one person during one day, if
 38 the dealer occupies a space of less than 5,000 square feet in a single area.

39 (d) Any beverage container that is damaged to the extent that the brand appearing on the con-
 40 tainer cannot be identified.

41 (3) The commission shall develop and provide to dealers notices that describe the reasons
 42 a dealer may refuse to accept and issue the refund value for empty beverage containers un-
 43 der subsection (2) of this section. The notices may contain additional information as deter-
 44 mined by the commission.

45 (4) A dealer must post in each area where beverage containers are received a notice

1 **provided to the dealer under subsection (3) of this section.**

2 [(3)(a) *In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer*
3 *occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where*
4 *containers are received a clearly visible and legible sign containing the following information:]*

5 [_____]

6
7 **NOTICE:**

8
9 *Oregon Law allows a dealer to refuse to accept:*

10 1. *Beverage containers visibly containing or contaminated by a substance other than water, residue*
11 *of the original contents or ordinary dust;*

12 2. *More than 144 individual beverage containers from any one person during one day; or*

13 3. *Beverage containers that are damaged to the extent that the brand appearing on the container*
14 *cannot be identified.*

15 [_____]

16
17 [(b) *In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer*
18 *occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where*
19 *containers are received a clearly visible and legible sign containing the following information:]*

20 [_____]

21
22 **NOTICE:**

23
24 *Oregon Law allows a dealer to refuse to accept:*

25 1. *Beverage containers visibly containing or contaminated by a substance other than water, residue*
26 *of the original contents or ordinary dust;*

27 2. *More than 50 individual beverage containers from any one person during one day; or*

28 3. *Beverage containers that are damaged to the extent that the brand appearing on the container*
29 *cannot be identified.*

30 [_____]

31
32 **SECTION 7.** ORS 459A.718 is amended to read:

33 459A.718. (1) Two or more distributors or importers may establish a distributor cooperative for
34 the purposes of:

35 (a) Collecting the refund value of beverage containers specified in ORS 459A.705 from distribu-
36 tors or importers and refunding to dealers the amount the dealers paid for the refund value of empty
37 beverage containers;

38 (b) Paying the refund value specified in ORS 459A.705 for beverage containers sold in this state;

39 (c) Processing beverage containers sold in this state; and

40 (d) Maintaining a registry of all beverage containers sold and redeemed in this state.

41 (2) A distributor cooperative established under this section must service a majority of the deal-
42 ers in this state.

43 (3) If a distributor cooperative is established, a dealer that uses the distributor cooperative to
44 redeem and process beverage containers sold in this state is not required to return beverage con-
45 tainers to a distributor or importer that does not participate in the distributor cooperative, provided

1 that the dealer or the distributor cooperative provides an accounting to the distributor or importer
2 of the beverage containers by brand and kind that were distributed by the distributor or importer
3 and subsequently redeemed by the dealer or distributor cooperative.

4 (4) Upon receipt of the accounting required by subsection (3) of this section, a distributor or
5 importer that does not participate in the distributor cooperative must pay the refund value of the
6 redeemed beverage containers specified in the accounting to the dealer or distributor cooperative
7 that provided the accounting.

8 (5) A distributor or importer that does not participate in a distributor cooperative to redeem
9 and process beverage containers shall register with the distributor cooperative as a nonparticipating
10 distributor or importer and shall report, in a form and manner as required by the distributor coop-
11 erative, information necessary for the distributor cooperative to maintain the beverage container
12 registry described in subsection (6) of this section.

13 (6) A distributor cooperative shall maintain a registry of all types of beverage containers sold
14 and redeemed in this state for all registered entities that describes the beverage containers using
15 the following information for each beverage container:

16 (a) The name of the beverage contained in the beverage container as identified through the use
17 of letters, words or symbols on the product label affixed to the beverage container;

18 (b) The type of beverage contained in the beverage container using an appropriate categori-
19 zation method for beverages as determined by the distributor cooperative;

20 (c) The size of the beverage container;

21 (d) Whether the beverage container is glass, metal or plastic; and

22 (e) If applicable, the universal product code or European article number on the product label
23 affixed to the beverage container.

24 (7)(a) For purposes of this subsection, beverage container return data is the number of beverage
25 containers returned for the refund value specified in ORS 459A.705 in Oregon during the calendar
26 year and the number of beverage containers that carry a refund value specified in ORS 459A.705
27 sold in Oregon during the calendar year, calculated separately.

28 (b) By July 1 of each calendar year, a distributor cooperative shall provide the Oregon Liquor
29 and Cannabis Commission with a report that lists, in aggregate form:

30 (A) For all distributors and importers that participate in the distributor cooperative, the previ-
31 ous calendar year's beverage container return data, calculated separately for glass, metal and plas-
32 tic beverage containers; and

33 (B) The registry of all beverage containers sold and redeemed in this state during the previous
34 calendar year.

35 (c) By July 1 of each calendar year, a distributor or importer that does not participate in a
36 distributor cooperative shall provide the commission with a report that lists the distributor's or the
37 importer's beverage container return data for the previous calendar year, calculated separately for
38 glass, metal and plastic beverage containers.

39 (8)(a) By August 1 of each calendar year, using the beverage container return data provided in
40 subsection (7)(b) of this section, the Oregon Liquor and Cannabis Commission shall calculate the
41 previous calendar year's percentage of beverage containers returned for the refund value specified
42 in ORS 459A.705 for each distributor cooperative. The commission shall carry out the calculation
43 separately for glass, metal and plastic beverage containers and shall post the percentages on the
44 commission's website.

45 (b) By August 1 of each calendar year, using the beverage container return data provided in

1 subsection (7)(c) of this section, the commission shall calculate the previous calendar year's per-
 2 centage of beverage containers returned for the refund value specified in ORS 459A.705 for each
 3 distributor or importer that does not participate in a distributor cooperative. The commission shall
 4 carry out the calculation separately for glass, metal and plastic beverage containers and shall post
 5 the percentages on the commission's website.

6 (c) By August 1 of each calendar year, using the beverage container return data provided in
 7 subsection (7)(b) and (c) of this section, the commission shall calculate the previous calendar year's
 8 percentage of beverage containers returned for the refund value specified in ORS 459A.705 for all
 9 distributors and importers in Oregon. The commission shall carry out the calculation for all
 10 beverage containers, and separately for glass, metal and plastic beverage containers, and shall post
 11 the percentages on the commission's website.

12 (d) Except for the percentages described in paragraphs (a) to (c) of this subsection or in a pro-
 13 ceeding under ORS 459A.717 for a violation of subsection (7) of this section, the commission may
 14 not disclose any information provided by a distributor, an importer or a distributor cooperative un-
 15 der subsection (7) of this section.

16 (9)(a) In order to determine compliance with the provisions of subsection (7) of this section,
 17 within six months of the date that the commission receives a report described in subsection (7)(b)
 18 and (c) of this section, the commission may review or audit the records of each reporting distributor
 19 cooperative, or each reporting distributor or importer that does not participate in a distributor co-
 20 operative.

21 (b)(A) If in the course of a review described in paragraph (a) of this subsection the commission
 22 determines that an audit of a distributor cooperative, distributor or importer is necessary, the
 23 commission shall require the distributor cooperative, distributor or importer to retain an independ-
 24 ent financial audit firm to determine the accuracy of information contained in the report. The dis-
 25 tributor cooperative, distributor or importer that is the subject of review shall pay the costs of the
 26 audit. The audit must be limited to the records described in paragraph (a) of this subsection.

27 (B) The commission shall adopt rules to carry out the provisions of this paragraph.

28 **(10) No later than February 15 of each year, the distributor cooperative shall submit to**
 29 **the commission, and to the appropriate committees of the Legislative Assembly in the man-**
 30 **ner provided under ORS 192.245, a report that describes sites, options and access points**
 31 **added during the previous calendar year and expansion priorities for the current calendar**
 32 **year. The report must include a description of the cooperative's efforts to expand and en-**
 33 **hance alternative redemption access opportunities for individuals who redeem containers on**
 34 **a daily or near daily basis.**

35 **SECTION 8.** (1) Sections 3 and 4 of this 2022 Act and the amendments to ORS 459A.700,
 36 459A.715, 459A.717 and 459A.718 by sections 1 and 5 to 7 of this 2022 Act become operative
 37 January 1, 2023.

38 **(2) The Oregon Liquor and Cannabis Commission may adopt rules and take any action**
 39 **before the operative date specified in subsection (1) of this section that is necessary to enable**
 40 **the commission, on and after the operative date specified in subsection (1) of this section,**
 41 **to exercise all of the duties, powers and functions conferred on the commission by sections**
 42 **3 and 4 of this 2022 Act and the amendments to ORS 459A.700, 459A.715, 459A.717 and**
 43 **459A.718 by sections 1 and 5 to 7 of this 2022 Act.**

44 **SECTION 9.** ORS 459A.702 is amended to read:

45 459A.702. ORS 459A.700 to 459A.744 apply to:

1 (1) Any individual, separate, sealed glass, metal or plastic bottle or can, except for a carton, foil
 2 pouch, drink box or metal container that requires a tool to be opened, that contains any one of the
 3 following beverages, intended for human consumption and in a quantity less than or equal to three
 4 liters:

- 5 (a) Water or flavored water;
- 6 (b) Beer or another malt beverage;
- 7 (c) Mineral water, soda water or a similar carbonated soft drink;
- 8 (d) Kombucha; or
- 9 (e) Hard seltzer.

10 **(2) Wine in a can.**

11 [(2)] **(3)** Any beverage other than those specified in [subsection (1)] **subsections (1) and (2)** of
 12 this section that is intended for human consumption and is in a quantity more than or equal to four
 13 fluid ounces and less than or equal to one and one-half liters, except distilled liquor, wine **in a**
 14 **container other than a can**, dairy or plant-based milks, infant formula and any other exemptions
 15 set forth in rule by the Oregon Liquor and Cannabis Commission.

16 **SECTION 10.** ORS 459A.705 is amended to read:

17 459A.705. (1) Except as provided in subsections (2) and (3) of this section, every beverage con-
 18 tainer sold or offered for sale in this state shall have a refund value of not less than five cents.

19 (2)(a) Every beverage container sold or offered for sale in this state shall have a refund value
 20 of not less than 10 cents, beginning on the later of:

21 (A) Eight months after the Oregon Liquor and Cannabis Commission determines that, in each
 22 of the two previous calendar years, the number of beverage containers returned for the refund value
 23 specified in this section was less than 80 percent of the total number of beverage containers that
 24 were sold in this state; or

25 (B) January 1 of the calendar year following the determination by the commission described in
 26 subparagraph (A) of this paragraph.

27 (b) In making a determination under this subsection, the commission may not include the
 28 beverages described in ORS 459A.702 [(2)] **(3)** before January 1, 2021.

29 (3) Every beverage container certified as provided in ORS 459A.725, sold or offered for sale in
 30 this state, shall have a refund value of not less than two cents.

31 **SECTION 11.** (1) **The amendments to ORS 459A.702 and 459A.705 by sections 9 and 10 of**
 32 **this 2022 Act become operative January 1, 2024.**

33 **(2) The Oregon Liquor and Cannabis Commission may adopt rules and take any action**
 34 **before the operative date specified in subsection (1) of this section that is necessary to enable**
 35 **the commission, on and after the operative date specified in subsection (1) of this section,**
 36 **to exercise all of the duties, powers and functions conferred on the commission by the**
 37 **amendments to ORS 459A.702 and 459A.705 by sections 9 and 10 of this 2022 Act.**

38 **SECTION 12.** **On and after the operative date specified in section 11 of this 2022 Act and**
 39 **until April 1, 2025:**

40 (1) **The refund value paid for a can that contains wine as described in ORS 459A.702 shall**
 41 **be not less than 10 cents, regardless of the refund value, or lack of a refund value, indicated**
 42 **on the beverage container.**

43 (2) **A can that contains wine may be sold or offered for sale in this state regardless of**
 44 **the refund value, or lack of a refund value, indicated on the beverage container,**
 45 **notwithstanding ORS 459A.720 (1).**

1 **SECTION 13.** This 2022 Act takes effect on the 91st day after the date on which the 2022
2 regular session of the Eighty-first Legislative Assembly adjourns sine die.
3 _____