

House Bill 2731

Sponsored by Representative READ; Representatives BOONE, DOHERTY, HUFFMAN, JOHNSON, Senators KRUSE, PROZANSKI (at the request of Cascade Brewing Company) (Presession filed.)

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**.

Authorizes holder of off-premises sales license or direct shipper permit to deliver malt beverages for delivery to consumer or to ship malt beverages for delivery to consumer.

A BILL FOR AN ACT

1
2 Relating to the delivery of malt beverages directly to consumers; amending ORS 471.186, 471.223,
3 471.242, 471.282 and 471.404.

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

5 **SECTION 1.** ORS 471.186 is amended to read:

6 471.186. (1) The holder of an off-premises sales license may sell factory-sealed containers of **malt**
7 **beverages**, wine[, *malt beverages*] and cider. Factory-sealed containers of malt beverages sold under
8 the license may not hold more than two and one-quarter gallons.

9 (2) The holder of an off-premises sales license may sell for consumption off the licensed premises
10 malt beverages, wines and cider in securely covered containers supplied by the consumer and having
11 capacities of not more than two gallons each.

12 (3) The holder of an off-premises sales license may provide sample tasting of alcoholic beverages
13 on the licensed premises if the licensee makes written application to the Oregon Liquor Control
14 Commission and receives approval from the commission to conduct tastings on the premises.
15 Tastings must be limited to the alcoholic beverages that may be sold under the privileges of the li-
16 cense.

17 (4) An off-premises sales license may not be issued for use at a premises that is mobile.

18 (5) Except as provided in ORS 471.402, a manufacturer or wholesaler may not provide or pay for
19 sample tastings of alcoholic beverages for the public on premises licensed under an off-premises
20 sales license.

21 (6) The holder of an off-premises sales license may deliver **malt beverages**, wine or cider that
22 is sold under the privileges of the license to retail customers in this state without a direct shipper
23 permit issued under ORS 471.282. Any deliveries by the holder of an off-premises sales license are
24 subject to any rules adopted by the commission relating to deliveries made under this subsection.
25 Deliveries under this subsection:

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

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

28 (c) Must be made in containers that are conspicuously labeled with the words: "CONTAINS
29 ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR
30 DELIVERY."

31 (7) The holder of an off-premises sales license that makes deliveries of **malt beverages**, wine

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 or cider under subsection (6) of this section must take all actions necessary to ensure that a carrier
 2 used by the licensee does not deliver any **malt beverages**, wine or cider unless the carrier:

3 (a) Obtains the signature of the recipient of the **malt beverages**, wine or cider upon delivery;

4 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
 5 21 years of age; and

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

7 (8) Any person who knowingly or negligently delivers **malt beverages**, wine or cider under the
 8 provisions of this section to a person under 21 years of age, or who knowingly or negligently de-
 9 livers **malt beverages**, wine or cider under the provisions of this section to a visibly intoxicated
 10 person, violates ORS 471.410.

11 (9) If a court determines that deliveries of **malt beverages**, wine or cider under subsection (6)
 12 of this section cannot be restricted to holders of off-premises sales licenses, and the decision is a
 13 final judgment that is no longer subject to appeal, the holder of an off-premises sales license may
 14 not make deliveries of **malt beverages**, wine or cider under the provisions of subsection (6) of this
 15 section after entry of the final judgment.

16 **SECTION 2.** ORS 471.223 is amended to read:

17 471.223. (1) As used in this section, "control" means that the licensee:

18 (a) Owns the brand under which the wine or cider is labeled; or

19 (b) Performs or has the legal right to perform all of the acts common to a brand owner under
 20 the terms of a trademark license or similar agreement that for the brand under which the wine or
 21 cider is labeled has a term of at least three years.

22 (2) A winery license shall allow the licensee:

23 (a) To import wine or cider in containers that have a capacity of more than four liters.

24 (b) To import wine or cider in containers that have a capacity of four liters or less if the brand
 25 of wine or cider is under the control of the licensee.

26 (c) To bottle, produce, blend, store, transport or export wines or cider.

27 (d) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees
 28 of the commission.

29 (e) To sell wines or cider at retail directly to the consumer for consumption on or off the li-
 30 censed premises.

31 (f) To sell malt beverages at retail for consumption on or off the licensed premises.

32 (g) To sell for consumption off the premises malt beverages, wines and cider in securely covered
 33 containers supplied by the consumer and having capacities of not more than two gallons each.

34 (h) To conduct any activities described in paragraphs (a) to (g) of this subsection at a second
 35 or third premises as may be designated by the commission.

36 (i) To purchase from or through the commission brandy or other distilled liquors for fortifying
 37 wines.

38 (j) To obtain a special events winery license that shall entitle the holder to conduct the activ-
 39 ities allowed under paragraphs (e) to (g) of this subsection at a designated location other than the
 40 one set forth in the winery license for a period not to exceed five days.

41 (3) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from
 42 the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

43 (4) In order to hold a winery license the licensee shall:

44 (a) Possess at a bonded premises within Oregon a valid producer and blender basic permit issued
 45 by the federal Alcohol and Tobacco Tax and Trade Bureau; or

1 (b) Possess a valid wine blender or valid wholesaler basic permit issued by the federal Alcohol
 2 and Tobacco Tax and Trade Bureau and have a written contract with a winery licensed under par-
 3 agraph (a) of this subsection that authorizes the winery to produce for the licensee a brand of wine
 4 or cider that is under the control of the licensee.

5 (5) A winery licensee may sell and ship **malt beverages**, wine or cider directly to a resident
 6 of this state only if the licensee has a direct shipper permit issued under ORS 471.282.

7 (6)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person
 8 having an interest in the licensee, may also hold a full on-premises sales license. If a person holds
 9 both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the
 10 sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery
 11 license.

12 (b) The commission may not issue a full on-premises sales license to a winery licensee under the
 13 provisions of this subsection if the winery licensee, or any person having an interest in the licensee
 14 or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt
 15 beverages annually or a winery that produces more than 200,000 gallons of wine or cider annually.

16 (7) More than one winery licensee may exercise the privileges of a winery license at a single
 17 location. The commission may not refuse to issue a winery license to a person for the production
 18 of wine or cider on specified premises based on the fact that other winery licensees also produce
 19 wine or cider on those premises.

20 (8) If a winery licensee does not possess at a bonded premises within Oregon a valid producer
 21 and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau, the
 22 licensee may exercise the privileges described in this section only for wine and cider brands that
 23 are under the control of the licensee.

24 **SECTION 3.** ORS 471.242 is amended to read:

25 471.242. (1) A warehouse license shall allow the licensee to store, import, bottle, produce, blend,
 26 transport and export nontax paid, bonded wine or wine on which the tax is paid and to store, import
 27 and export nontax paid malt beverages and cider, or malt beverages and cider on which the tax is
 28 paid. Wine, cider and malt beverages may be removed from the licensed premises only for:

29 (a) Sale for export;

30 (b) Sale or shipment to a wholesale malt beverage and wine licensee;

31 (c) Sale or shipment to another warehouse licensee;

32 (d) Sale or shipment to a winery licensee;

33 (e) Shipment of wine or cider produced by a winery licensee to a licensee of the Oregon Liquor
 34 Control Commission authorized to sell wine or cider at retail if the shipment is made pursuant to
 35 a sale to the retail licensee by the holder of a winery license issued under ORS 471.223, a grower
 36 sales privilege license issued under ORS 471.227 or a wholesale malt beverage and wine license is-
 37 sued under ORS 471.235; or

38 (f) Shipment of **malt beverages**, wine or cider to a person for personal use, as described in
 39 subsection (7) of this section.

40 (2) A license applicant must hold an approved registration for a bonded wine cellar or winery
 41 under federal law.

42 (3) For the purposes of tax reporting, payment and record keeping, the provisions that shall
 43 apply to a manufacturer under ORS chapter 473 shall apply to a warehouse licensee.

44 (4) A warehouse must be physically secure in an area zoned for the intended use and be phys-
 45 ically separated from any other use.

1 (5) For purposes of ORS 471.392 to 471.400, a warehouse licensee shall be considered a man-
2 ufacturer.

3 (6) For purposes of ORS 473.045, a warehouse licensee shall be considered a winery licensee.

4 (7) **Malt beverages**, wine or cider may be removed from the premises licensed under this section
5 for shipment pursuant to a sale under ORS 471.282. The warehouse licensee shall take reasonable
6 steps to ensure that shipments are made in containers that are conspicuously labeled with the
7 words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER RE-
8 QUIRED FOR DELIVERY." In addition, the warehouse licensee shall take reasonable steps to en-
9 sure that any carrier used by the licensee does not deliver any **malt beverages**, wine or cider
10 unless the carrier:

- 11 (a) Obtains the signature of the recipient of the **malt beverages**, wine or cider upon delivery;
- 12 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
13 21 years of age; and
- 14 (c) Determines that the recipient is not visibly intoxicated at the time of delivery.

15 **SECTION 4.** ORS 471.282 is amended to read:

16 471.282. (1) Notwithstanding any other provision of this chapter and except as provided by ORS
17 471.186 (6), a person may sell and ship **malt beverages**, wine or cider directly to a resident of
18 Oregon only if the person holds a direct shipper permit. The Oregon Liquor Control Commission
19 shall issue a direct shipper permit only to:

- 20 (a) A person that holds a license issued by this state or another state that authorizes the man-
21 ufacture of **malt beverages**, wine or cider;
- 22 (b) A person that holds a license issued by this state or another state that authorizes the sale
23 of wine or cider produced only from grapes or other fruit grown under the control of the person;
- 24 (c) A person that holds a license authorizing the sale of **malt beverages**, wine or cider at retail;
25 or
- 26 (d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and
27 that has a membership primarily composed of persons holding winery licenses issued under ORS
28 471.223 or grower sales privilege licenses issued under ORS 471.227.

29 (2)(a) A person may apply for a direct shipper permit by filing an application with the commis-
30 sion. The application must be made in such form as may be prescribed by the commission.

31 (b) If the application is based on a license issued by this state, the person must include in the
32 application the number of the license issued to the person.

33 (c) If the application is based on a license issued by another state, the person must include in
34 the application a true copy of the license issued to the person by the other state or include sufficient
35 information to allow verification of the license by electronic means or other means acceptable to the
36 commission.

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

41 (3) Sales and shipments under a direct shipper permit:

- 42 (a) May be made only to a person who is at least 21 years of age;
- 43 (b) May be made only for personal use and not for the purpose of resale; and
- 44 (c) May not exceed two cases, containing not more than nine liters per case, to any resident per
45 month.

1 (4) Sales and shipments under a direct shipper permit must be made directly to a resident of this
2 state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIG-
3 NATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

4 (5) A person holding a direct shipper permit must take all actions necessary to ensure that a
5 carrier used by the permit holder does not deliver any **malt beverages**, wine or cider unless the
6 carrier:

7 (a) Obtains the signature of the recipient of the **malt beverages**, wine or cider upon delivery;

8 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
9 21 years of age; and

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

11 (6)(a) A person holding a direct shipper permit must report to the commission all shipments of
12 **malt beverages**, wine or cider made to Oregon residents under the permit as required by ORS
13 chapter 473. The report must be made in a form prescribed by the commission.

14 (b) A person holding a direct shipper permit must allow the commission to audit the permit
15 holder's records upon request and shall make those records available to the commission in this state.

16 (c) A person holding a direct shipper permit consents to the jurisdiction of the commission and
17 the courts of this state for the purpose of enforcing the provisions of this section and any related
18 laws or rules.

19 (7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes im-
20 posed under ORS chapter 473 on **malt beverages**, wine and cider sold and shipped under the permit.
21 For the purpose of the privilege tax imposed under ORS chapter 473, all **malt beverages**, wine or
22 cider sold and shipped pursuant to a direct shipper permit is sold in this state.

23 (b) A person holding a direct shipper permit based on a license issued by another state must
24 timely pay to the commission all taxes imposed under ORS chapter 473 on all **malt beverages**, wine
25 or cider sold and shipped directly to Oregon residents under the permit. The permit holder, not the
26 purchaser, is responsible for the tax.

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

34 (9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the
35 permit holder fails to comply with the provisions of this section. A person may sell and ship **malt**
36 **beverages**, wine or cider under a direct shipper permit only for as long as the person has the li-
37 cense issued by this state or another state that authorizes the person to hold a direct shipper per-
38 mit. **A direct shipper permit does not authorize the shipment of malt beverages by a permit**
39 **holder described in subsection (1)(b) of this section.**

40 (10) Any person who knowingly or negligently delivers **malt beverages**, wine or cider under the
41 provisions of this section to a person under 21 years of age, or who knowingly or negligently de-
42 livers **malt beverages**, wine or cider under the provisions of this section to a visibly intoxicated
43 person, violates ORS 471.410.

44 (11) A person may not make sales and shipments of **malt beverages**, wine or cider directly to
45 Oregon residents unless the person holds a direct shipper permit issued under this section. Any

1 person who knowingly makes, participates in, transports, imports or receives a shipment of **malt**
2 **beverages**, wine or cider that is in violation of this section commits a misdemeanor as provided in
3 ORS 471.990 (1).

4 **SECTION 5.** ORS 471.404 is amended to read:

5 471.404. (1) Alcoholic liquor may not be imported into this state by any person other than a
6 holder of a brewery, winery, distillery or wholesaler's license, except as follows:

7 (a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission, under
8 a certificate of approval issued by the commission.

9 (b) Wines for sacramental purposes according to rules adopted by the commission.

10 (c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

11 (d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a
12 licensed brewery, winery or wholesaler.

13 (e) Grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical or indus-
14 trial use, under a certificate of approval issued by the commission.

15 (f) Wine or cider that is sold and transported by the holder of a wine self-distribution permit to
16 a retail licensee that has the endorsement described in ORS 471.274 (5).

17 (g) **Malt beverages**, wine or cider shipped directly to a resident of this state under a direct
18 shipper permit issued pursuant to ORS 471.282.

19 (2) The commission may require importers of alcoholic liquor to pay a reasonable handling fee
20 based on the quantity and type of alcoholic liquor being imported.

21