

LIQUOR MODERNIZATION AND CONVENIENCE ACT OF 2022 #2

Whereas, Oregon's local and family owned stores and national grocers have safely sold beer and wine for over 80 years; and

Whereas, Oregon grocers are responsible and reliable vendors with a long history of preventing sales to minors and visibly intoxicated individuals, preventing theft, and providing convenience to consumers; and

Whereas, customer convenience and competition is enhanced when both grocery retail and liquor stores can sell similar products; and

Whereas, Oregon has a growing craft distilled spirit industry comprised of local and family-owned producers, and

Whereas, this 2022 Act will increase awareness of and ensure retail shelf space for Oregon's growing craft distilling industry; and

Whereas, the Oregon Liquor Control Commission currently establishes the remittance rate of per-bottle sales at liquor stores and makes remittances to the General Fund, cities and counties; and

Whereas, the Oregon Liquor Control Commission can establish and similarly remit amounts on behalf of bottles and beverages sold at retail grocery stores; and

Whereas, this 2022 Act will ensure those dedicated revenues remain constant and do not decrease with expanded retail sales options; and

Whereas, new sales will allow for increased remittances and the opportunity to dedicate funds to make strategic investments in Oregon's addiction treatment and recovery services; now, therefore,

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

SECTION 1. Sections 2 and 3 of this 2022 Act are added to and made a part of ORS chapter 471.

SECTION 2. (1) The holder of an off-premises distilled liquor retail license may:

(a) Sell at retail:

(A) Distilled liquor in factory-sealed containers that do not hold more than one U.S. gallon.

(B) Distilled liquor in factory-sealed single-serving containers only for off-premises consumption.

(b) Purchase distilled liquor for resale only from the holder of a wholesale distilled liquor license issued under section 3 of this 2022 Act or a distillery licensee that produces craft distilled liquor.

(c) Determine:

(A) Subject to paragraph (b) of this subsection, the methods of procuring for sale distilled liquor.

(B) The retail price of any distilled liquor the licensee offers for sale, including a retail price that is below a licensee's cost.

(C) The methods of self-distribution of the licensee's private label distilled liquor the licensee offers for sale.

(d) Subject to subsection (7) of this section, store, import, transport and export private label distilled liquor on which the applicable tax is paid.

(2) The holder of an off-premises distilled liquor retail license may not sell the licensee's private label distilled liquor to another licensee for resale to consumers.

(3) An off-premises distilled liquor retail license may be issued to a grocery store that:

(a) Holds an off-premises retail sales license issued under ORS 471.186 and is in good standing; and

(b) Will offer for sale distilled liquor at a premises that is greater than 4,000 square feet.

(4) The Oregon Liquor Control Commission shall establish by rule off-premises distilled liquor retail license fees at rates calculated not to exceed the reasonable cost to the commission of regulating holders of off-premises distilled liquor retail licenses.

(5) An off-premises distilled liquor retail license is valid for 10 years unless sooner suspended, revoked or surrendered.

(6)(a) On or before the 20th day of the month, the holder of an off-premises distilled liquor retail license shall remit to the commission an amount equal to the average net markup per bottle or beverage sold through a liquor store established under ORS 471.750, expressed as a percentage of the licensee's wholesale cost for the preceding fiscal year.

(b) The "net mark-up" calculated under this subsection shall be based only on containers of distilled liquor sold by a licensee and shall not exceed an amount sufficient to maintain the commission's distributions from the Oregon Liquor Control Commission Account, as provided under ORS 471.810, at a rate equal to that during the preceding fiscal year.

(c) Upon request, but not more than four times in any calendar year, the commission shall provide reasonable opportunity for any off-premises liquor retail licensee, or for the licensee's agent, to inspect records related to the calculation of the net mark-up under this subsection.

(7)(a) Private label distilled liquor of the holder of an off-premises distilled liquor retail license may be:

(A) Removed from the licensed premises only for sale to consumers or for shipment to other premises for which the licensee holds a license.

(B) Shipped or transported by a holder of an off-premises distilled liquor retail license only by the licensee's employees, a holder of a wholesale distilled liquor license issued under section 3 of this 2022 Act or by a common carrier using a commission-approved delivery plan.

(b) The holder of an off-premises distilled liquor retail license is responsible for paying all taxes imposed under ORS chapter 473 and complying with all reporting requirements under ORS chapter 473 for all of the licensee's private label distilled liquor imported to and sold within this state.

SECTION 3. (1) The holder of a wholesale distilled liquor license may:

(a) Import, store, transport, export, sell at wholesale and distribute distilled liquor in factory-sealed containers to a holder of an off-premises distilled liquor retail license or another holder of a wholesale distilled liquor license.

(b) Sell and deliver distilled liquor to a holder of an off-premises distilled liquor retail license or to another holder of a wholesale distilled liquor license at the distilled liquor wholesaler's licensed premises.

(2) The holder of a wholesale distilled liquor license shall:

(a) Establish and maintain warehouses, subject to any restrictions, conditions or limitations imposed by the Oregon Liquor Control Commission; and

(b) Keep on hand in the warehouses established under this subsection the quantities and kinds of distilled liquor that are reasonably required to meet the purchasing needs of the holders of off-premises distilled liquor retail licenses in the area served by the holder of a wholesale distilled liquor license.

(3) The holder of a wholesale distilled liquor license may accept payment for purchases of distilled liquor, and the holder of an off-premises distilled liquor retail license may make payment for purchases of distilled liquor, by cash, check or electronic funds transfer. The holder of a wholesale distilled liquor license shall permit the holder of an off-premises distilled liquor retail license to pay for distilled liquor on credit terms that are usual and customary in the industry for distilled liquor transactions, but not more than 30 days from the date on which the distilled liquor is delivered.

(4) The commission shall establish by rule wholesale distilled liquor license fees at rates calculated not to exceed the reasonable cost to the commission of regulating holders of wholesale distilled liquor licenses.

(5) A wholesale distilled liquor license is valid for 10 years unless sooner suspended, revoked or surrendered.

SECTION 4. ORS 471.001 is amended to read:

471.001. As used in this chapter and ORS chapter 473:

(1) “Alcoholic beverage” and “alcoholic liquor” mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) “Commercial establishment” means a place of business:

(a) Where food is cooked and served;

(b) That has kitchen facilities adequate for the preparation and serving of meals;

(c) That has dining facilities adequate for the serving and consumption of meals; and

(d) That:

(A) If not a for-profit private club, serves meals to the general public; or

(B) If a for-profit private club, serves meals to the club’s members and guests and complies with any minimum membership and food service requirements established by Oregon Liquor Control Commission rules.

(3) “Commission” means the Oregon Liquor Control Commission.

(4) “Distilled liquor” means any alcoholic beverage other than a wine, cider or malt beverage. “Distilled liquor” includes distilled spirits.

(5) “Grocery store” means a retail food store that sells groceries and is licensed by the State Department of Agriculture.

[/5] (6) “Licensee” means any person holding a license issued under this chapter.

[/6(a)] (7)(a) “Malt beverage” means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume.

(b) “Malt beverage” includes:

(A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume;

(B) Malt beverages containing six percent or less alcohol by volume and that contain at least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49 percent of the beverage's overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; and

(C) Malt beverages containing more than six percent alcohol by volume that derive not more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

[(7)] (8) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(9) **"Net mark-up" means the gross mark-up charged by the Oregon Liquor Control Commission for sale to the public of the same or substantially similar liquor less the Oregon Liquor Control Commission's operating expenses, including, but not limited to, warehouse and distribution costs, liquor store bank card costs, liquor store agent commissions and surcharges whether or not approved by the Legislative Assembly.**

[(8)] (10) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.385.

[(9)] (11) "Premises" or "licensed premises" means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Premises" or "licensed premises" includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

(12) **"Private label distilled liquor" means a distilled liquor that has a trade name, trademark or other words or symbols identifiable with a holder of an off-premises distilled liquor retail license issued under section 2 of this 2022 Act.**

[(10)] (13) "Regulatory specialist" means a full-time employee of the commission who is authorized to act as an agent of the commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing this chapter, ORS 474.005 to 474.095, 474.115, 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655, commission rules and any other statutes the commission considers related to regulating liquor, marijuana or marijuana-derived products.

(14) **"Restaurant" has the meaning given that term in ORS 459A.755.**

[(11)] (15) "Wine" means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of

one percent of alcohol by volume and not more than 21 percent of alcohol by volume. “Wine” includes fortified wine. “Wine” does not include cider.

SECTION 5. ORS 471.230 is amended to read:

471.230. (1)(a) A distillery license allows the licensee to:

- (A) Import, manufacture, distill, rectify, blend, denature and store distilled liquor[, *to*];
 - (B) Sell the distilled liquor to:
 - (i) The Oregon Liquor Control Commission [*and to*];
 - (ii) **The holder of an off-premises distilled liquor retail license issued under section 2 of this 2022 Act; or**
 - (iii) **The holder of a wholesale distilled liquor license issued under section 3 of this 2022 Act;**
 - (C) Transport the distilled liquor out of this state for sale outside this state[. *Distillery licensees may*]; **and**
 - (D) Purchase and sell distilled liquor from or to another distillery licensee in containers [*having*] **that have** a capacity greater than one U.S. gallon for blending and manufacturing purposes.
- (b) A distillery licensee may not sell any alcoholic beverage within this state except [*to the commission or*] as provided in this section. [*However, any*]
- (c) **An** agricultural producer [*or*], **an** association of agricultural producers or the [*legal agents*] **agent** of an agricultural producer or association of agricultural producers that manufactures and converts agricultural surpluses, by-products and wastes into denatured ethyl and industrial alcohol for use in the arts and industry [*are*] **is** not required to obtain a license from the commission.

(2) If a distillery licensee holds a valid distilled spirits plant basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau for the licensed premises, the distillery licensee may:

- (a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee or by another distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. This paragraph does not authorize sales by the drink of distilled liquor. The tastings may be conducted on the licensed premises of the distillery and at no more than five other premises owned or leased by the licensee. The commission may allow more than one distillery licensee to use the same premises at the same time for conducting tastings if the premises

are a primary production location and the licensees share the premises or are owned by the same entity. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Obtain a special events distillery license.

(c) Apply for appointment by the commission as a distillery retail outlet agent for purposes of retailing distilled liquor at locations where tastings are permitted under paragraph (a) of this subsection or subsection (4)(a) of this section **and at any premises owned or leased by the licensee that is a restaurant**. A distillery retail outlet agent may sell at locations where tastings are allowed under **this** paragraph [(a) of this subsection] only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the distillery licensee or by another distillery licensee that uses the same premises as a primary production location or is owned by the same entity as the distillery licensee.

(3) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may hold one or more full on-premises sales licenses. All distilled liquor sold under a full on-premises sales license must be purchased from the commission.

(4) A distillery licensee that holds a special events distillery license may conduct an event on premises designated in the special events distillery license. Except as provided in this subsection, a special events distillery license may be valid for a period not exceeding five days. The commission shall limit the approval of special events distillery licenses for a distillery licensee at the same location to not more than 62 days during a calendar year. A distillery licensee conducting a special event may:

(a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Permit sales by the drink of distilled liquor. A drink that a distillery licensee sells under this paragraph must include distilled liquor that the licensee manufactured in Oregon. Any distilled liquor contained in the drink must be on the list of products approved by the commission for retail sale in Oregon. The distillery licensee selling the drink must purchase all distilled liquor contained in the drink at the retail price set by the commission for the month in which the drink is sold.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent under subsection (2)(c) of this section, sell distilled liquor in factory- sealed containers for consumption off the licensed premises. A distillery retail outlet agent may sell at a location where tastings are allowed under paragraph (a) of this subsection only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the

distillery licensee. The distillery retail outlet agent must sell the distilled liquor at the retail price set by the commission for the month of sale.

SECTION 6. ORS 471.244 is amended to read:

471.244. (1) *[No licensee of the Oregon Liquor Control Commission shall]* **A licensee may not** manufacture, import into, or purchase in *[the State of Oregon]* **this state** for resale *[therein]* **in this state** any malt beverages, cider *[or]*, wine **or distilled liquor** unless the manufacturer of *[such]* **the** malt beverages, cider *[or]*, wine **or distilled liquor** has first obtained from the *[commission]* **Oregon Liquor Control Commission** a certificate of approval¹, *except that with respect to malt beverages, cider or wine manufactured outside the United States, the certificate of approval may be obtained by the person importing same into the United States.* **under this section.**

(2) (a) The commission may issue a certificate of approval to a person importing malt beverages, cider, wine or distilled liquor manufactured outside the United States.

(b) *[Such certificate of approval shall be granted]* **The commission may grant a certificate of approval** only to manufacturers or importers *[who shall have entered]* **that enter** into an agreement with the commission to:

(A) *[furnish]* **Submit** a report to the commission, on or before the 20th day of each month, showing the quantity of malt beverages, cider *[or]*, wine **or distilled liquor** delivered to each licensee *[of the commission]* during the preceding calendar month², *and to*; **and**

(B) Faithfully comply with all laws of *[the State of Oregon]* **this state** pertaining to traffic in malt beverages, cider *[or]*, wine **or distilled liquor**.

(3) If *[any]* **the** holder of *[such]* **a certificate of approval issued under this section,** or any officer, agent or employee of *[such holder, shall violate]* **the holder of a certificate of approval, violates** any term or provision of *[such]* **an agreement described in subsection (2) of this section,** or *[submit any]* **submits a** false or fictitious report, the commission may, in its discretion, suspend or revoke *[such]* **the certificate of approval.**

[(2)] **(4)** The commission may grant special certificates of approval to manufacturers and importers of malt beverages, cider *[or]*, wine **or distilled liquor**. A special certificate of approval has the effect of a certificate of approval granted under subsection *[(1)]* **(2)** of this section, but is valid only for a period of 30 days.

(5) The holder of an off-premises distilled liquor retail license issued under section 2 of this 2022 Act that has obtained a certificate of approval under this section may import into this state the licensee's own private label distilled liquor for resale in this state.

SECTION 7. ORS 471.311 is amended to read:

471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business that

is to be operated under the license, and such other pertinent information as the commission may require. A license may not be granted or renewed until the applicant has complied with the provisions of this chapter and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) The commission shall charge an application fee, not to exceed \$150, to process an application for the issuance of a new license under this chapter or a license following a change in ownership. The application fee applies only to an application for a class of license having an annual license fee. The application fee is nonrefundable, except that the commission shall refund the fee if the applicant completes, submits and maintains an application and the commission does not, on or before 75 days following receipt of the completed application, propose that the license be granted, granted with conditions or refused. The commission shall adopt rules to:

- (a) Establish application fees by class of license; and
- (b) Define a completed application for purposes of this subsection.

(4) Subject to subsection (5) of this section, the commission shall assess a nonrefundable fee for processing a renewal application for any license authorized by this chapter only if the renewal application is received by the commission less than 20 days before expiration of the license. If the renewal application is received prior to expiration of the license but less than 20 days prior to expiration, the fee shall be 25 percent of the annual license fee. If a renewal application is received by the commission after expiration of the license but no more than 30 days after expiration, the fee shall be 40 percent of the annual license fee. This subsection does not apply to a certificate of approval, a brewery-public house license or any license that is issued for a period of less than 30 days.

(5) The commission may waive the fee imposed under subsection (4) of this section if the commission finds that failure to submit a timely application was due to unforeseen circumstances or to a delay in processing the application by the local governing authority that is no fault of the licensee.

(6) The license fee is nonrefundable and must be paid by each applicant upon the granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Fee	Minimum Bond
Brewery, including Certificate of Approval	\$1,000	\$1,000

Winery	\$500	\$1,000
Distillery	\$200	None
Wholesale Malt Beverage and Wine	\$550	\$1,000
Wholesale Distilled Liquor	\$500	\$1,000
Warehouse	\$200	\$1,000
Brewery-Public House including Certificate of Approval	\$500	\$1,000
Limited On-Premises Sale	\$400	None
Off-Premises Sales	\$200	None
Off-Premises distilled liquor retail license	\$200	None
Temporary Sales	\$50 per day	
Grower sales privilege license	\$500	\$1,000
Special events brewery license	\$10 per day	
Special events grower sales privilege license	\$10 per day	
Special events brewery-public house license	\$10 per day	
Special events brewery-public house license	\$10 per day	
Special events distillery license	\$10 per day	

(7) The fee for a certificate of approval or special certificate of approval granted under ORS 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is \$350. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is \$10.

(8) Except as provided in subsection (9) of this section, the annual license fee for a full on-premises sales license is \$800. No bond is required for any full on-premises sales license.

(9) The annual license fee for a full on-premises sales license held by a nonprofit private club as described in ORS 471.175 (8), or held by a nonprofit or charitable organization that is registered with the state, is \$400.

(10) The fee for temporary use of an annual license is \$10 per day.

(11) The annual fee for a wine self-distribution permit is \$200, and the minimum bond is \$1,000.

SECTION 8. ORS 471.810 is amended to read:

471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account and, after withholding such moneys as it may deem necessary to pay its outstanding obligations, shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by Portland State University last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by Portland State University; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030 and 473.035 to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month was reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or transferred under subsections (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2)

of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section.

(5) Notwithstanding subsection (1) of this section, amounts to be distributed from the Oregon Liquor Control Commission Account that are attributable to a per bottle surcharge imposed by the Oregon Liquor Control Commission, shall be credited to the General Fund.

(6) In addition to and not in lieu of any other appropriation, net mark-up receipts received under section 2 of this 2022 Act that exceed the amount necessary to maintain the distributions from the Oregon Liquor Control Commission Account at a rate equal to that during the prior fiscal year, shall be distributed to a Rapid Treatment and Recovery Fund created in the General Fund for the purpose of investing 25 percent to sobering centers, 25 percent to substance use disorder prevention and 50 percent to addiction treatment workforce.

SECTION 9. Sections 2 and 3 of this 2022 Act shall be known and may be cited as the Liquor Modernization and Convenience Act of 2022.

