



MEASURE: HB 2008  
EXHIBIT: 10  
H BUSINESS & LABOR  
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SUBMITTED BY: Bill Perry

Date: March 20, 2013  
To: Members of the House Business and Labor Committee  
From: Bill Perry, Vice President of Government Affairs  
Oregon Restaurant & Lodging Association  
Re: Testimony in Opposition to HB 2008

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To the Committee,

House Bill 2008 is the compilation of three separate bills that have been drafted over the last few Legislative Sessions. I have broken the bill into three sections to better explain our concerns.

**Please consider the following problems with the 72-hour closure section of HB 2008:**

1. There is no definition of “immediate threat to public safety.” Instead, the proposal states that the governing body, chief of police or peace officer has the authority to define whether the violation falls under that broad category.
2. The proposal deprives licensees of any meaningful due process or recourse from wrongful closures and it appears punitive.
3. Section 2: (2)(c) includes assault in the list of offenses that could lead to closure of an establishment. Assault could be some act as small as a fight in the parking lot. Does that small act really warrant closure?
4. The OLCC already has the authority to order cessation of alcohol in a short period of time.

The purpose of this section of the bill is to address specific events that could place anyone from the public in danger. An example might be a situation where a gang member shoots another gang member and there is fear of attempted retaliation in the next few days.

This bill would go far beyond that example without anyone verifying what the “public risk” is; the city can merely pick a business to close for three days. In the outlined example, it would be easy to determine the specific danger. However, a judge or the OLCC should observe data that shows the risk of additional criminal activity at the licensed premises is elevated during the 72 hours following one of the listed criminal acts.

A police officer cannot even get a search warrant without proving “probable cause,” but this proposal could give the same police official the authority to close a business without any oversight. Further, the officer’s standard of proof is the most lenient standard, the “reasonable basis” standard, which is very concerning and could easily lead to indiscretion.

The bill also raises numerous practical concerns. Is it really possible for a local jurisdiction to have a “reasonable belief” that numerous complex criteria are met within 24 hours of the occurrence of an event? What will be the basis for their reasonable belief when there are no police reports available and it may still be unclear what actually happened? Many local jurisdictions may feel that they have to “do something” even if they may not truly have a reasonable basis. This could lead to messy problems.

When an establishment applies for an OLCC license, it has to meet certain criteria that most other businesses do not. For example, our organization supported legislation that requires licensees to have alcohol server training and mandated liability insurance coverage. However, the Legislature should not require an establishment to give up its right to have an OLCC license that can be taken away without due process.

The OLCC already has the power to order the cessation of alcohol sales in a short period of time in a manner that is consistent with Oregon and constitutional law.

**Please consider the following problems with the OLCC license restrictions Section 3 of HB 2008:**

1. The bill raises constitutional issues because local jurisdictions cannot possibly enforce these provisions uniformly.
2. Section 3: (4)(a)-(d) lists the amount of incidences that would trigger OLCC action. Practically, who keeps track of the incidences? How are incidences recorded when many minor incidences are never reported to the OLCC?
3. This section of the bill gives the OLCC the ability to restrict activities at licensed premises based on legal “noise or unlawful activities.”
4. What is the “reasonable grounds for inferring” or “reasonable grounds to believe” standard? Is that an even lower standard than “reasonable belief”?

The bill raises numerous constitutional issues. Yet, this section is specifically worrisome because of the low standard of proof, again, and the broad range of activities that may be prohibited. For example, the bill conflicts with the uniformity provision of the Oregon Constitution that requires legislation regarding alcohol operate uniformly throughout the state and that all individuals are treated equally. The interpretation and enforcement of these provisions will likely vary tremendously across jurisdictions. In addition, the inconsistent treatment of licensees in different jurisdictions not only raises Constitutional issues, but may be perceived as unfair and inequitable by many.

Another practical concern is the bill's reliance on "incident counting" to determine if license restrictions should be imposed, whether the license should be renewed or whether the license should be suspended or cancelled. The list leaves no room for discretion and disproportionately impacts larger establishments that typically have more incidents because they serve so many more people.

Next, Section 3: (2)(b) gives the OLCC the authority to restrict activities at licensed premises if "[t]here is a past history of or current presence of problems related to noise, disturbances or unlawful activity connected with the sale or service of alcoholic beverages." Therefore, if passed, the OLCC has the authority to restrict a license not only because of unlawful activity, but also because of legal noise.

Finally, this bill as a whole tends to use the lowest standard of proof, but this section specifically uses the "reasonable grounds" standard, which appears to be even lower than the "reasonable belief" standard. At some point, these establishments must be afforded due process.

**Please consider the following problems with proposed changes to the Commission in HB 2008:**

1. Designating specific positions of the Commission limits the choice of candidates to a particular district.
2. The OLCC and the Lottery are the only Commissions with specific designees, making both Commissions harder to fill.

HB 2008 would require OLCC to have one member of its Commission with law enforcement or public safety expertise, which is not prohibited today. A law enforcement member may be added to the Commission without this bill. While having a member from each of the Congressional Districts may sound ideal, adding specific Commission designations limits the choice of candidates to a particular district.

Basically, the best candidate for the position may not live in the proper district, and therefore, cannot be appointed. The OLCC already has one specific designee: a member from the food and alcoholic beverage retail industry. When that member retires, he will likely have to be replaced by another designee in the same district even if there is a qualified potential appointee in another district.

Unfortunately, there are serious Constitutional and practical issues with each of the sections of this bill. **Lastly, do you really need an emergency clause?** I respectfully ask that you carefully consider our concerns with the bill.

Thank you for your consideration on House Bill 2008.

*Submitted by Bill Perry, ORLA*

**OREGON LIQUOR CONTROL COMMISSION**  
**CHAPTER 845**  
**EXHIBIT 1**  
**OAR 845-006-0500 (7)**  
**(Effective 10/1/07)**

CATEGORY	1st	2nd	3rd	4th	5th	6th	7th
<b>I</b>	Cancel						
<b>II</b>	30 days	Cancel					
<b>II(a)</b>	10 days	30 days	Cancel				
<b>III</b>	10 days or \$1650	30 days or \$4950	30 days	Cancel			
<b>III(a)</b>	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days or \$4950	30 days and \$4950	60 days	90 days
<b>IV</b>	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel		
<b>V</b>	3 days or \$495	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel	

**SANCTIONS**

-- These are guidelines only. Commission can impose a different sanction where appropriate.

-- Amounts are retail, wholesale, and manufacturer licensee civil penalties (\$5000 maximum per violation). Service permittees: multiply days by \$25 (\$500 maximum per violation).

**Categories for Most Common Violations**

<b><u>Category I</u></b>	<b><u>Statute</u></b>	<b><u>Administrative Rule</u></b>	<b><u>Violations</u></b>
	471.155		Failed to maintain a bond (manufacturer/wholesaler)
	471.315(1)(a)(F)		Habit of using to excess
	471.315(1)(a)(I)		Convicted of a felony (Licensee)
	471.385(1)(b)		Convicted of a felony (Service Permittee)
	471.315(1)(c)		History of Serious and Persistent Problems
	471.365(2)		Allowed use of service permit by another
	471.405(1)		Sale of alcohol other than as license permits
		845-005-0355(5)	Restriction violation
		845-005-0400	Failed to maintain liquor liability insurance or bond (On-premises consumption)
		845-006-0475	Failed to notify prior to complete change of ownership/ Allowed interest in business without prior Commission approval

845-006-0481	Failed to notify when permanently ceased Full On- Premises Sales operation
845-006-0498(3)	Operating while suspended

<u>Category II</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.315 (1)(a)(B) 471.385(1)(a) 471.425(1)		Made false statement or representation to induce or prevent Commission action
	471.675		Interfered with investigation
		845-006-0345(1)	Under the influence of intoxicants while on duty
		845-006-0345(2)	Failed to call police at inspector's request
		845-006-0345(4)(a)	Denied inspector/ police officer access to premises (during regular business hours)
		845-006-0345(4)(b)	Failed to promptly admit inspector / police officer (premises is or appears closed)

<u>Category IIa</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.316	845-006-0348	Unlawful drug activity on the licensed premises

<u>Category III</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.315(1)(a)(I) 471.385(1)(b)		Convicted of a crime other than a felony (Licensee) Convicted of a crime other than a felony (Service Permittee)
	471.360(1)(b)		Permitted mixing/selling/serving, or supervising those who do, without a service permit
	471.410(1)		Knowingly sold/made alcohol available to a visibly intoxicated person (VIP)*
	471.410(2)		Knowingly sold/made alcohol available to a minor
		845-006-0335(1)	Failed to verify the age of a minor (sale/service)
		845-006-0335(3)(a)	Permitted minor to consume alcohol
		845-006-0345(1)	Drinking on duty
		845-006-0345(7)	Drive-up window (Off-premises license)
		845-006-0345(10)	Kegs where minor patronage
		845-006-0345(11)	Prohibited conduct: promotions
	471.425(2)	845-006-0347(2)	Permitted/maintained disorderly activity/establishment Permitted/maintained noisy activity/establishment
		845-006-0347(3)	Permitted unlawful activity
		845-006-0347(5)	Drinking alcohol in parking lot
		845-006-0396	Same day delivery with meal service
		845-006-0398	Next day retail shipment

	845-006-0426	Failed to effectively communicate
471.478	845-006-0441	Failed to comply with keg law (minors or VIPS involved)
	845-006-0460-0469	Food service violation
	845-009-0145(3), (4)	Off-Premises Sales clerk/liquor agent's employee did not complete required training and continued to sell alcohol

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<u>Category IIIa</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.410(2)		Knowingly sold/made alcohol available to a minor (Responsible Vendors only)
		845-006-0335(1)	Failed to verify the age of a minor (sale/service) (Responsible Vendors only)

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<u>Category IV</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
		845-006-0335(1)	Failed to verify the age of a minor (minor in prohibited area)
	471.351(1)		Failed to permit premises or records inspection
	471.305		Delivered malt beverages to an unlicensed location
		845-006-0335(3)(b)	Permitted minor to enter or remain in a prohibited area
		845-006-0335(4)	Permitted minor to work in prohibited area
		845-006-0335(6)	Permitted minor entertainer in a prohibited area
		845-006-0345(3)	Destroyed or concealed evidence
		845-006-0347(5)	Failed to evict patron
	471.394	845-006-0370	Accepted or provided financial assistance
	471.398	845-013-0001-0110	
		845-006-0425(1)	After hours operation (retail licensees)
		845-015-0140	After hours operation (retail sales agents)
		845-006-0435	Failed to keep required records
		845-010-0170	
		845-013-0001(4)	
		845-006-0450	Retail On-Premises Malt Beverage or Wine Sampling
		845-006-0498(1), (2)(b)	Removed, altered, or covered suspension notice sign
		845-007-0015	Advertising media, coupons
		845-009-0130(2), (5)	Failed to meet training brochure requirements for off-premises employees
		845-009-0145(5)(b), (5)(c)	Failed to notify whether Off-Premises Sales Clerk/liquor agent's employee completed clerk training course
	471.480(1)		Sale of alcohol by juvenile (Off-premises sales license)
	471.482(1)		Sale of alcohol by juvenile (all other sales licenses)

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<u>Category V</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	459A.700 thru 720	845-020-0005 thru 0035	Beverage container violation
		845-006-0340(7)(c)	Failed to post or replace minor postings
		845-006-0345(5)	Unlawfully permitted an open container of alcohol to leave premises
		845-006-0345(6)	Permitted unauthorized liquor on premises
		845-006-0345(8)	Gave or permitted liquor as a prize
		845-006-0365	NSF check (licensee used or wholesaler failed to report)
		845-006-0475	Corporate licensee failed to advise of change (other than stock)
		845-006-0480(2), (3)	Changes in premises without prior Commission approval or notice
		845-006-0480(4)	Change of trade name without timely notification
		845-006-0481	Failed to notify Commission of temporary closure
		845-007-0020	Advertising restrictions
		845-007-0025	Advertising signs on licensed premises
		845-007-0035	Failed to remove objectionable and nonconforming advertising
		845-008-0045(2)	Private club sold to nonmember

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\*NOTE: 471.412(4) states that the penalty for the first three violations within a two year period of 471.412(1), allowing a VIP to consume, is a Letter of Reprimand. The fourth violation within a two-year period is treated as a fourth-level Category III violation.