

# Senate Bill 914

Sponsored by Senator PROZANSKI (at the request of Oregon Beverage Recycling Cooperative)

## 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**.

Requires certain distributors and importers to register with distributor cooperatives and provide certain information to distributor cooperatives.

Requires distributor cooperatives to maintain registry of all beverage containers sold in state and report on registry to Oregon Liquor Control Commission.

Declares intent that distributor cooperatives are granted immunity from federal and state anti-trust laws for limited purpose of carrying out duties of distributor cooperative.

## A BILL FOR AN ACT

Relating to beverage containers; creating new provisions; and amending ORS 459.992 and 459A.718.

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

**SECTION 1.** ORS 459A.718 is amended to read:

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

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

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

(c) Processing beverage containers sold in this state~~].~~; **and**

**(d) Maintaining a registry of all beverage containers sold in this state.**

(2) A distributor cooperative established under this section must service a majority of the dealers in this state.

(3) If a distributor cooperative is established, a dealer that uses the distributor cooperative to redeem and process beverage containers sold in this state is not required to return beverage containers to a distributor or importer that does not participate in the distributor cooperative, provided that the dealer or the distributor cooperative provides an accounting to the distributor or importer of the beverage containers by brand and kind that were distributed by the distributor or importer and subsequently redeemed by the dealer or distributor cooperative.

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

**(5) A distributor or importer that does not participate in a distributor cooperative to redeem and process beverage containers shall register with the distributor cooperative as a nonparticipating distributor or importer and shall report, in a form and manner as required by the distributor cooperative, information necessary for the distributor cooperative to**

**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 **maintain the beverage container registry described in subsection (6) of this section.**

2 **(6) A distributor cooperative shall maintain a registry of all types of beverage containers**  
 3 **sold in this state that describes the beverage containers using the following information for**  
 4 **each beverage container:**

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

7 **(b) The type of beverage contained in the beverage container using an appropriate cat-**  
 8 **egorization method for beverages as determined by the distributor cooperative;**

9 **(c) The size of the beverage container;**

10 **(d) Whether the beverage container is glass, metal or plastic;**

11 **(e) If the beverage container is glass, the color of the glass; and**

12 **(f) If applicable, the universal product code or European article number on the product**  
 13 **label affixed to the beverage container.**

14 [(5)(a)] **(7)(a)** For purposes of this subsection, beverage container return data is the number of  
 15 beverage containers returned for the refund value specified in ORS 459A.705 in Oregon during the  
 16 calendar year and the number of beverage containers that carry a refund value specified in ORS  
 17 459A.705 sold in Oregon during the calendar year, calculated separately.

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

20 **(A)** For all distributors and importers that participate in the distributor cooperative, the previ-  
 21 ous calendar year's beverage container return data, calculated separately for glass, metal and plas-  
 22 tic beverage containers[.]; **and**

23 **(B) The registry of all beverage containers sold in this state during the previous calendar**  
 24 **year.**

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

29 [(6)(a)] **(8)(a)** By August 1 of each calendar year, using the beverage container return data  
 30 provided in subsection [(5)(b)] **(7)(b)** of this section, the Oregon Liquor Control Commission shall  
 31 calculate the previous calendar year's percentage of beverage containers returned for the refund  
 32 value specified in ORS 459A.705 for each distributor cooperative. The commission shall carry out  
 33 the calculation separately for glass, metal and plastic beverage containers and shall post the per-  
 34 centages on the commission's website.

35 (b) By August 1 of each calendar year, using the beverage container return data provided in  
 36 subsection [(5)(c)] **(7)(c)** of this section, the commission shall calculate the previous calendar year's  
 37 percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each  
 38 distributor or importer that does not participate in a distributor cooperative. The commission shall  
 39 carry out the calculation separately for glass, metal and plastic beverage containers and shall post  
 40 the percentages on the commission's website.

41 (c) By August 1 of each calendar year, using the beverage container return data provided in  
 42 subsection [(5)(b)] **(7)(b)** and (c) of this section, the commission shall calculate the previous calendar  
 43 year's percentage of beverage containers returned for the refund value specified in ORS 459A.705  
 44 for all distributors and importers in Oregon. The commission shall carry out the calculation for all  
 45 beverage containers, and separately for glass, metal and plastic beverage containers, and shall post

1 the percentages on the commission's website.

2 (d) Except for the percentages described in paragraphs (a) to (c) of this subsection or in a pro-  
 3 ceeding under ORS 459A.717 for a violation of subsection [(5)] (7) of this section, the commission  
 4 may not disclose any information provided by a distributor, an importer or a distributor cooperative  
 5 under subsection [(5)] (7) of this section.

6 [(7)(a)] (9)(a) In order to determine compliance with the provisions of subsection [(5)] (7) of this  
 7 section, within six months of the date that the commission receives a report described in subsection  
 8 [(5)(b)] (7)(b) and (c) of this section, the commission may review or audit the records of each re-  
 9 porting distributor cooperative, or each reporting distributor or importer that does not participate  
 10 in a distributor cooperative.

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

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

18 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 459A.700 to**  
 19 **459A.740.**

20 **SECTION 3. (1) It is the intent of this section that a distributor cooperative established**  
 21 **pursuant to ORS 459A.718 for the purposes of carrying out the duties of a distributor coop-**  
 22 **erative under ORS 459A.700 to 459A.740, approved by the Oregon Liquor Control Commission**  
 23 **and subject to the regulatory supervision of the commission, is granted immunity from fed-**  
 24 **eral and state antitrust laws for the limited purpose of establishing and operating a distrib-**  
 25 **utor cooperative. The activities of the distributor cooperative that comply with the**  
 26 **provisions of this section may not be considered to be in restraint of trade, a conspiracy or**  
 27 **combination or any other unlawful activity in violation of any provisions of ORS 646.705 to**  
 28 **646.826 or federal antitrust laws.**

29 **(2) The commission shall actively supervise the conduct of the distributor cooperative.**  
 30 **The commission may require the distributor cooperative to take whatever action the com-**  
 31 **mission considers necessary to:**

32 **(a) Ensure that the distributor cooperative is engaging in conduct authorized under this**  
 33 **section;**

34 **(b) Ensure that the policies of this state are being fulfilled by the activities of the dis-**  
 35 **tributor cooperative; and**

36 **(c) Enjoin conduct that is not authorized by the commission or conduct that the com-**  
 37 **mission finds does not advance the interests of this state in carrying out the duties of the**  
 38 **distributor cooperative.**

39 **(3) The commission may designate employees of the commission to carry out the re-**  
 40 **sponsibility of actively supervising the conduct of the distributor cooperative.**

41 **(4) The commission may adopt rules to carry out the purposes of this section.**

42 **SECTION 4. ORS 459.992 is amended to read:**

43 459.992. (1) The following are Class A misdemeanors:

44 (a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105 and 459.205 to 459.385.

45 (b) Violation of ORS 459.205.

1 (c) Violation of ORS 459.270.

2 (d) Violation of ORS 459A.080.

3 (e) Violation of ORS 459.272.

4 (2) Each day a violation referred to by subsection (1) of this section continues constitutes a  
5 separate offense. Such separate offenses may be joined in one indictment or complaint or information  
6 in several counts.

7 (3) Violation of ORS 459A.705, 459A.710, 459A.718 [(5)] (7) or 459A.720 is a Class A  
8 misdemeanor.

9 (4) In addition to the penalty prescribed by subsection (3) of this section, the Oregon Liquor  
10 Control Commission or the State Department of Agriculture may revoke or suspend the license of  
11 any person who willfully violates ORS 459A.705, 459A.710, 459A.718 [(5)] (7) or 459A.720, who is  
12 required by ORS chapter 471 or 635, respectively, to have a license.  
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