

A-Engrossed
Senate Bill 806

Ordered by the Senate June 10
Including Senate Amendments dated June 10

Sponsored by Senator BEYER

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.

[Modifies definition of "malt beverage" for purpose of regulation and taxation of alcoholic beverages to align more closely with federal statutory definition of "beer." Increases alcohol by volume threshold percentage requiring additional privilege tax imposed on wine to match federal tax classification percentage.]

[Applies to manufacture or distribution of alcoholic beverages occurring on or after January 1, 2022.]

[Takes effect on 91st day following adjournment sine die.]

Includes "fortified cider" in definition of "cider." Allows holder of winery license to purchase from Oregon Liquor Control Commission distilled liquors for fortifying cider. Allows holder of direct shipper permit to ship up to five cases of wine per month to Oregon resident. Allows county to become licensee of commission. Deletes requirement that commission charge application fee for new licenses. Provides that commission may allow applicant to defer or waive payment of annual license fee if Governor declares state of emergency.

Provides that provisions of chapter __, Oregon Laws 2021 (Enrolled Senate Bill 317), allowing for sale of mixed drinks and single servings of wine for off-premises consumption become operative on passage of this Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to alcoholic beverages; creating new provisions; amending ORS 471.023, 471.223, 471.282,
3 471.310, 471.311 and 473.015; repealing section 4, chapter __, Oregon Laws 2021 (Enrolled Senate
4 Bill 317); and declaring an emergency.

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

6 **SECTION 1.** ORS 471.023 is amended to read:

7 471.023. For the purposes of this chapter, "cider" means an alcoholic beverage made from the
8 fermentation of the juice of apples or pears that contains not more than 8.5 percent of alcohol by
9 volume, including, but not limited to, flavored, sparkling [*or*], carbonated **or fortified** cider.

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

11 471.223. (1) As used in this section, "control" means that the licensee:

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

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

16 (2) [*A winery license shall allow the licensee*] **The holder of a winery license may:**

17 (a) [*To*] Import wine or cider in containers that have a capacity of more than four liters.

18 (b) [*To*] Import wine or cider in containers that have a capacity of four liters or less if the brand
19 of wine or cider is under the control of the licensee.

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 (c) [To] Bottle, produce, blend, store, transport or export wines or cider.

2 (d) [To] Sell wines or cider at wholesale to the Oregon Liquor Control Commission or to
3 licensees of the commission.

4 (e) [To] Sell wines or cider at retail directly to the consumer for consumption on or off the li-
5 censed premises.

6 (f) [To] Sell malt beverages at retail for consumption on or off the licensed premises.

7 (g) [To] Sell for consumption off the premises malt beverages, wines and cider in securely cov-
8 ered containers **that are** supplied by the consumer and [having] **have** capacities of not more than
9 two gallons each.

10 (h) [To] Conduct under [that] **the winery** license any activities described in paragraphs (a) to
11 (g) of this subsection at five or fewer premises designated by the commission.

12 (i) [To] Purchase from or through the commission brandy or other distilled liquors for fortifying
13 wines **or cider**.

14 (j) [To] Obtain a special events winery license that [shall entitle] **entitles** the holder to conduct
15 the activities allowed under paragraphs (e) to (g) of this subsection at a designated location other
16 than the one set forth in the winery license for a period not to exceed five days.

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

19 (4) Except as provided in subsection (5) of this section, in order to hold a winery license the
20 licensee shall:

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

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

27 (5) Subsection (4) of this section does not apply if a licensee produces only cider under the
28 winery license.

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

31 (7) A winery licensee, or any person having an interest in the licensee, may also hold a full
32 on-premises sales license. If a winery licensee, or a person having an interest in the licensee, also
33 holds a full on-premises sales license, the provisions of this chapter do not prevent the licensee or
34 person from both selling wine or cider bottled and produced under the winery license and selling
35 alcoholic liquor as authorized under the full on-premises sales license.

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

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

44 **SECTION 3.** ORS 471.282 is amended to read:

45 471.282. (1) Notwithstanding any other provision of this chapter and except as provided by ORS

1 471.186 (6), a person may sell and ship malt beverages, wine or cider directly to a resident of Oregon
2 only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue
3 a direct shipper permit only to:

4 (a) A person that holds a license issued by this state or another state that authorizes the man-
5 ufacture of malt beverages, wine or cider;

6 (b) A person that holds a license issued by this state or another state that authorizes the sale
7 of wine or cider produced only from grapes or other fruit grown under the control of the person;

8 (c) A person that holds a license authorizing the sale of malt beverages, wine or cider at retail;
9 or

10 (d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and
11 that has a membership primarily composed of persons holding winery licenses issued under ORS
12 471.223 or grower sales privilege licenses issued under ORS 471.227.

13 (2) The holder of a direct shipper permit that is a licensee of another state may deliver malt
14 beverages under the permit only if that other state makes direct shipper permits, or the equivalent,
15 available for the delivery of malt beverages by persons holding a license issued by the commission
16 authorizing the manufacture or retail sale of malt beverages.

17 (3)(a) A person may apply for a direct shipper permit by filing an application with the
18 commission. *The application must be made in such form as may be* **in a manner** prescribed by the
19 commission.

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

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

26 (d) If the application is based on a license issued by another state, or the application is by a
27 nonprofit trade association described in subsection (1)(d) of this section, the person or association
28 must pay a \$100 registration fee and maintain a bond or other security described in ORS 471.155 in
29 the minimum amount of \$1,000.

30 (4) Sales and shipments under a direct shipper permit:

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

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

33 (c) May not exceed *two* **five** cases, containing not more than nine liters per case, to any resi-
34 dent per month.

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

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

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

42 (b) Verifies by inspecting government-issued photo identification that the recipient is at least
43 21 years of age; and

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

45 (7)(a) A person holding a direct shipper permit *must* **shall** report to the commission on a

1 quarterly basis all shipments of malt beverages, wine or cider made to Oregon residents under the
2 permit. The report must be made in a form prescribed by the commission.

3 (b) A person holding a direct shipper permit *[must]* **shall** allow the commission to audit the
4 permit holder's records upon request and shall make those records available to the commission in
5 this state.

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

9 (8)(a) A person holding a direct shipper permit *[must]* **shall** timely pay to the commission all
10 taxes imposed under ORS chapter 473 on malt beverages, wine and cider sold and shipped under the
11 permit. For the purpose of the privilege tax imposed under ORS chapter 473, all malt beverages,
12 wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state.

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

17 (9) A direct shipper permit must be renewed annually. If the person holds the permit based on
18 an annual license issued by another state, the person may renew the permit by paying a \$100 re-
19 newal fee and providing the commission with a true copy of a current license issued to the person
20 by the other state or with sufficient information to allow verification of the license by electronic
21 means or other means acceptable to the commission. If the person holds the permit based on an
22 annual license issued by this state, the person may renew the permit at the same time that the
23 person renews the license.

24 (10) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the
25 permit holder fails to comply with the provisions of this section. A person may sell and ship malt
26 beverages, wine or cider under a direct shipper permit only for as long as the person has the license
27 issued by this state or another state that authorizes the person to hold a direct shipper permit. A
28 direct shipper permit does not authorize the shipment of malt beverages by a permit holder de-
29 scribed in subsection (1)(b) of this section or lacking authority as provided under subsection (2) of
30 this section.

31 (11) Any person who knowingly or negligently delivers malt beverages, wine or cider under the
32 provisions of this section to a person under 21 years of age, or who knowingly or negligently de-
33 livers malt beverages, wine or cider under the provisions of this section to a visibly intoxicated
34 person, violates ORS 471.410.

35 (12) A person may not make sales and shipments of malt beverages, wine or cider directly to
36 Oregon residents unless the person holds a direct shipper permit issued under this section. Any
37 person who knowingly makes, participates in, transports, imports or receives a shipment of malt
38 beverages, wine or cider that is in violation of this section commits a misdemeanor as provided in
39 ORS 471.990 (1).

40 **SECTION 4.** ORS 471.310 is amended to read:

41 471.310. Any city **or county** may, without further charter authority, become a licensee under
42 this chapter.

43 **SECTION 5.** ORS 471.311 is amended to read:

44 471.311. (1) *[Any person desiring]* **An applicant for** a license or renewal of a license under this
45 chapter shall *[make]* **submit an** application to the Oregon Liquor Control Commission *[upon forms*

1 *to be furnished* **on a form provided** by the commission [*showing*] **that includes** the name and ad-
 2 dress of the applicant, location of the place of business that is to be operated under the license, and
 3 [*such*] **any** other pertinent information [*as*] the commission may require. [*A license may not be*
 4 *granted or renewed*] **The commission may not grant or renew a license** until the applicant has
 5 complied with the provisions of this chapter and the rules of the commission.

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

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

17 [(a) *Establish application fees by class of license; and*]

18 [(b) *Define a completed application for purposes of this subsection.*]

19 [(4)] (3) Subject to subsection [(5)] (4) of this section, the commission shall assess a
 20 nonrefundable fee for processing a renewal application for any license authorized by this chapter
 21 only if the renewal application is received by the commission less than 20 days before expiration
 22 of the license. If the renewal application is received prior to expiration of the license but less than
 23 20 days prior to expiration, the fee shall be 25 percent of the annual license fee. If a renewal ap-
 24 plication is received by the commission after expiration of the license but no more than 30 days
 25 after expiration, the fee shall be 40 percent of the annual license fee. This subsection does not apply
 26 to a certificate of approval, a brewery-public house license or any license that is issued for a period
 27 of less than 30 days.

28 [(5)] (4) The commission may waive the fee imposed under subsection [(4)] (3) of this section if
 29 the commission finds that failure to submit a timely application was due to unforeseen circumstances
 30 or to a delay in processing the application by the local governing authority that is no fault of the
 31 licensee.

32 [(6)] (5) The license fee is nonrefundable and, **except as provided in subsection (6) of this**
 33 **section**, must be paid by each applicant upon the granting or committing of a license. Subject to
 34 ORS 471.155 and 473.065, the annual or daily license fee and the minimum bond required of each
 35 class of license under this chapter are as follows:

License	Minimum Fee	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

1	Warehouse	\$ 200	\$ 1,000
2	Brewery-Public House,		
3	including Certificate		
4	of Approval	\$ 500	\$ 1,000
5	Limited On-Premises Sales	\$ 400	None
6	Off-Premises Sales	\$ 200	None
7	Temporary Sales	\$ 50 per day	
8	Grower sales privilege		
9	license	\$ 500	\$ 1,000
10	Special events brewery		
11	license	\$ 10 per day	
12	Special events winery		
13	license	\$ 10 per day	
14	Special events grower		
15	sales privilege		
16	license	\$ 10 per day	
17	Special events		
18	brewery-public house		
19	license	\$ 10 per day	
20	Special events		
21	distillery		
22	license	\$ 10 per day	

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24

25 **(6) The commission may allow an applicant to defer payment, or may waive payment, of**
 26 **an annual license fee imposed under subsection (5) of this section, if the Governor declares**
 27 **a state of emergency under ORS 401.165 or a state of public health emergency under ORS**
 28 **433.441. The commission may by rule establish requirements for an applicant to qualify for**
 29 **deferral or waiver of an annual license fee.**

30 (7) The fee for a certificate of approval or special certificate of approval granted under ORS
 31 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a
 32 certificate of approval or special certificate of approval. *[No bond is]* **A bond is not** required for
 33 the granting of a certificate of approval or special certificate of approval. Certificates of approval
 34 are valid for a period commencing on the date of issuance and ending on December 31 of the fifth
 35 calendar year following the calendar year of issuance. The fee for a certificate of approval is \$350.
 36 Special certificates of approval are valid for a period of 30 days. The fee for a special certificate
 37 of approval is \$10.

38 (8) Except as provided in subsection (9) of this section, the annual license fee for a full on-
 39 premises sales license is \$800. *[No bond is]* **A bond is not** required for any full on-premises sales
 40 license.

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

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

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

1 **SECTION 6.** ORS 473.015 is amended to read:

2 473.015. For the purposes of this chapter, “cider” means an alcoholic beverage made from the
3 fermentation of the juice of apples or pears that contains not less than one-half of one percent and
4 not more than 8.5 percent of alcohol by volume, including, but not limited to, flavored, sparkling
5 [or], carbonated **or fortified** cider.

6 **SECTION 7.** The amendments to ORS 471.023, 471.223, 471.282 and 473.015 by sections 1,
7 2, 3 and 6 of this 2021 Act apply to the manufacture or distribution of alcoholic beverages
8 occurring on or after January 1, 2022.

9 **SECTION 8.** Section 4, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 317), is re-
10 pealed.

11 **SECTION 9.** This 2021 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
13 on its passage.

14