

Testimony in Support of House Bill 4093
February 13, 2024
House Committee On Emergency Management, General Government, and Veterans

Chair Grayber, Vice-Chair Lewis, Vice-Chair Tran, and Members of the Committee:

My name is Tony Morse, and I'm a Portlander and a person in long-term recovery. For me, that means I haven't had a drink in over 7 years.

Today I'm here as an Oregonian who cares deeply about the health, safety, and well-being of our state. And in that regard, I respectfully urge each of you to vote yes on HB 4093.

This legislation would require that at least one OLCC Commissioner have a background in public health, a concept that enjoys both bipartisan and bicameral support. Adjusting the composition of the OLCC Board of Commissioners in this way will help ensure fidelity to a key purpose of the Oregon Liquor Control Act,¹ and will align criteria for future Commissioner appointments with Legislative Counsel's recent assessment of that statute.

Oregon is struggling with a lethal and costly addiction crisis that produces tragic outcomes:

- Oregon has the second highest rate of substance use disorder in the country, and the fifth highest rate of alcohol use disorder.²
- Alcohol kills 6 Oregonians per day,³ and unintentional overdoses kill another 3.⁴
- And in 2019 alone, excessive alcohol use cost our state a staggering \$4.8 billion.⁵

Meanwhile, the Liquor Control Act requires protection of public health,⁶ and OLCC has the ability to help us improve these outcomes. Among other things, OLCC:

- licenses and regulates businesses in the alcohol industry such as manufacturers, wholesalers, bars, restaurants, grocery and convenience stores; and
- licenses and regulates the operation of the recreational marijuana industry in Oregon.⁷

¹ ORS 471.030.

² https://mhacbo.org/media/2021_epidemiology.pdf

³ <https://www.opb.org/article/2023/03/15/oregon-addiction-alcohol-related-deaths-treatment/>

⁴ <https://www.opb.org/article/2023/05/30/oregon-worsening-drug-crisis-fentanyl-overdoses/>

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https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/excessivealcoholuse/Documents/OHA_Alcohol%20Harms_Interim%20Report.pdf

⁶ ORS 471.030(1)(c).

⁷ https://www.oregon.gov/olcc/pages/about_us.aspx

These types of regulatory powers can be effectively leveraged to protect public health in Oregon, and the Liquor Control Act⁸ tasks OLCC with doing exactly that. In a written opinion last year, a copy of which is attached to my testimony, Legislative Counsel made clear that OLCC:

- Is the agency responsible for administering the Liquor Control Act;
- Is required to construe the Liquor Control Act in a manner that protects the safety, welfare, and health of the people of Oregon; and
- Must not encourage the development of Oregon's alcohol and cannabis industries in a manner that conflicts with protecting public health interests.

Legislative Counsel's opinion elucidates that OLCC needs to view its work and decision making considerations through a public health lens. And that brings us to HB 4093.

- Requiring at least one person with a public health background to sit on the OLCC Board of Commissioners will posture the agency to better execute its statutorily imposed public health responsibilities.
- It ensures that someone will always be in the room to ask how a particular policy, ruling, or decision might impact public health.
- Importantly, that serves to effectuate the intent of the Liquor Control Act, and will help us better address our addiction crisis—something the Liquor Control Act unambiguously contemplates.

Finally, passing this bill will not disrupt the OLCC's current composition. Last year, a new Commissioner with a public health background joined the Board of Commissioners.

Please help protect public health in Oregon. Please vote yes on HB 4093.

I welcome the Committee's questions. Thank you.

Sincerely,

Tony Morse

⁸ ORS 471.030.



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

August 9, 2023

Senator Janeen Sollman
900 Court Street NE S207
Salem OR 97301

Representative Lisa Reynolds
900 Court Street NE H485
Salem OR 97301

Re: Oregon Liquor and Cannabis Commission mission statement

Dear Senator Sollman and Representative Reynolds:

You requested “clarification regarding the public health responsibilities of the Oregon Liquor and Cannabis Commission (OLCC) as set forth in the Oregon Liquor Control Act” and in particular, “clarification regarding the statutory priority of protecting public health interests relative to promoting industry interests.”

The OLCC¹ is authorized to, among other things, “control the manufacture, possession, sale, purchase, transportation, importation and delivery of alcoholic liquor in accordance with the provisions of [the Liquor Control Act]” and “[t]o exercise all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of [the Liquor Control Act].”² According to the OLCC itself, the agency is:

responsible for regulating the sale and service of alcoholic beverages in Oregon by administering the state’s Liquor Control Act and regulating the production, processing and sale of recreational marijuana in Oregon through the Control, Regulation and Taxation of Marijuana and Industrial Hemp Act. The agency also regulates the production, processing and sale of medical products sold to Oregon Medical Marijuana Program (OMMP) cardholders in OLCC licensed marijuana retail shops.³

The mission statement published by the OLCC states that their mission is “to support businesses, public safety, and community livability through education and the enforcement of liquor and marijuana laws.”⁴

As the state agency tasked with administering the Liquor Control Act⁵, the OLCC must construe the Liquor Control Act in order to achieve the objectives stated in ORS 471.030 (1) and

¹ The OLCC is created in ORS 471.705. ORS 471.730 sets out the OLCC’s regulatory powers regarding alcohol, and ORS 475C.017 sets out the OLCC’s general powers and duties regarding marijuana.

² ORS 471.730.

³ Oregon Liquor and Cannabis Commission, “About the Oregon Liquor & Cannabis Commission,” https://www.oregon.gov/olcc/Pages/About_Us.aspx (last visited July 31, 2023).

⁴ Oregon Liquor and Cannabis Commission, https://www.oregon.gov/olcc/Pages/About_Us.aspx (last visited July 31, 2023).

carry out the state policy of encouraging “the development of all Oregon industry”⁶ in a manner “consistent with” the objectives of ORS 471.030 (1). Thus, the OLCC must encourage the development of the alcohol and cannabis industries in Oregon in a manner consistent with, for example, the protection of “the safety, welfare, health, peace and morals of the people of the state.”⁷ The OLCC’s mission statement is likely intended to guide the agency in carrying out its statutory duties and inform the public of the agency’s responsibilities and intent. As further outlined below, we believe that the OLCC’s mission statement, as written, accurately encompasses their statutory duties.

You propose reading ORS 471.030 to mean that the “OLCC is legally required to, first, promote the health and safety interests set forth in subsection (1), and then—only once that has occurred—to encourage the development of all Oregon industry.” The meaning of ORS 471.030 is a question of statutory interpretation. In interpreting the meaning of statutes, courts first look to the text and context of the statutes, and then to any relevant legislative history.⁸ If a word or term is not defined, we look to the plain meaning. ORS 471.030 provides:

- (1) The Liquor Control Act shall be liberally construed so as:
 - (a) To prevent the recurrence of abuses associated with saloons or resorts for the consumption of alcoholic beverages.
 - (b) To eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of such beverages and to promote temperance in the use and consumption of alcoholic beverages.
 - (c) To protect the safety, welfare, health, peace and morals of the people of the state.
- (2) Consistent with subsection (1) of this section, it is the policy of this state to encourage the development of all Oregon industry.

Central to the proposed reading are the terms “construed,” “protect” and “consistent.” None are defined for purposes of the Liquor Control Act, so we look to the dictionary definitions for the plain meaning of each term. “Construe” is defined as “to put a construction on; discover and apply the meaning and intention of with reference to a particular state of affairs.”⁹ “Protect” is defined as “to cover or shield from that which would injure, destroy, or detrimentally affect.”¹⁰ “Consistent” is defined as “marked by agreement and concord; coexisting and showing no noteworthy opposing, conflicting, inharmonious, or contradictory qualities or trends.”¹¹ In light of these definitions, we understand ORS 471.030 to mean that the construction of the Liquor Control Act must be such that the “safety, welfare, health, peace and morals of the people of the state” are shielded from that which would injure, destroy or detrimentally affect those principles, and encouraging the development of the Oregon alcohol and cannabis industries must not conflict with the shielding of the stated principles.

⁵ ORS 471.027 provides that the Liquor Control Act is codified as ORS chapter 471 and ORS 474.105 and 474.115. ORS 471.027.

⁶ Although the text of the statute provides “all Oregon industry,” (emphasis added), because the OLCC is empowered to regulate only alcohol and cannabis, we understand this statute to be limited to the alcohol and cannabis industries.

⁷ ORS 471.030 (1)(c).

⁸ *State v. Gaines*, 346 Or. 160, 171-172 (2009).

⁹ *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/construe> (last visited July 31, 2023).

¹⁰ *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/protect> (last visited July 31, 2023).

¹¹ *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/consistent> (last visited July 31, 2023).

Utilizing the established method for statutory interpretation leads to a slightly different reading of ORS 471.030 than that proposed above. ORS 471.030 (1) does not require OLCC to promote health and safety before encouraging the development of the Oregon alcohol and cannabis industries. Instead, subsection (1) requires the Liquor Control Act be “construed so as [t]o protect the safety, welfare, health, peace and morals of the people of the state.” Subsection (2) provides the state policy, “[c]onsistent with subsection (1) of this section, it is the policy of this state to encourage the development of all Oregon industry.” We do not understand this subsection to require any agency to first promote health and safety and, only after such action, to encourage the development of Oregon industries. Instead, subsection (2) means that encouraging the development of Oregon’s alcohol and cannabis industries may not contradict the protection of “the safety, welfare, health, peace and morals of the people of the state.”¹²

As the agency responsible for administering the Liquor Control Act, we apply our understanding of ORS 471.030 to the OLCC. The OLCC is required to construe the Liquor Control Act in a manner that protects “the safety, welfare, health, peace and morals of the people of the state,”¹³ and is responsible for effectuating the policy statement set out in ORS 471.030 (2): “to encourage the development of all Oregon industry” in a manner consistent with the principles set out in subsection (1). Thus, the OLCC must encourage the development of Oregon’s alcohol and cannabis industries in a manner that does not conflict with any of the principles set forth in ORS 471.030 (1), but the agency is not required to first promote health and safety and only then authorized to encourage industry development. With this understanding in mind, we believe that the OLCC’s mission statement, as written, does accurately encompass the agency’s statutory duties.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel’s office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel’s office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Suzanne C. Trujillo
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¹² ORS 471.030 (1)(c).

¹³ *Id.*