



OREGON LIQUOR CONTROL COMMISSION
The Commission proposes to amend the following
Oregon Administrative Rule:

OAR 845-006-0335 Age Verification; Minors on Licensed Premises

PUBLIC HEARING:

Commission staff will hold a public hearing on this proposed action:

Date: February 23, 2012
Time: 10:00 am
Location: Oregon Liquor Control Commission
9079 SE McLoughlin Boulevard
Portland, OR 97222

Phone: (503) 872-5004 (toll free within Oregon 1-800-452-6522)

Fax: (503) 872-5110

Presiding Officer: Jennifer Huntsman

(Auxiliary aids for persons with disabilities are available upon advance request)

CAPTION: Amendments clarifying where minors are allowed on a licensed premises and a minor employee's duties

This rule describes the requirements and responsibilities of licensees and permittees to prevent minors from purchasing and consuming alcohol on their premises or from being in an area that is prohibited to minors.

In section (6) regarding minor entertainers, staff recommends minor amendments to clarify our expectation that if a minor entertainer is not performing and a Commission approved area has not been designated on the licensed premises (on the floor plan) where the minor stays when not performing, then the minor entertainer must be off of the licenses premises. Our regulatory staff is seeing more licensees choosing not to designate an approved area on their licensed premises, but rather utilizing options such as trailers in parking lots, and our public safety interest is to clearly know where minors will be so that we can help ensure that no minors are in possession of alcoholic beverages.

Staff also recommends amending section (4) regarding minor employees and service permittees in order to reflect recent minor posting changes made in the Minor Posting rule. A complete rewrite and reorganization of the language regarding the allowance of these minors in various posted areas, as well as what duties they are allowed to perform, is proposed to improve clarity.

And finally, staff recommends deletion of language in sections (3)(a) (and (2)(b)) to clarify that this rule section should only be used to charge allowing a minor to drink. Selling or serving minors would instead be charged under the applicable statute (ORS 471.410(2)), or as we typically do instead, charged under section (1) of this rule for failure to verify age. The statute

has a knowingly or “with knowledge” element required for selling and serving to a minor, but there is no such limitation for allowing a minor to drink.

You can obtain a copy of the proposed amendments by calling the toll-free number listed above. Rule drafts are also available on the OLCC web site: <http://oregon.gov/OLCC/> - go to the “Liquor Laws and Rules” button, then follow the link to “Proposed Rulemaking”, then “Minors on Licensed Premises”, and finally “Final Staff Draft”. If you wish to give your views, arguments, or information on this matter, you may do so at the public hearing, or you can submit comments by March 8, 2012. You can also email your comments to: jennifer.huntsman@state.or.us.

Documents faxed, mailed or emailed must be received by 5:00 pm on March 8, 2012.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing negative economic impact of the rule on business. That comment must also be received by 5:00 pm on March 8, 2012.

The Commission reserves the right to request and receive additional comments at any time on or before the date the Commission takes final action on the proposed rule.

Statutory Authority: ORS 471, including 471.030, 471.040, 471.430, 471.482, & 471.730

Other Authority: None

Statutes Implemented: ORS 471.130, 471.410, 471.430, 471.480 & 471.482

Need for the Rule(s): This rule describes the requirements and responsibilities of licensees and permittees to prevent minors from purchasing and consuming alcohol on their premises or from being in an area that is prohibited to minors. In section (6) regarding minor entertainers, staff recommends minor amendments to clarify our expectation that if a minor entertainer is not performing and a Commission approved area has not been designated on the licensed premises (on the floor plan) where the minor stays when not performing, then the minor entertainer must be off of the licenses premises. Our regulatory staff is seeing more licensees choosing not to designate an approved area on their licensed premises, but rather utilizing options such as trailers in parking lots, and our public safety interest is to clearly know where minors will be so that we can help ensure that no minors are in possession of alcoholic beverages. Staff also recommends amending section (4) regarding minor employees and service permittees in order to reflect recent minor posting changes made in the Minor Posting rule. A complete rewrite and reorganization of the language regarding the allowance of these minors in various posted areas, as well as what duties they are allowed to perform, is proposed to improve clarity. And finally, staff recommends deletion of language in sections (3)(a) (and (2)(b)) to clarify that this rule section should only be used to charge allowing a minor to drink. Selling or serving minors would instead be charged under the applicable statute (ORS 471.410(2)), or as we typically do instead, charged under section (1) of this rule for failure to verify age. The statute has a knowingly or “with knowledge” element required for selling and serving to a minor, but there is no such limitation for allowing a minor to drink.

Documents Relied Upon, and where they are available: Minutes of Advisory Committee meeting of December 6, 2011 available from the Commission’s rules coordinator, Jennifer Huntsman, at 9079 SE McLoughlin Boulevard Portland, OR 97222.

Fiscal and Economic Impact, including Statement of Cost of Compliance: This statement takes into account the fiscal impact on (a) Liquor Licensees; (b) local government; (c) state agencies; and (d) the public.

(a) Liquor Licensees. The Commission anticipates the only potential impacts from the proposed rule amendments to be positive. There are no substantive changes in agency policy associated with the proposed amendments. The proposed clarifying & streamlining amendments should have a positive impact on licensees in that they should make the rule simpler, easier to understand, and easier to follow.

(b) Local government. The Commission does not anticipate any fiscal impact on local government from the proposed rule amendments.

(c) State agencies. The Commission does not anticipate any fiscal impact on state agencies from the proposed rule amendments.

(d) The public. The Commission anticipates only positive fiscal impact on the public from the proposed rule amendments. Because the rule provisions are designed to prevent the consumption of alcohol by minors, greater licensee compliance should translate into positive impact on public safety as well.

Cost of Compliance: There should be no costs for anyone to comply with these rule amendments. There are no reporting or recordkeeping requirements required for compliance. There is no additional requirement for equipment, supplies, labor, or administration.

Because there is not adequate information available to accurately project the fiscal impact, the Commission is unable to calculate the potential fiscal impacts.

How were small businesses involved in the development of this rule? The Commission assumes the majority of its licensees are small businesses. We invited licensees, industry representatives, and public safety representatives, including moderation groups, to the Advisory Committee meeting where this matter was discussed.

Administrative Rule Advisory Committee consulted? Yes. An Advisory Committee met on December 6, 2011. Members included industry representatives, licensees, and members representing moderation and public safety concerns. The Committee assisted in writing this Fiscal Impact Statement.

(This notice mailed February 1, 2012)