

CUSTOMER CHOICE AND CONVENIENCE ACT OF 2022 #1

Whereas, Oregon's local and family owned grocery stores and national grocers have safely sold beer and wine for over 80 years; and

Whereas, Oregon grocers are responsible and reliable vendors with a long history of preventing sales to minors and visibly intoxicated individuals, preventing theft, and providing convenience to customer; and

Whereas, customer convenience and competition is enhanced when both grocery retail and liquor stores can sell similar products; and

Whereas, Oregon has a growing distilled spirit industry comprised of local and family-owned producers, and

Whereas, this 2022 Act will increase awareness of and ensure retail shelf space for Oregon's growing distilling industry; and

Whereas, the Oregon Liquor and Cannabis Commission currently establishes the remittance rate of per-bottle sales at liquor stores and makes remittances to the General Fund, cities and counties; and

Whereas, the Oregon Liquor and Cannabis Commission can establish and similarly remit amounts on behalf of bottles and beverages sold at retail grocery stores; and

Whereas, this 2022 Act will ensure those dedicated revenues remain constant and do not decrease with expanded retail sales options; and

Whereas, new sales will allow for increased remittances and the opportunity to dedicate funds to make strategic investments in Oregon's addiction treatment and recovery services; now, therefore,

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

SECTION 1. Sections 3 and 4 of this 2022 Act shall be known and may be cited as the Customer Choice and Convenience Act of 2022.

SECTION 2. Sections 3 and 4 of this 2022 Act are added to and made a part of ORS chapter 471.

SECTION 3. (1) The holder of an off-premises distilled liquor retail license may:

(a) Sell at retail:

(A) Distilled liquor and low-proof spirit beverages in factory-sealed containers that do not hold more than one U.S. gallon.

(B) Distilled liquor and low-proof spirit beverages in factory-sealed single-serving containers only for off-premises consumption.

(b) Purchase distilled liquor and low-proof spirit beverages for resale only from the holder of a wholesale distilled liquor license issued under section 4 of this 2022 Act or a distillery licensee that produces distilled liquor.

(c) Determine:

(A) Subject to paragraph (b) of this subsection, the methods of procuring for sale distilled liquor and low-proof spirit beverages.

(B) The retail price of any distilled liquor and low-proof spirit beverages the licensee offers for sale, including a retail price that is below a licensee's cost.

(2) An off-premises distilled liquor retail license may be issued to a grocery store that:

(a) Holds an off-premises retail sales license issued under ORS 471.186 and is in good standing; and

(b) Will offer for sale distilled liquor and low-proof spirit beverages at a premises that is greater than 4,000 square feet.

(3) Notwithstanding ORS 471.311:

(a) The Oregon Liquor and Cannabis Commission shall establish by rule off-premises distilled liquor retail license fees at rates calculated not to exceed the reasonable cost to the commission of regulating holders of off-premises distilled liquor retail licenses.

(b) No bond is required for a an off-premises distilled liquor retail license.

(4) Notwithstanding ORS 471.294, an off-premises distilled liquor retail license shall be issued and renewed for a period of 10 years unless sooner suspended, revoked or surrendered. A license shall expire at 12 midnight on March 31, June 30, September 30 or December 31 of the year of expiration. To align with required expiration dates, a license issued for the first time may be issued for a period of up to three months less than 10 years.

(5)(a) On or before the 20th day of the month, the holder of an off-premises distilled liquor retail license shall remit to the Oregon Liquor and Cannabis Commission an amount equal to the average net mark-up per bottle or beverage sold through a liquor store established under ORS 471.750, expressed as a percentage of the licensee's wholesale cost for the preceding fiscal year.

(b) The net mark-up calculated under this subsection:

(A) Shall be based only on containers of distilled liquor and low-proof spirit beverages sold by a licensee for the preceding month.

(B) May not exceed an amount sufficient to maintain the commission's distributions from the Oregon Liquor and Cannabis Commission Account, as provided under ORS 471.810, at a rate equal to that during the preceding fiscal year.

(c) Upon request, but not more than four times in any calendar year, the commission shall provide reasonable opportunity for any off-premises liquor retail licensee, or for the licensee's agent, to inspect records related to the calculation of the net mark-up under this subsection.

(d) In addition to and not in lieu of any other appropriation, net mark-up receipts received under this section of this 2022 Act that exceed the amount necessary to maintain the distributions from the Oregon Liquor and Cannabis Commission Account at a rate equal to that during the prior fiscal year, shall be distributed to a Rapid Treatment and Recovery Fund created in the General Fund for the purpose of investing 25 percent to sobering centers, 25 percent to substance use disorder prevention and 50 percent to addiction treatment workforce.

SECTION 4. (1) The holder of a wholesale distilled liquor license may:

(a) Import, store, transport, export, sell at wholesale and distribute distilled liquor and low-proof spirit beverages in factory-sealed containers to a holder of an off-premises distilled liquor retail license or another holder of a wholesale distilled liquor license.

(b) Sell and deliver distilled liquor and low-proof spirit beverages to a holder of an off-premises distilled liquor retail license or to another holder of a wholesale distilled liquor license at the distilled liquor wholesaler's licensed premises.

(2) The holder of a wholesale distilled liquor license shall:

(a) Establish and maintain warehouses, subject to any restrictions, conditions or limitations imposed by the Oregon Liquor and Cannabis Commission; and

(b) Keep on hand in the warehouses established under this subsection the quantities and kinds of distilled liquor and low-proof spirit beverages that are reasonably required to meet the purchasing needs of the holders of off-premises distilled liquor retail licenses in the area served by the holder of a wholesale distilled liquor license.

(3) The holder of a wholesale distilled liquor license may accept payment for purchases of distilled liquor and low-proof spirit beverages, and the holder of an off-premises distilled liquor retail license may make payment for purchases of distilled liquor and low-proof spirit beverages, by cash, check or electronic funds transfer. The holder of a wholesale distilled liquor license shall permit the holder of an off-premises distilled liquor retail license to pay for distilled liquor and low-proof spirit beverages on credit terms that are usual and customary in the industry for distilled liquor transactions, but not more than 30 days from the date on which the distilled liquor or low-proof spirit beverages is delivered.

(4) Notwithstanding ORS 471.311:

(a) The commission shall establish by rule wholesale distilled liquor license fees at rates calculated not to exceed the reasonable cost to the commission of regulating holders of wholesale distilled liquor licenses.

(b) The minimum bond required for a wholesale distilled liquor license is \$1,000.

(c) The commission may refuse to issue a license, or may issue a restricted license, to any applicant under the provisions of this section if the commission has reasonable ground to believe that the applicant has not furnished an acceptable bond as required by this subsection.

(d) The commission may cancel, suspend, restrict or require mandatory training for any license issued under this section, or impose a civil penalty in lieu of or in addition to a suspension as provided by ORS 471.322, if the commission finds or has reasonable ground to believe that the licensee is not maintaining an acceptable bond as required by this subsection.

(5) Notwithstanding ORS 471.294, a wholesale distilled liquor license shall be issued and renewed for a period of 10 years unless sooner suspended, revoked or surrendered. A license shall expire at 12 midnight on March 31, June 30, September 30 or December 31 of the year of expiration. To align with required expiration dates, a license issued for the first time may be issued for a period of up to three months less than 10 years.

SECTION 5. ORS 471.001 is amended to read:

471.001. As used in this chapter and ORS chapter 473:

(1) “Alcoholic beverage” and “alcoholic liquor” mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) “Commercial establishment” means a place of business:

(a) Where food is cooked and served;

(b) That has kitchen facilities adequate for the preparation and serving of meals;

(c) That has dining facilities adequate for the serving and consumption of meals; and

(d) That:

(A) If not a for-profit private club, serves meals to the general public; or

(B) If a for-profit private club, serves meals to the club’s members and guests and complies with any minimum membership and food service requirements established by Oregon Liquor and Cannabis Commission rules.

(3) “Commission” means the Oregon Liquor and Cannabis Commission.

(4) “Distilled liquor” means any alcoholic beverage other than a wine, cider or malt beverage. “Distilled liquor” includes distilled spirits.

(5) “Grocery store” means a retail food store that sells groceries and is licensed by the State Department of Agriculture.

[(5)] (6) “Licensee” means any person holding a license issued under this chapter.

(7) “Low-proof spirit beverage” means an alcoholic beverage that:

(a) Contains at least a mixture of distilled liquor and a nonalcoholic liquid; and

(b) Contains not more than 14 percent alcohol by volume.

[(6)(a)] **(8)(a)** “Malt beverage” means beer, ale, porter, stout and other similar fermented beverages that contain more than one-half of one percent and not more than 16 percent of alcohol by volume and that are brewed or produced from malt, wholly or in part, or from rice, grain, bran, glucose, sugar or molasses as a substitute for malt.

(b) “Malt beverage” does not include cider, mead, sake or wine.

[(7)] **(9)** “Manufacturer” means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(10) “Net mark-up” means the gross mark-up charged by the Oregon Liquor and Cannabis Commission for sale to the public of the same or substantially similar liquor and surcharges whether or not approved by the Legislative Assembly less the Oregon Liquor and Cannabis Commission’s operating expenses, including, but not limited to, warehouse and distribution costs, liquor store bank card costs and liquor store agent commissions.

[(8)] **(11)** “Permittee” means a person holding a permit issued under ORS 471.360 to 471.385.

[(9)] **(12)** “Premises” or “licensed premises” means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. “Premises” or “licensed premises” includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

[(10)] **(13)** “Regulatory specialist” means a full-time employee of the commission who is authorized to act as an agent of the commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing this chapter, ORS 474.005 to 474.095, 474.115, 475B.010 to 475B.545,

475B.550 to 475B.590 and 475B.600 to 475B.655, commission rules and any other statutes the commission considers related to regulating liquor, marijuana or marijuana-derived products.

[(11)] (14) “Wine” means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. “Wine” includes fortified wine. “Wine” does not include cider.

SECTION 6. ORS 471.244 is amended to read:

471.244. (1) No licensee of the Oregon Liquor and Cannabis Commission shall manufacture, import into, or purchase in the State of Oregon for resale therein any malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages** unless the manufacturer of such malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages** has first obtained from the commission a certificate of approval, except that with respect to malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages** manufactured outside the United States, the certificate of approval may be obtained by the person importing same into the United States. Such certificate of approval shall be granted only to manufacturers or importers who shall have entered into an agreement with the commission to furnish a report to the commission, on or before the 20th day of each month, showing the quantity of malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages** delivered to each licensee of the commission during the preceding calendar month, and to faithfully comply with all laws of the State of Oregon pertaining to traffic in malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages**. If any holder of such certificate, or any officer, agent or employee of such holder, shall violate any term or provision of such agreement, or submit any false or fictitious report, the commission may, in its discretion, suspend or revoke such certificate.

(2) The commission may grant special certificates of approval to manufacturers and importers of malt beverages, cider [*or*], wine, **distilled liquor or low-proof spirit beverages**. A special certificate of approval has the effect of a certificate of approval granted under subsection (1) of this section, but is valid only for a period of 30 days.

SECTION 7. ORS 471.292 is amended to read:

471.292. (1) A license granted under the Liquor Control Act shall:

- (a) Be a purely personal privilege.
- (b) Be valid for the period stated in the license.
- (c) Be renewable in the manner provided in ORS 471.311, except for a cause which would be grounds for refusal to issue such license under ORS 471.313 **or section 4 of this 2022 Act.**
- (d) Be subject to cancellation, suspension or restriction as provided in ORS 471.315 **or section 4 of this 2022 Act.**

(e) Be transferable from the place for which the license was originally issued to another location subject to the provisions of the Liquor Control Act, any rules of the Oregon Liquor and Cannabis Commission and any municipal ordinance or local regulation.

(f) Cease upon the death of the licensee, except as provided in subsection (2) of this section.

(g) Not constitute property.

(h) Not be alienable.

(i) Not be subject to attachment or execution.

(j) Not descend by the laws of testate or intestate devolution.

(2) The commission may, by order, provide for the manner and conditions under which:

(a) Alcoholic liquors left by any deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed of.

(b) The business of any deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(c) A business licensed pursuant to this chapter subject to a security interest may be continued in business by a secured party as defined in ORS 79.0102 for a reasonable period after default on the indebtedness by the debtor.

(d) A license granted under this chapter may be transferred from the place for which the license was originally issued to another location.

