



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

March 17, 2014

The Honorable Thomas A. Balmer
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97310

Re: *Elspeth McCann; Paul Romain and Ronald R. Dodge; Lauren G.R. Johnson and Lynn T. Gust v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S062082 (control), S062083, S062084

Dear Chief Justice Balmer:

Petitioner Elspeth McCann; petitioners Paul Romain and Ronald R. Dodge; and petitioners Lauren G. R. Johnson and Lynn T. Gust, have filed ballot title challenges in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Program Representative Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Matthew J. Lysne

Matthew J. Lysne
Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

MJL:aft/5097171

cc: Steven C. Berman/without encl.
Margaret E. Schroeder/without encl.
Paul R. Romain/without encl.
John DiLorenzo, Jr./without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

ELSPETH MCCANN,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062082 (Control)

PAUL ROMAIN and RONALD R.
DODGE,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062083

LAUREN G. R. JOHNSON and LYNN
T. GUST,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062084

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITIONS TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 47
(SUPREME COURT)

Petitioner Elspeth McCann, petitioners Paul Romain and Ronald R.

Dodge, and chief petitioners Lauren G. R. Johnson and Lynn T. Gust,

separately petition for review of the Attorney General’s certified ballot title for Initiative Petition (IP) 47 (2014). This court reviews ballot titles for “substantial compliance with the requirements of ORS 250.035.” ORS 250.085(5). In Case No. S062082, petitioner McCann challenges all four parts of the ballot title; in Case No. S062083, petitioners Romain and Dodge challenge the caption, “yes” vote result statement, and summary; in Case No. 062084, chief petitioners Johnson and Gust challenge all four parts of the ballot title. The Attorney General submits this answering memo pursuant to ORAP 11.30(6) to explain why this court should certify the Attorney General’s certified ballot title for IP 47.

A. The caption substantially complies with ORS 250.035(2).

Each petitioner challenges whether the caption for IP 47 “reasonably identifies the subject matter of the state measure”—as required by ORS 250.035(2)(a). The caption states:

**Allows qualified retail stores to sell liquor; imposes taxes
similar to current state price markup**

Because petitioners raise several different arguments as to why the caption fails to reasonably identify the “subject matter” of IP 47, the Attorney General responds to each in turn.

1. Petitioner McCann's arguments

Petitioner McCann first objects that the caption fails to identify eight specified “major effects” of IP 47 that are of “equal import.” (McCann Petition, 4-5). “The ‘subject matter’ of a ballot title is ‘the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *McCann / Harmon v. Rosenblum*, 354 Or 701, 706, ___P3d ___(2014) (quoting *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011)). When the Attorney General describes a measure by listing changes the measure would enact, “some changes may be of ‘sufficient significance’ that they must be included in the description.” *McCann / Harmon*, 354 Or at 706 (citations omitted). Petitioner contends that the caption omits eight “major effects” of “equal import”¹, yet fails to supply any proposed caption that includes any (let alone all) of those eight effects. For that reason alone, McCann’s objection is not well taken. In any event, the caption

¹ Those effects include: (1) altering the distribution formula for liquor revenues; (2) eliminating OLCC’s authority to operate liquor stores; (3) terminating contracts between OLCC and retail agents; (4) creating the Oregon Distilled Liquor Board (ODLB); (5) restricting the number of smaller retail stores that may sell liquor; (6) restricting minimum prices for liquor and prohibiting certain contractual provisions; (7) establishing a new bookkeeping requirements for delivering liquor; and (8) mandating new licensing requirements. (McCann Petition, 4).

substantially complies with ORS 250.035(2)(a) because it does identify the two “major effects” of IP 47—allowing qualified retail stores to sell liquor, and imposing new taxes that are similar to the existing state markup—and the remaining eight effects are ancillary to those two major changes to existing law.

Second, petitioner McCann objects that the phrase “imposes taxes similar to current price markup” is inaccurate and speculative.² However, IP 47 provides a method for replacing existing state revenues—by substituting new taxes in lieu of an existing “price markup.” Whether a measure may reduce state revenues or have a replacement for reduced or eliminated revenue streams may be a major effect of a measure. *Cf. Sizemore v. Myers*, 332 Or 417, 420, 29 P3d 1135 (2001) (concluding that the phrase “reduces state income tax revenues and provides no replacements funds” impartially informed voters that the measure will reduce tax revenues and “will not be offset by any corresponding increase provided for in the proposed measure”). Under existing law, the Oregon Liquor Control Commission (OLCC) imposes a “price markup” (or fee per bottle sold) that generates state revenues. *See generally*

² The Attorney General has considered objections to related draft ballot titles (IP 57 and IP 58) with respect to the phrase “similar to.” The certified ballot title for IP 57 likely resolves that objection as the text of the caption no longer includes that language. (Att-1). (The certified ballot title for IP 58 is due for filing with the Secretary of State on March 18, 2014).

ORS 471.745 (providing that OLCC “shall fix the prices” of liquors with more than 5% alcohol by volume); OAR 845-015-0138 (requiring OLCC to give notice before changing “the mark-up formula” in a way that increases the retail price of liquor). In turn, IP 47 generates state revenues through taxes and fees that are “similar to” a per-bottle price markup, *i.e.* a 71.7% tax per bottle and a \$0.75 additional fee per bottle, and further includes a provision that would allow the 71.7% tax to be recalculated depending on revenue actually generated by the tax. IP 47, § 73. That is, a major effect of IP 47 is to replace revenue sources from retail liquor sales. The phrase “similar to” reasonably identifies the revenue-replacement mechanism IP 47 would put in place.³

Third, petitioner McCann objects that the term “qualified” is “vague and uninformative” as it “does not inform voters as to what is required to be ‘qualified.’” (McCann Petition, 8, citing *McCann / Harmon*). However, in *McCann / Harmon*, this court concluded that the phrase “modifies minimum tax” was vague because it did not signal whether the measure would increase or

³ The caption does not state that IP 47 is, in fact, “revenue neutral,” as Petitioner McCann appears to contend. (McCann Petition, 6-7). In response to comments, the Attorney General explained that she could not make such a determination. (McCann Petition, Ex 4, at 2, explaining that “it is not possible to say with certainty whether there [sic] exactly equivalent taxes will be collected, or how prices might be effected”); *see generally, Terhune v. Myers*, 342 Or 136, 150 (a summary “must summarize a measure and its major effects, not guess about them”).

decrease taxes. 354 Or at 706-07. Here, the term “qualified” does not suffer from a similar defect because it modifies and restricts the term “retail store.” That is, “qualified” reasonably identifies that not just any (or all) “retail stores” could sell liquor if IP 47 passed, but only those that met certain qualifications. Petitioner McCann’s objection and reliance on *McCann / Harmon* is misplaced.

2. Petitioners Romain and Dodge’s arguments

Petitioners Romain and Dodge object that the phrase “imposes taxes similar to current state price markup” is deficient because it “understates the scope of the administrative and legal challenges that face the state in trying to collect the tax.” (Romain / Dodge Petition, 4). Specifically, petitioners Romain and Dodge remonstrate that there may be two obstacles to obtaining state liquor revenues if IP 47 is passed: (1) the “Legislative Revenue Officer” may lack legal authority to adjust tax rates—as Section 73 of IP 47 would allow; and (2) a tax exemption for liquor sales “that occur on the distillery licensee’s licensed premises,” IP 47, § 16(4)(a)(B), discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution—and potentially result in no tax revenues. (Romain / Dodge Petition, 4-5).

However, a ballot title cannot “speculate about the possible effects of a

proposed measure.”” *Pelikan / Tauman v. Myers*, 342 Or 383, 389, 153 P3d 117 (2007). Therefore, petitioners Romain and Dodge’s arguments lack merit.

3. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust contend that the caption improperly states that the measure would create a “tax,” (as opposed to a “fee,” which is the term used in the measure). (Johnson / Gust Petition, 3-6). However, whether IP 47 imposes a “fee” or a “tax” invites a legal determination that is not appropriate in a ballot title proceeding. *See, e.g., Bernard v. Keisling*, 317 Or 591, 596, 858 P2d 1309 (1993) (“whether the charges imposed here are taxes for any particular purpose is an issue of statutory interpretation that normally lies outside the proper scope of a ballot title review proceeding”); *id.* at 595-96 (“[t]his court has held that, if a measure is enacted into law, the court may later be required to decide the meaning and significance of words used in the measure and, therefore, that it generally is inappropriate for the court to do so in a ballot title proceeding”). *Bernard* controls and demonstrates that petitioners Johnson and Gust’s argument is not well taken.

Because the caption reasonably identifies the subject matter of IP 47, this court should certify the caption without modification.

B. The “yes” vote result statement substantially complies with ORS 250.035(2)(b).

The petitioners also challenge whether the “yes” vote result statement contains a “simple and understandable statement * * * that describes the result if the state measure is approved”—as ORS 250.035(2)(b) requires. The “yes” vote result statement states:

Result of “Yes” Vote: “Yes” vote expands retail sales of liquor by qualified retailers; imposes taxes roughly comparable to current state markup; establishes regulatory requirements for sales and distribution.

Like the caption, there is no material defect in the “yes” vote result statement.

1. Petitioner McCann’s arguments

Petitioner McCann contends that that statement is deficient in two respects. First, petitioner McCann argues that the phrase “expands retail sales of liquor by qualified retailers” is “speculative and inaccurate”—that IP 47 “does not, in itself, increase either the number of retailers selling alcohol in Oregon or the volume of retail alcohol sales[.]” (McCann Petition, 9). Second, petitioner McCann contends that “establishes regulatory requirements” is underinclusive because IP 47 adds new statutory requirements and the creation of a regulatory board. (McCann Petition, 9). Neither argument is correct.

First, the phrase “expands retail sales of liquor by qualified retailers” reasonably describes a major effect of IP 47. Under present law, one entity is responsible for the sale of liquor in retail liquor stores, OLCC. ORS 471.725. The OLCC sells liquor through retail sales agents appointed by the commission. ORS 471.750(3). Such agents are prohibited from having financial interests in distilleries or businesses with on-premises sales licenses. ORS 471.710(3). In contrast, IP 47 provides that the OLCC shall issue an “distilled liquor sales endorsement,” which permits retail sales of liquor, to retail licensees that are in compliance with OLCC laws and have completed participation in the “responsible vendor program” established in ORS 471.344, IP 47, § 5, and without the prohibition on financial interests. IP 47, § 61. Thus, IP 47 expands the “retail sales of liquor” through the issuance of licenses to qualified retailers.

Second, the phrase “establishes regulatory requirements for sales and distribution” is not underinclusive. Petitioner McCann agrees that IP 47 creates new “statutory requirements” for liquor sales, but such “regulatory requirements” could encompass statutes and rules. Moreover, although the creation the Oregon Distilled Liquor Board (ODLB) is an effect of IP 47, it is not one of most significant or immediate effects of the measure. *McCann / Harmon*, 354 Or at 707 (the “yes” vote result statement should identify “the

most significant and immediate effects of the ballot initiative for the general public”) (citation and internal quotation marks omitted).

2. Petitioners Romain and Dodge’s arguments

Petitioners Romain and Dodge repeat their argument against the caption, that is, that the phrase “imposes taxes roughly comparable to current state markup” is inaccurate because “[t]he imposed wholesale sales tax is not roughly comparable to the current state markup in any respect” and fails to account for the “costs of administering the sales tax system.” (Romain / Dodge Petition, 6-7). Like the caption, the “yes” vote result statement explains that IP 47 would include taxes on bottled liquor that are “roughly comparable” to existing state markups to show that a major effect of the measure is to include a revenue-replacement mechanism for existing liquor revenues from OLCC stores.⁴

3. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust argue that the “yes” vote result statement suffers two deficiencies, it erroneously suggests an “expansion” of sales by

⁴ The Attorney General has considered similar objections raised against other draft ballot titles (IP 57 and IP 58) with respect to the phrase “roughly comparable to.” The certified ballot title for IP 57 likely resolves that objection as the text of the “yes” vote result statement no longer includes that language. (Att-1). (As previously noted, the certified ballot title for IP 58 has not yet been filed with the Secretary of State).

retailers (when none is permitted under existing law), and it erroneously states that IP 47 would impose a tax. Both arguments are incorrect for the reasons explained above. Again, the phrase “expands retail sales of liquor by qualified retailers” reasonably identifies that IP 47 will expand who may sell liquor at retail. And this court need not and should not resolve whether IP 47 imposes “taxes” (as opposed to “fees”). *Bernard*, 317 Or at 596.

Because the “yes” vote result statement sufficiently explains the major effects of IP 47, this court should certify the statement without modification.

C. The “no” vote result statement substantially complies with ORS 250.035(2)(b).

Petitioners also challenge whether the “no” vote result statement contains a “simple and understandable statement * * * that describes the result if the state measure is rejected”—as ORS 250.035(2)(c) requires. The “no” vote result statement reads:

Result of “No” Vote: “No” vote retains the current system of retail sales of liquor exclusively through Oregon Liquor Control Commission agents, retains state markup for costs and taxes.

Petitioner McCann argues that the phrase “sales of liquor exclusively through [OLCC] agents” is inaccurate because sales “occur at stores operated under agency agreements with OLCC” and are not “OLCC agents.” (McCann

Petition, 9). Petitioners Johnson and Gust contend that the “no” vote result statement fails to identify that OLCC is also the “exclusive distributor of liquor in the state,” and that the phrase “retains state markup for costs and taxes” improperly suggests that the existing state markup is a “tax on liquor.” (Johnson / Gust Petition, 8). None of those arguments is well taken.

First, the “no” vote result statement appropriately describes the existing system of retail sales “through [OLCC] agents.” ORS 471.750(3) provides that OLCC “may appoint agents in the sale of said liquor under such agreement as the commission may negotiate with said agents or their representative.” By statute, an agent of OLCC—an “OLCC agent”—may sell liquor. The “no” vote result statement reasonably and accurately identifies existing law in that regard.

Second, the “no” result statement need not identify that OLCC would remain the exclusive distributor of liquor if IP 47 is rejected. “[A] ‘no’ vote result statement should ‘address[] the substance of current law on the subject matter of the proposed measure’ and ‘summarize[] the current law accurately.’” *McCann / Harmon*, 354 Or at 707 (quoting *Novick / Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004)). “The ‘yes’ and ‘no’ vote result statements should be read together.” *Rasmussen v. Kroger*, 351 Or 358, 365, 266 P3d 87 (2011) (citation omitted). Here, the certified ballot title explains

that a “yes” vote would “require termination” of OLCC’s “retail sales agent agreements” and “establish[] regulatory requirements for sales and distribution,” whereas a “no” vote “retains the current system of retail sales of distilled liquor * * * by [OLCC] retail sales agents.” Considered together, the statement that IP 47 will establish regulatory “requirements” for distribution of liquor reasonably informs the voter that IP 47 would permit the distribution of liquor by private entities—and not just by the state. The result statements need not identify that if IP 47 is rejected that the state would remain the one and only distributor of liquor in the state.

Because the “no” vote result statement sufficiently explains what would occur if IP 47 was rejected by voters, this court should certify the statement without modification.

D. The summary substantially complies with ORS 250.035(2)(d).

Lastly, petitioners challenge whether the summary contains “[a] concise and impartial statement of not more than 125 words summarizing the measure and its major effect”—as required by ORS 250.035(2)(d). ““The function of [the] summary is to provide voters with enough information to understand what will happen if the proposed measure is approved, *i.e.*, to advise voters of the ‘breadth’ of a measure’s impact.”” *Whitsett v. Kroger*, 348 Or 243, 252, 230

P3d 545 (2010) (quoting *Caruthers v. Kroger*, 347 Or 660, 670, 227 P3d 723

(2010)) (brackets added in *Whitsett*). The summary states:

Summary: Under current law, retail sales of liquor by the bottle are made exclusively by retail sale agents of the Oregon Liquor Control Commission (OLCC). Price determined by multiplying cost/case by 1.798, adding operation and other costs. Measure would expand the number of retailers; current agreements with retail sales agents would be terminated, subject to a right to continue to operate. Current beer/wine retailers over 10,000 square feet would qualify as liquor retailers, provided they are in compliance with all liquor laws and have successfully completed the responsible vendor program. Current markup of prices replaced by 71.7% tax, plus per bottle tax; taxes adjusted in 2017; establishes minimum price. Creates Oregon Distilled Liquor Board to encourage industry; OLCC retains regulatory functions. Other provisions.

As explained below, the summary sufficiently identifies the breadth of IP 47.

1. Petitioner McCann’s arguments

In her challenge to the summary, petitioner McCann renews her arguments raised above,⁵ and further contends that the summary fails to inform voters about three things: (1) that only a “very restricted number of stores” with

⁵ As explained above, petitioner McCann’s arguments against the caption and vote result statements are not well taken. For those same reasons, petitioner McCann’s renewed arguments against the summary lack merit. Again, although petitioner McCann suggests that the summary should include *eight* changes of “equal import,” she provides no clarification or explanation as to how all of those changes (or any of them) could be included in the summary, given the word-count limitation.

less than 10,000 feet of retail space would be permitted to sell liquor, which she contends would “have a disparate impact on rural areas”; (2) that the ODLB is a new governmental agency with regulatory and contracting powers that is funded by revenue from the taxes established in IP 47; and (3) that IP 47 “would reduce a source of General Fund revenues.” (McCann Petition, 10). None of those arguments is well taken.

First, the summary need not identify the exact number of stores with less than 10,000 feet of retail space that may sell distilled liquor if IP 47 passes. IP 47 provides that OLCC may approve 50 such smaller stores for liquor sales in 2014, and 5 more stores each year thereafter. IP 47, § 39(2), (3). Identifying the number of smaller retailers permitted to sell liquor is not particularly informative, especially without some basis of comparison (*i.e.* the number of larger retailers that may sell liquor). And the summary cannot speculate about whether the IP 47, if approved, would discriminate against rural areas.

Pelikan / Tauman, 342 Or at 389.

Second, the summary sufficiently describes ODLB. The summary explains that IP 47 “creates [the ODLB] to encourage industry” and that “OLCC retains regulatory functions.” The summary’s description of the ODLB reasonably captures the breadth of ODLB’s role should IP 47 pass. IP 47

provides that ODLB may, among other things, support research on sustainable liquor manufacturing practices, advertise responsible drinking, provide technical assistance to encourage minority and women-owned businesses, recommend smaller retailers for endorsements to sell liquor, and create a state repository of distilled liquors for specified purposes. *See generally* IP 47, §§ 37, 39-40. ODLB’s regulatory or contracting authority is not helpful for identifying any major effect of IP 47.

Third, the summary need not inform that “the Initiative would reduce a source of General Fund revenues.” That information is not proper to include because it is potentially misleading—and may cause a voter to understand that IP 47 may negatively affect state revenues as a whole (which as explained above, cannot be determined). The effect that IP 47 would have on specific treasury funds, *e.g.*, a reduction in the General Fund revenue, the creation of a fund for the ODLB, is not necessary given the overall uncertain effect IP 47 would have on state revenues.

2. Petitioners Romain and Dodge’s arguments

Petitioners Romain and Dodge first argue that the summary is deficient because it fails to identify that the effects of IP 47 include “the imposition of a unique wholesales tax and bottle tax, the expansion of those who can sell

distilled liquor, and the termination of the contracts of those private retailers currently authorized to sell the product.” (Romain / Dodge Petition, 8).

However the summary sufficiently describes each of those three effects, respectively: “[c]urrent markup of prices replaced by 71.7% tax, plus per bottle tax”; “[m]easure would expand the number of retailers”; “current agreements with retail sales agents would be terminated[.]”

Petitioners Romain and Dodge further assert because of the different tax structure IP 47 would create, that the summary must explain that the state “will have to have a huge auditing staff to review all sales transactions wherever they are generated[.]” or that the taxes imposed may be unconstitutional (Romain / Dodge Petition, 8). However, the summary cannot speculate about what changes, if any, IP 47 would have on the state’s tax auditing procedures, or whether some or all of the taxes provided in IP 47 would violate the Commerce Clause. *Pelikan / Tauman*, 342 Or at 389.

Lastly, petitioner Romain and Dodge contend that the summary’s explanation of the current price markup system is “confusing” (*i.e.* difficult to calculate without knowing how much a case of liquor costs) and that the summary should instead “simply say that the current price markup is replaced by two taxes, a wholesale sales tax of 71.7% and a bottle tax of \$0.75/unit.

(Romain / Dodge Petition, 9). However, the summary should provide some explanation of what the “current price markup” *is*—so that voters can understand what is replacing what. The summary provides helpful information to compare the existing markup system with the proposed taxes imposed by IP 47, and should include some explanation of how the markup is determined.

3. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust contend that the summary is deficient because the summary fails to identify that under existing law, OLCC may “fix the prices” of distilled liquor (pursuant to ORS 471.745), and that “they do so “to cover costs and make money for government programs.” (Johnson / Gust Petition, 9). However, the summary explains that under existing law, the price of a bottle of liquor is “determined by multiplying cost/case by 1.798, adding operation and other costs.” In context, the summary makes it apparent that the OLCC makes that price determination. The summary need not include an explanation as to what general purposes the markup serves.

Petitioners Johnson and Gust also argue that the summary should explain that the 71.7% tax rate and \$0.75/bottle tax are “subject to recalculation” and that the bottle tax will drop by \$0.50/bottle at the end of the first biennium.

(Johnson / Gust Petition, 9). But the summary sufficiently explains the

potential for changes in tax rates with the explanation that the taxes provided by IP 47 will be “adjusted in 2017.” The summary need not contain a complete description of future tax rates, especially given that other tax rates provided in the measure remain undetermined and subject to recalculation by the Legislative Revenue Officer as provided in Section 73 of IP 47.

Lastly, petitioners Johnson and Gust argue that the summary should identify that IP 47 would “maintain” current state funding for state and local government programs. (Johnson / Gust Petition, 10). However, as explained above, whether IP 47 is revenue-neutral requires unpermitted speculation. *Pelikan / Tauman*, 342 Or at 389.

The summary sufficiently identifies the major effects and breadth of IP 47 and therefore should be certified without modification.

CONCLUSION

For the above reasons, this court should certify the ballot title for IP 47 to the Secretary of State without modification. In the alternative, this court could

refer the ballot title for IP 47 to the Attorney General for modification.⁶

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General

/s/ Matthew J. Lysne

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Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

Attorneys for Respondent-Respondent
Ellen Rosenblum, Attorney General,
State of Oregon

⁶ As noted above, the Attorney General has recently certified a related ballot title for IP 57, and will file a certified ballot title for IP 58 tomorrow. Those certified ballot titles likely will address and resolve certain of the challenges raised in this proceeding.

BALLOT TITLE NO. 57**Allows qualified retail stores to sell liquor; current price markup replaced by wholesale sales tax**

Result of “Yes” Vote: “Yes” vote expands retail sales of liquor by qualified retailers; current price markup replaced by wholesale sales tax; establishes regulatory requirements for sales and distribution.

Result of “No” Vote: “No” vote retains the current system of retail sales of liquor exclusively through Oregon Liquor Control Commission agents, retains price markup for costs and taxes.

Summary: Under current law, retail sales of liquor are made exclusively by retail sale agents of the Oregon Liquor Control Commission (OLCC). Price determined by multiplying cost/case by 1.798, adding operation and other costs. Measure would expand the number of retailers; current agreements with retail sales agents would be terminated, subject to a right to continue to operate. Current beer/wine retailers over 10,000 square feet would qualify as liquor retailers, provided they are in compliance with all liquor laws and have successfully completed the responsible vendor program. Current markup of prices replaced by 71.7% wholesale sales tax, plus \$0.75/bottle tax; taxes adjusted in 2017; establishes minimum price. Creates Oregon Distilled Liquor Board to encourage industry; OLCC retains regulatory functions. Other provisions.

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503)986-1518

March 4, 2014

The Honorable Ellen Rosenblum, Attorney General
Anna Joyce, Solicitor General
Dept. of Justice, Appellate Division
400 Justice Building
Salem, OR 97310

Re: Paul Romain and Steven Berman v. Ellen Rosenblum, Attorney General, State of Oregon
Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #47. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

../?

LYDIA PIUKOU
Compliance Specialist

enclosures

Prospective Petition for State Measure

SEL 310

rev 1/12; ORS 260.046

To the Secretary of State,

I, the undersigned, request a ballot title for the attached proposed measure be submitted to the people of Oregon for their approval or rejection at the election to be held on _____, 20____

Type of petition _____

Initiative _____

0 Referendum _____

Constitutional _____

0 Constitutional _____

I, the undersigned, request a ballot title for the attached proposed measure be submitted to the people of Oregon for their approval or rejection at the election to be held on _____, 20____

Every petition must designate not more than three persons as chief petitioners, setting forth the name, residence address and title (if officer of sponsoring organization) of each. All chief petitioners for an initiative or referendum petition must sign this form. Please carefully read the instructions for circulators and signers on the back of this form.

Chief Petitioner Information

Name (print) _____

Signature _____

Residence Address, Street/Route _____

804 NW Harmon Blvd.

City _____

Bend

State _____

OR

Zip Code _____

97701

Mailing Address if different, Street/Route _____

8565 SW Salish Ln., Suite 100

City _____

Wilsonville

State _____

OR

Zip Code _____

97070

Email Address and/or Website _____

Day Phone Number _____

Sponsoring Organization if any _____

Name (print) _____

Signature _____

Residence Address, Street/Route _____

2203 NE 17th Ave

City _____

Portland

State _____

OR

Zip Code _____

97212

Mailing Address if different, Street/Route _____

8565 SW Salish Ln., Suite 100

City _____

Wilsonville

State _____

OR

Zip Code _____

97070

Email Address and/or Website _____

Day Phone Number _____

Sponsoring Organization if any _____

Name (print) _____

Signature _____

Residence Address, Street/Route _____

City _____ Zip Code _____

Mailing Address if different, Street/Route _____

City _____

State _____

Zip Code _____

Email Address and/or Website _____

Day Phone Number _____

Sponsoring Organization if any _____

SEL 30J: Statement One or More Petition Circulators Will be Paid

DM 1/17: DRS 250,045, ORS 250,165, ORS 255.166, ORS 255.167

0 Prospective Petition Initial Filing with Filing Officer

I/We hereby declare one or more petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that no petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition based on the number of signatures obtained by the circulator.

0 Completed Petition signatures submitted to filing officer

By signing this document I hereby state that no circulators have been compensated on this petition based on the number of signatures obtained by the circulator.

Identify Petition

OREGON LIQUOR CONTROL MODERNIZATION ACT #

Signed

Date Signed

12/10/2013

Signed

Date Signed

12/11/2013

I, Signed

Date Signed

-7 Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

SEL 301: Statement No Petition Circulators Will be Paid

DM 1/17: DRS 250,045, ORS 250,165, ORS 255.166, ORS 255.167

0 Prospective Petition Initial Filing with Filing Officer

I/We hereby declare no petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that any petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition.

0 Completed Petition Signatures Submitted to Filing Officer

By signing this document, I hereby state that no circulators were compensated for obtaining signatures on the attached petition.

Identify Petition

Signed

Date Signed

Signed

Date Signed

Signed

Date Signed

-7 Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

1 OREGON LIQUOR CONTROL MODERNIZATION ACT #2

2
3 Relating to alcoholic beverages.

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

5
6 FINDINGS AND GOALS

7
8 SECTION 1. The people of the State of Oregon find and declare:

9 (1) The appropriate role for State government is to enforce laws regulatirlg
10 consumption, licensing and commercial sale of alcoholic beverages.

11 (2) The State government's monopoly on the retail and wholesale sale of distilled
12 liquor is inefficient and costly to Oregon taxpayers and Oregon consumers.

13 (3) Privatizing and modernizing the retail and wholesale sale of distilled liquor will:

14 (a) Reduce state government costs.

15 (b) Promote job development through the creation and maintenance of small
16 businesses, including grocery stores, retailers, restaurants .and local manufacturers of
17 distilled liquor.

18 (c) Provide additional funding for public safety services.

19 (d) Provide convenience for consumers.

20 (4) The principal reason for state government's sale of alcoholic beverages has been
21 to protect the morals of the people of the State of Oregon, which is inconsistent with the
22 individual freedoms and responsibilities that the people of the state have granted
23 themselves since the end of Prohibition.

24 SECTION 2. ORS 471.030 is amended to read:

25 471.030. (1) The goals of the Liquor Control Act. *[shall be liberally constn<ed so as]* are
26 to:

27 (a) *[To] Prevent [the recurrence of]* abuses associated with *[saloons or resorts for]* the
28 consumption of alcoholic beverages.

29 (b) *[To eliminate the evils of]* Prevent unlicensed and unlawful manufacture, selling and
30 disposing of *[such]* alcoholic beverages and *[to]* promote *[temperance]* moderation in the use
31 and consumption of alcoholic beverages.

1 (A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14
2 percent alcohol by volume;

3 (B) Malt beverages containing six percent or less alcohol by volume and that contain at
4 least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more
5 than 49 percent of the beverage's overall alcohol content is obtained from flavors and other
6 added nonbeverage ingredients containing alcohol; and

7 (C) Malt beverages containing more than six percent alcohol by volume that derive not
8 more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other
9 added nonbeverage ingredients containing alcohol.

10 (c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily
11 by fermentation of rice, such as sake.

12 (7) "Manufacturer" means every person who produces, brews, ferments, manufactures or
13 blends an alcoholic beverage within this state or who imports or causes to be imported into this
14 state an alcoholic beverage for sale or distribution within the state.

15 (8) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.390.

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

22 (10) "Wine" means any fermented vinous liquor or fruit juice, or other fermented
23 beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of
24 one percent of alcohol by volume and not more than 21 percent of alcohol by volume. "Wine"
25 includes fortified wine. "Wine" does not include cider.

26 SECTION 4. ORS 471.038 is amended to read:

27 471.038. (1) Nonbeverage food products described in subsection (6) of this section may
28 be sold at retail by any holder of a license issued by the Oregon Liquor Control Commission that
29 authorizes the sale of alcoholic *[liquor]* beverages at retail, or in any store *[operated by the*
30 *commission under the provisions of ORS 471.750]* that holds an off-premises sales license and
31 endorsement issued under section 5 of this 2014 Act. Any nonbeverage food product

1 ..containing more than--one"half of one-percent of alcohol-by-volume mmt-be-clearly-labeled to
2 reflect the alcohol content of the product and clearly labeled on the front of the pack- age to
3 indicate that the product may not be sold to persons under 21 years of age.

4 (2) Except as provided by this section, sales of nonbcverage food products described in
5 subsection (6) of this section are subject to all provisions of tlus chapter, including the
6 prohibitions on sales to persons under 21 years of age and the prohlbitons on sales to persons
7 who are visibly intoxicated.

8 (3) Nonbeverage food products described in subsection (6) of this section may be
9 imported, stored and distributed in this state without a license issued by the commission.
10 Nonbeverage food products described in subsection (6) of this section are not subject to the
II privilege taxes imposed by ORS chapter 473.

12 (4) Manufacturers of nonbcverage food products described in subsection (6) of this
13 section are not subject to the provisions of ORS 471.92 to 471.400[, 471.485, 471.490] or
14 471.495 or any other provision of this chapter relating to manufacturers of alcoholic [*liquor*]
15 beverages. A manufacturer of nonbeverage food products described in subsection (6) of this
16 section may sell and deliver the product directly to a licensee authorized under this section to sell
17 the product at retail.

18 (5) The holder of a distillery license issued under ORS 471.230, as amended by section
19 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws 2013, and section 67
20 of this 2014 Act, who is also a manufacturer of nonbeverage food products described in
21 subsection (6) of this section may purchase distilled liquor [*directly*] from other distilleries.

22 (6) The provisions of this section apply only to nonbeverage food products that contain
23 more tban one-half of one percent of ethanol alcohol by volume and not more than the
24 greater of five percent alcohol by weight or 10 percent alcohol by volume[. *whichever is*
25 *greater*).

26 27 PRIVATE SALES OF DISTILLED LIQUOR

28
29 SECTION 5. (1)(a) The Oregon Liquor Control Commission shall issue a distilled
30 liquor self-distribution permit:

(A) To a holder of a distilled liquor license issued under ORS 471.230, as amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws 2013, and section 67 of this 2014 Act.

(B) To a holder of a certificate of approval issued under ORS 471.251.

(b) A holder of a distilled liquor self-distribution permit may sell at wholesale and transport distilled liquor to:

(A) A holder of a retail sales license that holds an endorsement issued under subsection (2) of this section, including to a central warehouse of the retail licensee.

(B) A holder of a wholesale malt beverage and wine license that holds an endorsement issued under subsection (3) of this section.

(C) A holder of a distillery license issued under ORS 471.230, as amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws 2013, and section 67 of this 2014 Act.

(D) A holder of a certificate of approval ORS 471.251.

(E) A holder of a distilled liquor central warehouse permit or certificate of authority issued under section 8 of this 2014 Act.

(c) A holder of a distilled liquor self-distribution permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this chapter and any related laws or rules.

(2)(a) The commission shall issue a distilled liquor sales endorsement to a retail licensee that:

(A) Is in compliance with all laws and rules enforced by the commission.

(B) Has successfully completed the responsible vendor program established under ORS 471.344 as amended by section 10 of this 2014 Act.

(b) Notwithstanding ORS 471.186, as amended by section 3, chapter 32, Oregon Laws 2013, and section 55 of this 2014 Act, the holder of a retail off-premises sales license that holds an endorsement issued under this subsection may:

(A) Purchase distilled liquor from:

(i) A holder of a distilled liquor self-distribution permit.

(ii) A retail licensee that holds an endorsement issued under this subsection.

-----1 - (iii) A holder of a wholesale malt, beer and wine license that holds an endorsement issued under subsection (3) of this section.

2 (iv) A holder of distilled liquor central warehouse permit or a certificate of

3 authority to operate a central warehouse issued under section 8 of this 2014 Act.

4 (B) Receive and store the distilled liquor at the retail licensee's premises, including a

5 central warehouse of or designated by the retail licensee.

6 (C) Pick up and transport distilled liquor:

7 (i) Between a central warehouse of the retail licensee and licensed retail premises of

8 the licensee.

9 (ii) Between the retail licensee's licensed retail premises.

10 (iii) Between the retail licensee's central warehouses.

11 (iv) From the licensed premises of another retail licensee from which the retail

12 licensee has purchased the distilled liquor.

13 (D) Sell distilled liquor at retail.

14 (E) Sell and deliver distilled liquor to a retail licensee that holds an endorsement

15 issued under this subsection.

16 (c) The holder of a retail off-premises sales license:

17 (A) Must sell distilled liquor from licensed retail premises with at least 10,000

18 square feet of space devoted to the retail selling of merchandise, including any space for the

19 retail selling of alcoholic beverages, unless the Oregon Distilled Liquor Board established

20 by section 36 of this 2014 Act authorizes the licensee to sell distilled liquor from licensed

21 premises of under 10,000 square feet.

22 (B) Must take reasonable steps to prevent theft of distilled liquor from the licensee's

23 premises, including but not limited to:

24 (i) Implementing theft prevention measures required by the commission of retail

25 sales agents on the effective date of this 2014 Act.

26 (ii) Securing access to distilled liquor offered for sale to the public with 25 feet of

27 an entrance or exit of the licensee's premises.

28 (iii) Implementing cost-effective theft prevention recommendations of the nonprofit

29 corporation identified in sections 28 and 29 of this 2014 Act.

30

1 –(d)Notwithstamlng ORS 471.175;-aram nded-by-sedion- l;-.:lrnpt 32;-oregon
2 Laws 2013, and section 54 of this 2014 Act, the holder of a full retail on-premises sales
3 license that holds an endorsement issued under this subsection may:

4 (A) Purchase distilled liquor from:

5 (i) A retail licensee that holds an endorsement issued under subsection (2) of this
6 section.

7 (ii) A wholesale malt beverage and wine licensee that holds an endorsement issued
8 under subsection {3} of this section.

9 {ill) A holder of a distilled liquor self-distribution permit.

10 (B) Receive and store the distilled liquor at the retail licensee's premises, including a
11 central warehouse of or designated by the retail licensee.

12 (C) Pick up the distilled liquor and transport the distilled liquor to the retail
13 licensee's premises.

14 (D) Sell distilled liquor at retail.

15 (3)(a) The commission may issue a distilled liquor wholesaler endorsement to the
16 holder of a wholesale malt beverage and wine license.

17 (b) Notwithstanding to ORS 471.235, the bolder of a wholesale malt beverage and
18 wine license that holds an endorsement issued under this subsection may:

19 (A) Purchase distilled liquor from a holder of a distilled liquor self-distribution
20 permit or a wholesale distributor that holds an endorsement issued under this subsection.

21 (B) Receive and store the distilled liquor at the wholesale distributor's licensed
22 premises.

23 (C) Pick up the distilled liquor and transport the distilled liquor to:

24 (i) A retail licensee's premises, including a central warehouse of or designated by the
25 retail licensee.

26 (ii) The wholesale distributor's licensed premises and the licensed premises of a
27 wholesale distributor that holds an endorsement issued under this subsection.

28 (4) The holder of a distilled liquor self-distribution permit or an endorsement issued
29 under this section of this 2014 Act may provide or pay for sample tastings of distilled liquor
30 for the public on premises with a full or limited on-premises sales license or an off-premises
31 sales license.

----- 1 ----- (5) The commission may not charge a fee for an endorsement issued under this section.

2
3 (6) The commission may refuse to issue or may suspend or revoke a permit or
4 endorsement issued under this section of this 2014 Act if the applicant or holder fails to
5 comply with any provision of this section or sections 6, 7 or 8 of this 2014 Act.

6 7 PROTECTION OF COMPETITION

8
9 SECTION 6. (1) Holders of a distilled liquor self-distribution permit, a distilled
10 liquor central warehouse permit, a distilled liquor certificate of authority or distilled liquor
11 wholesaler endorsement may not directly, indirectly or by implication establish the retail
12 price for distilled liquor.

13 (2) A retail licensee that holds an endorsement under section 5 of this 2014 Act may
14 sell distilled liquor below the licensee's purchase price only:

15 (a) If the licensee discontinues the sale of the distilled liquor for a period of one year;
16 or

17 (b) To match a selling price of a competitor.

18 (3) Holders of a distilled liquor self-distribution permit, a distilled liquor central
19 warehouse permit, a distilled liquor certificate of authority or distilled liquor wholesaler
20 endorsement may offer a retail licensee that holds an endorsement issued under section 5 of
21 this 2014 Act and the retail licensee may accept, with respect to distilled liquor, any of the
22 financial assistance prohibited by ORS 471.398 for sales of beer and wine, including but
23 not limited to:

24 (a) Price discounts on distilled liquor.

25 (b) Financing and credit terms on the sale of distilled liquor.

26 (c) Assistance in the form of payments, goods or services that facilitates the retail
27 licensee's marketing and sales of distilled liquor.

28 (4) The Oregon Liquor Control Commission may not prescribe or prohibit terms of
29 an agreement for the sale of distilled liquor between:

30 (a) A holder of a distilled liquor self-distribution permit and a retail licensee.

31 (b) A wholesale distributor and a retail licensee.

-----xS)-A-holder of a distilled liquor self-distribution permit may not sell distilled liquor at different prices to different licensees.

SECTION 7. (1) To encourage free and open competition in the interest of the general welfare and economy of the state and to prevent monopolistic practices and practices that restrain trade and commerce, the following clauses in agreements are against public policy and are void and unenforceable:

(a) Any clause in an agreement between a holder of a distilled liquor self-distribution permit and a wholesale distributor that requires the holder to sell a distilled liquor product exclusively to a wholesale distributor.

(b) Any clause in an agreement between a holder of a distilled liquor self-distribution permit and the holder of a retail licensee that holds an endorsement issued under section 5 of this 2014 Act that has the effect of limiting the brands, flavors or the size or packaging of a container of distilled liquor offered for sale by the permit holder that a retail licensee may purchase from the permit holder.

(2)(a) A wholesale distributor may not require that a holder of a distilled liquor self-distribution permit grant the wholesale distributor the rights of a wholesale distributor granted by ORS 474.005 to 474.095, 474.105 or 474.115 as a condition of the wholesaler distributor's distributing the distilled liquor products of the holder of a distilled liquor self-distribution permit.

(b) ORS 474.005 to 474.095, 474.105 and 474.115 do not apply to an arrangement for the sale of distilled liquor by a holder of a distilled liquor self-distribution permit to a wholesale distributor or to the distribution of distilled liquor by a wholesale distributor on behalf of a holder of a distilled liquor self-distribution permit.

(3) At the request of a holder of a retail off-premises sales license that holds an endorsement issued under section 5 of this 2014 Act, a holder of a distilled liquor self-distribution permit that agrees to sell distilled liquor to the retail licensee must sell the distilled liquor directly to the licensee rather than through a wholesale distributor.

(4) A holder of a distilled liquor self-distribution permit may not obtain a license as a wholesale distributor.

(5) A wholesale distributor may not hold a distilled liquor self-distribution permit.

SECTION 8. (1)(a) A holder of a distilled liquor self-distribution permit that sells distilled liquor to a retail licensee may deliver the distilled liquor only to the retail licensee's licensed premises or central warehouse.

(b) A holder of a distilled liquor self-distribution permit may not deliver malt beverages or wine.

(c) A holder of a distilled liquor self-distribution permit that uses a common carrier to ship or transport distilled liquor shall take reasonable steps to ensure that the distilled liquor is sold and transported only to holders of permits or endorsements issued under this section.

(2)(a) A retail licensee that will receive and store distilled liquor at a central warehouse must designate the warehouse with the Oregon Liquor Control Commission.

(b) A retail licensee may designate more than one central warehouse for the receipt and storage of distilled liquor.

(c) Any central warehouse that a retail licensee designates may be inside or outside this state.

(3) Notwithstanding ORS 471.394, a retail licensee may designate as a central warehouse:

(a) A distribution center owned or operated by the retail licensee.

(b) A warehouse of a wholesale distributor, including a cooperative of which the retail licensee is a member, whose primary business is providing customers with products other than alcoholic beverages.

(c) A warehouse of a wholesale distributor that holds an endorsement issued under section 5 of this 2014 Act.

(4)(a) **If** the central warehouse designated by a retail licensee is located in this state, the commission shall issue a distilled liquor central warehouse permit to the person who owns or operates the central warehouse.

(b) **If** the central warehouse designated by a retail licensee is located outside this state, the commission shall issue a certificate of authority to operate a distilled liquor central warehouse to the person who owns or operates the central warehouse.

1 - (c)-A distilled liquor central warehouse permit and a certificate of authority to
2 operate a central warehouse authorize the holder to:

3 (A) To purchase, receive and store distilled liquor at the distribution center or
4 warehouse that a retail licensee has designated as a central warehouse for the retail
5 licensee.

6 (B) To sell and transport distilled liquor from the distribution center or warehouse
7 to a retail licensee that has designated the distribution center or warehouse as a central
8 warehouse.

9 (d) A holder of distilled liquor central warehouse permit or a certificate of authority
10 to operate a central warehouse consents to the jurisdiction of the commission and the
11 courts of this state for the purpose of enforcing the provisions of this chapter and any
12 related laws or rules.

13 (5) The commission may refuse to issue or may suspend or revoke a permit or
14 certificate issued under this section of this 2014 Act if the applicant or holder fails to
15 comply with any provision of this section or sections 5, 6 or 7 of this 2014 Act.

16 SECTION 9. (1) Notwithstanding ORS 471.404, as amended by section 72 of this
17 2014 Act:

18 (a) The authority to transport distilled liquor includes the authority to transport
19 into or out of the State of Oregon distilled liquor that is distilled, bottled or packaged inside
20 or outside the State of Oregon and inside or outside the United States.

21 (b) The authority to receive and store distilled liquor includes the authority to
22 receive and store within and outside the State of Oregon distilled liquor that is distilled,
23 bottled or packaged inside or outside the State of Oregon and inside or outside the United
24 States.

25 (c) The authority to purchase and sell distilled liquor includes the authority to
26 purchase and sell within and outside the State of Oregon and the United States distilled
27 liquor that is distilled, bottled or packaged inside or outside the State of Oregon and inside
28 or outside the United States.

29 (2) Notwithstanding subsection (1) of this section and section 5 of this 2014 Act, a
30 holder of distilled liquor wholesaler endorsement may not import distilled liquor into this
31 state.

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471.344. (1) The Oregon Liquor Control Commission shall by rule establish a responsible program. The program shall include a list of positive measures that a licensee must take to prevent sales of alcoholic beverages to minors. Any person holding a liquor license that authorizes the person to sell alcoholic beverages at retail may participate in the program.

(3)(a) Each off-premises sales licensee with an endorsement issued under section 5 of this 2014 Act must successfully complete responsible vendor program training no later than six months after initial issuance of the endorsement.

(A) A new license is issued due to a change in location;

(B) The licensee is issued a different form of retail sales license; or

(C) The licensee is issued one or more licenses for additional premises.

[(2)](5) If a licensee *[participates in the]* successfully completes responsible vendor training and takes all measures specified by the program as necessary to prevent sales of alcoholic beverages to minors, the commission may not cancel the license of the licensee, or refuse to issue or renew a license to the licensee, based on sales of alcoholic beverages to minors by the licensee.

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1 RESPONSIBLE SELLING -

2
3 SECTION 12. ORS 471.115 is amended to read:

4 471.115. (1) The Oregon Liquor Control Commission may limit:

5 (a) The quantity of alcoholic *[liquor]* beverages purchased at any one time by any person
6 other than a licensee or permit holder.

7 (b) *[It may limit]* The amount of purchases within any length of time *[so as effectually]* to
8 prevent the resale of *[such liquors]* alcoholic beverages by any person who is not a licensee or
9 permit holder.

10 (2) **If** the commission imposes a limit under subsection (1) of this section, the limits
11 must be the same for all licensees and permit holders.

12
13 RESPONSIBLE SALES

14
15 SECTION 13. ORS 471.446 is amended to read:

16 471.446. (1) *[No retail licensee shall purchase any wine or cider]* A retail licensee may
17 not purchase alcoholic beverages for resale except in sealed containers, the seals of which shall
18 remain unbroken when it is sold for consumption off the premises.

19 (2) The Oregon Liquor Control Commission *[may refuse to sell, or]* may prohibit any
20 retail licensee from selling[,] any brand of alcoholic *[liquor which in its judgment is]* beverages
21 that the commission considers to be deceptively labeled or branded as to content, or that
22 contains injurious or adulterated ingredients.

23
24 INCREASED PENALTIES FOR DISTILLED LIQUOR VIOLATIONS

25
26 SECTION 14. ORS 471.410 is amended to read:

27 471.410. (1) A person may not sell, give or otherwise make available any alcoholic
28 *[liquor]* beverages to any person who is visibly intoxicated.

29 (2) No one other than the person's parent or guardian may sell, give or otherwise make
30 available any alcoholic *[liquor]* beverages to a person under the age of 21 years. A parent or
31 guardian may give or otherwise make alcoholic *[liquor]* beverages available to a person under

1 the age of 21 years only if the person is in a private residence and is accompanied by the parent-
2 or guardian. A person violates this subsection who sells, gives or otherwise makes available
3 alcoholic [*liquor*] beverages to a person with the knowledge that the person to whom the liquor
4 is made available will violate this subsection.

5 (3)(a) A person who exercises control over private real property may not knowingly
6 allow any other person under the age of 21 years who is not a child or minor ward of the person
7 to consume alcoholic [*liquor*] beverages on the property, or allow any other person under the
8 age of 21 years who is not a child or minor ward of the person to remain on the property if the
9 person under the age of 21 years consumes alcoholic [*liquor*] beverages on the property.

10 (b) This subsection:

11 (A) Applies only to a person who is present and in control of the location at the time the
12 consumption occurs;

13 (B) Does not apply to the owner of rental property, or the agent of an owner of rental
14 property, unless the consumption occurs in the individual unit in which the owner or agent
15 resides; and

16 (C) Does not apply to a person who exercises control over a private residence if the liquor
17 consumed by the person under the age of 21 years is supplied only by an accompanying parent or
18 guardian.

19 (4) This section does not apply to sacramental wine given or provided as part of a
20 religious rite or service.

21 (5) Except as provided in subsection [(6)] (7) of this section, a person who violates
22 subsection (1) or (2) of this section commits a Class A misdemeanor.

23 (6)(a) Upon violation of subsection (2) of this section, the court shall impose at least a
24 mandatory minimum sentence as follows:

25 [(a)] (A) Upon a first conviction, a fine of at least \$500.

26 [(b)] (B) Upon a second conviction, a fine of at least \$1,000.

27 [(c)] (C) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than
28 30 days of imprisonment.

29 (b) Notwithstanding paragraph (a) of this subsection, if the person who violates
30 subsection (2) of this section is the holder of an off-premises license, the court shall impose
31 at least a mandatory minimum sentence as follows:

I (A) Upon a first conviction; a fine of at least \$1,000.

2 (B) Upon a second conviction, a fine of at least \$2,000.

3 (C) Upon a third or subsequent conviction, a fine of at least \$3,000 and not less than
4 30 days of imprisonment.

5 ~~[(6)]~~ (7)(a) A person who violates subsection (2) of this section is subject to the
6 provisions of this subsection if the person does not act knowingly or intentionally and:

7 (A) Is licensed *[or appointed]* under this chapter; or

8 (B) Is an employee of a person licensed *[or appointed]* under this chapter and holds a
9 valid service permit or has attended a program approved by the Oregon Liquor Control
10 Commission that provides training to avoid violations of this section.

II (b) For a person described in paragraph (a) of this subsection:

12 (A) A first conviction is a Class A violation.

13 (B) A second conviction is a specific fine violation, and the presumptive fine for the
14 violation is \$860.

15 (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory
16 fine of not less than \$1,000.

17 (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose
18 a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of
19 imprisonment.

20 (c) For a person described in paragraph (a) of this subsection who is the holder of
21 an off-premises license:

22 (A) A first conviction is a Class A violation. Notwithstanding ORS 153.019, the
23 presumptive fine for a violation under this subparagraph is an amount equal to twice the
24 Class A violation presumptive fine established under ORS 153.019.

25 (B) A second conviction is a specific fine violation, and the presumptive fine for the
26 violation is \$1,720.

27 (C) A third conviction is a Class A misdemeanor. The court shall impose a
28 mandatory fine of not less than \$2,000.

29 (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall
30 impose a mandatory fine of not less than \$2,000 and a mandatory sentence of not less than
31 30 days of imprisonment.

1 - ~~[(7)]~~ (8) The court may waive an amount that is at least \$200 but not more than one-third
2 of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours
3 of community service.

4 ~~[(8)]~~ (9) Except as provided in subsection ~~[(7)]~~ (8) of this section, the court may not
5 waive or suspend imposition or execution of the mandatory minimum sentence required by
6 subsection (5), ~~[or]~~ (6) **or** (7) of this section. In addition to the mandatory sentence, the court
7 may require the violator to make restitution for any damages to property where the alcoholic
8 ~~[liquor]~~ **beverages** was illegally consumed or may require participation in volunteer service to a
9 community service agency.

10 ~~[(9)]~~ (10) (a) Except as provided in paragraph (b) of this subsection, a person who
11 violates subsection (3) of this section commits a Class A violation.

12 (b) A second or subsequent violation of subsection (3) of this section is a specific fine
13 violation, and the presumptive fine for the violation is \$1,000.

14 (c) **Notwithstanding paragraphs (a) and (b) of this subsection, if the person who**
15 **violates subsection (3) of this section is the holder of an off-premises license, the**
16 **presumptive fine is as follows:**

17 (a) **Upon a first violation, \$1,000.**

18 (h) **Upon a second violation, \$2,000.**

19 (c) **Upon a third or subsequent violation, \$4,000.**

20 ~~[(10)]~~ (11) Nothing in this section prohibits any licensee under this chapter from allowing
21 a person who is visibly intoxicated from remaining on the licensed premises so long as the
22 person is not sold or served any alcoholic ~~[liquor]~~ **beverages**.

23 **SECTION 15.** ORS 471.559 is amended to read:

24 471.559. (1) If no warning sign is posted:

25 (a) The Oregon Liquor Control Commission shall furnish a warning sign.

26 (b) The retailer shall have five days from the receipt of the warning sign to post it
27 appropriately.

28 (2) If there is a violation of this section or of ORS 471.551, the violator shall be subject
29 to:

30 (a) A written warning from the commission for the first violation accompanied by a copy
31 of the sign.

1 (b) A civil penalty of not to exceed ~~[\$25]~~ \$50 payable to the commission for a second
2 violation.

3 (c) A civil penalty of not to exceed ~~[\$25]~~ \$50 for the third and subsequent violations for
4 each day the sign is not posted.

5 (3) The civil penalty imposed under subsection (2) of this section shall be separate from
6 any other sanction or penalty imposed by the commission and shall not be used in any
7 progressive violation schedule.

8 (4) The penalty provided by this section shall be the sole penalty for violation of this
9 section or ORS 471.551 or the rules adopted under section I, chapter 324, Oregon Laws 1991.

10 (5) Violation of this section or ORS 471.551 or the rules adopted under section 1, chapter
11 324, Oregon Laws 1991, shall not be grounds for refusal to issue a license, cancellation of a
12 license or suspension of a license issued under this chapter.

13 (6) Nothing in this section or ORS 471.551 or the rules adopted under section I, chapter
14 324, Oregon Laws 1991, creates any new cause of action or any private right of any person.

15
16 **STATE REVENUE REPLACEMENT FEE**
17

18 **SECTION 16.** (1) For every container of distilled liquor that a holder of a distilled
19 liquor self-distribution permit transports into or sells in this state, the holder shall pay to
20 the Oregon Liquor Control Commission a fee of 75 cents per container plus 71.7 percent of
21 the price for which the holder sells the distilled liquor.

22 (2) Distilled liquor is subject to imposition of the fee only once.

23 (3) The fee is not due on distilled liquor that is:

24 (A) Given away and consumed on the licensed premises of a holder of a distilled
25 liquor self-distribution permit.

26 (B) Sold to or by a voluntary unincorporated organization of army, air force, coast
27 guard, marine or navy personnel operating a place for the sale of goods pursuant to
28 regulations promulgated by the proper authority of the service.

29 (d) Determined by the commission to be unfit for human consumption or unsalable.

30 (4) Notwithstanding subsection (1) of this section:

31 (a) The fee imposed by this section on does not apply to:

1 (A) The first \$400,000 of gross sales by the holder of a distilled liquor self-
2 distribution permit in Oregon.

3 (B) Sales to the public by the holder of a distillery license issued under ORS 471.230,
4 as amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon
5 Laws 2013, and section 67 of this 2014 Act, that occur on the distillery licensee's licensed
6 premises.

7 (b) If the holder of a distilled liquor self-distribution permit sells distilled liquor out
8 of this state to the holder of an endorsement under section 5 of this 2014 Act or a holder of
9 a certificate of authority issued under section 8 of this 2014 Act, the holder of the distilled
10 liquor self-distribution permit must notify the purchaser whether the sale to the purchaser
11 qualifies for the exemption provided by subparagraph (a)(A) of this section.

12 (c) If a holder of an endorsement under section 5 of this 2014 Act or a holder of a
13 certificate of authority issued under section 8 of this 2014 Act transports distilled liquor
14 into this state and the distilled liquor does not qualify for the exemption provided by
15 subparagraph (a)(A) of this section and the fee imposed by this section has not been paid,
16 the person causing the transportation into this state is responsible for paying the fee.

17 SECTION 16a. Section 16 of this 2014 Act is amended to read:

18 Sec. 16. (1) For every container of distilled liquor that a holder of a distilled liquor self-
19 distribution permit transports into or sells in this state, the holder shall pay to the Oregon Liquor
20 Control Commission a fee of [75] 25 cents per container plus 71.7 percent of the price for which
21 the holder sells the distilled liquor.

22 (2) Distilled liquor is subject to imposition of the fee only once.

23 (3) The fee is not due on distilled liquor that is:

24 (A) Given away and consumed on the licensed premises of a holder of a distilled liquor
25 self-distribution permit.

26 (B) Sold to or by a voluntary unincorporated organization of army, air force, coast guard,
27 marine or navy personnel operating a place for the sale of goods pursuant to regulations
28 promulgated by the proper authority of the service.

29 (d) Determined by the commission to be unfit for human consumption or unsalable.

30 (4) Notwithstanding subsection (1) of this section:

31 (a) The fee imposed by this section on does not apply to:

1 (A) The first \$400,000 of gross sales by the holder of a distilled liquor self-distribution
2 permit in Oregon.

3 (B) Sales to the public by the holder of a distillery license issued under ORS 471.230, as
4 amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws
5 2013, and section 67 of this 2014 Act, that occur on the distillery licensee's licensed premises.

6 (b) If the holder of a distilled liquor self-distribution permit sells distilled liquor out of
7 this state to the holder of an endorsement under section 5 of this 2014 Act or a holder of a
8 certificate of authority issued under section 8 of this 2014 Act, the holder of the distilled liquor
9 self-distribution permit must notify the purchaser whether the sale to the purchaser qualifies for
10 the exemption provided by subparagraph (a)(A) of this section.

11 (c) If a holder of an endorsement under section 5 of this 2014 Act or a holder of a
12 certificate of authority issued under section 8 of this 2014 Act transports distilled liquor into this
13 state and the distilled liquor does not qualify for the exemption provided by subparagraph (a)(A)
14 of this section and the fee imposed by this section has not been paid, the person causing the
15 transportation into this state is responsible for paying the fee.

16 17 RECORDKEEPING AND PAYMENT PROCEDURES

18
19 SECTION 17. (1) (a) A person that owes the fee under section 16 of this 2014 Act
20 shall pay the fee not later than the date the statement required by section 19 of this 2014
21 Act is due. If the person that owes the fee does not make timely payment of the fee, the
22 commission shall add and collect a penalty of 10 percent of the fee owed and interest at the
23 rate of one percent a month or fraction of a month.

24 (b) The commission shall refund a fee paid in error or collected on distilled liquor
25 that is exempted from imposition of the fee by section 16 of this 2014 Act.

26 (2) The commission may waive any penalty or interest assessed under this section if
27 the commission, in its discretion, determines that the person that owes the fee made a good
28 faith attempt to comply with the requirements of this section.

29 (3) Except in the case of fraud, the commission may not assess a penalty or interest
30 on a fee due under section 16 of this 2014 Act if 24 months has elapsed since date on which
31 the statement required under section 17 of this 2014 Act was due.

(4) A person may appeal from a fee imposed under section 16 of this 2014 Act or the imposition of a penalty or interest under this section of this 2014 Act in the manner of a contested case under ORS chapter 183.

SECTION 18. (1) If in the previous calendar year, a person's total liability for a fee under section 16 of this 2014 Act was less than \$1,000, the person may, in lieu of the bond required by ORS 471.155 (1), deposit with the Oregon Liquor Control Commission funds equal to the person's total liability under section 16 of this 2014 Act for the previous calendar year.

(2) If a person's actual liability for a fee under section 16 of this 2014 Act is less than the amount deposited under subsection (1) of this section, the person may request that the commission refund the excess funds or may apply those funds toward the person's liability under section 16 of this 2014 Act for the next calendar year.

(3) If a person's actual liability for a fee under section 16 of this 2014 Act is greater than the amount deposited under subsection (1) of this section, the person shall pay to the commission the additional amount owed in the manner required by section 17 of this 2014 Act.

(4) Unless the commission determines that a person presents an unusual risk for nonpayment of the fee imposed by section 16 of this 2014 Act or nonpayment of a penalty or interest imposed under section 17 of this 2014 Act, the commission shall waive the bond required under ORS 471.155 (1) for the person if the person does not reasonably expect to be liable for the fee imposed by section 16 of this 2014 Act in the current calendar year.

SECTION 19. (1) Not later than the 20th day of a month, a person that owes the fee imposed by section 16 of this 2014 Act shall file with the Oregon Liquor Control Commission a statement of the number of containers and the sales price of distilled liquor transported into or sold in this state during the month 90 days preceding the month in which the report is filed.

(2) Notwithstanding subsection (1) of this section, a person that does not reasonably expect to be liable for the fee imposed by section 16 of this 2014 Act in the current calendar year may file a single annual statement reporting the quantity of distilled liquor produced,

1 purchased or received by the person during the current calendar year. The person shall file
2 the annual statement with the commission on or before January 20 of the following year.

3 (3)(a) **If** a person does not file a statement required by this section or files a false
4 statement, the commission shall estimate the amount of distilled liquor produced,
5 purchased or received by the person and, based on the estimate, assess the fee imposed by
6 section 16 of this 2014 Act.

7 (b) Notwithstanding section 17 (4) of this 2014 Act, a person may not challenge the
8 amount the commission estimates under this subsection.

9 SECTION 20. The fee required to be paid by section 16 of this 2014 Act constitutes
10 a lien upon, and has the effect of an execution duly levied against any and all property of
11 the person, attaching at the time the distilled liquor subject to the fee was produced,
12 purchased or received and remaining until the fee is paid or the distilled liquor is sold in
13 payment of the fee. The lien created by this section is paramount to all private liens or
14 encumbrances.

15 SECTION 21. (1) Whenever a person is delinquent in the payment of the fee
16 imposed under section 16 of this 2014 Act, the Oregon Liquor Control Commission or its
17 duly authorized representative shall seize any property subject to the fee and sell, at public
18 auction, property so seized, or a sufficient portion of the property to pay the fee due,
19 together with any penalties imposed under section 17 for the delinquency and all costs
20 incurred on account of the seizure and sale.

21 (2)(a) Written notice of the intended sale and the time and place of the sale shall be
22 given to the delinquent person and to all persons appearing of record to have an interest in
23 the property at least 10 days before the date set for the sale.

24 (b) In the case of a delinquent person, the notice shall be enclosed in an envelope
25 addressed to the person at the last-known residence or place of business of the person in
26 this state, if any

27 (c) In the case of a person appearing of record to have an interest in the property,
28 the notice shall be enclosed in an envelope addressed to the person at the last-known place
29 of residence of the person, if any.

30 (d) The envelope containing notice under this subsection shall be deposited in the
31 United States mail, postage prepaid.

1 (3) In addition to the mailing of notice required by subsection (2) of this section of
2 this 2014 Act, notice shall be published for at least 10 days before the date set for the sale in
3 a newspaper of general circulation published in the county in which the property seized is
4 to be sold. **If** there is no newspaper of general circulation in the county, the notice shall be
5 posted in three public places in the county for the 10-day period. The notice shall contain a
6 description of the property to be sold, a statement of the amount of the fees, penalties and
7 costs, the name of the manufacturer or importer and the further statement that, unless the
8 fees, penalties and costs are paid on or before the time fixed in the notice for the sale, the
9 property, or so much of the property as may be necessary, will be sold in accordance with
10 law and the notice.

11 (4)(a) At a sale, the property shall be sold by the commission or by its duly
12 authorized agent in accordance with law and the notice. The commission shall deliver to
13 the purchaser a bill of sale for the personal property and a deed for any real property so
14 sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property
15 seized may be left at the place of sale at the risk of the manufacturer or importer. **If** upon
16 the sale, the money received exceeds the amount of fees, penalties and costs due the state
17 from the manufacturer or importer, the excess shall be returned to the manufacturer or
18 importer.

19 (h) Notwithstanding paragraph (a) of this subsection, if a person with an interest in
20 or lien upon the property has, prior to the sale, filed with the commission notice of the
21 interest or lien, the commission shall withhold any the excess pending a determination of
22 the rights of the respective parties to the excess by a court of competent jurisdiction.

23 SECTION 22. (1) The Oregon Liquor Control Commission shall immediately
24 transmit notice of the delinquency under section 21 of this 2014 Act to the Attorney
25 General. The Attorney General shall at once proceed to collect the sums due to the state
26 from the person by filing an action against the necessary parties to effect forfeiture of the
27 bonds of the person, reducing any deficiency to judgment against the person.

28 (2) The remedies of the state provided in this section and sections 20 and 21 of this
29 2014 Act are cumulative and no action taken by the commission or Attorney General
30 constitutes an election on the part of the state or any of its officers to pursue one remedy to
31 the exclusion of any other remedy.

1 **SECTION 23.** In any suit brought to enforce the rights of the state, an assessment
2 made by the Oregon Liquor Control Commission under section 19 of this 2014 Act that is
3 certified by the commission and that shows unpaid fees imposed by section 16 of this 2014
4 Act is prima facie evidence:

5 (1) Of the assessment of the fees and the delinquency in payment of the fees.

6 (2) Of the amount of the fees, interest, penalties and costs due and unpaid to the
7 state.

8 (3) That the person is indebted to this state in the amount of the fees, interest and
9 penalties appearing in the assessment as unpaid.

10 (4) That the law relating to assessment and levy of the fees has been fully complied
11 with by all persons required to perform administrative duties under this chapter.

12 **SECTION 24.** (1) A person paying the fee imposed by section 16 of this 2014 Act
13 shall keep a complete and accurate record of:

14 (a) The dollar amount of sales of distilled liquor.

15 (b) The number and size of containers of distilled liquor imported, produced,
16 purchased or manufactured.

17 (c) The brands of distilled liquor imported, produced, purchased or manufactured.

18 (d) The date of importation, production, purchase or manufacture of distilled
19 liquor.

20 (e) Any other information required by the Oregon Liquor Control Commission by
21 rule.

22 (2) The commission by rule may prescribe the form of records in which a
23 manufacturer keeps information required by this section of this 2014 Act.

24 (3) All records required by this section shall be retained for a period of two years.

25 (4) A person that holds a distilled liquor self-distribution permit or an endorsement
26 issued under section 5 of this 2014 Act shall permit the commission to examine the person's
27 books and records at the request of the commission.

1 ENHANCED RESOURCES FOR PUBLIC SAFETY

2

3 SECTION 25. (1) There is created within the Oregon Liquor Control Commission

4 Account of the General Fund of the State Treasury the Oregon Liquor Control

5 Commission Enhanced Public Safety Subaccount. All moneys in the Oregon Liquor

6 Control Commission Enhanced Public Safety Subaccount are appropriated continuously to

7 the Oregon Liquor Control Commission for enhancement of enforcement of laws

8 governing manufacturing, importing, transportation, sale, purchase, and consumption of

9 distilled liquor.

10 SECTION 26. ORS 471.810, as amended by section 106j, chapter 768, Oregon Laws

11 2013, is amended to read:

12 471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall

13 certify the amount of moneys available for distribution in the Oregon Liquor Control

14 Commission Account and, after withholding such moneys as *[it may deem]* the commission

15 considers necessary to pay its outstanding obligations, shall within 35 days of the month for

16 which a distribution is made direct the State Treasurer to pay *[the amounts due, upon warrants*

17 *drawn by the Oregon Department of Administrative Services, as follows]:*

18 (a) An amount equal to 23 cents per container from the fees paid under section 16

19 of this 2014 Act to the Oregon Liquor Control Commission Enhanced Public Safety

20 Subaccount created by section 25 of this 2014 Act.

21 (b) An amount equal to two cents per container from the fees paid under section 16

22 of this 2014 Act to the Oregon Distilled Liquor Board Fund created by section 42 of this

23 2014 Act.

24 (2) Of the amounts remaining after the payment required by subsection (1) of this

25 section:

26 (a) Fifty-six percent, or the amount remaining after the distribution under subsection *[(4)]*

27 (5) of this section, credited to the General Fund available for general governmental purposes

28 wherein it shall be considered as revenue during the quarter immediately preceding receipt;

29 (b) Twenty percent to the cities of the state in such shares as the population of each city

30 bears to the population of the cities of the state, as determined by Portland State University last

31 preceding such apportionment, under ORS 190.510 to 190.610;

1 (c) Ten percent to counties in such shares as their respective populations bear to the total
2 population of the state, as estimated from time to time by Portland State University; and

3 (d) Fourteen percent to the cities of the state to be distributed as provided in ORS
4 221.770 and this section.

5 ~~[(2)]~~ (3) The commission shall direct the Oregon Department of Administrative Services
6 to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030 and 473.035 to
7 the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid
8 monthly as provided in ORS 430.380.

9 ~~[(3)]~~ (4) If the amount of revenues received from the taxes imposed by ORS 473.030 for
10 the preceding month was reduced as a result of credits claimed under ORS 473.047, the
11 commission shall compute the difference between the amounts paid or transferred as described in
12 subsections ~~[(1)]~~ (2) (b), (c) and (d) and ~~[(2)]~~ (3) of this section and the amounts that would have
13 been paid or transferred under subsections ~~[(1)]~~ (2) (b), (c) and (d) and ~~[(2)]~~ (3) of this section if
14 no credits had been claimed. The commission shall direct the Oregon Department of
15 Administrative Services to pay or transfer amounts equal to the differences computed for
16 subsections ~~[(1)]~~ (2) (b), (c) and (d) and ~~[(2)]~~ (3) of this section from the General Fund to the
17 recipients or accounts described in subsections ~~[(1)]~~ (2) (b), (c) and (d) and ~~[(2)]~~ (3) of this
18 section.

19 ~~[(4)]~~ (5) Notwithstanding subsection ~~[(1)]~~ (2) of this section, no city or county shall
20 receive for any fiscal year an amount less than the amount distributed to the city or county in
21 accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965
22 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in
23 population as shown by its census. If the population declined, the per capita distribution to the
24 city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal
25 year. Any additional funds required to maintain the level of distribution under this subsection
26 shall be paid from funds credited under subsection ~~[(1)](a)]~~ (2)(a) of this section.

27 **SECTION 27.** In addition to and not in lieu of any other appropriation, there is
28 appropriated to the Department of Justice, for the biennium beginning July 1, 2015, out of
29 the Oregon Liquor Control Commission Enhanced Public Safety Subaccount, an amount
30 equal to two cents per container from the fees paid under section 16 of this 2014 Act, for
31 the following purposes:

1 (1) Paying expenses of district attorneys; and

2 (2) Paying the expenses incurred in administering this section.

3 SECTION 28. (1) In addition to and not in lieu of any other appropriation, there is
4 appropriated to the Oregon Liquor Control Commission, for the biennium beginning
5 July 1, 2015, out of the Oregon Liquor Control Commission Enhanced Public Safety
6 Subaccount, an amount equal to two cents per container from the fees paid under section
7 16 of this 2014 Act, for a grant for a period of not less than six years to an Oregon
8 nonprofit corporation that is governed by a board of directors consisting of members who
9 are employed as district attorneys or assistant district attorneys, Oregon law enforcement
10 personnel and private retailer security personnel for the purpose of strengthening
11 cooperation and coordination among law enforcement and private loss prevention experts
12 and to effect strategies for disrupting and preventing organized retail crime.

13 SECTION 29. The Oregon nonprofit corporation that receives the grant under
14 section 28 of this 2014 Act shall devote a portion of the grant to formulating best practices
15 to prevent theft of distilled liquor for holders of retail off-premises sales licenses that hold
16 endorsements issued under this section 5 of this 2014 Act.

17 SECTION 30. (1) In addition to and not in lieu of any other appropriation, there is
18 appropriated to the Office of Emergency Management, for the biennium beginning July 1,
19 2015, out of the Oregon Liquor Control Commission Enhanced Public Safety Subaccount
20 for credit to the Enhanced 9-1-1 Subaccount of the Emergency Communications Account
21 an amount equal to 11 cents per container from the fees paid under section 16 of this 2014
22 Act, for the purposes described in ORS 403.240 (3), (4) and (5).

23 (2) The total amount of appropriations for paying expenses of the Enhanced 9-1-1
24 Subaccount for the biennium beginning July 1, 2015, including the appropriation under
25 subsection (1) of this section, must equal or exceed \$65,731,256.

26 SECTION 31. (1) In addition to and not in lieu of any other appropriation, there is
27 appropriated to the Oregon Liquor Control Commission, for the biennium beginning
28 July 1, 2015, out of the Oregon Liquor Control Commission Enhanced Public Safety
29 Subaccount an amount equal to two cents per container from the fees paid under section 16
30 of this 2014 Act, for the purpose of enhancing enforcement against licensees with a history
31 of serious and persistent problems.

1 SECTION 32. (1) In addition to and not in lieu of any other appropriation, there is
2 appropriated to the Oregon Liquor Control Commission, for the biennium beginning
3 July 1, 2015, out of the Oregon Liquor Control Commission Enhanced Public Safety
4 Subaccount an amount equal to two cents per container from the fees paid under section 16
5 of this 2014 Act, for payment to The Oregon State Sheriffs' Association, or its successor
6 organization, for the purpose of for enhancement of enforcement of laws governing
7 manufacturing, importing, transportation, sale, purchase, and consumption of distilled
8 liquor.

9 SECTION 33. (1) In addition to and not in lieu of any other appropriation, there is
10 appropriated to the Oregon Liquor Control Commission, for the biennium beginning
11 July 1, 2015, out of the Oregon Liquor Control Commission Enhanced Public Safety
12 Subaccount an amount equal to two cents per container from the fees paid under section 16
13 of this 2014 Act, for payment to the Oregon Association Chiefs of Police, or its successor
14 organization, for the purpose of for enhancement of enforcement of laws governing
15 manufacturing, importing, transportation, sale, purchase, and consumption of distilled
16 liquor.

17 SECTION 34. For the biennium beginning July 1, 2015, the commission shall direct
18 the Oregon Department of Administrative Services to transfer from the Oregon Liquor
19 Control Commission Enhanced Public Safety Subaccount an amount equal to two cents per
20 container from the fees paid under section 16 of this 2014 Act to the Mental Health
21 Alcoholism and Drug Services Account in the General Fund to be paid monthly as
22 provided in ORS 430.380.

23
24 OREGON DISTILLED LIQUOR BOARD
25

26 SECTION 35. (1) The people of Oregon find and declare that:

27 (a) The development of world-class industry in the manufacture of distilled liquor is
28 important to Oregon as a whole.

29 (b) **It** is in the public interest to encourage the orderly growth and development of
30 sustainable, labor-intensive, value-added distilled liquor industry.

(2) As used in sections 35 to 42 of this 2014 Act, "distilled liquor" has the meaning given that term in ORS 471.001 as amended by section 3 of this 2014 Act.

SECTION 36. (1) The Oregon Distilled Liquor Board is established as a semi-independent state agency subject to ORS 182.456 to 182.472.

(2) The board shall consist of nine members appointed by the Governor. In making appointments, the Governor shall consider nominations or recommendations made by organizations supporting the distilled liquor industry.

(3) The term of office for a member is three years, but a member serves at the pleasure of the Governor. Before the expiration of a term, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment.

(4) **If** a vacancy occurs on the board, the Governor shall appoint a qualified person to serve the unexpired term.

(5) A member of the board must maintain the following qualifications during the term of office:

(a) Be a bona fide resident of the state or an officer or principal owner of an entity organized or registered to do business in this state.

(b) Have a demonstrated interest in the positive development of the Oregon distilled liquor industry.

(6) The members of the board shall elect a chairperson and vice-chairperson with duties and powers as determined by the board.

(7) Notwithstanding ORS 182.460 and subsection (1) of this section, employees of the Oregon Distilled Liquor Board are not eligible for inclusion within the Public Employees Retirement System.

SECTION 37. (1) The Oregon Distilled Liquor Board shall support:

(a) Economic research to develop sustainable business practices for the manufacture of distilled liquor in Oregon and promote Oregon's distilled liquor industry.

(b) Advertising and marketing for safe and responsible drinking of distilled liquor.

(c) Technical assistance, grants, and marketing incentives to encourage minority and women owned businesses to manufacture, market, or sell distilled liquor products made in Oregon.

(2) The board shall create and maintain a long term strategic plan and use that plan to guide the granting and funding decisions of the board. To the extent practicable, the board shall allocate funds and award grants in a manner that encourages coordinated, cost-effective projects that are integrated to implement the board's strategic statewide objectives for the development in Oregon of a world class distilled liquor industry.

SECTION 38. To carry out sections 35 to 42 of this 2014 Act, the Oregon Distilled Liquor Board may:

(1) Appoint officers and enter into agreements with consultants, agents and advisers, and prescribe their duties;

(2) Appear on the board's own behalf before boards, commissions, departments or other agencies of municipal or county governments, the state government or the federal government;

(3) Procure insurance against any losses in connection with properties of the board in the amounts and from the insurers as the board considers necessary or desirable;

(4) Accept donations, grants, bequests and devises, conditional or otherwise, of money, property, services or other things of value, including the interest or earnings thereon, but excluding corporate stock, that may be received from a government agency or a public or private institution or person, to be held, used or applied for any or all of the purposes specified in sections 35 to 42 of this 2014 Act in accordance with the terms and conditions of the donation, grant, bequest or devise;

(5) Organize, conduct, sponsor, cooperate with and assist the private sector and other state agencies in the conduct of conferences and tours relating to the distilled liquor industry;

(6) Provide and pay for advisory services and technical assistance that the board finds necessary or desirable;

(7) Exercise any other powers necessary for the operation and functioning of the board under sections 35 to 42 of this 2014 Act; and

(8) In accordance with ORS chapter 183, the Oregon Distilled Liquor Board may adopt rules necessary for the administration of sections 35 to 42 of this 2014 Act.

SECTION 39. (1) The Oregon Liquor Control Commission shall authorize a holder of a distillery license or a holder of a retail off-premises sales license that holds an

endorsement issued under section 5 of this 2014 Act to sell distilled liquor on premises with less than 10,000 square feet of space if the Oregon Distilled Liquor Board determines that the sale of distilled liquor on the premises will promote the growth and economic success of Oregon manufacturers.

(2) The board shall by rule establish criteria to guide the board's evaluation of applications to sell distilled liquor on premises under 10,000 square feet.

(3)(a) The board may approve up to 50 premises of under 10,000 square feet of space in 2014.

(b) The board may approve up to five premises of under 10,000 square feet of space in each year after 2014.

SECTION 40. The Oregon Distilled Liquor Board shall establish a state distilled liquor repository by purchasing or receiving donations of distilled liquors made in this state. Distilled liquor collected in the state distilled liquor cellar may be:

(1) Held as standards to compare against other distilled liquors to develop and improve the manufacturing of distilled liquor in Oregon..

(2) Sold to state governmental agencies for service at official governmental entertainment functions.

(3) Sold to the Governor and to the administrative heads of state agencies on official government business to present as gifts when required by protocol or social custom.

(4) Displayed and offered for tasting in connection with promotional campaigns to encourage the purchase of Oregon distilled liquors.

SECTION 41. (1) The report submitted by the Oregon Distilled Liquor Board under ORS 182.472 must include a description of the long term strategic plan created by the board and a description of the progress made in implementing the statewide strategic objectives of the board during the most recent biennium.

(2) Notwithstanding ORS 182.462:

(a) The board shall prepare and submit annual plans and a budget recommended by the board for promotion and for research during the next fiscal year.

(b) The board shall adopt rules specifying the procedures, criteria and timelines for the preparation and approval of the annual plans and budget for promotion and for research.

1 (c) The Director of the Oregon Business Development Department shall review the
2 budget and plans submitted under this section. In reviewing the annual plans and budget,
3 the director shall consider whether the information supplied by the board is factual and
4 consistent with ORS 576.750 to 576.775 and the positive development of the manufacturing
5 of distilled liquor and the growing of agricultural products to be made into distilled liquor
6 in Oregon. The director shall either approve the budget and plans prior to the
7 commencement of the next fiscal year or disapprove and return the budget and plans to the
8 board with conditions necessary for approval prior to the commencement of the next fiscal
9 year. In reviewing the budget and plans, the director may consult with and receive
10 coordinated support from:

11 (A) The State Department of Agriculture;

12 (B) The Oregon Tourism Commission;

13 (C) The Oregon University System;

14 (D) The Department of Community Colleges and Workforce Development; and

15 (E) The Oregon Liquor Control Commission.

16 SECTION 42. (1) There is created within the State Treasury, separate and distinct
17 from the General Fund, General Fund of the State Treasury, the Oregon Distilled Liquor
18 Board Fund. Interest earned by the Oregon Distilled Liquor Board Fund shall be credited
19 to the fund. The moneys in the fund are appropriated continuously to the Oregon Distilled
20 Liquor Board for the purpose of:

21 (a) Promoting job development through the creation and maintenance of small
22 businesses in and affiliated with the craft distilling industry, including local manufacturers
23 of distilled liquor.

24 (b) Carrying out sections 35 to 42 of this 2014 Act.

25 (2) The fund shall consist of all moneys credited to the fund, including moneys from
26 the fees paid under section 16 of this 2014 Act, federal funds collected or received, and fees,
27 moneys or other revenues, including Miscellaneous Receipts, collected or received by the
28 board.

29
30 OLCC REMAINING POWERS
31

I **SECTION 43.** ORS 471.725 is amended to read:

2 471.725. The function, duties and powers of the Oregon Liquor Control Commission
3 include the following:

4 *[(1) To buy, have in its possession, bottle, blend, rectify, transport and sell, for present or*
5 *future delivery, in its own name, alcoholic liquor in the manner set forth in this chapter.]*

6 *[(2) To purchase, acquire, rent, lease or occupy any building, rooms, stores or land and*
7 *acquire, own, lease and sell equipment and fixtures required for its operations.]*

8 *[(3) To lease or sublet to others property which it acquires or owns and which is not*
9 *immediately required for its operations. However, no real property shall be purchased without*
10 *the consent and approval of the Governor.]*

II *[(4) To borrow money, guarantee the payment thereof and of the interest thereon, by the*
12 *transfer or pledge of goods or in any other manner required or permitted by law.]*

13 *[(5)] (1) To issue, sign, indorse and accept checks, promissory notes, bills of exchange*
14 *and other negotiable instruments.*

15 *[(6)] (2) [In the event] If* the United States Government provides any plan or method
16 whereby the taxes upon alcoholic *[liquors]* **beverages** are collected at the source, to enter into
17 any and all contracts and comply with all regulations, even to the extent of partially or wholly
18 abrogating any statutory provisions *[which]* **that** might be in conflict with federal law or
19 regulations, to the end that the commission receives the portion *[thereof]* **of the taxes** allocated
20 to this state, to be distributed as provided by statute.

21 *[(7) To secure and pay for such policies of insurance as may be necessary to adequately*
22 *protect it from loss by fire, theft or other casualty.]*

23 **SECTION 44.** ORS 471.730 is amended to read:

24 471.730. The function, duties and powers of the Oregon Liquor Control Commission
25 include the following:

26 (1) To control the manufacture, possession, sale, purchase, transportation, importation
27 and delivery of alcoholic *[liquor]* **beverages** in accordance with the provisions of this chapter
28 and ORS 474.105 and 474.115.

29 (2) To grant, refuse, suspend or cancel licenses and permits for the sale or manufacture of
30 alcoholic *[liquor]* **beverages**, or other licenses and permits in regard *[thereto, and to permit, in*

1 *its discretion,]* to alcoholic beverages, and to allow, in the discretion of the commission, the
2 transfer of a license of any person.

3 (3) To collect the taxes and duties imposed by statutes relating to alcoholic [*liquors*]
4 beverages, and to issue, and provide for cancellation, stamps and other devices as evidence of
5 payment of such taxes or duties.

6 (4) To investigate and aid in the prosecution of every violation of statutes relating to
7 alcoholic [*liquors*] beverages, to seize alcoholic [*liquor*] beverages manufactured, sold, kept,
8 imported or transported in contravention of this chapter and ORS 474.105 and 474.115, and
9 apply for the confiscation thereof, whenever required by statute, and cooperate in the prosecution
10 of offenders before any court of competent jurisdiction.

11 (5) To adopt [*such regulations as are necessary and feasible*], amend and repeal rules
12 for carrying out the provisions of this chapter and ORS 474.105 and 474.115 [*and to amend or*
13 *repeal such regulations. When such regulations are adopted they shall*] that are necessary and
14 feasible. Rules adopted under this subsection have the full force and effect of law.

15 (6) To exercise all powers incidental, convenient or necessary to enable it to administer
16 or carry out any of the provisions of this chapter and ORS 474.105 and 474.115.

17 (7) To control, regulate and prohibit any advertising by manufacturers, wholesalers or
18 retailers of alcoholic [*liquor*] beverages by the medium of newspapers, letters, billboards, radio
19 or otherwise.

20 (8) To [*sell,*] license, regulate and control the use of alcohol for scientific,
21 pharmaceutical, manufacturing, mechanical, industrial and other purposes, and to provide by
22 regulation for the sale thereof for such uses.

23 24 LICENSING MULTI-YEAR / FEES

25
26 SECTION 45. ORS 471.294 is amended to read:

27 471.294. (1) Except as otherwise provided in this section, all licenses under this chapter
28 and renewals [*thereof*] of a license shall be issued for a period of one year or two years, at the
29 election of the applicant or licensee, which shall expire at 12 midnight on March 31, June 30,
30 September 30 or December 31 of each year.

31 (2) Notwithstanding subsection (1) of this section LJ:

1 (a) A license issued for the first time to an applicant may be issued for less than a year.
2 *[The fee for a license issued for less than a year under this subsection is the annual license fee*
3 *prescribed by ORS 471.311.]*

4 (b) **For the first three years that a licensee holds a license issued on or after the**
5 **effective date of this 2014 Act, the license shall be issued for a period of one year**

6 (3) The term of a temporary letter of authority or license issued under ORS 471.302 or
7 any temporary sales license is the period fixed by the Oregon Liquor Control Commission when
8 the letter or license is issued.

9 (4) **The fee for a license issued for less than a year under this subsection is the**
10 **annual license fee prescribed by ORS 471.311 as amended by section 46 of this 2014 Act.**

11 **SECTION 46.** ORS 471.311 is amended to read:

12 471.311. (1) Any person desiring a license or renewal of a license under this chapter shall
13 make application to the Oregon Liquor Control Commission upon forms to be furnished by the
14 commission showing the name and address of the applicant, location of the place of business that
15 is to be operated under the license, and such other pertinent information as the commission may
16 require. No license shall be granted or renewed until the applicant has complied with the
17 provisions of this chapter and the rules of the commission.

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

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

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

(5) The license fee is nonrefundable and shall be paid by each applicant upon the granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual, **biennial** or daily license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Minimum Annual/Biennial Fee	Bond
Brewery, including Certificate of Approval	\$500/\$1,000	\$1,000
Winery	\$250/\$250	\$1,000
Distillery	\$100/\$200	[None] \$1,000
Wholesale Malt Beverage and Wine	\$275/\$550	\$1,000
Warehouse	\$100/\$200	\$1,000
Special events winery license	\$10 per day	
Brewery-Public House, including Certificate of Approval	\$250/\$500	\$1,000
Limited On-Premises Sales	\$200/\$400	None
Off-Premises Sales	\$100/\$200	None
Temporary Sales	\$50 per day	
Grower sales privilege license	\$250/\$500	\$1,000
Special events grower sales privilege license	\$10 per day	

1 Special events
2 brewery-public house
3 license \$10 per day
4 Special events
5 distillery
6 license \$10 per day

8 (6) The fee for a certificate of approval or special certificate of approval granted under
9 ORS 471.244 is nonrefundable and must be paid by each applicant upon the granting or
10 committing of a certificate of approval or special certificate of approval. No bond is required for
11 the granting of a certificate of approval or special certificate of approval. Certificates of approval
12 are valid for a period commencing on the date of issuance and ending on December 31 of the
13 fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is
14 \$175. Special certificates of approval are valid for a period of 30 days. The fee for a special
15 certificate of approval is \$10.

16 (7) Except as provided in subsection (8) of this section, the annual license fee for a full
17 on-premises sales license is \$400 and the biennial fee is \$800. No bond is required for any full
18 on-premises sales license.

19 (8) The annual license fee for a full on-premises sales license held by a nonprofit private
20 club as described in ORS 471.175 [(8)] (7), or held by a nonprofit or charitable organization that
21 is registered with the state, is \$200 and the biennial fee is \$400.

22 (9) The annual fee for a wine self-distribution permit or distilled liquor self-distribution
23 permit is \$100, the biennial fee is \$200 and the minimum bond is \$1,000.

24 25 OLCC TRANSITION

26
27 **SECTION 47.** (1)(a) By January 15, 2015, the Oregon Liquor Control Commission
28 shall give notice of termination of all retail sales agent agreements, effective April 15, 2015.

29 (b) Notwithstanding termination of a retail sales agreement under subsection (1) of
30 this section, a retail sales agent may continue to take delivery of alcoholic beverages from
31 the commission through March 31, 2015.

(2)(a) A person whose retail sales agent agreement is terminated under subsection (1) of this section may apply for an off-premises retail sales license with an endorsement issued under section 5 of this 2014 Act.

(b) A person who applies for a license under paragraph (a) of this subsection must submit the application to the commission not later than 21 days after the person's receipt of the notice required by subsection (1) of this section.

(3) Unless the agent was in default under the retail sales agent agreement at the time of the agent's receipt of the notice of termination under subsection (1) of this section or the commission finds grounds to refuse licensing under ORS 471.313 (2), (3) or (4), the commission shall, within 21 days of the commission's receipt of the application under subsection (2) of this section, issue the off-premises retail sales license with an endorsement under section 5 of this 2014 Act.

((4) Notwithstanding the termination of a retail sales agent agreement under subsection (1) of this section:

(a) The retail sales agent agreement of a retail sales agent that obtains a retail license under subsection (3) of this section terminates April 1, 2015.

(b) A retail sales agent that obtains a retail license under subsection (3) of this section may sell distilled liquor that is provided by the commission pursuant to the retail sales agent agreement on or before March 31, 2014, under the terms and conditions of the retail sales agent agreement until the supply of distilled liquor is exhausted.

(5) ORS 471.166 does not apply to a license application under this section.

SECTION 48. (1) Notwithstanding section 5 of this 2014 Act, a person who obtains an off-premises retail sales license under section 47 of this 2014 Act may operate a licensed premises that has less than 10,000 square feet of space devoted to the retail selling of merchandise, including any space for the retail selling of alcoholic beverages; and

(2) The dollar amount of sales of alcoholic beverages on or from the licensed premises does not need to be a percent of the sales of food on or from the licensed premises.

SECTION 49. An off-premises retail sales license obtained under section 47 of this 2014 Act may be:

(1) Sold to any person who qualifies for an off-premises retail sales license.

(2) Used at any location that qualifies for an off-premises retail sales license.

I **SECTION 50.** (1) On April 1, 2015, the Oregon Department of Administrative
2 Services shall take charge of all real properties owned or leased by the Oregon Liquor
3 Control Commission and being used by the commission to store or sell alcoholic beverages.
4 The department shall assume responsibility for the payment of all mortgages, rents and
5 other expenses associated with the real properties.

6 (2) Properties that are transferred to the department under section (1) of this
7 section are surplus real property as defined in ORS 270.005 and shall be disposed of as
8 provided in ORS 270.100 to 270.110.

9 (3) Notwithstanding subsection (2) of this section, ORS 184.634, 270.005 to 270.015,
10 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551, proceeds from the disposition
11 of properties under this section shall first be applied to offset the costs of the commission to
12 implement this 2014 Act.

13 (4) The commission may, in its discretion and to the extent there are funds
14 remaining after the payments required by subsection (3) of this section:

15 (a) Compensate a retail sales agent for termination of a retail sales agent agreement
16 under section 47 of this 2014 Act.

17 (b) Provide severance payments to employees of the commission whose jobs are
18 terminating as a result of this 2014 Act.

19 (5) When sums owed to retail sales agents by virtue of the termination of retail sales
20 agent agreements under section 47 of this 2014 Act are satisfied and payments under
21 subsections (3) and (4) of this section have been completed, any remaining proceeds are
22 subject to ORS 270.150.

23 **SECTION 51.** (1) **If** on April 1, 2015, the Oregon Liquor Control Commission
24 remains in possession of distilled liquor, the commission shall, at the cost of the person
25 from whom the commission obtained the distilled liquor, return the distilled liquor to or
26 ship the distilled liquor at the direction of the person from whom the commission obtained
27 the distilled liquor.

28 (2) **If**, on April 16, 2015, alcoholic beverages remain in the possession of a retail sales
29 agent whose retail sales agent agreement terminated on or before April 15, 2015, and the
30 retail sales agent has not obtained a retail license under section 47 of this 2014 Act, the
31 commission shall retrieve the alcoholic beverages and make the alcoholic beverages

1 available for purchase by the holder of a retail licensee with an endorsement issued under
2 section 5 of this 2014 Act or a retail license issued under section 47 of this 2014 Act.

3
4 **CONFORMING AND TECHNICAL AMENDMENTS**

5
6 **SECTION 52.** ORS 471.346 is amended to read:

7 471.346. (1) The Oregon Liquor Control Commission shall by rule develop uniform
8 standards for minor decoy operations used to investigate licensees *[and agents operating stores*
9 *on behalf of the commission under ORS 471.750]* for violations of the laws of this state
10 prohibiting sales of alcoholic beverages to minors. Uniform standards established by the
11 commission under this section apply to all investigations conducted by the commission that use
12 minor decoys. The commission shall encourage all law enforcement agencies of this state to use
13 the uniform standards established under this section for minor decoy operations conducted by the
14 law enforcement agencies.

15 (2) To the greatest extent possible, the uniform standards established by the commission
16 under this section:

17 (a) Shall be the same for minor decoy operations conducted by the commission and for
18 minor decoy operations conducted by law enforcement agencies of this state; and

19 (b) Shall provide for coordination between the commission and law enforcement agencies
20 of this state in conducting minor decoy operations.

21 (3) The uniform standards established by the commission under this section shall provide
22 that minor decoy operations must be conducted on either a random or a targeted basis in cities
23 with populations of 20,000 or more. Random minor decoy operations shall cover a range of retail
24 outlets. Targeted minor decoy operations may be conducted for a single licensee *[or agent]*, but
25 may be used only if there is a documented compliance problem with the specific licensee *[or*
26 *agent]* that is the target of the operation. For the purpose of implementing standards for random
27 minor decoy operations under this subsection, the commission shall by rule adopt a methodology
28 that produces, to the greatest extent possible, an equal chance that any licensee *[or agent]* will be
29 subject to a minor decoy operation.

30 (4) Except as provided in subsection (5) of this section, the failure of the commission or
31 of a law enforcement agency to follow uniform standards established by the commission under

1 this section is not grounds for challenging any complaint, citation or conviction for violation of
2 the laws prohibiting the sale of alcoholic beverages to minors.

3 (5) In determining whether to impose sanctions based on multiple violations of the laws
4 of this state prohibiting sales of alcoholic beverages to minors, the commission may not consider
5 any complaint filed against a licensee for selling alcoholic beverages to a minor, citation issued
6 to a licensee for selling alcoholic beverages to a minor or conviction of a licensee for selling
7 alcoholic beverages to a minor if the complaint, citation or conviction arose out of a minor decoy
8 operation that was not conducted pursuant to the uniform standards established by the
9 commission under this section.

10 (6) Notwithstanding any other proVIsiOn of this chapter, the commIsswn may not
11 consider any sale of alcoholic beverages to a minor that results from a minor decoy operation
12 that is not conducted in compliance with the standards established under this section for the
13 purpose of imposing any civil penalty against a licensee, making a decision on the renewal,
14 suspension or cancellation of a license issued under this chapter or otherwise sanctioning a
15 licensee for the sale of alcoholic beverages to a minor.

16 (7) The commission shall give notice of the uniform standards established under this
17 section to all law enforcement agencies of this state that conduct minor decoy operations.

18 **SECTION 53.** ORS 471.155 is amended to read:

19 471.155. (1) The Oregon Liquor Control Commission shall provide for the licensing of
20 persons and cities within the state to manufacture, distribute, take orders for and sell [*spirits,*
21 *wines, beer and other*] alcoholic [*liquors*] beverages. Except as provided in subsection (2) of this
22 section, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or
23 brewery- public house license or the holder of a wine self-distribution permit or distilled liquor
24 self-distribution permit shall give, and at all times maintain on file with the commission, a
25 bond with a corporate surety authorized to transact business in this state. The bond shall be in
26 form and amount acceptable to the commission, shall be payable to the commission and
27 conditioned that the licensee or permittee will pay any fine imposed for any violation of any
28 provision of the Liquor Control Act and that the licensee or permittee will pay all license fees,
29 privilege taxes, fees imposed by section 16 of this 2014 Act, taxes imposed under ORS 473.045
30 and other taxes on alcoholic [*liquors*] beverages, together with penalties and interest thereon,
31 levied or assessed against the licensee or permittee under statutes relating to the importation,

1 manufacture, distribution, sale or taxation of alcoholic *[liquors]* **beverages** in the State of
2 Oregon.

3 (2) Under such conditions as the commission may prescribe, the holder of a brewery,
4 winery, wholesale, warehouse, grower sales privilege or brewery-public house license or the
5 holder of a wine self-distribution permit **or distilled liquor self-distribution permit** may
6 deposit, in lieu of the bond required by subsection (1) of this section, the equivalent value in
7 cash, bank letters of credit recognized by the State Treasurer or negotiable securities of a
8 character approved by the State Treasurer. The deposit is to be made in a bank or trust company
9 for the benefit of the commission. Interest on deposited funds or securities shall accrue to the
10 depositor.

11 **SECTION 54.** ORS 471.175, as amended by section 1, chapter 32, Oregon Laws 2013, is
12 amended to read:

13 471.175. (1) The holder of a full on-premises sales license may sell **alcoholic beverages**
14 by the drink at retail [*wine, malt beverages, cider and distilled liquor*]. Except as provided in this
15 section, all alcoholic beverages sold under a full on-premises sales license must be consumed on
16 the licensed premises.

17 (2) A full on-premises sales license may be issued only to:

18 (a) A nonprofit private club, as described in subsection *[(8)]* (7) of this section.

19 (b) A public passenger carrier as provided in ORS 471.182.

20 (c) A commercial establishment, as defined in ORS 471.001 (2).

21 (d) A public location that does not qualify for licensing under paragraphs 8 (a) to (c) of
22 this subsection if:

23 (A) Food is cooked and served at the location;

24 (B) The predominant business activity at the location is other than the preparation or
25 serving of food or the serving of alcohol; and

26 (C) The location meets any minimum food service requirements established by Oregon
27 Liquor Control Commission rule.

28 (e) A caterer, subject to the requirements of ORS 471.184.

29 (3) The holder of a full on-premises sales license shall allow a patron to remove a
30 partially consumed bottle of wine from the licensed premises if the wine is served in conjunction
31 with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

1 *[(4) The holder of a full on-premises sales license is entitled to purchase any distilled*
2 *liquor from an agent of the commission appointed pursuant to ORS 471.750 at a discount of not*
3 *more than five percent off the regular listed price fixed by the commission, together with all*
4 *taxes, in a manner prescribed by commission rule. For purposes of compensation by the*
5 *commission, the appointed agent shall be credited with such sales at full retail cost. The com-*
6 *mission may not require the licensee to purchase more than one container of distilled liquor at a*
7 *time if the distilled liquor:]*

8 *[(a) Except as provided in subsection (9) of this section, has a retail sales price of \$30 or*
9 *more per container;]*

10 *[(b) Is available through a distributor in the United States that does not require the*
11 *commission to acquire more than one case of the distilled liquor in a single transaction;]*

12 *[(c) Is not regularly stocked by the commission; and]*

13 *[(d) Is ordered in a 750 milliliter container size if available in that size.]*

14 *[(5) The holder of a full on-premises sales license may purchase distilled liquor only from*
15 *a retail sales agent of the commission or from another person licensed under this section who*
16 *has purchased the distilled liquor from a retail sales agent of the commission.]*

17 *[(6)] (4) The holder of a full on-premises sales license may sell factory- sealed containers*
18 *of wine to a person who organizes a private gathering on the licensee's premises if the wine was*
19 *acquired as part of a larger purchase of wine by the licensee for the purpose of the gathering and*
20 *only part of the larger purchase was consumed at the gathering. Wine sold under this sub- section*
21 *may be sold only for an amount adequate to compensate the licensee for the amounts paid by the*
22 *licensee for the wine.*

23 *[(7)] (5) The holder of a full on-premises sales license may sell for consumption off the*
24 *licensed premises malt beverages, wines and cider in securely covered containers provided by*
25 *the consumer and having capacities of not more than two gallons each.*

26 *[(8)] (6) A nonprofit private club, including but not limited to a fraternal or veterans*
27 *organization, may qualify for a full on-premises sales license under this section only if the club*
28 *meets any minimum membership, nonprofit status and food service requirements established by*
29 *commission rule.*

30 *[(9) The commission may annually adjust the price threshold established in subsection*
31 *(4)(a) of this section by a percentage equal to the percentage change in the Portland-Salem, OR-*

1 *WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of*
2 *Labor Statistics of the United States Department of Labor. However, the commission may not*
3 *adjust the price threshold to be less than \$30.]*

4 **SECTION 55.** ORS 471.186, as amended by section 3, chapter 32, Oregon Laws 2013, is
5 amended to read:

6 471.186. (1) The holder of an off-premises sales license may sell factory-sealed
7 containers of wine, malt beverages and cider. Containers of malt beverages sold under the
8 license may not hold more than two and one-quarter gallons.

9 (2) The holder of an off-premises sales license may sell for consumption off the licensed
10 premises malt beverages, wines and cider in securely covered containers provided by the
11 consumer and having capacities of not more than two gallons each.

12 (3) The holder of an off-premises sales license may provide sample tasting of alcoholic
13 beverages on the licensed premises *[if the licensee makes written application to the Oregon*
14 *Liquor Control Commission and receives approval from the commission to conduct tastings on*
15 *the premises]*. Tastings must be limited to the alcoholic beverages that may be sold under the
16 privileges of the license.

17 (4) An off-premises sales license may not be issued for use at a premises that is mobile.

18 (5) Except as provided in ORS **471.230, as amended by section 1, chapter 20, Oregon**
19 **Laws 2012, section 1, chapter 253, Oregon Laws 2013, and section 67 of this 2014 Act, and**
20 **in ORS 471.402 and section 5 of this 2014 Act,** a manufacturer or wholesaler may not provide
21 or pay for sample tastings of alcoholic beverages for the public on premises licensed under an
22 off-premises sales license.

23 (6) The holder of an off-premises sales license may deliver wine or cider that is sold
24 under the privileges of the license to retail customers in this state without a direct shipper permit
25 issued under ORS 471.282. Any deliveries by the holder of an off-premises sales license are
26 subject to any rules adopted by the commission relating to deliveries made under this subsection.
27 Deliveries under this subsection:

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

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

I (c) Must be made in containers that are conspicuously labeled with the words:
2 "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER
3 REQUIRED FOR DELIVERY."

4 (7) The holder of an off-premises sales license that makes deliveries of wine or cider
5 under subsection (6) of this section must take all actions necessary to ensure that a carrier used
6 by the licensee does not deliver any wine or cider unless the carrier:

7 (a) Obtains the signature of the recipient of the wine or cider upon delivery;

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

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

II (8) Any person who knowingly or negligently delivers wine or cider under the provisions
12 of this section to a person under 21 years of age, or who knowingly or negligently delivers wine
13 or cider under the provisions of this section to a visibly intoxicated person, violates ORS
14 471.410.

15 (9) If a court determines that deliveries of wine or cider under subsection (6) of this
16 section cannot be restricted to holders of off-premises sales licenses, and the decision is a final
17 judgment that is no longer subject to appeal, the holder of an off-premises sales license may not
18 make deliveries of wine or cider under the provisions of subsection (6) of this section after entry
19 of the final judgment.

20 **SECTION 56.** ORS 471.200, as amended by section 4, chapter 32, and section 3, chapter
21 537, Oregon Laws 2013, is amended to read:

22 471.200. (I) A brewery-public house license allows the licensee:

23 (a) To manufacture on the licensed premises, store, transport, sell to wholesale malt
24 beverage and wine licensees of the Oregon Liquor Control Commission and export malt
25 beverages;

26 (b) To sell malt beverages manufactured on or off the licensed premises at retail for
27 consumption on or off the premises;

28 (c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer
29 for consumption off the premises;

30 (d) To sell on the licensed premises at retail malt beverages manufactured on or off the
31 licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption

1 off the premises, delivery of which may be made in a securely covered container supplied by the
2 consumer;

3 (e) To sell wine and cider at retail for consumption on or off the premises;

4 (f) To sell for consumption off the premises wines and cider in securely covered
5 containers provided by the consumer and having capacities of not more than two gallons each.

6 (g) To conduct the activities, except manufacturing, described in paragraphs (a) to (f) of
7 this subsection at one location other than the premises where the manufacturing occurs; and

8 (h) To obtain a special events brewery-public house license entitling the holder to
9 conduct the activities allowed under paragraphs (h) to (f) of this subsection at a designated
10 location other than the location set forth in the brewery-public house license for a period not
II exceeding five days.

12 (2) In addition to the privileges specified in subsection (I) of this section, in any calendar
13 year a brewery-public house licensee may sell at wholesale to licensees of the commission malt
14 beverages produced by the brewery-public house licensee if the brewery-public house licensee
15 produced 5,000 barrels or less of malt beverages in the immediately preceding calendar year.

16 (3) A brewery-public house licensee, or any person having an interest in the licensee, is a
17 retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section
18 and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial
19 or otherwise, in, upon or to the premises, equipment, business or merchandise of any
20 manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any
21 person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398
22 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any
23 right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises,
24 equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

25 (4) A brewery-public house licensee, or any person having an interest in the licensee, is a
26 retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section
27 and ORS 471.400, may not accept directly or indirectly any financial assistance described in
28 ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-
29 public house licensee, or any person having an interest in the licensee, is also a manufacturer for
30 the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS
31 471.400, may not provide directly or indirectly any financial assistance described in ORS

1 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial
2 assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail
3 businesses licensed to the same person under the provisions of this section.

4 (5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or
5 any person having an interest in the licensee, may also hold a winery license authorized by ORS
6 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may
7 also hold a warehouse license authorized by ORS 471.242.

8 (6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is
9 eligible for limited on-premises sales licenses and temporary sales licenses.

10 (7)(a) Notwithstanding subsection (3) of this section, and except as provided in this
11 subsection, a brewery-public house licensee, or any person having an interest in the licensee,
12 may also hold a full on-premises sales license. If a person holds both a brewery-public house
13 license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the
14 licensee of both distilled liquor and malt beverages manufactured under the brewery-public
15 house license.

16 (b) The commission may not issue a full on-premises sales license to a brewery-public
17 house licensee under the provisions of this subsection if the brewery-public house licensee, or
18 any person having an interest in the licensee or exercising control over the licensee, is a brewery
19 that brews more than 200,000 barrels of malt beverages annually or a winery that produces more
20 than 200,000 gallons of wine annually.

21 (8) Notwithstanding any other provision of this chapter, a brewery-public house licensee,
22 or any person having an interest in the licensee, may also hold a distillery license. No provision
23 of this chapter prevents a brewery-public house licensee that also holds a distillery license from
24 *[being appointed by the commission]* **holding a distilled liquor self-distribution permit or**
25 **endorsement issued under section 5 of this 2014 Act** *[as the distillery's retail outlet agent]* for
26 the purpose of selling distilled liquors *[under ORS 471.230]*.

27 (9) Notwithstanding subsection (3) of this section, the commission by rule may authorize
28 a brewery-public house licensee to coproduce special events with other manufacturers.

29 (10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee
30 may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the
31 interest does not result in exercise of control over, or participation in the management of, the

1 manufacturer's or wholesaler's business or business decisions and does not result in exclusion of
2 any competitor's brand of alcoholic *[liquor]* **beverages**.

3 (b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any
4 officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may
5 hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the
6 interest does not result in exercise of control over, or participation in the management of, the
7 licensee's business or business decisions and does not result in exclusion of any competitor's
8 brand of alcoholic *[liquor]* **beverages**.

9 (11) For purposes of ORS chapter 473, a brewery-public house licensee shall be
10 considered to be a manufacturer.

11 **SECTION 57.** ORS 471.039 is amended to read:

12 471.039. (1) Notwithstanding any provision of this chapter, the Oregon Liquor Control
13 Commission may not require the owners, operators and employees of a cruise ship to have a
14 license or permit issued under the provisions of this chapter for the purpose of possessing,
15 transporting, storing, selling or serving alcoholic beverages that are described in subsection *[(3)]*
16 **(2)** of this section.

17 *[(2) The provisions of ORS 471.740 do not apply to alcoholic beverages that are*
18 *described in subsection (3) of this section.]*

19 *[(3)]* **(2)** The provisions of this section apply only to alcoholic beverages that are served
20 aboard a cruise ship and that are served solely for the purpose of onboard consumption by a
21 cruise ship's passengers, guests, officers and employees.

22 *[(4)]* **(3)** For the purposes of this section, "cruise ship" means a marine vessel used
23 primarily for nonfishing purposes that is licensed to carry at least 500 passengers, provides
24 overnight accommodations for those passengers and operates on the rivers or waterways within
25 the boundaries of the State of Oregon, including docking and dry docking, fewer than 45 days
26 during a calendar year.

27 **SECTION 58.** ORS 471.184 is amended to read:

28 471.184. (1) The holder of a full or limited on-premises sales license may cater a
29 temporary event at a location other than the licensed premises if the event is not open to the
30 general public. Catering of an event under this subsection must be pursuant to a contract with a
31 client. The contract must provide that the licensee will furnish food and beverage services for no

1 more than 100 patrons. The licensee must serve food as required by rules of the commission. The
2 licensee may cater events under this subsection without giving advance notice to the Oregon
3 Liquor Control Commission if, before the event occurs, the commission gives written approval
4 to the licensee authorizing catering pursuant to this subsection. Events catered under the
5 provisions of this subsection must meet all requirements for enclosure of premises that may be
6 imposed by the commission for the purposes of this section. Notwithstanding ORS 471.175 (3)
7 and [(7)] (5) and 471.178 (2) to (4), the licensee may not permit patrons of the event to remove
8 any alcoholic beverages from the premises of the event.

9 (2) In addition to catered events under subsection (I) of this section, the commission may
10 by rule allow the exercise of the privileges of a full or limited on-premises sales license at
11 temporary events held at locations other than the licensed premises. The commission may:

12 (a) Require notice to the commission before the exercise of license privileges at
13 temporary events under this subsection;

14 (b) Require that written approval by the commission be obtained before the exercise of
15 license privileges at temporary events under this subsection;

16 (c) Establish eligibility criteria for the exercise of license privileges at temporary events
17 under this subsection; and

18 (d) Establish fees reasonably calculated to cover administrative expenses incurred by the
19 commission in administering this subsection.

20 **SECTION 59.** ORS 471.480 is amended to read:

21 471.480. (1) Any employee 18 years of age or older of a person who holds an off-
22 premises sales license from the Oregon Liquor Control Commission may sell any alcoholic
23 liquor authorized by such license on the licensed premises.

24 (2) Any employee 18 years of age or older of a person who holds a wholesale malt
25 beverage and wine license, a distilled liquor self-distribution permit or an endorsement
26 issued under section 5 of this 2014 Act from the Oregon Liquor Control Commission may
27 assist the licensee in the delivery of any alcoholic liquor authorized by such license.

28 (3) During any inspection of a licensed premises, the commission may require proof that
29 a person performing work at the premises meets any applicable minimum age requirement
30 created under this chapter or under commission rules. If the person does not provide the
31 commission with acceptable proof of age upon request, the commission may require the person

1 to immediately cease any activity that is subject to a minimum age requirement until the
2 commission receives acceptable proof of age. If the activity is the sole lawful basis for the person
3 to be present on the premises, the commission may require that the person leave the premises.
4 This subsection does not apply to a person temporarily at the premises to make a service,
5 maintenance or repair call, to make a delivery or for other purposes independent of the premises
6 operations.

7 (4) If a person performing work that is subject to a minimum age requirement has not
8 provided proof of age requested by the commission under subsection (3) of this section, the
9 commission may request that the licensee or a manager of the premises provide proof that the
10 person meets any applicable minimum age requirement created under this chapter or under
11 commission rules. Failure of the licensee or manager to respond to a request made under this
12 subsection by providing acceptable proof of age for a person is prima facie evidence that the
13 licensee has allowed the person to perform work at the licensed premises in violation of a
14 minimum age requirement.

15 **SECTION 60.** ORS 471.510 is amended to read:

16 471.510. ORS 471.506 shall not prohibit the sale of pure alcohol for scientific or
17 manufacturing purposes, or of wines to church officials for sacramental purposes, nor shall it
18 prevent any person residing in the county or city from ordering and having delivered to the home
19 of the person, for the personal use of self and family, alcoholic [*liquors*] **beverages** [*purchased*
20 *from the Oregon Liquor Control Commission or*] from persons duly licensed to sell them under
21 the Liquor Control Act.

22 **SECTION 61.** ORS 471.710 is amended to read:

23 471.710. **(1)** The Governor may remove any commissioner for inefficiency, neglect of
24 duty, or misconduct in office, giving to the commissioner a copy of the charges made and an
25 opportunity of being publicly heard in person or by counsel, in the commissioner's own defense,
26 upon not less than 10 days' notice. If such commissioner is removed, the Governor shall file in
27 the office of the Secretary of State a complete statement of all charges made against such
28 commissioner, the findings thereon, and a complete record of the proceedings.

29 (2) No person, other than the member appointed in accordance with ORS 471.705 who is
30 designated from the food and alcoholic beverage retail industry, is eligible to hold the office of
31 commissioner, or to be employed by the Oregon Liquor Control Commission if:

1 (a) The person has any financial interest in any business licensed by the commission or in
2 any business which manufactures alcoholic beverages sold in Oregon;

3 (b) Anyone in the person's household or immediate family has a financial interest
4 described in paragraph (a) of this subsection;

5 (c) Anyone in the person's household or immediate family is employed by a business
6 licensed by the commission, unless the person is not in a position to take action or make
7 decisions which could affect the licensed business; or

8 (d) The person or anyone in the person's household or immediate family has a business
9 connection with any business licensed by the commission, unless the person is not in a position
10 to take action or make decisions which could affect the licensed business.

11 *[(3)(a) A retail sales agent appointed by the commission, or a person in the household or
12 immediate family of a retail sales agent, may not have any financial interest in or business
13 connection with:]*

14 *[(A) A person or business that is licensed as a distillery;]*

15 *[(B) A person or business that holds a foil on-premises sales license; or]*

16 *[(C) A distillery whose products are sold in Oregon.]*

17 *[(b) Paragraph (a) of this subsection does not apply to a distillery retail outlet agent
18 appointed by the commission under ORS 471.230.]*

19 *[(4)]* (3) Nothing in this section prohibits a person from having a financial interest
20 resulting from investments made by the Public Employees Retirement System or through mutual
21 funds, blind trusts or similar investments where the person does not exercise control over the
22 nature, amount or timing of the investment.

23 *[(5)]* (4) The commission by rule may establish additional restrictions to prohibit
24 potential conflicts of interest. The commission by rule shall define "immediate family" and
25 "business connection" as used in this section.

26 **SECTION 62.** ORS 471.805 is amended to read:

27 471.805. (1) Except as otherwise provided in ORS 471.810 *[(2)]* (3) **and** sections 27, **28,**
28 **29, 30, 31, 32, 33 and 34 of this 2014 Act,** all money collected by the Oregon Liquor Control
29 Commission under this chapter and ORS chapter 473 and privilege taxes shall be remitted to the
30 State Treasurer who shall credit it to a suspense account of the commission. Whenever the
31 commission determines that moneys have been received by it in excess of the amount legally due

1 and payable to the commission or that it has received money to which it has no legal interest, or
2 that any license fee or deposit is properly refundable, the commission is authorized and directed
3 to refund such money by check drawn upon the State Treasurer and charged to the suspense
4 account of the commission. After withholding refundable license fees and such sum, not to
5 exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the
6 purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items
7 which are payable in cash immediately upon presentation, the commission shall direct the State
8 Treasurer to transfer the money remaining in the suspense account to the Oregon Liquor Control
9 Commission Account in the General Fund. Moneys in the Oregon Liquor Control Commission
10 Account are continuously appropriated to the commission to be distributed and used as required
11 or allowed by law.

12 (2) All necessary expenditures of the commission incurred in carrying out the purposes
13 required of the commission by law, including the salaries of its employees, purchases made by
14 the commission and such sums necessary to reimburse the \$250,000 revolving fund, shall be
15 audited and paid from the Oregon Liquor Control Commission Account in the General Fund,
16 upon warrants drawn by the Oregon Department of Administrative Services, pursuant to claims
17 duly approved by the commission.

18 **SECTION 63.** ORS 166.715 is amended to read:

19 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

20 (!)"Documentary material" means any book, paper, document, writing, drawing, graph,
21 chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation
22 from which information can be obtained or from which information can be translated into usable
23 form, or other tangible item.

24 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation,
25 business trust or other profit or nonprofit legal entity, and includes any union, association or
26 group of individuals associated in fact although not a legal entity, and both illicit and licit
27 enterprises and governmental and nongovernmental entities.

28 (3) "Investigative agency" means the Department of Justice or any district attorney.

29 (4) "Pattern of racketeering activity" means engaging in at least two incidents of
30 racketeering activity that have the same or similar intents, results, accomplices, victims or
31 methods of commission or otherwise are interrelated by distinguishing characteristics, including

1 a nexus to the same enterprise, and are not isolated incidents, provided at least one of such
2 incidents occurred after November 1, 1981, and that the last of such incidents occurred within
3 five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to
4 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar
5 to a subsequent prosecution, conduct that constitutes an incident of racketeering activity may be
6 used to establish a pattern of racketeering activity without regard to whether the conduct
7 previously has been the subject of a criminal prosecution or conviction or a juvenile court
8 adjudication, unless the prosecution resulted in an acquittal or the adjudication resulted in entry
9 of an order finding the youth not to be within the jurisdiction of the juvenile court.

10 (5) "Person" means any individual or entity capable of holding a legal or beneficial
11 interest in real or personal property.

12 (6) "Racketeering activity" includes conduct of a person committed both before and after
13 the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to
14 commit, or to solicit, coerce or intimidate another person to commit:

15 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the
16 following provisions of the Oregon Revised Statutes:

17 (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

18 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

19 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating
20 to obstructing governmental administration;

21 (D) ORS 162.405 to 162.425, relating to abuse of public office;

22 (E) ORS 162.455, relating to interference with legislative operation;

23 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal
24 homicide;

25 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

26 (H) ORS 163.225 and 163.235, relating to kidnapping;

27 (I) ORS 163.275, relating to coercion;

28 (J) ORS 163.665 to 163.693, relating to sexual conduct of children;

29 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098,
30 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary,
31 criminal trespass and related offenses;

1 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
2 (M) ORS 164.345 to 164.365, relating to criminal mischief;
3 (N) ORS 164.395 to 164.415, relating to robbery;
4 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or
5 labeling of a recording;
6 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to
7 forgery and related offenses;
8 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
9 (R) ORS 165.540 and 165.555, relating to communication crimes;
10 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and
11 166.470, relating to firearms and other weapons;
12 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to
13 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167,
14 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution,
15 obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery,
16 animal fighting, forcible recovery of a fighting bird and related offenses;
17 (U) ORS 171.990, relating to legislative witnesses;
18 (V) ORS 260.575 and 260.665, relating to election offenses;
19 (W) ORS 314.075, relating to income tax;
20 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and
21 tobacco products taxes and the directories developed under ORS 180.425 and 180.477;
22 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments,
23 and ORS 411.990 (2) and (3);
24 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
25 (AA) ORS 463995, relating to boxing, mixed martial arts and entertainment wrestling, as
26 defined in ORS 463015;
27 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425,
28 471.442, 471.445, 471.446[, 471.485, 471.490] and 471.675, relating to alcoholic *[liquor]*
29 beverages, and any of the provisions of ORS chapter 471 relating to licenses issued under the
30 Liquor Control Act;
31 (CC) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;

(DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
(EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
(FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
(GG) ORS chapter 706, relating to banking law administration;
(HH) ORS chapter 714, relating to branch banking;
(II) ORS chapter 716, relating to mutual savings banks;
(JJ) ORS chapter 723, relating to credit unions;
(KK) ORS chapter 726, relating to pawnbrokers;
(LL) ORS 166.382 and 166.384, relating to destructive devices;
(MM) ORS 165.074;
(NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;
(OO) ORS chapter 496, 497 or 498, relating to wildlife;
(PP) ORS 163.355 to 163.427, relating to sexual offenses;
(QQ) ORS 166.015, relating to riot;
(RR) ORS 166.155 and 166.165, relating to intimidation;
(SS) ORS chapter 696, relating to real estate and escrow;
(TT) ORS chapter 704, relating to outfitters and guides;
(UU) ORS 165.692, relating to making a false claim for health care payment;
(VV) ORS 162.117, relating to public investment fraud;
(WW) ORS 164.170 or 164.172;
(XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
(YY) ORS 164.886;
(ZZ) ORS 167.312 and 167.388;
(AAA) ORS 164.889;
(BBB) ORS 165.800; or
(CCC) ORS 163.263, 163.264 or 163.266.

(b) Any conduct defined as "racketeering activity" under 18 USC 1961(1)(B), (C), (D) and (E).

(7) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

1 (a) In violation of any one of the following:

2 (A) ORS chapter 462, relating to racing;

3 (B) ORS 167.108 to 167.164, relating to gambling; or

4 (C) ORS 82.010 to 82.170, relating to interest and usury.

5 (b) In gambling activity in violation of federal law or in the business of lending money at
6 a rate usurious under federal or state law.

7 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a
8 statute in the Oregon Revised Statutes that is substantially different in the nature of its essential
9 provisions from what the statute was when this section was enacted, the reference shall extend to
10 and include amendments to the statute.

11 SECTION 64. ORS 279A.025 is amended to read:

12 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public
13 Contracting Code applies to all public contracting.

14 (2) The Public Contracting Code does not apply to:

15 (a) Contracts between a contracting agency and:

16 (A) Another contracting agency;

17 (B) The Oregon Health and Science University;

18 (C) The Oregon State Bar;

19 (D) A governmental body of another state;

20 (E) The federal government;

21 (F) An American Indian tribe or an agency of an American Indian tribe;

22 (G) A nation, or a governmental body in a nation, other than the United States; or

23 (H) An intergovernmental entity formed between or among:

24 (i) Governmental bodies of this or another state;

25 (ii) The federal government;

26 (iii) An American Indian tribe or an agency of an American Indian tribe;

27 (iv) A nation other than the United States; or

28 (v) A governmental body in a nation other than the United States;

29 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provisiOn,
30 ordinance or other authority for establishing agreements between or among governmental bodies
31 or agencies or tribal governing bodies or agencies;

1 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135
2 and 414.145 for purposes of source selection;

3 (d) Grants;

4 (e) Contracts for professional or expert witnesses or consultants to provide services or
5 testimony relating to existing or potential litigation or legal matters in which a public body is or
6 may become interested;

7 (f) Acquisitions or disposals of real property or interest in real property;

8 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of
9 source selection;

10 (h) Contracts for the procurement or distribution of textbooks;

11 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises
12 program;

13 *[(l) The procurement, transportation or distribution of distilled liquor, as defined in ORS*
14 *471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control*
15 *Commission;]*

16 *[(k)]* (j) Contracts entered into under ORS chapter 180 between the Attorney General and
17 private counsel or special legal assistants;

18 *[(L)]* (k) Contracts for the sale of timber from lands owned or managed by the State
19 Board of Forestry and the State Forestry Department;

20 *[(m)]* (L) Contracts for forest protection or forest related activities, as described in ORS
21 477.406, by the State Forester or the State Board of Forestry;

22 *[(n)]* (m) Sponsorship agreements entered into by the State Parks and Recreation Director
23 in accordance with ORS 565.080 (4);

24 *[(o)]* (n) Contracts entered into by the Housing and Community Services Department in
25 exercising the department's duties prescribed in ORS chapters 456 and 458, except that the
26 department's public contracting for goods and services is subject to ORS chapter 279B;

27 *[(l>)]* (o) Contracts entered into by the State Treasurer in exercising the powers of that
28 office prescribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and 295, including but not
29 limited to investment contracts and agreements, banking services, clearing house services and
30 collateralization agreements, bond documents, certificates of participation and other debt
31 repayment agreements, and any associated contracts, agreements and documents, regardless of

1 whether the obligations that the contracts, agreements or documents establish are general, special
2 or limited, except that the State Treasurer's public contracting for goods and services is subject
3 to ORS chapter 279B;

4 ~~[(q)]~~ (p) Contracts, agreements or other documents entered into, issued or established in
5 connection with:

6 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public
7 body;

8 (B) The making of program loans and similar extensions or advances of funds, aid or
9 assistance by a public body to a public or private body for the purpose of carrying out, promoting
10 or sustaining activities or programs authorized by law; or

11 (C) The investment of funds by a public body as authorized by law, and other financial
12 transactions of a public body that by their character cannot practically be established under the
13 competitive contractor selection procedures of ORS 279B.050 to 279B.085;

14 ~~[(r)]~~ (q) Contracts for employee benefit plans as provided in ORS 243.105 (!), 243.125
15 (4), 243.221, 243.275, 243.291, 243.303 and 243.565;

16 ~~[(s)]~~ (r) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

17 ~~[(t)]~~ (s) Any other public contracting of a public body specifically exempted from the
18 code by another provision of law.

19 (3) The Public Contracting Code does not apply to the contracting activities of:

20 (a) The Oregon State Lottery Commission;

21 (b) The Oregon University System and member public universities, except as provided in
22 ORS 351.086;

23 (c) The legislative department;

24 (d) The judicial department;

25 (e) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS
26 279.835 to 279.855 and 27A.250 to 27A.290;

27 (f) Oregon Corrections Enterprises;

28 (g) The Oregon Film and Video Office, except as provided in ORS 27A.00 and 27A.250
29 to 27A.290;

30 (h) The Travel Information Council, except as provided in ORS 27A.250 to 27A.290;

(i) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

(j) The Oregon Innovation Council;

(k) The Oregon Utility Notification Center; or

(L) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

SECTION 65. ORS 279A.050 is amended to read:

279A.050. (!)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

1 (c) Establish standards for, prescribe forms for and conduct the prequalification of
2 prospective bidders on public improvement contracts related to the operation, maintenance or
3 construction of highways, bridges and other transportation facilities that are subject to the
4 authority of the Department of Transportation.

5 (4) Except as otherwise provided in the Public Contracting Code, the Secretary of State
6 has all the authority to procure or supervise the procurement of goods, services and personal
7 services related to programs under the authority of the Secretary of State.

8 (5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has
9 all the authority to procure or supervise the procurement of goods, services and personal services
10 related to programs under the authority of the State Treasurer.

11 (6) The state agencies listed in this subsection have all the authority to do the following in
12 accordance with the Public Contracting Code:

13 (a) The Department of Human Services to procure or supervise the procurement of goods,
14 services and personal services under ORS 179.040 for the department's institutions and the
15 procurement of goods, services and personal services for the construction, demolition, exchange,
16 maintenance, operation and equipping of housing for the purpose of providing care to individuals
17 with intellectual disabilities or other developmental disabilities, subject to applicable provisions
18 of ORS 427.335;

19 (b) The Oregon Health Authority to procure or supervise the procurement of goods,
20 services and personal services under ORS 179.040 and construction materials, equipment and
21 supplies for the authority's institutions and the procurement of goods, services, personal services,
22 construction materials, equipment and supplies for the construction, demolition, exchange,
23 maintenance, operation and equipping of housing for persons with chronic mental illness, subject
24 to applicable provisions of ORS 426.504;

25 (c) The State Department of Fish and Wildlife to procure or supervise the procurement of
26 construction materials, equipment, supplies, services and personal services for public
27 improvements, public works or ordinary construction described in ORS 279C.320 that is subject
28 to the authority of the State Department of Fish and Wildlife;

29 (d) The State Parks and Recreation Department to procure or supervise the procurement
30 of all goods, services, public improvements and personal services relating to state parks;

1 (e) The Oregon Department of Aviation to procure or supervise the procurement of
2 construction materials, equipment, supplies, services and personal services for public
3 improvements, public works or ordinary construction described in ORS 279C.320 that is subject
4 to the authority of the Oregon Department of Aviation;

5 (f) The Oregon Business Development Department to procure or supervise the
6 procurement of all goods, services, personal services and public improvements related to its
7 foreign trade offices operating outside the state;

8 (g) The Housing and Community Services Department to procure or supervise the
9 procurement of goods, services and personal services as provided in ORS 279A.025 [(2)(o)]
10 (2)(n);

11 (h) The Department of Corrections to procure or supervise the procurement of
12 construction materials, equipment, supplies, services and personal services for public
13 improvements, public works or ordinary construction described in ORS 279C.320 that is subject
14 to the authority of the Department of Corrections;

15 (i) The Department of Corrections, subject to any applicable provisions of ORS
16 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the
17 procurement of goods, services and personal services under ORS 179.040 for its institutions;

18 G) The Department of Veterans' Affairs to procure or supervise the procurement of real
19 estate broker and principal real estate broker services related to programs under the department's
20 authority;

21 (k) The Oregon Military Department to procure or supervise the procurement of
22 construction materials, equipment, supplies, services and personal services for public
23 improvements, public works or ordinary construction described in ORS 279C.320 that is subject
24 to the authority of the Oregon Military Department;

25 (L) The Department of Education, subject to any applicable provisions of ORS 329.075,
26 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (PL 107-110, 115 Stat
27 1425), to procure or supervise the procurement of goods, services, personal services and
28 information technology relating to student assessment; and

29 (m) Any state agency to conduct a procurement when the agency is specifically
30 authorized by any provision of law other than the Public Contracting Code to enter into a
31 contract.

(7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates this authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6)(a) to (k) of this section under which more than one state agency may order goods, services or personal services and, except for contracts procured by the Oregon Health Authority, all state agency information technology contracts. This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to (k) of this section may not establish a price agreement or enter into a contract for goods, services, personal services, construction materials, equipment or supplies without the approval of the director if the director has established a price agreement for the goods, services or personal services.

SECTION 66. ORS 526.285 is amended to read:

526.285. Notwithstanding ORS 530.059, the State Forester may enter into contracts under ORS 530.050 to provide a supply of woody biomass from forestlands managed by the State Forestry Department as needed to facilitate the development of projects, including but not limited to bioenergy projects. The department shall ensure that the provisions of contracts described in this section comply with applicable state forestland management plans. A contract described in this section is a sale of timber for purposes of the public contracting exemption described in ORS 279A.025 (2)[(L)] **(k)**.

SECTION 67. ORS 471.230, as amended by section 1, chapter 20, Oregon Laws 2012, and section 1, chapter 253, Oregon Laws 2013, is amended to read:

471.230. **(l)(a)** A distillery license allows the licensee:

(A) To import, manufacture, distill, rectify, blend, denature and store *[spirits]* **distilled liquor** of an alcoholic content greater than 17 percent alcohol by weight[.,].

(B) To sell the *[spirits to the Oregon Liquor Control Commission]* **distilled liquor that the licensee manufactures in Oregon as provided in subsections (3) and (4) of this section[, and].**

(C) To transport the *[spirits]* **distilled liquor:**

(i) Out of this state for sale outside this state.

1 (ii) **To any licensed premises of the distillery licensee.**

2 **(D)** *[Distillery licensees are permitted to purchase from and through the commission]* **To**
3 **purchase** alcoholic beverages for blending and manufacturing purposes upon such terms and
4 conditions as the commission may provide **by rule.**

5 **(b)** A distillery licensee may not sell any alcoholic beverage within this state except *[to*
6 *the commission or]* as provided in this section **or under a distilled liquor self-distribution**
7 **permit.** *[However,]*

8 (c) Any agricultural producer or association of agricultural producers or the legal agents
9 of an agricultural producer or association of agricultural producers that manufactures and
10 converts agricultural surpluses, by-products and wastes into denatured ethyl and industrial
11 alcohol for use in the arts and industry are not required to obtain a license from the commission.

12 (2) A distillery licensee may:

13 (a) Permit tastings of the distilled liquor manufactured by the distillery licensee. The
14 tastings may be conducted on the licensed premises of the distillery and at *[no more than five]*
15 **any other licensed** premises owned or leased by the licensee. *[The licensee must purchase the*
16 *distilled liquor from the commission.]*

17 (b) Obtain a special events distillery license.

18 *[(c) Apply for appointment by the commission as a distillery retail outlet agent for*
19 *purposes of retailing only distilled liquor that the licensee manufactured in Oregon at locations*
20 *where tastings are permitted under paragraph (a) of this subsection or subsection (4)(a) of this*
21 *section.]*

22 (3)(a) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may also hold a full
23 on-premises sales license for a location at the licensed premises of the distillery and **for any**
24 **other location of the distillery licensee** *[a full on-premises sales license for one other location.*
25 *All distilled spirits sold under the full on-premises sales license must be purchased from the*
26 *commission].*

27 **(b) All distilled liquor that the distillery licensee supplies to the premises of a full on-**
28 **premises sales license held by the distillery is subject to the fee imposed by section 16 of this**
29 **2014 Act and to the reporting required by section 17 of this 2014 Act.**

1 (4)(a) A distillery licensee that holds a special events distillery license may conduct an
2 event on a premises at a designated location *[other than the location set forth in the distillery*
3 *license]* for a period not exceeding five days.

4 (b) A distillery licensee conducting an event may:

5 (A) Permit tastings of distilled liquor manufactured by the distillery.

6 (B) Permit sales by the drink of distilled liquor manufactured by the distillery.

7 (C) *[If the distillery licensee has been appointed as a distillery retail outlet agent under*
8 *subsection (2)(c) of this section,]* Sell factory sealed containers of distilled liquor manufactured
9 by the distillery for consumption off the licensed premises of the event.

10 (c)(A) **All distilled liquor that the distillery licensee supplies to the premises for a**
11 **special event is subject to the fee imposed by section 16 of this 2014 Act.**

12 (B) **All distilled liquor that the distillery licensee sells at a special event is subject to**
13 **the reporting required by section 17_ of this 2014 Act.**

14 *[(b) A distillery licensee that holds a special events distillery license:]*

15 *[(A) Must purchase distilled liquor that the licensee uses for conducting tastings at the*
16 *event from the commission at the price set by the commission for distilled liquor removed from*
17 *bond for tastings.]*

18 *[(B) Must purchase distilled liquor that the licensee uses for sales by the drink at the*
19 *event at the retail price set by the commission for the month in which the distilled liquor is sold*
20 *by the drink.]*

21 *[(C) Must purchase distilled liquor that the licensee sells in factory sealed containers at*
22 *the event at the retail price set by the commission for the month in which the licensee makes the*
23 *purchase.]*

24 *[(D) Must sell distilled liquor described in subparagraph (C) of this paragraph at the*
25 *retail price set by the commission for the month in which the licensee makes the sale.]*

26 **SECTION 68.** ORS 471.235 is amended to read:

27 471.235. (1) A wholesale malt beverage and wine license shall allow the importation,
28 storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control
29 Commission, and the export of wine, cider and malt beverages, and the importation and *[sale to*
30 *the commission and the]* export of wine of alcoholic content ~~in excess of~~ 21 percent alcohol by
31 volume. A wholesale malt beverage and wine licensee may not sell any alcoholic liquor for

consumption upon the licensed premises. However, a wholesale malt beverage and wine licensee may sell naturally fermented wine or cider in quantities of not less than four gallons nor more than 55 gallons at any one time to consumers for consumption not on the licensed premises. Wholesale malt beverage and wine licensees may sell malt beverages containing not more than nine percent alcohol by volume in quantities not less than four gallons to any unlicensed organization, lodge, picnic party or private gathering. The unlicensed organization, lodge, picnic party or private gathering may not sell the malt beverages. A wholesale malt beverage and wine license shall permit the licensee also to sell malt beverages at wholesale only, to persons holding licenses authorizing the persons to resell such beverages at retail. Employees of wholesale malt beverage and wine licensees may serve sample tastings of malt beverages, cider and wine at alcoholic beverage industry trade shows, seminars and conventions and at alcoholic beverage industry sample tastings for employees of retail licensees.

(2) Subsection (I) of this section does not prohibit the transportation or wholesale sale or distribution of malt beverage or wine by a wholesale malt beverage and wine licensee to any alcoholic treatment center licensed by the Oregon Health Authority.

(3) A wholesale malt beverage and wine licensee may impose an additional handling fee on any wine sold to any retailer in this state if the quantity of wine sold to the retailer is less than the smallest multiple-package case available to be sold and the handling fee is uniform for all licensees.

SECTION 69. ORS 471.396 is amended to read:

471.396. (I) The prohibitions of ORS 471.394 (I) do not apply to persons holding winery licenses, grower sales privilege licenses, brewery-public house licenses, distillery licenses or brewery licenses, to the extent that retail sales are authorized by the statutes establishing the privileges of each license.

(2)(a) The prohibitions of ORS 471.394 (2) and (3) do not apply to a person who wholesales alcoholic *[liquor]* **beverages** and who is not required to be licensed under the provisions of this chapter if the retail licensee does not sell any brand of alcoholic *[liquor]* **beverages** sold or distributed by the person and does not sell any brand of alcoholic *[liquor]* **beverages** produced by any manufacturer doing business with the person selling at wholesale.

(b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of alcoholic *[liquor]* **beverages** if the retail licensee does not sell any brand of alcoholic *[liquor]*

1 **beverages** sold, distributed or produced by the manufacturer and does not sell any brand of
2 alcoholic [*liquor*] **beverages** sold, distributed or produced by any subsidiary or other business
3 entity that the manufacturer owns or manages, or that the manufacturer exercises control over.

4 (c) **The prohibitions in ORS 471.394 (2) and (3) and 471.398 as amended by section**
5 **70 of this 2014 Act do not apply to the selling of distilled liquors by a holder of a distilled**
6 **liquor self-distribution permit to a retail licensee on credit.**

7 (3) The prohibitions of ORS 471.394 do not apply solely by reason of the family
8 relationship of a spouse or family member to a manufacturer or wholesaler if:

9 (a) The manufacturer or wholesaler is licensed by the Oregon Liquor Control
10 Commission to sell alcoholic [*liquor*] **beverages** at wholesale;

11 (b) The license authorizing sale of alcoholic [*liquor*] **beverages** at wholesale was first
12 issued before January 1, 1965, and has been held continuously since that date;

13 (c) The spouse or family member holds or seeks a license that authorizes the retail sale of
14 alcoholic [*liquor*] **beverages** for off-premises consumption only; and

15 (d) The manufacturer or wholesaler does not directly or indirectly sell alcoholic [*liquor*]
16 **beverages** to the spouse or family member.

17 (4) The prohibitions of ORS 471.394 do not apply solely by reason of the family
18 relationship of a spouse or family member to the retail licensee if the manufacturer or wholesaler
19 is licensed by the commission to sell alcoholic [*liquor*] **beverages** at wholesale and does not
20 directly or indirectly sell alcoholic [*liquor*] **beverages** to the spouse or family member.

21 (5) Notwithstanding ORS 471.394, a manufacturer or wholesaler, and any officer,
22 director or substantial stockholder of any corporate manufacturer or wholesaler, may hold,
23 directly or indirectly, an interest in a full or limited on-premises sales licensee, provided that the
24 interest does not result in exercise of control over, or participation in the management of, the
25 licensee's business or business decisions, and does not result in exclusion of any competitor's
26 brand of alcoholic [*liquor*] **beverages**.

27 (6) Notwithstanding ORS 471.394, a full or limited on-premises sales licensee, and any
28 officer, director or substantial stockholder of any corporate full or limited on-premises sales
29 licensee, may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided
30 that the interest does not result in exercise of control over, or participation in the management of,

1 the manufacturer's or wholesaler's business or business decisions, and does not result in
2 exclusion of any competitor's brand of alcoholic *[liquor]* **beverages**.

3 (7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a
4 wholesaler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless
5 the institutional investor controls, is controlled by, or is under common control with, a
6 wholesaler or manufacturer. Notwithstanding ORS 471.394, an institutional investor with a
7 financial interest in a retail licensee may hold, directly or indirectly, an interest in a wholesaler or
8 manufacturer unless the institutional investor controls, is controlled by, or is under common
9 control with, a retail licensee. The provisions of this subsection apply only to an institutional
10 investor that is a state or federally chartered bank, a state or federally chartered mutual savings
11 bank, a mutual fund or pension fund, or a private investment firm. The principal business activity
12 of the institutional investor must be the investment of capital provided by depositors, participants
13 or investors. The institutional investor must maintain a diversified portfolio of investments. The
14 majority of the institutional investor's investments may not be in businesses that manufacture,
15 distribute or otherwise sell alcoholic beverages. The institutional investor, and the officers,
16 directors, substantial shareholders, partners, employees and agents of the institutional investor,
17 may not participate in management decisions relating to the sale or purchase of alcoholic
18 beverages made by a licensee in which the institutional investor holds an interest.

19 (8) Notwithstanding ORS 471.394, a member of the board of directors of a parent
20 company of a corporation that is a manufacturer may serve on the board of directors of a parent
21 company of a corporation that is a retail licensee if:

22 (a) The manufacturer or parent company of a manufacturer is listed on a national security
23 exchange;

24 (b) All purchases of alcoholic beverages by the retail licensee are made from holders of
25 wholesale malt beverage and wine licenses, brewery licenses or winery licenses in this state;

26 (c) The interest of the member of the board of directors does not result in the exclusion of
27 any competitor's brand of alcoholic beverages on the licensed premises of the retail licensee; and

28 (d) The sale of goods and services other than alcoholic beverages by the retail licensee
29 exceeds 50 percent of the gross receipts of the business conducted by the retail licensee on the
30 licensed premises.

31 **SECTION 70.** ORS 471.398 is amended to read:

1 471.398. Except as otherwise specifically provided by law, a person holding a retail
2 license may not accept directly or indirectly from a manufacturer or wholesaler of wine, cider or
3 malt beverages, and a manufacturer or wholesaler of wine, cider or malt beverages may not
4 provide directly or indirectly to the retail licensee, any of the following:

5 (1) Any substantial gratuities;

6 (2) Any finances, money, credit, discounts or rebates;

7 (3) Any fixtures, furniture or furnishings;

8 (4) Any equipment other than advertising and point of sale material and other items of
9 nominal value supplied to all retail licensees without discrimination; or

10 (5) Any services other than the inspection of equipment, the inspection and rotation of
11 stock, the building of displays and other services of nominal value incidental to merchandising in
12 the usual course of business furnished to all retail licensees without discrimination.

13 SECTION 71. ORS 471.485 is amended to read:

14 471.485. No wholesale malt beverage or wine licensee or agent or employee thereof
15 shall sell or deliver, nor shall any retail licensee purchase or receive any malt beverages, cider or
16 wine for currency on delivery, but such malt beverages, cider or wine shall be paid for prior to
17 delivery thereof, by electronic fund transfer initiated on or before the date of delivery, or by valid
18 check, order, negotiable instrument or voucher payable on the date of delivery. The wholesale
19 licensee may accept cash at the time of delivery if such acceptance does not create or increase
20 the licensee's, or the agents' or employees' of the licensee, exposure to or risk of being
21 victimized by criminal activity.

22 SECTION 72. ORS 471.404 is amended to read:

23 ORS 471.404. *[(1)]* Alcoholic *[liquor]* beverages may not be imported into this state by
24 any person other than a holder of a brewery license, winery license, distillery license, *[or]*
25 wholesaler's license, distilled liquor self-distribution permit or retail license that holds an
26 endorsement issued under section 5 of this 2014 Act, except as follows:

27 *[(a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission.*
28 *under a certificate of approval issued by the commission.]*

29 *[(b)]* (1) Wines for sacramental purposes according to rules adopted by the commission.

30 *[(c)]* (2) Alcoholic *[liquor]* beverages that *[is]* are in transit on a common carrier to a
31 destination outside Oregon.

1 [(d)] (3) Alcoholic [*liquor*] beverages coming into Oregon on a common earner
2 according to orders placed by a licensed brewery, winery or wholesaler.

3 [(e)] (4) Grain and ethyl alcohol for scientific, pharmaceutical, manufacturing,
4 mechanical or industrial use, under a certificate of approval issued by the commission.

5 [(f)] (5) Wine or cider that is sold and transported by the holder of a wine self-distribution
6 permit to a retail licensee that has the endorsement described in ORS 471.274 (5).

7 [(g)] (6) Wine or cider shipped directly to a resident of this state under a direct shipper
8 permit issued pursuant to ORS 471.282.

9 [(2) *The commission may require importers of alcoholic liquor to pay a reasonable*
10 *handling fee based on the quantity and type of alcoholic liquor being imported.*]
11

12 ADMINISTRATIVE AND TEMPORARY PROVISIONS

13

14 SECTION 73. (1) Not later than September 1, 2016, the Oregon Liquor Control
15 Commission shall determine the amount of revenue raised by the fee imposed by section 16
16 of this 2014 Act for the period July 1, 2015 to June 30, 2016, and report the determination
17 to the Legislative Revenue Officer.

18 (2) **If** the amount determined under subsection (1) of this section is less than
19 \$190,791,582 or more than \$194,645,958, not later than September 15, 2016, the Legislative
20 Revenue Officer shall determine, within one-tenth of one percent, the amount the
21 percentage portion of the fee imposed by section 16 of this 2014 Act would need to have
22 been for the fee to have raised \$192,718,770 for the period July 1, 2015 to June 30, 2016.

23 (3) **If** the Legislative Revenue Officer makes a determination under subsection (2) of
24 this section, beginning October 1, 2016, the percentage portion of the fee imposed by
25 section 16 of this 2014 Act shall be the percentage determined by the Legislative Revenue
26 Officer.

27 SECTION 74. ORS 471.485, 471.490, 471.500, 471.740, 471.745, 471.750, 471.752
28 and 471.754 are repealed.

29 SECTION 75. This 2014 Act becomes effective December 1, 2014.

30 SECTION 76. **If** the Oregon Liquor Control Commission receives an application for
31 a distilled liquor self-distribution permit or endorsement under section 5 of this 2014 Act or

1 for a permit or certificate under section 8 of this 2014 Act between January 1, 2015, and
2 March 31, 2015, the commission shall issue the permit, endorsement or certificate within 14
3 business days of the commission's receipt of the application.

4 **SECTION 77.** Notwithstanding sections 76 and 78 of this 2014 Act:

5 (1) The holder of a retail license, including a retail license issued under section 47 of
6 this 2014 Act, with an endorsement issued under section 5 of this 2014 Act may not sell
7 distilled liquor to the public under the license or endorsement before April 1, 2015.

8 (2) Notwithstanding subsection (1) of this section, the holder of a retail license,
9 including a retail license issued under section 47 of this 2014 Act, with an endorsement
10 issued under section 5 of this 2014 Act may, before April 1, 2015, take any action necessary
11 to permit the holder of the license to sell distilled liquor to the public on or after April 1,
12 2015.

13 **SECTION 78.** (1) Sections 17, 18, 19, 20, 21, 22, 23 and 24 of this 2014 Act become
14 operative January 1, 2015.

15 (2) Section 16a of this 2014 Act becomes operative July 1, 2017,

16 (3) The amendments to ORS 471.410 by section 14 of this 2014 Act apply to fines
17 and sentences imposed for offenses committed on or after April 1, 2015.

18 **SECTION 79.** Sections 1, 5, 6, 7, 8, 9, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of
19 this 2014 Act are added to and made a part of ORS chapter 471.

20 **SECTION 80.** Sections 50, 51, 73, 76 and 77 of this 2014 Act are repealed
21 January 1, 2017.

22 **SECTION 81.** The unit and section captions used in this 2014 Act are provided only
23 for the convenience of the reader and do not become part of the statutory law of this state
24 or express any intent in the enactment of this 2014 Act.

Allows sale of liquor by private retailers for off-premises consumption; related regulatory changes/provisions

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor for off-premises consumption exclusively by Oregon Liquor Control Commission retail sales agents.

Summary: Under current law, sales of distilled liquor for consumption off the seller's premises are made exclusively by retail sales agents of Oregon Liquor Control Commission (OLCC). Proposed measure would allow off-premises retail sales by private parties licensed and regulated by the OLCC, effective April 1, 2015. Current agreements with retail sales agents would be terminated. Retail sellers of wine and beer would be eligible for an endorsement to sell distilled liquor, provided that they are in compliance with all laws and rules enforced by the OLCC and have successfully completed the responsible vendor program. Requires payment of fees to OLCC for each container sold. Establishes Oregon Distilled Liquor Board to encourage development of distilling industry and related purposes; OLCC retains regulatory functions. Other provisions.

[illegible]

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January 30, 2014

VIA FACSIMILE

Kate Brown
Secretary of State
Elections Division
255 Capitol St. N.E., Ste 501
Salem, OR 97310

RECEIVED
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KATE BROWN
SECRETARY OF THE STATE

Re: Written Comments on Draft Ballot Title for initiative Petition No. 47
for the General Election of November 4, 2014

Dear Secretary Brown:

Our office represents Paul Romain and Ronald R. Dodge, both of whom are electors and persons dissatisfied with the Attorney General's draft ballot title for Initiative Petition #47. Mr. Dodge and Mr. Romain object to the Attorney General's draft ballot title on the ground that the draft ballot title does not substantially comply with ORS 250.035(2).

For the reasons set forth below, we respectfully request that the alternative ballot title caption, statements, and summary set forth in this submission be certified in lieu of the Attorney General's draft ballot title.

1. THE DRAFT CAPTION DOES NOT COMPLY WITH ORS 250.035(2J)(a).

The draft caption states:

Allows sale of liquor by private retailers for off-premises consumption:
related regulatory changes/provisions

ORS 250.035(2)(a) provides that the ballot title caption must contain "not more than 15 words that reasonably identify the subject matter of the state measure." "The caption is the 'headline' of the ballot; it provides the context for the reader's consideration of the other information in the ballot title and must describe the proposed measure's subject matter accurately." *Towers v. Rosenblum*, 354 Or 125, 129, 310 P3d 1136 (2013) (quoting *Greene v. Kulongoiki*, 322 Or 169, 175, 903 P2d 366 (1995)).

The "subject matter" of a measure refers to "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." *Buehler v. Rosenblum*, 354 Or 318, 323, 311 P3d 882. (2013) (quoting *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010)). "The caption must also identify the measure's subject matter in terms that will not 'confuse or mislead potential petition signers and voters.' *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001), and it cannot overstate or understate the scope of the legal changes that the measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004)." *Buehler*, 354 Or at 323.

"A caption may describe accurately the actual major effect of a measure and still not comply with the requirements of the statute if the description is 'too vague and gives voters no clear picture of what is at stake.'" *Girod v. Kroger*, 351 Or 389, 397, 268 P3d 562 (2011) (quoting *Hunnicuttt/Stucey v. Myers*, 343 Or 387, 391, 171 P3d 349 (2007)).

In this case, the draft caption for Initiative Petition 1147 is partially correct, but incomplete. Currently, all retailers of distilled liquor in Oregon are "private retailers." Stores are either exclusive or non-exclusive agents of the State, and they receive a commission on the sale of the distilled liquor as their compensation. The proposed measure actually expands the number of large retailers that would be authorized to sell distilled liquor. The current statutes allow an unlimited number of private retailers to sell distilled liquor; it is the Oregon Liquor Control Commission that decides the exact number.

The most important change from the current system is the way that the state taxes the product. The current system has the state buying the product and marking it up to cover its costs of sale plus an amount that is a substitute for a direct tax. For example, if the state buys a bottle for \$10, it will sell that product to the general consumer for about \$20.80. Of that \$10.80 markup, \$2.40 covers the cost of wholesale and retail operations and \$8.40 is the tax equivalent that is distributed to the general fund and to local and state government for various programs.

The proposed measure imposes a wholesale sales tax of 71.7% on the acquisition price of the bottle by the first Oregon purchaser. Initiative Petition 47 (2014) at Section 16. In other words, if a bottle is sold by a supplier to a retailer or wholesaler for \$10, a tax of \$7.17 is added to the price and sent to the state as taxes. There also is a \$.75 per bottle tax that is added to the price to the retailer or wholesaler, making the tax on that container \$7.92.

The proponents of the measure try to mask the sales tax by calling it a revenue replacement fee. The determination of whether a charge is a tax or a fee is based upon how it operates, not how it is classified. *Automobile Club of Oregon v. State of Oregon*, 314 Or 479, 840 P2d 674 (1992). A "tax" is levied primarily for the purpose of raising revenue, as opposed to funding the operating costs of a regulatory program to which it attaches. *Ferwick v. City of Klamath Falls*, 135 Or 571, 297 P 838 (1931). The revenue source for the State of Oregon imposed by this measure is a wholesale sales tax plus a per-bottle tax, not any kind of a fee. The way the current draft ballot title reads, a voter could interpret it to mean that elimination of the OLCC from handling distilled liquor would eliminate the current state markup and reduce the cost of the product.

As discussed above, the draft caption does not refer to the "actual major effect" of the measure, which is the imposition of a 71.7% wholesale sales tax. It also describes the proposed measure's subject matter in terms that could confuse or mislead potential petition signers and voters. Changing the draft caption to highlight the imposition of a 71.7% wholesale sales tax avoids the potential problem of

understating the scope of the legal changes that the measure would enact, avoids the issue of the caption being too vague, and gives signers and voters a clear picture of what is at stake.

For these reasons, we suggest the caption should read:

Replaces state markup on distilled liquor with 71.7% wholesale sales tax;
expands private retail outlets.

2. THE DRAFT "YES" AND "NO" VOTE STATEMENTS DO NOT COMPLY WITH ORS 250.035(2)(b) AND (c).

The draft "yes" and "no" vote statements read as follows:

Result of "Yes" Vote: "Yes" vote allows private off-premises sales of distilled liquor under specified circumstances; requires termination of the Oregon Liquor Control Commission's retail sales agent agreements.

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor for off-premises consumption exclusively by Oregon Liquor Control Commission retail sales agents.

ORS 250.035(2)(b) requires the "yes" vote statement to describe "the result if the state measure is approved" within 25 words. "[T]he result of a proposed measure's enactment that belongs in the 'yes' vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public. Stated differently, the legislature intended the 25-word 'yes' vote result statement to notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon." *Carley v. Myers*, 340 Or 222, 231, 132 P3d 651 (2006) (quoting *Novick/Crew v. Myerli*, 337 Or 568, 574, 100 P3d 1064 (2004)).

ORS 250.035(2)(c) requires the "no" vote statement to describe "the result if the state measure is rejected" within 25 words. The "no" vote result statement "should state accurately what voters would retain, under their existing legal or contractual arrangements, if they defeat the measure." *Carson v. Kroger*, 351 Or 508, 518, 270 P3d 243 (2012) (quoting *Earls v. Myers*, 330 Or 171, 177, 999 P2d 1134 (2000)). "The object is to advise 'potential voters as to the choice they are being asked to make.'" *Carson*, 351 Or at 518, 270 P3d 243 (quoting *Whitsett v. Kroger*, 348 Or 243, 252, 230 P3d 545 (2010)).

The proposed draft "yes" and "no" vote statements are inaccurate. A "yes" vote does not "allow" for private retailers; it expands the number of large retailers in the business. While the "yes" vote statement is correct in referring to the termination of current retail agent agreements, that is the third most important issue for the voting public to consider. The imposition of a wholesale sales tax is the outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public. Accordingly, the "yes" and "no" vote statements should instead read as follows:

Result of "Yes" Vote: "Yes" vote replaces state markup on distilled liquor with 71.7% wholesale sales tax; expands number of retailers authorized to sell liquor; terminates retail agent agreements.

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor exclusively by private retail sales agents appointed by Oregon Liquor Control Commission.

3. THE DRAFT SUMMARY DOES NOT COMPLY WITH ORS 50.035(2)(d).

The draft summary states:

Summary: Under current law, sales of distilled liquor for consumption off the seller's premises are made exclusively by retail sales agents of Oregon liquor Control Commission (OLCC). Proposed measure would allow off-premises retail sales by private parties licensed and regulated by the OLCC, effective April 1, 2015. Current agreements with retail sales agents would be terminated. Retail sellers of wine and beer would be eligible for an endorsement to sell distilled liquor, provided that they are in compliance with all laws and rules enforced by the OLCC and have successfully completed the responsible vendor program. Requires payment of fees to OLCC for each container sold. Establishes Oregon Distilled Liquor Board to encourage development of distilling industry and related purposes; OLCC retains regulatory functions. Other provisions.

ORS 50.035(2)(d) requires that a ballot title contain "[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The purpose of an initiative ballot summary "is to help voters understand what will happen if the measure is approved, and...[it] should...be worded so that voters will understand the breadth of its impact." *Wyant v. Myers*, 336 Or 128, 139, 81 P3d 692 (2003) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)).

In *Novick/Crew*, the Oregon Supreme Court described the "major effect" requirement as follows:

logically, those would include additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law.

337 Or at 574, 100 P3d 1064.

There are so many confusing issues in this measure that writing an accurate summary is a daunting task. The three most important issues for the public are the imposition of a unique wholesale sales tax and bottle tax, the expansion of those who can sell distilled liquor, and the termination of the contracts of those private retailers currently authorized to sell the product. At a minimum, the ballot summary should include these three items in order to help voters understand what will happen if the measure is approved and in order for voters to understand the breadth of its impact.

In addition, the measure moves tax collection by the state from a simple system whereby all tax revenue is collected in-state to a very complex system where each separate sales transaction by a supplier to a wholesaler or retailer has its own unique tax, and most of the taxes will have to be collected from suppliers who are out-of-state.

The tax due to the state depends upon the selling price, so a sale to two different entities will generate two different tax amounts depending on the price paid by the purchaser. For example, if a large box retailer negotiates a price of \$100 for a case of distilled spirits, and a smaller retailer negotiates a price of \$150 for that same case, the tax due on the two sales is unique. The former would generate a tax of \$71.70 plus \$9 (assuming a 12. bottle case), for a total of \$80.70, while the latter would generate a tax of \$107.55 plus \$9, for a total of \$116.55. The state will have to have a huge auditing staff to review all sales transactions wherever they are generated.

In addition, the tax provision in Section 16 of the measure has a provision that is unconstitutional and could render the entire tax invalid. The state could be left with no revenue from distilled liquor. The exemption found in Section 16(4)(a)(B) only can apply to sales by a distiller located in the State of Oregon. Obviously, the purpose and effect of the exemption is to not impose the tax upon Oregon-based distillers for some of their sales. No distiller or importer outside of the state would be able to qualify for the exemption. Under *Bacchus Imports, LTD. v. Dios*, 468 US 263 (1984), such a tax exemption is unconstitutional.

The concern is not that there is an effort to cater to Oregon distillers. The concern is that the Court remedy in such a situation is to declare the entire tax invalid. A court will not simply sever the offending exemption and impose the tax upon an entity that the initiative does not tax. *Vannatra v. Keisling*, 324 Or 514, 991P2d 770 (1997); *Advocates for Effective Regulation v. City of Eugene*, 176 Or App 370, 32 P3d 228 (2001). Thus, the initiative's major effect may be to eliminate the tax on all distilled liquor sold in Oregon.

Finally, the statement in the summary that the proposed measure establishes a Distilled Liquor Board is not important enough to include in a ballot title, unless the summary stated that the measure would use taxpayer money to create another state agency to promote another Oregon product. The most important issues for the voter are the ones that should be explained in the limited number of words available for the summary.

For these reasons, we propose the following summary:

Summary: Under current law, sales of distilled liquor to restaurants, bars and private consumers are made by private retailers as agents of the State of Oregon. The proposed measure would remove the State from the sale of liquor but keep the Oregon Liquor Control Commission as the tax collection and regulatory entity for all alcoholic beverages. It would terminate current retail sales agreements and expand the licensing of retail sellers to include large retailers over 10,000 square feet. The measure imposes a 71.7% wholesale sales tax plus a \$.75 per bottle tax upon almost all liquor sold by a supplier to a wholesaler or retailer in the state. It requires OLCC to audit individual sales transactions to determine amount due from taxpayers. Makes other regulatory changes.

/

The Romain Group, LLC, by Paul R. Romain
on behalf of Paul Romain and Ronald R. Dodge, individually

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Steven C. eerman
sberman@.stol:berne.CoM

January 30, 2014

VIA FACSIMIL:E

KateBrovm
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310

Re: Draft Ballot Title for Initiative Petition No. 47 for the General Elllttion **df**
November 4, 2014 **gj**

Dear Secretary Bwwn:

I represent Elspeth McCann regarding the ballot title for Initiative Petition No. 47 for the general election. of November 4, 2014 ("the Initiative"). Ms. McCann is an elector in the State of Oregon and the Interim Execative Director of Our Oregon. This letter is V>litten in response to your office's press release, dated January 15,2014, which invites comments on the draft ballot title for the Initiative. These comments are substantively identical to the comments filed on l:vfs. McCann's behalf regarding the draft ballot title for Initiative Petition No. 46.

Ms. McCann respectflllly objects to each section ofthe ballot title, because each section fails to convey the broad sweep and impact of the Initiative. Ms. McCann requests that the ballot title be revised in its entirety.

I. An Overview ofTnitiative Petition No. 47

The Initiative would completely overhaul of how liquor is sold in Oregon. The Initiative would eliminate the current system of privately run, state licensed liquor stores. It creates new taxes o-n. liquor, a new governmental agency, and multiple government-contralied and run fJnds.

The Initiative is lengthy and complex. It .runs almost 70 pages, and contains 81 sections. The Initiative adds myriad new provisions to the Oregon Revised Statues, amends exist:ng provl.sions, and repeals others.¹ The Initiative nearly eviscerates the extant statutory scheme

¹The Initiative is the second of eight filed by the same Chief Petitioners regarding the overhaul of how liquor is sold in Oregon. As of the date of the filing of these comments, seven have been designated as initiative petitions by the Secretary of State. Those are Initiative Peti.tions 46, 47, 48, 49, 50, 56 and 57. The remaining one is a prospective initiative petition, designated

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regarding retail sales of liquor for off-premises consumption, and replaces it with one that favors large scale retailers over the interests of local businesses and consumers.

Under existing law, Oregon is a "control" state with the exclusive right to sell packaged distilled spirits. That liquor is disbursed from a statewide distribution center in Milwaukee, Oregon and sold at 242 retail liquor stores. Liquor stores are independently operated under agency agreements between the operators and the Oregon Liquor Control Commission ("OLCC"). See ORS 471.750 (so providing).

The Initiative would radically alter the statutes governing liquor sales in Oregon. The Initiative eliminates the OLCC's authority to: purchase, sell, import or transport liquor; set prices for liquor; operate liquor stores and warehouses; and, contract with agents to sell liquor. See Initiative, §74 (repealing ORS 471.740, ORS 471.745 and ORS 471.750). The Initiative terminates agent agreements between OLCC and its agents operating liquor stores would be terminated effective April 15, 2015. Initiative, §47. OLCC owned or leased properties must be disposed of. *Id.* at §50(2).

In place of the existing process for retail sales of alcohol for off-premises consumption, OLCC will be required to issue "retail off-premises sales licenses" to applicants who meet specific requirements. Initiative, §5. One requirement is that the premises must contain "at least 10,000 square feet of space devoted to the retail selling of merchandise," with very limited exceptions. *Id.* at §5(2)(c)(A).

The Initiative creates a new governmental agency, the Oregon Distilled Liquor Board (the "ODLB"). Initiative, §36. The nine member ODLB will be appointed by the governor. *Id.* at §36(2). The ODLB will have broad authority, including the authority to enter into contracts and adopt rules. *Id.* at §38. The ODLB is funded by new taxes created by the Initiative. *Id.* at §26(2)(b). The ODLB will assume certain responsibilities previously performed by OLCC, and also have additional new responsibilities.

The ODLB will adopt rules to "establish criteria to guide the board's evaluation of applications to sell distilled liquor on premises under 10,000 square feet." Initiative, §39(2). The OLCC must issue licenses to premises under 10,000 square feet *if* the ODLB "determines that the sale of distilled liquor on the premises will promote the growth and economic success of Oregon manufacturers." *Id.* at §39(1). Only 50 licenses for premises under 10,000 square feet may be approved in 2014, and an additional 51 licenses in subsequent years. *Id.* at §39(3). An existing retail sales agent who has had his retail sales agent agreement terminated under Section 47 may apply for an off-premises retail sales license, including for a premises that is less than 10,000 square feet. *Id.* at §47(2). The Initiative does not address whether those licenses count towards the 50 license limit in Section 39(2).

SP 2014-69. Initiative Petitions 46, 47, 48, 49, 50, 56 and 57 are all substantively similar. The prospective initiative petition has not yet been posted for public viewing.

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The Initiative creates a new tax for liquor transported into or sold in Oregon. The tax initially is 75 cents per container and 71.7% of the wholesale price of the liquor. Initiative, §16. The tax is reduced to 25 cents per container and 71.7% of the wholesale price beginning July, 2017. See *id.* at §16a (setting forth lower tax rate); *id.* at §78(2) (setting forth effective dates of tax provisions)?

The Initiative delineates how funds raised from the new fee will be distributed. Twenty-three cents per container will be paid into a newly created Oregon Liquor Control Commission Enhanced Public Safety Subaccount. Initiative, §26(l)(a). Two cents per container will be distributed to a newly created Oregon Distilled Liquor Board Fund. *Id.* at §26(l)(b). The remainder is divided between the General Fund, Counties and cities. *Id.* at §26(2).

The Initiative makes a whole host of other significant changes to Oregon law. For example, the Initiative:

- Contains findings and goals pertaining to "the appropriate role for State liquor control" and amends the current legislative findings regarding the Liquor Control Commission. Initiative, §§1, 2.
- Provides new licensing requirements and procedures for distilleries and wholesalers. Initiative, §5.
- Restricts the minimum price at which liquor may be sold. Initiative, §6.
- Prohibits certain contracts and agreements between distillers, wholesalers and retailers. Initiative, §7.
- Establishes a new statutory scheme for transportation and delivery of liquor. Initiative, §§8, 9.
- Creates new civil and criminal penalties. Initiative, §§14, 15.
- Establishes detailed bookkeeping requirements for licensed distillers, retailers and wholesalers. Initiative, §§17, 18, 19, 20, 24.
- Gives the Attorney General new enforcement authority. Initiative, §22.

²The Initiative refers to the new tax as a "fee." However, whether a government assessed charge is a "tax" or a "fee" is based on what the charge does, not on how it is characterized by its proponents or labeled in legislation. *Automobile Club of Oregon v. State*, 314 Or 479, 485-486 (1992). The "fee" in the Initiative obviously is a tax, because the revenue generated is not used solely to administer the distribution or sale of alcohol in Oregon. See e.g., Initiative, §26 (setting forth how the funds collected are distributed).

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The Initiative also contains a host of housekeeping provisions. It makes multiple "confirming and technical amendments" to existing law. See Initiative at §§52-72 (setting forth those amendments). The Initiative also contains multiple "administrative and temporary provisions." *Id.*, at §§73-81.

In summary, the Initiative is a huge, sweeping enactment. The scope of the Initiative cannot easily be conveyed in a ballot title. Ms. McCann recognizes that the Attorney General's task in drafting a ballot title is particularly onerous when an initiative is as broad as the one at issue here. However, the scope of an Initiative does not alter the Attorney General's obligation to certify a statutorily compliant ballot title.

II. The Draft Ballot Title

A. The Caption

ORS 250.035(2)(a) provides that a ballot title must contain a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption "shall state or describe the proposed measure's subject matter accurately, and in terms that do not confuse, mislead or mislead potential petition signers and voters." *Lavey v. Kroger*, 350 Or 563 (2011) (citations omitted; internal quotation marks omitted). The "subject matter" of an initiative is its "actual major effect." *Lavey*, 350 Or at 563 (citation omitted; internal quotation marks omitted). The "actual major effect" is the change or changes "the proposed measure would enact in the context of existing law." *Rasmussen v. Kroger*, 350 Or 281, fn 5 (2011), *aff'd*, 350 Or 281, 175 (1995). As the "headline," the caption "provides the context for the reader's consideration of the other information in the ballot title." *Grune*, 322 Or at 175. A caption that is underinclusive, because it fails to inform voters of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Meyers*, 341 Or 357, 362 (2006). "When the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, [s]he runs the risk that the caption will be underinclusive and thus inaccurate." *Towers*, 341 Or at 361.

A caption also must provide voters and potential petition signers with sufficient information to make an informed decision about the subject matter of an Initiative. "A caption may describe accurately the actual major effect of a measure and still not comply with the requirements of the statute if the description is too vague and gives voters no clear picture of what is at stake." *Girod v. Kroger*, 351 Or 389, 397 (2011) (internal quotation marks omitted; citations omitted). The Supreme Court repeatedly has rejected captions and ballot titles that "fail[] to disclose the subject matter of the proposed measure in terms that give notice to the voters of the principal substantive choice or choices that the measure presents." *Rogers v. Myers*, 344 Or 219, 224 (2008). See, e.g., *Hunnicut v. Meyers*, 343 Or 387, 391-393 (2007) (referring certified caption and result of yes statement for modification, because they were "too vague"); *Terhune v. Myers*, 342 Or 475, 480 (2007) ("The Attorney General's caption blandly refers to a 'tax credit for educational expenses.' That may be accurate, but it hardly can be said to note, much less highlight, the actual major effect of the proposed measure.")

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The caption in the draft ballot title provides:

Allows sale of liquor by private retailers for off-premises consumption;
related regulatory changes/provisions

Ms. McCann respectfully submits that the caption is underinclusive. Specifically, the phrase "[a]llows sale of liquor by private retailers for off-premises consumption" understates the subject matter of the initiative. As was set forth above, the Initiative entirely eliminates the existing system of Oregon licensed, privately run liquor stores. The OLCC's authority is curtailed. A new governmental agency is established. New fees are imposed. New government run and controlled funds are created. Large retailers- those with over 10,000 square feet of space -will be entitled to obtain licenses for retail sales of alcohol for off-premises consumption, while only limited number of smaller premises will be allowed to engage in off-premises consumption sales. OLCC properties must be liquidated. New laws regarding transportation of alcohol are established. Licensing for distillers and wholesalers is modified. The phrase "[a]llows sale of liquor by private retailers for off-premises consumption" grossly understates the scope of the Initiative.

The phrase "private retailers" also is misleading, because it implies that, under current law, retailers are not private. However, as was set forth above, current retailers hold retail sales agreements with the OLCC are "private." They are not public employees, and they are independently operated.

"[R]elated regulatory changes/provisions" does not adequately capture the major effects of the initiative. That phrase is impermissibly vague. For example, the phrase does not inform voters that the Initiative: contains heightened civil and criminal penalties or new fees; favors large retailers over small retailers; creates a new governmental agency; Mill requires sale of property currently held by an existing agency. The phrase altogether "fails to disclose the subject matter of the proposed measure in terms that give notice to the voters of the principal substantive choice or choices that the measure presents." *Rogers*, 344 Or at 224.

For those reasons, the draft caption is insufficient. A caption that complies with the statutory requirements would provide:

Repeals, replaces liquor sales laws, process; prefers large retailers; creates new alcohol taxes, state agency

B. The Results Statements

ORS 250.035(2)(b) and (c) require that a ballot title contain "simple and understandable statement[s] of not more than 25 words that describe the result if the state measure is approved or rejected."

The results statements in the draft ballot title provide:

Kate Brown
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Result of "Yes" Vote: "Yes" vote allows private off-premises sales of distilled liquor under specified circumstances; requires termination of Oregon Liquor Control Commission's retail sales agent agreements.

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor for off-premises consumption exclusively by Oregon Liquor Control Commission retail sales agents.

The draft result of yes statement is flawed for the reasons set forth above. A result of "yes" statement that complies with the statutory requirements would provide:

Result of "Yes" Vote: "Yes" vote amends, replaces existing laws, process for retail off-premises liquor sales; gives preference to large retailers; creates new alcohol taxes, government funds, administrative agency.

The draft result of no statement does not fully describe the result if the Initiative is rejected. A result of no statement that complies with the statutory requirements would

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor for off-premises consumption, does not create new alcohol taxes, government funds, administrative agency.

C. The Summary

ORS 250.035(2)(d) requires that the ballot title contain a "concise statement of not more than 125 words summarizing the state measure and its effect." The caption is deficient for the reasons set forth above. The summary does not inform voters and potential petition signers that the Initiative:

- Creates a new regulatory agency and new government administered funds;
- Establishes new taxes on alcohol;
- Provides preferential treatment to large-scale retailers;
- Provides new licensing requirements and procedures for distilleries and liquor sales;
- Restricts the minimum price at which liquor may be sold;
- Prohibits certain contracts and agreements between distillers, wholesalers and retailers;
- Establishes a new statutory scheme for transportation of liquor in Oregon;
- Adds new civil and criminal penalties;

Kate Brov.,n
January 30, 2014
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- Creates detailed bookkeeping requirements for licensed distillers, retailers and wholesalers; and,
- Gives the Attorney General new enforcement authority.

For those reasons, the summary also must be revised.

I thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

Ver ly yours,

Steven C. Berrna.1

SCB:jjs
cc: client

[illegible]



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January 30, 2014

SENT VIA FACSIMILE TO: 1-503-373-7414

Honorable Kate Brown
Elections Division
255 Capitol St NE, Ste 501
Salem, OR 97310-1306

Re: Ballot Title Comments to Initiative Petition No. 47 (2014)

Dear Madam Secretary:

This office represents Lauren G. R. Johnson and Lym Guest, registered voters in the State of Oregon and the ChiefPetitioners for IP #47. The purpose of this letter is to make comments on their behalf to the draft ballot title prepared by the Attorney General for Initiative Petition No. 47 (2014). We are mindful that ORS 250.035(2) requires: (a) a caption not more than 15 words that reasonably identifies the subject matter of the state measure; (b) a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved; (c) a simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected; and (d) a concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.

A. The Caption

The caption must "state or describe the proposed measure's subject matter accurately, and in terms that will not confuse or mislead potential petition signers and voters." *Lavey v. Kroger*, 350 Or 559,563 (2011) (citations omitted; internal quotation marks omitted). The caption is the "cornerstone for the other portions of the ballot title." *Greene v. Kulongoski*, 322 Or 169, 175 (1995). As the "headline" the caption "provides the context for the reader's consideration of the other information in the ballot title." *Greene*, 322 Or at 175.

The draft caption employs the term "off-premises." This is a term of art defined in statute and not likely familiar to or understood by the general public. In addition, the reference to "related regulatory changes/provisions" while suited for the summary, tells the voters nothing concerning

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Ms. Kate Brown
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the subject of the proposed measure. Finally, the reference to "private-retailers" is misleading in that it does not describe a basic change in the law which the proposed initiative would make.

The subject of the proposed initiative is selling bottled liquor from retail stores. Of course, all retailers selling liquor in Oregon are "private" including OLCC's current sales agents. Instead of the vague language about regulation, we believe the caption should address the most significant effect of the measure—its regulation of liquor distribution. The Attorney General's draft caption identifies the change in retail sales of liquor but ignores the significant effect of taking the state out of the liquor distribution system.

In addition, the draft caption makes no reference whatsoever of specific language in the initiative that ensures that net state liquor revenues are maintained. Funding of existing state and local programs relies on state liquor revenues – the third largest contributor to Oregon's general fund. Section 73 of the proposed measure protects those revenues, and the programs that depend on them, a matter very important to Oregon voters.

Finally, not all stores (especially those with under 10,000 square feet devoted to retail liquor sales) will qualify for endorsements.

For these reasons, we suggest the following caption be substituted for the Attorney General's draft caption:

"Allows qualified retail stores to sell bottled liquor; maintains state liquor revenues; regulates liquor distribution."

Our suggested caption makes clear that not all retail stores will be able to sell bottled liquor, only those that qualify. It also identifies the major changes in the law, i.e. allowing certain retail stores to sell liquor and maintaining state liquor revenues besides. Finally, it references the significant effect of regulating liquor distribution.

B. Result of Yes Vote

The draft result of yes vote statement does not comply with the statutory requirements because it, once again, references a term of art "off-premises," which is not understood by the voters, fails to inform the voters that certain retail stores will be allowed to sell bottled liquor, fails to reference the maintenance of liquor revenues, and makes reference to "termination of Oregon Liquor Control Commission's Retail Sales Agent Agreements" without speaking to what replaces the termination of those agreements.

It is true that Section 47 of the proposed initiative does require the Oregon Liquor Control Commission to give notice of termination to agents for all retail sales agreements effective April 1, 2015.

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15,2015. However, that section also allows the retail sales agents to apply for endorsements which will permit them to sell liquor directly to consumers. This is a special benefit provided to the terminated agents notwithstanding whether their premises are 10,000 square feet or more (as is the general rule in the proposed initiative). We question whether referencing the impact on state liquor agent agreements is any more important than the other salient aspects of the proposed initiatives and feel, for that reason, there should be no reference at all to that particular impact in the result statement. But if the Attorney General chooses to make that reference, the Attorney General should be complete in describing what is offered to the retail agents in return. "When the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, [s]he runs the risk that the caption will be under inclusive and thus inaccurate." *Towers v. Afyers*, 341 Or 357,362 (2006). The same rule of thumb should apply to referencing only one portion of an impact in the result statement. For that reason, we suggest the result of yes vote be rephrased as follows:

"Yes' vote allows qualified retail stores to sell bottled liquor under specified circumstances; maintains current state liquor revenues; establishes regulatory requirements for liquor sales, distribution."

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C. Result of No Vote Statement

The current draft result of no vote statement once again references retail sales of distilled liquor for "off-premises consumption." For the reasons described above, use of that term of art is confusing to voters. We suggest that the result of no vote statement address this confusing language and more accurately identify the State's current authority related to liquor sales at both the retail and wholesale levels. For that reason we suggest:

Result of no vote: "No" vote retains the Oregon Liquor Control Commission's exclusive authority to sell and distribute distilled liquor at the wholesale and retail levels in the State."

D. The Summary

We believe the Attorney General's summary summarizes a portion of the proposed initiative and its major effects. However, the Attorney General's draft has not utilized all of the words which are otherwise available for a summary. With the benefit of more available words for the summary, the language regarding "off-premises" sales should be placed in a more understandable context. We suggest that the words "retail stores" be substituted for "private parties" in the second sentence and suggest that the Attorney General remove the redundant "retail" in that sentence. We further suggest that the sentence in the Attorney General's draft that focuses on the termination of agreements with current sales agents be replaced with the more

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relevant declaration that "retail sales agents may continue operating as privately owned retail liquor stores." For those reasons, we suggest the following replace the current draft¹ :

Summary: Under current law, sales of distilled liquor for consumption off the seller's premises are made exclusively by retail sales agents of Oregon Liquor Control Commission (OLCC). Proposed measure would allow off-premises sales by retail stores licensed and regulated by OLCC, effective April 1, 2015. Current retail sales agents may continue operating as privately owned retail liquor stores. Qualified retail sellers of wine and beer would be eligible for endorsement to sell distilled liquor, provided that they are in compliance with all laws and rules enforced by OLCC and have successfully completed the responsible vendor program. Requires payment of fees to OLCC for each container sold. Establishes Oregon Distilled Liquor Board to encourage development of distilling industry and related purposes; OLCC retains regulatory functions. Other provisions.

We ask that you request of the Attorney General a certified ballot title addressing the following issues.

Thank you for your consideration and time concerning this matter.

Sincerely,

Davis Irriight Tremaine LLP

J DiLorenzo, Jr.
J . p

cc: Lauren G. R. Jolmson
Lynn Guest

¹ We have not made provisions in our suggested summary for the very important references relating to preservation of state revenues on the assumption that we might persuade you to include those references in the caption and result of yes vote statement. Should you fail to make those inclusions, however, some reference should, at minimum, be made in the summary.



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 14, 2014

Jim Williams
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition-Allows Qualified Retail Stores to Sell Liquor; Imposes
Taxes Similar to Current State Price Markup
DOJ File #BT-47-14; Elections Division #47

Dear Mr. Williams:

We have received the comments submitted in response to the draft ballot title for prospective Initiative Petition #47 (2014). Comments were submitted by Paul Romain on his own behalf and on behalf of Robert Dodge; by John DiLorenzo on behalf of chief petitioners Lauren Johnson and Lynn Guest; and by Steven Berman on behalf of Elspeth McCann. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

The proposed measure changes the way in which bottled liquor is sold in Oregon, allowing qualified retailers to sell liquor by the bottle and imposes taxes on those sales in place of the current state mark-up on liquor prices.

The commenters suggest changes to all parts of the draft ballot title, as discussed below.

I. The draft caption

The draft caption provides:

**Allows Sale of Liquor by Private Retailers for Off-Premises Consumption; Related
Regulatory Changes/Provisions**

A. Comments by Romain

Romain asserts that the draft caption we have prepared is incomplete, because it does not note that "the most important change: from the current system is the imposition of a tax on liquor sales. We agree that the establishment of a new taxation system is a major effect of the measure, and we have revised the ballot title accordingly. We understand that the measure is intended to be revenue-neutral to the state, a point that is made by Mr. DiLorenzo, and we believe that is the major effect that must be included. We have included information about the mathematical formulas for the current system and that proposed by this measure in the summary.

B. Comments by DiLorenzo

DiLorenzo asserts that the term "off-premises" is likely not useful to the general public, and that "related regulatory changes/provisions" is not informative. Further, he notes that the reference to private retailers is inaccurate, in that current sales are made by private retailers; thus, that term does not describe the changes that the measure would bring about. We agree that more precise language is needed, and have revised the caption.

DiLorenzo also asserts that a major effect of the measure is to replace state revenues currently generated by liquor. As noted above, we agree and have revised the caption. However, it is not possible to say with certainty whether there exactly equivalent taxes will be collected, or how prices might be effected.

C. Comments by Berman

Berman asserts that the caption is misleading and underinclusive in that it understates the scope of the changes to the state's liquor laws, and that the use of the term "private retailers" is incorrect. We have already made changes of substantially the character that he has requested in response to the commenters. However, within the scope of a fifteen word caption, it is not possible to include all of the possible effects of the measure. Nor do we believe that the phrase "prefers large retailers" is entirely accurate or unbiased. We decline to include it in the caption. We have, however, revised the summary to include a reference to the 10,000 square foot eligibility requirement.

Accordingly, we certify the following caption:

Allows qualified retail stores to sell liquor; imposes taxes similar to current state price
markup

II. The Result Statements

All three commenters urge changes to the result statements. The draft result statements were as follows:

Result of "Yes" Vote: "Yes" vote allows private off-premises sales of distilled liquor under specified circumstances; requires termination of the Oregon Liquor Control Commission's retail sales agent agreements.

Result of "No" Vote: "No" vote retains the current system of retail sales of distilled liquor for off-premises consumption exclusively by Oregon Liquor Control Commission retail sales agents.

A. Comments by Romain

Romain's comments to the result statements raise similar issues as were raised as to the caption. As above, we agree that his comments with regard to retail sales agents and new taxes are well taken, and we revise the statements accordingly.

B. Comments by DiLorenzo

DiLorenzo likewise raises similar issues with regard to the result statements. He also asserts that if current sales agents are mentioned at all, then the benefit accorded them of preferential licensing should also be mentioned. We decline to make that change, because we have eliminated that reference in the "yes" statement.

C. Comments by Berman

Berman repeats his comments as to the caption. Again, we agree to the extent set forth above.

Accordingly, we certify the following result statements:

Result of "Yes" Vote: "Yes" vote expands retail sales of liquor by qualified retailers; imposes taxes roughly comparable to current state markup; establishes regulatory requirements for sales and distribution.

Result of "No" Vote: "No" vote retains the current system of retail sales of liquor exclusively through Oregon Liquor Control Commission agents, retains state markup for costs and taxes.

III. The Summary

The draft summary prepared by this office was as follows:

Summary: Under current law, sales of distilled liquor for consumption off the seller's premises are made exclusively by retail sales agents of Oregon Liquor Control Commission (OLCC). Proposed measure would allow off-premises retail sales by private parties licensed and regulated by the OLCC, effective April 1, 2015. Current agreements with retail sales agents would be terminated. Retail sellers of wine and beer would be eligible for an endorsement to sell distilled liquor, provided that they are in compliance with all laws and rules enforced by the OLCC and have successfully completed the responsible vendor program. Requires payment of fees to OLCC for each container sold. Establishes Oregon Distilled Liquor Board to encourage development of distilling industry and related purposes; OLCC retains regulatory functions. Other provisions.

As all three commenters correctly note, this measure has extraordinary breadth, making literally dozens of changes to existing law. It is thus a challenge to determine which of those many changes must be included in the summary. We greatly appreciate the input of the commenters on this issue.

A. Comments by Romain

Romain posits that, at a minimum, the summary must include the sales and bottle tax, the expansion of retailers, and the termination of current retailer contracts. We agree. He also suggests that the creation of the Distilled Liquor Board is not of sufficient importance to include; we believe that the creation of a new state agency should be noted.

Romain also asserts that there may be a constitutional issue with the details of the taxation system that "could" cause the entire system to be declared unconstitutional. Speculating about the results of a hypothetical legal challenge is beyond the scope of a ballot title, and we decline to include such information.

B. Comments by DiLorenzo

DiLorenzo asserts that the reference to "off-premises" sales should be made clearer, and that the preference for current retail sales agents be included, and we agree. We have changed the summary accordingly.

C. Comments by Berman

Berman suggests there are at least 10 subject areas that must be included in the caption. Many of those subjects are included in our revision. He also suggests, as he did with the caption and the result statement, that the preference for large retailers should be included. We agree that the summary is an appropriate place to include that information. However, a 125-word summary

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simply does not provide sufficient space to include all ten of those concepts. Berman has not attempted to provide such a summary. Accordingly, we have not included the details of contractual agreements among distillers, wholesalers, and retailers; civil and criminal penalties; bookkeeping requirements; or enforcement provisions.

Considering all of those comments, and upon further study of the measure itself, we certify the following summary:

Summary: Under current law, retail sales of liquor by the bottle are made exclusively by retail sale agents of the Oregon Liquor Control Commission. (OLCC). Price determined by multiplying cost/case by 1.798, adding operation and other costs. Measure would expand the number of retailers; current agreements with retail sales agents would be terminated, subject to a right to continue to operate. Current beer/wine retailers over 10,000 square feet would qualify as liquor retailers, provided they are in compliance with all liquor laws and have successfully completed the responsible vendor program. Current markup of prices replaced by 71.7% tax, plus per bottle tax; taxes adjusted in 2017; establishes minimum price. Creates Oregon Distilled Liquor Board to encourage industry; OLCC retains regulatory functions. Other provisions.

We certify the attached ballot title.

Sincerely,

gr DGF

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BALLOT TITLE

Allows qualified retail stores to sell liquor; imposes taxes similar to current state price markup

Result of "Yes" Vote: "Yes" vote expands retail sales of liquor by qualified retailers; imposes taxes roughly comparable to current state markup; establishes regulatory requirements for sales and distribution.

Result of "No" Vote: "No" vote retains the current system of retail sales of liquor exclusively through Oregon Liquor Control Commission agents, retains state markup for costs and taxes.

Summary: Under current law, retail sales of liquor by the bottle are made exclusively by retail sale agents of the Oregon Liquor Control Commission (OLCC). Price determined by multiplying cost/case by 1.798, adding operation and other costs. Measure would expand the number of retailers; current agreements with retail sales agents would be terminated, subject to a right to continue to operate. Current beer/wine retailers over 10,000 square feet would qualify as liquor retailers, provided they are in compliance with all liquor laws and have successfully completed the responsible vendor program. Current markup of prices replaced by 71.7% tax, plus per bottle tax; taxes adjusted in 2017; establishes minimum price. Creates Oregon Distilled Liquor Board to encourage industry; OLCC retains regulatory functions. Other provisions.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on March 17, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 47 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Steven C. Berman, attorney for petitioner Elspeth McCann; and served upon Margaret E. Schroeder, attorney for petitioners Ronald R. Dodge and Paul Romain; and served upon Paul Romain, attorney for petitioners Ronald R. Dodge and Paul Romain; and served upon John DiLorenzo, Jr., attorney for petitioners Lynn Gust and Lauren G. R. Johnson, using the court's electronic filing system.

/s/ Matthew J. Lysne

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