

IN THE SUPREME COURT OF THE STATE OF OREGON

ELSPETH McCANN,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

No. 62154

**PETITION TO REVIEW  
BALLOT TITLE CERTIFIED  
BY THE ATTORNEY  
GENERAL FOR INITIATIVE  
PETITION NUMBER 58 (2014)**

Petition to Review Ballot Title for Initiative Petition No. 58 for the General Election of November 4, 2014.

Ballot title certified by the Attorney General on March 18, 2014.

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## **I. PETITIONER’S INTEREST IN THIS MATTER**

Pursuant to ORS 250.085 and ORAP 11.30, petitioner Elspeth McCann (“McCann”) seeks review of the certified ballot title for Initiative Petition No. 58 for the General Election of November 4, 2014 (the “Initiative”).<sup>1</sup> McCann is an elector in the State of Oregon who filed timely written comments concerning the draft ballot title with the Secretary of State pursuant to ORS 250.067(1).<sup>2</sup> In response to the comments provided by McCann and others, the Attorney General revised the ballot title.<sup>3</sup> However, the caption, result of yes statement and summary for the certified ballot title still do not comply with ORS 250.035(2).

The arguments raised in the this petition to review are similar to the arguments raised in support of McCann’s petition to review the certified ballot title for Initiative Petition No. 47 (2014) (“IP 47”),<sup>4</sup> with one exception. The certified ballot title for IP 47 inaccurately describes the new taxes created by that initiative (which are the same as the new taxes created by this Initiative) as “impos[ing] taxes similar to current state price markup.” The certified ballot challenged here corrects that flaw, but still inaccurately describes the new taxes; accordingly, the arguments regarding the ballot title’s description of the

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<sup>1</sup>A copy of the Initiative is attached as Exhibit 1.

<sup>2</sup>A copy of the draft ballot title is attached as Exhibit 2. A copy of McCann’s comments to the Secretary of State is attached as Exhibit 3.

<sup>3</sup>A copy of the Attorney General’s response to McCann’s comments is attached as Exhibit 4. A copy of the certified ballot title is attached as Exhibit 5.

<sup>4</sup>That petition to review is pending before the court. The case is entitled *McCann v. Rosenblum* (S062082) (control).

new taxes imposed by the Initiative are not the same as the arguments raised in McCann's petition challenging the certified ballot title for IP 47.

## **II. THE INITIATIVE**

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 on liquor, a new governmental agency, and new government-controlled funds.

The Initiative is too complex to describe fully within the space constraints set by ORAP 11.30(4). It runs over 70 pages, and contains 81 sections. McCann explained in detail the breadth of the Initiative in her comments to the Attorney General. Ex 3. Some of the major effects of the Initiative include:

- Imposing new taxes on liquor. Initiative, §§16, 16a, 73, 78(2).
- Altering the distribution formula for liquor generated revenues. Initiative, §§26(1)(a), (b); 27-34.
- Eliminating the Oregon Liquor Control Commission's ("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. Initiative, §74.
- Terminating all existing contracts between OLCC retail agents and OLCC, and disposing of all OLCC held property. Initiative, §§47, 50(1), (2).
- Creating a new administrative agency, the Oregon Distilled Liquor Board ("ODLB"). The ODLB will be appointed by the governor, have broad regulatory and contracting authority, and be funded by the new taxes created by the Initiative. Initiative, §§35-42.
- Providing "retail off-premises sales licenses" to applicants with "at least 10,000 square feet of space devoted to the retail selling of merchandise" who meet other minimal qualifications. Initiative, §5(2)(c)(A).

- Strictly limiting the number of “retail off-premises sales licenses” available to retailers smaller than 10,000 square feet who meet certain criteria that will be established by the ODLB. Initiative, §39.
- Restricting the minimum price at which liquor can be sold and prohibiting certain contracts between retailers and wholesalers. Initiative, §§ 6, 7.
- Establishing a new statutory scheme for delivery of liquor and detailed bookkeeping and recordkeeping requirements for distillers, retailers and wholesalers. Initiative, §§8, 9, 17, 18, 19, 20 and 24.
- Mandating new licensing requirements and procedures for distillers and wholesalers. Initiative, §5.
- Granting OLCC new authority, including the authority to seize and sell property, and providing the Attorney General with new enforcement authority. Initiative, §§21, 22.

The Initiative also makes a host of “conforming and technical amendments,” and contains multiple “administrative and temporary provisions.” Initiative, §§52-72, 73-81.

The Initiative is a massive and sweeping proposed enactment. The certified ballot title does not capture the full reach of the Initiative, and as a result, does not adequately describe the Initiative to voters and potential petition signers.

### **III. ARGUMENTS AND AUTHORITIES**

#### **A. The Caption Does not Comply with the Requirements of ORS 250.035(2)(a).**

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 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, 258 P3d 1194 (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). A caption that is underinclusive, because it fails to inform voters of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Myers*, 341 Or 357, 362, 142 P3d 1040 (2006). *See also Towers*, 341 Or at 361 (“[w]hen 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”).

The caption for the certified ballot title provides:

**Allows qualified retail stores to sell liquor; current price markup replaced by wholesale sales tax**

Ex 5.

The first clause of the caption – “[a]llows qualified retail stores to sell liquor” – is underinclusive and uninformative. That clause addresses only one aspect of the Initiative, specifically those provisions which allow certain retail stores to sell liquor. *See, e.g.*, Initiative, §§5(2)(c), (d) (so providing). The first clause, and the caption, do not address myriad other changes that the Initiative makes to extant law, including:

- Altering the distribution formula for liquor generated revenues.
- Eliminating 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.

- Terminating all existing contracts between OLCC retail agents and OLCC, and disposing of all OLCC held property.
- Creating and funding (with new taxes) the ODLB, with broad regulatory and contracting authority.
- Favoring large retailers by restricting the number of smaller retail stores that can sell liquor.
- Restricting the minimum price at which liquor can be sold and prohibiting certain contracts between retailers and wholesalers.
- Establishing a new statutory scheme for delivery of liquor and detailed bookkeeping and recordkeeping requirements for distillers, retailers and wholesalers.
- Mandating new licensing requirements and procedures for distillers and wholesalers.

The first clause improperly emphasizes a single major effect of the Initiative and does not discuss others that are of equal import. The first clause of the caption is underinclusive for that reason, and must be revised.

The Attorney General’s task in crafting a ballot title for such a sweeping initiative is unenviable. “We recognize that trying to describe all the major effects of a multifaceted, complex measure in 15 words can be difficult, and sometimes not possible.” *McCann v. Rosenblum*, 354 Or 701, 707, \_\_\_ P3d \_\_\_ (2014) (citation omitted). While the 15-word limit in ORS 250.035(2)(a) “will often require trade-offs between detail and breadth,” “the caption still must ‘reasonably identify’ the subject matter of the measure.” *McCann*, 354 Or at 707 (citation omitted). “Allows qualified retail stores to sell liquor” captures only a small part of the breadth of the Initiative and sacrifices necessary detail. The Initiative does much more than license some retailers to sell liquor; in addition to creating new taxes, the Initiative eliminates an existing Oregon

agency, creates a new agency, changes how liquor is distributed and priced, modifies existing civil and criminal statutes and alters licensing requirements for distillers and wholesalers. The phrase “[a]llows qualified retail stores to sell liquor” is underinclusive and not sufficiently informative.

The word “qualified” also is vague and uninformative. The caption does not notify voters as to what is required to be “qualified.” *See, e.g., McCann* 354 Or at 606-607 (rejecting word “modifies” in caption as insufficient). Voters would have no way of knowing that “qualified” means stores with over 10,000 square feet of space devoted to retail sales, and that only a handful of smaller retailers would be allowed to sell alcohol.

The second clause – “current price markup replaced by wholesale sales tax” – also must be revised. As the Attorney General correctly recognizes, “the establishment of a new taxation system is a major effect of the measure that must be included in the caption.” Exhibit 4 at 2. *See also McCann* 354 Or at 606-607 (changes to taxes must be set forth with some specificity in caption); *Green v. Kroger*, 351 Or 641, 647-648, 274 P3d 180 (2012) (caption must inform voters of changes to taxes made by initiative). However, the description of the new taxation system is inaccurate.

The Initiative creates both a wholesale sales tax and a per bottle tax, but the caption describes only the wholesale sales tax. The new taxes created by the Initiative consist of a 71.7% tax on the wholesale price of the liquor, plus a 75 cents per container flat tax. Initiative, §16(1). The per container tax may drop to 25 cents in 2017. *Id.* at §§16a, 78(2). However, the Initiative explicitly

provides that the legislature can extend all or part of the 75 cent per bottle flat tax indefinitely. *Id.* at §16b. The caption describes only the wholesale sales tax, but not the per bottle flat tax.

The phrase “current price markup replaced by” also is inaccurate and potentially misleading. “Replace” means “restore to a former place, position, or condition,” “supply an equivalent for.” *Webster’s Third New Int’l Dictionary* 1925 (unabridged ed 2002). The new taxes do not “replace” the current state price markup. Under existing law, the OLCC has the authority to set the price for liquor sold in Oregon. ORS 471.745. The Initiative removes that authority as well as the OLCC’s authority to sell liquor. Initiative, §74. The Initiative *adds* the new wholesale sales and flat taxes. Initiative, §§16, 16a. However, there is no way of knowing whether either the amount of taxes charged under the Initiative’s taxation system, or the revenue generated by that taxation system, will be the same or remotely similar to the current state markup or current revenues generated by the markup. As presently phrased, voters and potential petition signers could be improperly led to believe that the amount of the taxes charged under the Initiative would be the same as the current state markup and that the revenue generated by the taxes would be the same as the revenue generated by the current state markup.

The Chief Petitioners may argue that “replace” is accurate, because they *believe* that the new taxes would replicate the existing markup. However a ballot title may not speculate as to what could happen if an initiative is approved. *Terhune v. Myers*, 342 Or 136, 150, 149 P3d 1139 (2006). The



Chief Petitioners' argument does not gain any traction merely because they entitled the provisions in the Initiative relating to the new taxes as "State Revenue Replacement Fee." *See* Initiative, p. 18 (caption preceding sections 16, 16a and 16b). A ballot title should not quote language from an initiative if that language would be confusing or misleading to voters. *Tauman v. Myers*, 343 Or 299, 302-304, 170 P3d 556 (2007). Referring to the Initiative's new taxing regime as a "revenue replacement fee" is misleading, because there is no way to ensure that existing revenue will be replaced by the new taxes. Moreover, "[w]e recognize that the potential exists for the proponents of an initiative measure either intentionally or unintentionally to use words in the measure that obfuscate the subject \* \* \* or major effect of the measure."

*Bernard v. Keisling*, 317 Or 591, 596, 858 P2d 1309 (1993).<sup>5</sup> A ballot title should not incorporate language from an Initiative used for that purpose. *Dirks v. Myers*, 329 Or 608, 616, 993 P2d 808 (2000). The phrase "revenue replacement" in the section heading in the Initiative is language that obfuscates the subject of the measure and should not be incorporated into the ballot title.

McCann respectfully submits that the caption does not reasonably identify the subject matter of the Initiative, because the first clause is underinclusive, and the second clause does not accurately describe the new taxes created by the Initiative. That caption must be modified.

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<sup>5</sup>Even the text of the Initiative provides that the section captions in the Initiative do not express any legislative or drafters' intent. *See* Initiative, §81 (so providing).

**B. The Result of Yes Statement Does not Comply With the Requirements of ORS 250.035(2)(b).**

ORS 250.035(2)(b) requires that the ballot title contain a “simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.”

The result of yes statement for the certified ballot title provides:

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.

The result of yes statement should be revised for the reasons set forth above. In addition, in the result of yes statement:

- The word “expands” is speculative and inaccurate. “Expand” means “to increase the extent, size, number, volume, or scope of.” *Webster’s* at 798. The Initiative does not, in itself, increase either the number of retailers selling alcohol in Oregon or the volume of retail alcohol sales. It changes who can and cannot sell alcohol, but that is not necessarily an “expansion.”
- “Establishes regulatory requirements” is underinclusive. The Initiative adds new *statutory* requirements and creates a new regulatory board with new regulatory authority. The Initiative creates new legal requirements that are both statutory *and* regulatory.

For those reasons, the result of yes statement also must be revised.

**C. The Summary Does Not Comply with the Requirements of ORS 250.035(2)(d).**

ORS 250.035(2)(d) requires that the ballot title contain a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The summary contains the flaws discussed above. In addition:

- Voters are not informed that only a very restricted number of stores with retail space of less than 10,000 square feet would be permitted to sell liquor (which would have a disparate impact on rural areas).
- The role of the ODLB is understated and voters are not informed that the board is a new governmental agency, with regulatory and contracting powers, funded by revenue from a new tax created by the Initiative. *See* Initiative, §§35-42 (discussing ODLB). The role of the ODLB is not limited “to encourag[ing] industry” as the summary implies.

For those reasons, the summary also must be revised.

#### **IV. CONCLUSION**

McCann respectfully requests that the court certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035(2) in lieu of the ballot title certified by the Attorney General or, alternatively, refer the ballot title to the Attorney General for modification.

DATED this 31st day of March, 2014.

Respectfully submitted,

By: /s/ Steven C. Berman

Steven C. Berman, OSB No. 951769  
STOLL STOLL BERNE LOKTING &  
SHLACHTER, PC

**Attorneys for Petitioner Elspeth McCann**

1 OREGON LIQUOR CONTROL MODERNIZATION ACT #8

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 regulating  
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 construed 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.

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1 (c) [To protect] **Promote** the safety, welfare, health[,] and peace [*and morals*] of the  
2 people of the state.

3 (2) Consistent with subsection (1) of this section, it is the policy of this state to encourage  
4 the development of all Oregon industry, **including the promotion of job development through**  
5 **the creation and maintenance of small businesses such as grocery stores, retailers,**  
6 **restaurants and local manufacturers of alcoholic beverages.**

7  
8 **DEFINITIONS**

9  
10 **SECTION 3.** ORS 471.001 is amended to read:

11 471.001. As used in this chapter and ORS chapter 473:

12 (1) "Alcoholic beverage" [*and "alcoholic liquor" mean*] **means** any liquid or solid  
13 containing more than one-half of one percent **ethanol** alcohol by volume and capable of being  
14 consumed by a human being.

15 (2) "Commercial establishment" means a place of business:

16 (a) Where food is cooked and served;

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

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

19 (d) That:

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

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

24 (3) "Commission" means the Oregon Liquor Control Commission.

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

27 (5) "Licensee" means any person holding a license issued under this chapter.

28 (6)(a) "Malt beverage" means an alcoholic beverage obtained by the fermentation of  
29 grain that contains not more than 14 percent alcohol by volume.

30 (b) "Malt beverage" includes:

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 must 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 nonbeverage food products described in  
5 subsection (6) of this section are subject to all provisions of this chapter, including the  
6 prohibitions on sales to persons under 21 years of age and the prohibitions 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  
11 privilege taxes imposed by ORS chapter 473.

12 (4) Manufacturers of nonbeverage 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 than 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*].

## 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:**

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

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

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

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

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

11 (C) A holder of a distillery license issued under ORS 471.230, as amended by section  
12 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws 2013, and section 67  
13 of this 2014 Act.

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

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

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

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

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

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

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

28 (A) Purchase distilled liquor from:

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

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



1 (iii) A person that is not a holder of a retail license that holds a distilled liquor  
2 central warehouse permit or certificate of authority to operate a central warehouse issued  
3 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 (D) Sell distilled liquor at retail.

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

13 (A) Must sell distilled liquor from licensed retail premises with at least 10,000  
14 square feet of space devoted to the retail selling of merchandise, including any space for the  
15 retail selling of alcoholic beverages, unless the Oregon Distilled Liquor Board established  
16 by section 36 of this 2014 Act authorizes the licensee to sell distilled liquor from licensed  
17 premises of under 10,000 square feet.

18 (B) Must take reasonable steps to prevent theft of distilled liquor from the licensee's  
19 premises, including but not limited to:

20 (i) Implementing theft prevention measures required by the commission of retail  
21 sales agents on the effective date of this 2014 Act.

22 (ii) Securing access to distilled liquor offered for sale to the public within 25 feet of  
23 an entrance or exit of the licensee's premises.

24 (iii) Implementing cost-effective theft prevention recommendations of the nonprofit  
25 corporation identified in sections 28 and 29 of this 2014 Act.

26 (d) Notwithstanding ORS 471.175, as amended by section 1, chapter 32, Oregon  
27 Laws 2013, and section 54 of this 2014 Act, the holder of a full retail on-premises sales  
28 license that holds an endorsement issued under this subsection may:

29 (A) Purchase distilled liquor from:

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

1 (ii) A wholesale malt beverage and wine licensee that holds an endorsement issued  
2 under subsection (3) of this section.

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

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

7 (D) Sell distilled liquor at retail.

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

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

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

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

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

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

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

21 (D) Sell distilled liquor to:

22 (i) A retail licensee or wholesale distributor that holds an endorsement issued under  
23 this section of this 2014 Act.

24 (ii) The holder of distilled liquor central warehouse permit or a certificate of  
25 authority to operate a central warehouse.

26 (4) The authority to pick up and transport distilled liquor granted by subsection (2)  
27 of this section includes the authority to pick up from and transport between premises of  
28 retail licensees that are under common ownership or control.

29 (5) The holder of a distilled liquor self-distribution permit or an endorsement issued  
30 under this section of this 2014 Act may provide or pay for sample tastings of distilled liquor

1 for the public on premises with a full or limited on-premises sales license or an off-premises  
2 sales license.

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) Nothing in subsection (3) of this section or in ORS 471.398 as amended by  
29 section 70 of this 2014 Act authorizes a person to violate the federal Alcohol Administration  
30 Act, 27 U.S.C. 205, or regulations adopted to implement the federal Alcohol Administration  
31 Act.

1           (5) The Oregon Liquor Control Commission may not prescribe or prohibit terms of  
2 an agreement for the sale of distilled liquor between:

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

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

5           (c) A holder of a distilled liquor self-distribution permit and a wholesaler  
6 distributor.

7           (6) A holder of a distilled liquor self-distribution permit may sell distilled liquor at  
8 different prices to different licensees.

9           SECTION 7. (1) To encourage free and open competition in the interest of the  
10 general welfare and economy of the state, the following clauses in agreements are against  
11 public policy and are void and unenforceable:

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

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

20           (c) Any clause in an agreement between a holder of a distilled liquor self-  
21 distribution permit and a holder of an off-premises retail license that holds an endorsement  
22 under section 5 of this 2014 Act that conditions the sale by the permit holder to the licensee  
23 on the licensee's obtaining distilled liquor through a wholesale distributor.

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

29           (b) ORS 474.005 to 474.095, 474.105 and 474.115 do not apply to an arrangement  
30 for the sale of distilled liquor by a holder of a distilled liquor self-distribution permit to a

1 wholesale distributor or to the distribution of distilled liquor by a wholesale distributor on  
2 behalf of a holder of a distilled liquor self-distribution permit.

3 (3) At the request of a holder of a retail off-premises sales license that holds an  
4 endorsement issued under section 5 of this 2014 Act, a holder of a distilled liquor self-  
5 distribution permit that agrees to sell distilled liquor to the retail licensee must sell the  
6 distilled liquor directly to the licensee rather than through a wholesale distributor.  
7 Nothing in this subsection, subsection (1) of this section, or in the grant of an endorsement  
8 to an off-premises retail licensee under section 5 of this 2014 Act requires a holder of a  
9 distilled liquor self-distribution permit to sell distilled liquor to a retail off-premises sales  
10 licensee.

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

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

14 (6) Notwithstanding any other provision of law:

15 (a) A wholesale distributor may not import, purchase, sell, transport or receive a  
16 brand of distilled liquor without the written permission of the brand owner or the  
17 authorized agent of the brand owner for the sale of that brand in this state.

18 (b) A retail licensee may not import, purchase, sell, transport or receive a brand of  
19 distilled liquor without the written permission of the brand owner or the authorized agent  
20 of the brand owner for the sale of that brand in this state unless it is from a person in the  
21 chain of distribution to the retail licensee that has the written permission stated in  
22 paragraph (a) of this subsection.

23 (7) Subsection (6) of this section does not limit the authority of a retail licensee to  
24 designate or use a central warehouse inside or outside this state if that licensee's obligations  
25 conform to subsection (6)(b) of this section.

## 26 27 TRANSPORTATION OF DISTILLED LIQUOR

28  
29 SECTION 8. (1)(a) A holder of a distilled liquor self-distribution permit that sells  
30 distilled liquor to a retail licensee may deliver the distilled liquor only to the retail  
31 licensee's licensed premises or central warehouse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 SECTION 9. (1) Notwithstanding ORS 471.404, as amended by section 72 of this  
12 2014 Act:

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

16 (b) The authority to receive and store distilled liquor includes the authority to  
17 receive and store within and outside the State of Oregon distilled liquor that is distilled,  
18 bottled or packaged inside or outside the State of Oregon and inside or outside the United  
19 States.

20 (c) The authority to purchase and sell distilled liquor includes the authority to  
21 purchase and sell within and outside the State of Oregon and the United States distilled  
22 liquor that is distilled, bottled or packaged inside or outside the State of Oregon and inside  
23 or outside the United States.

## 24 RESPONSIBLE SALES TO THE PUBLIC

25 SECTION 10. ORS 471.344 is amended to read:  
26

27 471.344. (1) The Oregon Liquor Control Commission shall by rule establish a responsible  
28 vendor program. The program shall include a list of positive measures that a licensee must take  
29 to avoid sales of alcoholic beverages to minors. Any person holding a liquor license that  
30 authorizes the person to sell alcoholic beverages at retail may participate in the program.  
31

1 (2) Any off-premises licensee with an endorsement issued under section 5 of this  
2 2014 Act shall participate in the responsible vendor program.

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

6 (b) Notwithstanding paragraph (a) of this subsection, a licensee that completes  
7 training is not required to repeat the training if:

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

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

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

11 (4) The commission may require a licensee to repeat responsible vendor training if  
12 the licensee is convicted under ORS 471.410 (5).

13 [(2)](5) If a licensee [*participates in the*] **successfully completes** responsible vendor  
14 program **training** and takes all measures specified by the program as necessary to prevent sales  
15 of alcoholic beverages to minors, the commission may not cancel the license of the licensee, or  
16 deny issuance of a license to the licensee, based on sales of alcoholic beverages to minors by  
17 employees of the licensee.

18 **SECTION 11.** Notwithstanding ORS 471.344, as amended by section 10 of this 2014  
19 Act, a licensee that completed responsible vendor training under ORS 471.344 prior to the  
20 effective date of this 2014 Act is not required to repeat the training to obtain an  
21 endorsement under section 5 of this 2014 Act.

## 22 23 RESPONSIBLE SELLING

24  
25 **SECTION 12.** ORS 471.115 is amended to read:

26 471.115. (1) The Oregon Liquor Control Commission may limit:

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

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



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

3  
4 RESPONSIBLE SALES

5  
6 SECTION 13. ORS 471.446 is amended to read:

7 471.446. (1) *[No retail licensee shall purchase any wine or cider]* A retail licensee may  
8 not purchase alcoholic beverages for resale except in sealed containers, the seals of which shall  
9 remain unbroken when it is sold for consumption off the premises.

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

14  
15 INCREASED PENALTIES FOR DISTILLED LIQUOR VIOLATIONS

16  
17 SECTION 14. ORS 471.410 is amended to read:

18 471.410. (1) A person may not sell, give or otherwise make available any alcoholic  
19 *[liquor]* beverages to any person who is visibly intoxicated.

20 (2) No one other than the person's parent or guardian may sell, give or otherwise make  
21 available any alcoholic *[liquor]* beverages to a person under the age of 21 years. A parent or  
22 guardian may give or otherwise make alcoholic *[liquor]* beverages available to a person under  
23 the age of 21 years only if the person is in a private residence and is accompanied by the parent  
24 or guardian. A person violates this subsection who sells, gives or otherwise makes available  
25 alcoholic *[liquor]* beverages to a person with the knowledge that the person to whom the liquor  
26 is made available will violate this subsection.

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

1 (b) This subsection:

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

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

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

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

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

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

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

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

18 [(c)] (C) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than  
19 30 days of imprisonment.

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

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

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

25 (C) Upon a third or subsequent conviction, a fine of at least \$3,000 and not less than  
26 30 days of imprisonment.

27 [(6)] (7)(a) A person who violates subsection (2) of this section is subject to the  
28 provisions of this subsection if the person does not act knowingly or intentionally and:

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

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

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

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

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

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

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

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

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

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

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

22 (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall  
23 impose a mandatory fine of not less than \$2,000 and a mandatory sentence of not less than  
24 30 days of imprisonment.

25 [(7)] (8) The court may waive an amount that is at least \$200 but not more than one-third  
26 of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours  
27 of community service.

28 [(8)] (9) Except as provided in subsection [(7)] (8) of this section, the court may not  
29 waive or suspend imposition or execution of the mandatory minimum sentence required by  
30 subsection (5), [*or*] (6) or (7) of this section. In addition to the mandatory sentence, the court  
31 may require the violator to make restitution for any damages to property where the alcoholic

1 [liquor] **beverages** was illegally consumed or may require participation in volunteer service to a  
2 community service agency.

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

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

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

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

11 **(b) Upon a second violation, \$2,000.**

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

13 [(10)] **(11)** Nothing in this section prohibits any licensee under this chapter from allowing  
14 a person who is visibly intoxicated from remaining on the licensed premises so long as the  
15 person is not sold or served any alcoholic [liquor] **beverages**.

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

17 471.559. (1) If no warning sign is posted:

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

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

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

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

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

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

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

1 (4) The penalty provided by this section shall be the sole penalty for violation of this  
2 section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991.

3 (5) Violation of this section or ORS 471.551 or the rules adopted under section 1, chapter  
4 324, Oregon Laws 1991, shall not be grounds for refusal to issue a license, cancellation of a  
5 license or suspension of a license issued under this chapter.

6 (6) Nothing in this section or ORS 471.551 or the rules adopted under section 1, chapter  
7 324, Oregon Laws 1991, creates any new cause of action or any private right of any person.

8  
9 **STATE REVENUE REPLACEMENT FEE**

10  
11 **SECTION 16.** (1) For every container of distilled liquor that a holder of a distilled  
12 liquor self-distribution permit transports into or sells in this state, the holder shall pay to  
13 the Oregon Liquor Control Commission a fee of 75 cents per container plus 71.7 percent of  
14 the price for which the holder sells the distilled liquor.

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

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

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

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

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

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

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

25 (A) The first \$400,000 of gross sales each calendar year beginning January 1 by the  
26 holder of a distilled liquor self-distribution permit in Oregon.

27 (B) Sales to the public by the holder of a distillery license issned nnder ORS  
28 471.230, as amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253,  
29 Oregon Laws 2013, and section 67 of this 2014 Act, that occur on the distillery licensee's  
30 licensed premises.

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

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

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

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

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

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

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

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

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

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

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

26 (A) The first \$400,000 of gross sales each calendar year beginning January 1 by the  
27 holder of a distilled liquor self-distribution permit in Oregon.

28 (B) Sales to the public by the holder of a distillery license issued under ORS 471.230, as  
29 amended by section 1, chapter 20, Oregon Laws 2012, section 1, chapter 253, Oregon Laws  
30 2013, and section 67 of this 2014 Act, that occur on the distillery licensee's licensed premises.

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

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

11 **SECTION 16b.** Nothing in this 2014 Act affects the authority of the Legislative  
12 Assembly to retain or extend the portion of the per bottle fee reduced by the amendments  
13 to section 16 of this 2014 Act by section 16a of this 2014 Act.

#### 14 **RECORDKEEPING AND PAYMENT PROCEDURES**

15  
16  
17 **SECTION 17.** (1) (a) A person that owes the fee under section 16 of this 2014 Act  
18 shall pay the fee not later than the date the statement required by section 19 of this 2014  
19 Act is due. If the person that owes the fee does not make timely payment of the fee, the  
20 commission shall add and collect a penalty of 10 percent of the fee owed and interest at the  
21 rate of one percent a month or fraction of a month.

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

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

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

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

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

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

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

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

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

28 (2) Notwithstanding subsection (1) of this section, a person that does not reasonably  
29 expect to be liable for the fee imposed by section 16 of this 2014 Act in the current calendar  
30 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           (b) 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, importiug, 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.

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

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

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

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

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

14 (5) A member of the board must maintain the followiug qualifications during the  
15 term of office:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) Notwithstanding ORS 182.462:

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

29 (b) The board shall adopt rules specifying the procedures, criteria and timelines for  
30 the preparation and approval of the annual plans and budget for promotion and for  
31 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

1           **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.]*

11           *[(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 [ ]:

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:

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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

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

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

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

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

(10) **The annual fee for an endorsement issued to an on-premises licensee under section 5 of this 2014 Act is \$25 and the biennial fee is \$50.**

(11) **The annual fee for an endorsement issued to an off-premises licensee under section 5 of this 2014 Act is \$100 and the biennial fee is \$200.**

(12) **The annual fee for an endorsement issued to a wholesale distributor under section 5 of this 2014 Act is \$275 and the biennial fee is \$550.**

(13) **The annual fee for a permit or certificate issued under section 8 of this 2014 Act is \$100 and the biennial fee is \$200.**



1  
2 OLCC TRANSITION  
3

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

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

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

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

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

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

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

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

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

30 SECTION 48. (1) Notwithstanding section 5 of this 2014 Act, a person who obtains  
31 an off-premises retail sales license under section 47 of this 2014 Act may operate a licensed

1 premises that has less than 10,000 square feet of space devoted to the retail selling of  
2 merchandise, including any space for the retail selling of alcoholic beverages; and

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

5 SECTION 49. An off-premises retail sales license obtained under section 47 of this  
6 2014 Act may be:

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

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

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

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

17 (3) Notwithstanding subsection (2) of this section, ORS 184.634, 270.005 to 270.015,  
18 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551, proceeds from the disposition  
19 of properties under this section shall first be applied to offset the costs of the commission to  
20 implement this 2014 Act.

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

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

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

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

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

6        (2) If, on April 16, 2015, alcoholic beverages remain in the possession of a retail sales  
7 agent whose retail sales agent agreement terminated on or before April 15, 2015, and the  
8 retail sales agent has not obtained a retail license under section 47 of this 2014 Act, the  
9 commission shall retrieve the alcoholic beverages and make the alcoholic beverages  
10 available for purchase by the holder of a retail license with an endorsement issued under  
11 section 5 of this 2014 Act or a retail license issued under section 47 of this 2014 Act.

12  
13                    **CONFORMING AND TECHNICAL AMENDMENTS**  
14

15        **SECTION 52.** ORS 471.346 is amended to read:

16        471.346. (1) The Oregon Liquor Control Commission shall by rule develop uniform  
17 standards for minor decoy operations used to investigate licensees [*and agents operating stores*  
18 *on behalf of the commission under ORS 471.750*] for violations of the laws of this state  
19 prohibiting sales of alcoholic beverages to minors. Uniform standards established by the  
20 commission under this section apply to all investigations conducted by the commission that use  
21 minor decoys. The commission shall encourage all law enforcement agencies of this state to use  
22 the uniform standards established under this section for minor decoy operations conducted by the  
23 law enforcement agencies.

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

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

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

30        (3) The uniform standards established by the commission under this section shall provide  
31 that minor decoy operations must be conducted on either a random or a targeted basis in cities

1 with populations of 20,000 or more. Random minor decoy operations shall cover a range of retail  
2 outlets. Targeted minor decoy operations may be conducted for a single licensee [*or agent*], but  
3 may be used only if there is a documented compliance problem with the specific licensee [*or*  
4 *agent*] that is the target of the operation. For the purpose of implementing standards for random  
5 minor decoy operations under this subsection, the commission shall by rule adopt a methodology  
6 that produces, to the greatest extent possible, an equal chance that any licensee [*or agent*] will be  
7 subject to a minor decoy operation.

8 (4) Except as provided in subsection (5) of this section, the failure of the commission or  
9 of a law enforcement agency to follow uniform standards established by the commission under  
10 this section is not grounds for challenging any complaint, citation or conviction for violation of  
11 the laws prohibiting the sale of alcoholic beverages to minors.

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

19 (6) Notwithstanding any other provision of this chapter, the commission may not  
20 consider any sale of alcoholic beverages to a minor that results from a minor decoy operation  
21 that is not conducted in compliance with the standards established under this section for the  
22 purpose of imposing any civil penalty against a licensee, making a decision on the renewal,  
23 suspension or cancellation of a license issued under this chapter or otherwise sanctioning a  
24 licensee for the sale of alcoholic beverages to a minor.

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

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

28 471.155. (1) The Oregon Liquor Control Commission shall provide for the licensing of  
29 persons and cities within the state to manufacture, distribute, take orders for and sell [*spirits,*  
30 *wines, beer and other*] alcoholic [*liquors*] **beverages**. Except as provided in subsection (2) of this  
31 section, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or

1 brewery- public house license or the holder of a wine self-distribution permit **or distilled liquor**  
2 **self-distribution permit** shall give, and at all times maintain on file with the commission, a  
3 bond with a corporate surety authorized to transact business in this state. The bond shall be in  
4 form and amount acceptable to the commission, shall be payable to the commission and  
5 conditioned that the licensee or permittee will pay any fine imposed for any violation of any  
6 provision of the Liquor Control Act and that the licensee or permittee will pay all license fees,  
7 privilege taxes, **fees imposed by section 16 of this 2014 Act**, taxes imposed under ORS 473.045  
8 and other taxes on alcoholic [*liquors*] **beverages**, together with penalties and interest thereon,  
9 levied or assessed against the licensee or permittee under statutes relating to the importation,  
10 manufacture, distribution, sale or taxation of alcoholic [*liquors*] **beverages** in the State of  
11 Oregon.

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

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

22 471.175. (1) The holder of a full on-premises sales license may sell **alcoholic beverages**  
23 by the drink at retail [*wine, malt beverages, cider and distilled liquor*]. Except as provided in this  
24 section, all alcoholic beverages sold under a full on-premises sales license must be consumed on  
25 the licensed premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 *[(6)]* (4) The holder of a full on-premises sales license may sell factory- sealed containers  
27 of wine to a person who organizes a private gathering on the licensee's premises if the wine was  
28 acquired as part of a larger purchase of wine by the licensee for the purpose of the gathering and  
29 only part of the larger purchase was consumed at the gathering. Wine sold under this sub- section  
30 may be sold only for an amount adequate to compensate the licensee for the amounts paid by the  
31 licensee for the wine.

1           [(7)] (5) The holder of a full on-premises sales license may sell for consumption off the  
2 licensed premises malt beverages, wines and cider in securely covered containers provided by  
3 the consumer and having capacities of not more than two gallons each.

4           [(8)] (6) A nonprofit private club, including but not limited to a fraternal or veterans  
5 organization, may qualify for a full on-premises sales license under this section only if the club  
6 meets any minimum membership, nonprofit status and food service requirements established by  
7 commission rule.

8           [(9) *The commission may annually adjust the price threshold established in subsection*  
9 *(4)(a) of this section by a percentage equal to the percentage change in the Portland-Salem, OR-*  
10 *WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of*  
11 *Labor Statistics of the United States Department of Labor. However, the commission may not*  
12 *adjust the price threshold to be less than \$30.*]

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

15           471.186. (1) The holder of an off-premises sales license may sell factory-sealed  
16 containers of wine, malt beverages and cider. Containers of malt beverages sold under the  
17 license may not hold more than two and one-quarter gallons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 56.** ORS 471.200, as amended by section 4, chapter 32, and section 3, chapter  
28 537, Oregon Laws 2013, is amended to read:

29 471.200. (1) A brewery-public house license allows the licensee:



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

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

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

8 (d) To sell on the licensed premises at retail malt beverages manufactured on or off the  
9 licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption  
10 off the premises, delivery of which may be made in a securely covered container supplied by the  
11 consumer;

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

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

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

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

21 (2) In addition to the privileges specified in subsection (1) of this section, in any calendar  
22 year a brewery-public house licensee may sell at wholesale to licensees of the commission malt  
23 beverages produced by the brewery-public house licensee if the brewery-public house licensee  
24 produced 5,000 barrels or less of malt beverages in the immediately preceding calendar year.

25 (3) A brewery-public house licensee, or any person having an interest in the licensee, is a  
26 retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section  
27 and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial  
28 or otherwise, in, upon or to the premises, equipment, business or merchandise of any  
29 manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any  
30 person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398  
31 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any

1 right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises,  
2 equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

3 (4) A brewery-public house licensee, or any person having an interest in the licensee, is a  
4 retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section  
5 and ORS 471.400, may not accept directly or indirectly any financial assistance described in  
6 ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-  
7 public house licensee, or any person having an interest in the licensee, is also a manufacturer for  
8 the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS  
9 471.400, may not provide directly or indirectly any financial assistance described in ORS  
10 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial  
11 assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail  
12 businesses licensed to the same person under the provisions of this section.

13 (5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or  
14 any person having an interest in the licensee, may also hold a winery license authorized by ORS  
15 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may  
16 also hold a warehouse license authorized by ORS 471.242.

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

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

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

30 (8) Notwithstanding any other provision of this chapter, a brewery-public house licensee,  
31 or any person having an interest in the licensee, may also hold a distillery license. No provision

of this chapter prevents a brewery-public house licensee that also holds a distillery license from *[being appointed by the commission]* **holding a distilled liquor self-distribution permit or endorsement issued under section 5 of this 2014 Act** *[as the distillery's retail outlet agent]* for the purpose of selling distilled liquors *[under ORS 471.230]*.

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

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

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

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

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

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

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

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

1            [(4)] (3) For the purposes of this section, "cruise ship" means a marine vessel used  
2 primarily for nonfishing purposes that is licensed to carry at least 500 passengers, provides  
3 overnight accommodations for those passengers and operates on the rivers or waterways within  
4 the boundaries of the State of Oregon, including docking and dry docking, fewer than 45 days  
5 during a calendar year.

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

7            471.184. (1) The holder of a full or limited on-premises sales license may cater a  
8 temporary event at a location other than the licensed premises if the event is not open to the  
9 general public. Catering of an event under this subsection must be pursuant to a contract with a  
10 client. The contract must provide that the licensee will furnish food and beverage services for no  
11 more than 100 patrons. The licensee must serve food as required by rules of the commission. The  
12 licensee may cater events under this subsection without giving advance notice to the Oregon  
13 Liquor Control Commission if, before the event occurs, the commission gives written approval  
14 to the licensee authorizing catering pursuant to this subsection. Events catered under the  
15 provisions of this subsection must meet all requirements for enclosure of premises that may be  
16 imposed by the commission for the purposes of this section. Notwithstanding ORS 471.175 (3)  
17 and [(7)] (5) and 471.178 (2) to (4), the licensee may not permit patrons of the event to remove  
18 any alcoholic beverages from the premises of the event.

19            (2) In addition to catered events under subsection (1) of this section, the commission may  
20 by rule allow the exercise of the privileges of a full or limited on-premises sales license at  
21 temporary events held at locations other than the licensed premises. The commission may:

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

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

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

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

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

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

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

8           (3) During any inspection of a licensed premises, the commission may require proof that  
9 a person performing work at the premises meets any applicable minimum age requirement  
10 created under this chapter or under commission rules. If the person does not provide the  
11 commission with acceptable proof of age upon request, the commission may require the person  
12 to immediately cease any activity that is subject to a minimum age requirement until the  
13 commission receives acceptable proof of age. If the activity is the sole lawful basis for the person  
14 to be present on the premises, the commission may require that the person leave the premises.  
15 This subsection does not apply to a person temporarily at the premises to make a service,  
16 maintenance or repair call, to make a delivery or for other purposes independent of the premises  
17 operations.

18           (4) If a person performing work that is subject to a minimum age requirement has not  
19 provided proof of age requested by the commission under subsection (3) of this section, the  
20 commission may request that the licensee or a manager of the premises provide proof that the  
21 person meets any applicable minimum age requirement created under this chapter or under  
22 commission rules. Failure of the licensee or manager to respond to a request made under this  
23 subsection by providing acceptable proof of age for a person is prima facie evidence that the  
24 licensee has allowed the person to perform work at the licensed premises in violation of a  
25 minimum age requirement.

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

27           471.510. ORS 471.506 shall not prohibit the sale of pure alcohol for scientific or  
28 manufacturing purposes, or of wines to church officials for sacramental purposes, nor shall it  
29 prevent any person residing in the county or city from ordering and having delivered to the home  
30 of the person, for the personal use of self and family, alcoholic [*liquors*] **beverages** [*purchased*

1 *from the Oregon Liquor Control Commission or]* from persons duly licensed to sell them under  
2 the Liquor Control Act.

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

4 471.710. (1) The Governor may remove any commissioner for inefficiency, neglect of  
5 duty, or misconduct in office, giving to the commissioner a copy of the charges made and an  
6 opportunity of being publicly heard in person or by counsel, in the commissioner's own defense,  
7 upon not less than 10 days' notice. If such commissioner is removed, the Governor shall file in  
8 the office of the Secretary of State a complete statement of all charges made against such  
9 commissioner, the findings thereon, and a complete record of the proceedings.

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

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

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

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

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

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

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

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

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

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

1           [(4)] (3) Nothing in this section prohibits a person from having a financial interest  
2     resulting from investments made by the Public Employees Retirement System or through mutual  
3     funds, blind trusts or similar investments where the person does not exercise control over the  
4     nature, amount or timing of the investment.

5           [(5)] (4) The commission by rule may establish additional restrictions to prohibit  
6     potential conflicts of interest. The commission by rule shall define “immediate family” and  
7     “business connection” as used in this section.

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

9           471.805. (1) Except as otherwise provided in ORS 471.810 [(2)] (3) **and sections 27, 28,**  
10    **29, 30, 31, 32, 33 and 34 of this 2014 Act,** all money collected by the Oregon Liquor Control  
11    Commission under this chapter and ORS chapter 473 and privilege taxes shall be remitted to the  
12    State Treasurer who shall credit it to a suspense account of the commission. Whenever the  
13    commission determines that moneys have been received by it in excess of the amount legally due  
14    and payable to the commission or that it has received money to which it has no legal interest, or  
15    that any license fee or deposit is properly refundable, the commission is authorized and directed  
16    to refund such money by check drawn upon the State Treasurer and charged to the suspense  
17    account of the commission. After withholding refundable license fees and such sum, not to  
18    exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the  
19    purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items  
20    which are payable in cash immediately upon presentation, the commission shall direct the State  
21    Treasurer to transfer the money remaining in the suspense account to the Oregon Liquor Control  
22    Commission Account in the General Fund. Moneys in the Oregon Liquor Control Commission  
23    Account are continuously appropriated to the commission to be distributed and used as required  
24    or allowed by law.

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

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

1 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

2 (1) "Documentary material" means any book, paper, document, writing, drawing, graph,  
3 chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation  
4 from which information can be obtained or from which information can be translated into usable  
5 form, or other tangible item.

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

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

11 (4) "Pattern of racketeering activity" means engaging in at least two incidents of  
12 racketeering activity that have the same or similar intents, results, accomplices, victims or  
13 methods of commission or otherwise are interrelated by distinguishing characteristics, including  
14 a nexus to the same enterprise, and are not isolated incidents, provided at least one of such  
15 incidents occurred after November 1, 1981, and that the last of such incidents occurred within  
16 five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to  
17 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar  
18 to a subsequent prosecution, conduct that constitutes an incident of racketeering activity may be  
19 used to establish a pattern of racketeering activity without regard to whether the conduct  
20 previously has been the subject of a criminal prosecution or conviction or a juvenile court  
21 adjudication, unless the prosecution resulted in an acquittal or the adjudication resulted in entry  
22 of an order finding the youth not to be within the jurisdiction of the juvenile court.

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

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

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

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

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



1 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating  
2 to obstructing governmental administration;  
3 (D) ORS 162.405 to 162.425, relating to abuse of public office;  
4 (E) ORS 162.455, relating to interference with legislative operation;  
5 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal  
6 homicide;  
7 (G) ORS 163.160 to 163.205, relating to assault and related offenses;  
8 (H) ORS 163.225 and 163.235, relating to kidnapping;  
9 (I) ORS 163.275, relating to coercion;  
10 (J) ORS 163.665 to 163.693, relating to sexual conduct of children;  
11 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098,  
12 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary,  
13 criminal trespass and related offenses;  
14 (L) ORS 164.315 to 164.335, relating to arson and related offenses;  
15 (M) ORS 164.345 to 164.365, relating to criminal mischief;  
16 (N) ORS 164.395 to 164.415, relating to robbery;  
17 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or  
18 labeling of a recording;  
19 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to  
20 forgery and related offenses;  
21 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;  
22 (R) ORS 165.540 and 165.555, relating to communication crimes;  
23 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and  
24 166.470; relating to firearms and other weapons;  
25 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to  
26 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167,  
27 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution,  
28 obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery,  
29 animal fighting, forcible recovery of a fighting bird and related offenses;  
30 (U) ORS 171.990, relating to legislative witnesses;  
31 (V) ORS 260.575 and 260.665, relating to election offenses;

1 (W) ORS 314.075, relating to income tax;

2 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and

3 tobacco products taxes and the directories developed under ORS 180.425 and 180.477;

4 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments,

5 and ORS 411.990 (2) and (3);

6 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

7 (AA) ORS 463995, relating to boxing, mixed martial arts and entertainment wrestling, as

8 defined in ORS 463015;

9 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425,

10 471.442, 471.445, 471.446[, 471.485, 471.490] and 471.675, relating to alcoholic [*liquor*]

11 **beverages**, and any of the provisions of ORS chapter 471 relating to licenses issued under the

12 Liquor Control Act;

13 (CC) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;

14 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

15 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

16 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;

17 (GG) ORS chapter 706, relating to banking law administration;

18 (HH) ORS chapter 714, relating to branch banking;

19 (II) ORS chapter 716, relating to mutual savings banks;

20 (JJ) ORS chapter 723, relating to credit unions;

21 (KK) ORS chapter 726, relating to pawnbrokers;

22 (LL) ORS 166.382 and 166.384, relating to destructive devices;

23 (MM) ORS 165.074;

24 (NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;

25 (OO) ORS chapter 496, 497 or 498, relating to wildlife;

26 (PP) ORS 163.355 to 163.427, relating to sexual offenses;

27 (QQ) ORS 166.015, relating to riot;

28 (RR) ORS 166.155 and 166.165, relating to intimidation;

29 (SS) ORS chapter 696, relating to real estate and escrow;

30 (TT) ORS chapter 704, relating to outfitters and guides;

31 (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:

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

(A) ORS chapter 462, relating to racing;

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

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

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

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

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

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

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

(a) Contracts between a contracting agency and:

(A) Another contracting agency;

(B) The Oregon Health and Science University;

(C) The Oregon State Bar;

- 1 (D) A governmental body of another state;
- 2 (E) The federal government;
- 3 (F) An American Indian tribe or an agency of an American Indian tribe;
- 4 (G) A nation, or a governmental body in a nation, other than the United States; or
- 5 (H) An intergovernmental entity formed between or among:
- 6 (i) Governmental bodies of this or another state;
- 7 (ii) The federal government;
- 8 (iii) An American Indian tribe or an agency of an American Indian tribe;
- 9 (iv) A nation other than the United States; or
- 10 (v) A governmental body in a nation other than the United States;
- 11 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision,
- 12 ordinance or other authority for establishing agreements between or among governmental bodies
- 13 or agencies or tribal governing bodies or agencies;
- 14 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135
- 15 and 414.145 for purposes of source selection;
- 16 (d) Grants;
- 17 (e) Contracts for professional or expert witnesses or consultants to provide services or
- 18 testimony relating to existing or potential litigation or legal matters in which a public body is or
- 19 may become interested;
- 20 (f) Acquisitions or disposals of real property or interest in real property;
- 21 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of
- 22 source selection;
- 23 (h) Contracts for the procurement or distribution of textbooks;
- 24 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises
- 25 program;
- 26 *[(j) The procurement, transportation or distribution of distilled liquor, as defined in ORS*
- 27 *471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control*
- 28 *Commission;]*
- 29 *[(k)]* (j) Contracts entered into under ORS chapter 180 between the Attorney General and
- 30 private counsel or special legal assistants;

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

3           [(m)] (L) Contracts for forest protection or forest related activities, as described in ORS  
4 477.406, by the State Forester or the State Board of Forestry;

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

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

10          [(p)] (o) Contracts entered into by the State Treasurer in exercising the powers of that  
11 office prescribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and 295, including but not  
12 limited to investment contracts and agreements, banking services, clearing house services and  
13 collateralization agreements, bond documents, certificates of participation and other debt  
14 repayment agreements, and any associated contracts, agreements and documents, regardless of  
15 whether the obligations that the contracts, agreements or documents establish are general, special  
16 or limited, except that the State Treasurer's public contracting for goods and services is subject  
17 to ORS chapter 279B;

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

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

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

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

28          [(r)] (q) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125  
29 (4), 243.221, 243.275, 243.291, 243.303 and 243.565;

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

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

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

4           (a) The Oregon State Lottery Commission;

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

7           (c) The legislative department;

8           (d) The judicial department;

9           (e) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS  
10 279.835 to 279.855 and 27A.250 to 27A.290;

11          (f) Oregon Corrections Enterprises;

12          (g) The Oregon Film and Video Office, except as provided in ORS 27A.100 and 27A.250  
13 to 27A.290;

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

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

17          (j) The Oregon Innovation Council;

18          (k) The Oregon Utility Notification Center; or

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

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

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

25          279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a  
26 contracting agency shall exercise all procurement authority in accordance with the provisions of  
27 the Public Contracting Code.

28          (b) When a contracting agency has authority under this section to carry out functions  
29 described in this section, or has authority to make procurements under a provision of law other  
30 than the Public Contracting Code, the contracting agency is not required to exercise that

1 authority in accordance with the provisions of the code if, under ORS 279A.025, the code does  
2 not apply to the contract or contracting authority.

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

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

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

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

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

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

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

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

28 (a) The Department of Human Services to procure or supervise the procurement of goods,  
29 services and personal services under ORS 179.040 for the department's institutions and the  
30 procurement of goods, services and personal services for the construction, demolition, exchange,  
31 maintenance, operation and equipping of housing for the purpose of providing care to individuals

with intellectual disabilities or other developmental disabilities, subject to applicable provisions of ORS 427.335;

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

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

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

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

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

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

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

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



1 (j) The Department of Veterans' Affairs to procure or supervise the procurement of real  
2 estate broker and principal real estate broker services related to programs under the department's  
3 authority;

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

8 (L) The Department of Education, subject to any applicable provisions of ORS 329.075,  
9 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (PL 107-110, 115 Stat  
10 1425), to procure or supervise the procurement of goods, services, personal services and  
11 information technology relating to student assessment; and

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

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

28 **SECTION 66.** ORS 526.285 is amended to read:

29 526.285. Notwithstanding ORS 530.059, the State Forester may enter into contracts  
30 under ORS 530.050 to provide a supply of woody biomass from forestlands managed by the  
31 State Forestry Department as needed to facilitate the development of projects, including but not

1 limited to bioenergy projects. The department shall ensure that the provisions of contracts  
2 described in this section comply with applicable state forestland management plans. A contract  
3 described in this section is a sale of timber for purposes of the public contracting exemption  
4 described in ORS 279A.025 (2)[(L)] **(k)**.

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

7 471.230. (1)**(a)** A distillery license allows the licensee:

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

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

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

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

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

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

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

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

26 **(2)** A distillery licensee may:

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

31 **(b)** Obtain a special events distillery license.

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

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

10        **(b) All distilled liquor that the distillery licensee supplies to the premises of a full on-**  
11 **premises sales license held by the distillery is subject to the fee imposed by section 16 of this**  
12 **2014 Act and to the reporting required by section 17 of this 2014 Act.**

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

16        **(b)** A distillery licensee conducting an event may:

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

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

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

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

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

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

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

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

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

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

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

10           471.235. (1) A wholesale malt beverage and wine license shall allow the importation,  
11 storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control  
12 Commission, and the export of wine, cider and malt beverages, and the importation and [*sale to*  
13 *the commission and the*] export of wine of alcoholic content in excess of 21 percent alcohol by  
14 volume. A wholesale malt beverage and wine licensee may not sell any alcoholic liquor for  
15 consumption upon the licensed premises. However, a wholesale malt beverage and wine licensee  
16 may sell naturally fermented wine or cider in quantities of not less than four gallons nor more  
17 than 55 gallons at any one time to consumers for consumption not on the licensed premises.  
18 Wholesale malt beverage and wine licensees may sell malt beverages containing not more than  
19 nine percent alcohol by volume in quantities not less than four gallons to any unlicensed  
20 organization, lodge, picnic party or private gathering. The unlicensed organization, lodge, picnic  
21 party or private gathering may not sell the malt beverages. A wholesale malt beverage and wine  
22 license shall permit the licensee also to sell malt beverages at wholesale only, to persons holding  
23 licenses authorizing the persons to resell such beverages at retail. Employees of wholesale malt  
24 beverage and wine licensees may serve sample tastings of malt beverages, cider and wine at  
25 alcoholic beverage industry trade shows, seminars and conventions and at alcoholic beverage  
26 industry sample tastings for employees of retail licensees.

27           (2) Subsection (1) of this section does not prohibit the transportation or wholesale sale or  
28 distribution of malt beverage or wine by a wholesale malt beverage and wine licensee to any  
29 alcoholic treatment center licensed by the Oregon Health Authority.

30           (3) A wholesale malt beverage and wine licensee may impose an additional handling fee  
31 on any wine sold to any retailer in this state if the quantity of wine sold to the retailer is less than

1 the smallest multiple-package case available to be sold and the handling fee is uniform for all  
2 licensees.

3 **SECTION 69.** ORS 471.396 is amended to read:

4 471.396. (1) The prohibitions of ORS 471.394 (1) do not apply to persons holding winery  
5 licenses, grower sales privilege licenses, brewery-public house licenses, distillery licenses or  
6 brewery licenses, to the extent that retail sales are authorized by the statutes establishing the  
7 privileges of each license.

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

13 (b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of  
14 alcoholic [*liquor*] **beverages** if the retail licensee does not sell any brand of alcoholic [*liquor*]  
15 **beverages** sold, distributed or produced by the manufacturer and does not sell any brand of  
16 alcoholic [*liquor*] **beverages** sold, distributed or produced by any subsidiary or other business  
17 entity that the manufacturer owns or manages, or that the manufacturer exercises control over.

18 (c) **The prohibitions in ORS 471.394 (2) and (3) and 471.398 as amended by section**  
19 **70 of this 2014 Act do not apply to the selling of distilled liquors by a holder of a distilled**  
20 **liquor self-distribution permit to a retail licensee on credit.**

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

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

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

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

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

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

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

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

17 (7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a  
18 wholesaler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless  
19 the institutional investor controls, is controlled by, or is under common control with, a  
20 wholesaler or manufacturer. Notwithstanding ORS 471.394, an institutional investor with a  
21 financial interest in a retail licensee may hold, directly or indirectly, an interest in a wholesaler or  
22 manufacturer unless the institutional investor controls, is controlled by, or is under common  
23 control with, a retail licensee. The provisions of this subsection apply only to an institutional  
24 investor that is a state or federally chartered bank, a state or federally chartered mutual savings  
25 bank, a mutual fund or pension fund, or a private investment firm. The principal business activity  
26 of the institutional investor must be the investment of capital provided by depositors, participants  
27 or investors. The institutional investor must maintain a diversified portfolio of investments. The  
28 majority of the institutional investor's investments may not be in businesses that manufacture,  
29 distribute or otherwise sell alcoholic beverages. The institutional investor, and the officers,  
30 directors, substantial shareholders, partners, employees and agents of the institutional investor,

1 may not participate in management decisions relating to the sale or purchase of alcoholic  
2 beverages made by a licensee in which the institutional investor holds an interest.

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

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

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

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

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

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

16 471.398. Except as otherwise specifically provided by law, a person holding a retail  
17 license may not accept directly or indirectly from a manufacturer or wholesaler **of wine, cider or**  
18 **malt beverages**, and a manufacturer or wholesaler **of wine, cider or malt beverages** may not  
19 provide directly or indirectly to the retail licensee, any of the following:

20 (1) Any substantial gratuities;

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

22 (3) Any fixtures, furniture or furnishings;

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

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

28 **SECTION 71.** ORS 471.485 is amended to read:

29 471.485. No wholesale **malt beverage or wine** licensee or agent or employee thereof  
30 shall sell or deliver, nor shall any retail licensee purchase or receive any malt beverages, cider or  
31 wine for currency on delivery, but such malt beverages, cider or wine shall be paid for prior to

1 delivery thereof, by electronic fund transfer initiated on or before the date of delivery, or by valid  
2 check, order, negotiable instrument or voucher payable on the date of delivery. The wholesale  
3 licensee may accept cash at the time of delivery if such acceptance does not create or increase  
4 the licensee's, or the agents' or employees' of the licensee, exposure to or risk of being  
5 victimized by criminal activity.

6 **SECTION 72.** ORS 471.404 is amended to read:

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

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

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

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

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

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

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

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

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

## 26 27 **ADMINISTRATIVE AND TEMPORARY PROVISIONS**

28  
29 **SECTION 73.** (1) Not later than September 1, 2016, the Oregon Liquor Control  
30 Commission shall determine the amount of revenue raised by the fee imposed by section 16



of this 2014 Act for the period July 1, 2015 to June 30, 2016, and report the determination to the Legislative Revenue Officer.

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

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

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

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

**SECTION 76. If the Oregon Liquor Control Commission receives an application for a distilled liquor self-distribution permit or endorsement under section 5 of this 2014 Act or for a permit or certificate under section 8 of this 2014 Act between January 1, 2015, and March 31, 2015, the commission shall issue the permit, endorsement or certificate within 14 business days of the commission's receipt of the application.**

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

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

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

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

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

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

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

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

7           SECTION 81. The unit and section captions used in this 2014 Act are provided only  
8 for the convenience of the reader and do not become part of the statutory law of this state  
9 or express any intent in the enactment of this 2014 Act.  
10

## **DRAFT 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.

RECEIVED  
2019 FEB 14 PM 3 01  
KATE BROWN  
SECRETARY OF THE STATE

Steven C. Berman  
sberman@stollberne.com

March 3, 2014

VIA EMAIL

Kate Brown  
Secretary of State  
Elections Division  
255 Capital Street NE, Suite 501  
Salem, OR 97310

RECEIVED  
2014 MAR 3 PM 4 40  
KATE BROWN  
SECRETARY OF THE STATE

Re: Draft Ballot Title for Initiative Petition No. 58 for the General Election of November 4, 2014

Dear Secretary Brown:

I represent Elspeth McCann regarding the ballot title for Initiative Petition No. 58 for the general election of November 4, 2014 ("the Initiative"). Ms. McCann is an elector in the State of Oregon and the Interim Executive Director of Our Oregon. This letter is written in response to your office's press release, dated February 14, 2014, which invites comments on the draft ballot title for the Initiative. These comments are substantively similar to the petition to review the certified ballot title for Initiative Petition No. 47 that Ms. McCann filed today with the Oregon Supreme Court.

Ms. McCann respectfully objects to each section of the 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 of Initiative Petition No. 58

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 on liquor, a new governmental agency, and multiple government-controlled and run funds.

The Initiative is lengthy and complex. It runs over 70 pages, and contains 81 sections. The Initiative adds myriad new provisions to the Oregon Revised Statutes, amends existing provisions, and repeals others.<sup>1</sup> The Initiative nearly eviscerates the extant statutory scheme

<sup>1</sup>The Initiative is the eighth filed by the same Chief Petitioners regarding the overhaul of how liquor is sold in Oregon. Those are Initiative Petitions 46, 47, 48, 49, 50, 56, 57 and 58. The Chief Petitioners withdrew initiative petitions 46, 48, 49, 50 and 56 after comments on the draft

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). All retail sales 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(1)(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 5 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); §48. The Initiative does not address whether those licenses count towards the 50 license limit in Section 39(3).

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.

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ballot titles for those initiatives were submitted.

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); *id.* at §16b (providing legislature does not need to reduce tax rate).<sup>2</sup>

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(1)(a). Two cents per container will be distributed to a newly created Oregon Distilled Liquor Board Fund. *Id.* at §26(1)(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 Government” and amends the extant legislative findings regarding the Liquor Control Act. 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.

The Initiative also contains a host of housekeeping provisions. It makes multiple “conforming and technical amendments” to existing law. *See* Initiative at §§52-72 (setting forth

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<sup>2</sup>The 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).

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 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 “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, 285 (2011). “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. A caption that is underinclusive, because it fails to inform voters of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Myers*, 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).

The caption in the draft ballot title provides:

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

Ms. McCann respectfully submits that the caption is underinclusive and legally insufficient.

That first clause of the caption addresses only one aspect of the Initiative, specifically those provisions which allow certain retail stores to sell liquor. *See e.g.*, Initiative §§5(2)(c), (d) (so providing). The first clause, and the caption, do not address myriad other changes that the Initiative makes to extant law, including:

- Altering the distribution formula for liquor generated revenues.
- Eliminating 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.
- Terminating all existing contracts between OLCC retail agents and OLCC, and disposing of all OLCC held property.
- Creating and funding (with new taxes) the ODLB, with broad regulatory and contracting authority.
- Favoring large retailers by restricting the number of smaller retail stores that can sell liquor.
- Restricting the minimum price at which liquor can be sold and prohibiting certain contracts between retailers and wholesalers.
- Establishing a new statutory scheme for delivery of liquor and detailed bookkeeping and recordkeeping requirements for distillers, retailers and wholesalers.
- Mandating new licensing requirements and procedures for distillers and wholesalers.

The first clause improperly emphasizes a single major effect of the Initiative and does not discuss others that are of equal import. The first clause, and the caption, are underinclusive and must be revised.

The second clause – “imposes taxes similar to current state price markup” – also must be revised. The clause properly informs voters that the Initiative creates new taxes. *See, e.g., McCann v. Rosenblum*, 359 Or 701, \_\_\_ (January 30, 2014) (slip op at 4-5) (changes to taxes must be set forth with some specificity in caption); *Green v. Kroger*, 351 Or 641, 647-648, 274 P3d 180 (2012) (caption must inform voters of changes to taxes made by initiative). However, the description of the taxes as being “similar to current state price markup” is inaccurate and speculative.

The markup on alcohol by OLCC is not “similar” to the new taxes contained in the Initiative. Although both the current markup and one of the Initiative's proposed new taxes are based on the wholesale price of the product, the similarities stop there. Under extant Oregon law, OLCC fixes the price for liquor sold in Oregon. ORS 471.745. The current markup is



derived from a formula based on the wholesale price of the product.<sup>3</sup> Under the Initiative, the new tax initially is 71.7% of the wholesale price of the liquor, plus 75 cents per container. Initiative, §16(1). It applies only to some liquor. *Id.* at §16(3). The per container tax drops to 25 cents in 2017. *Id.* at §§16a, 78(2). Under the Initiative, the tax paid on a product would be substantially different than the markup under extant law on the same product.

The dissimilarities in amount between the current markup and the Initiative's proposed taxes could become even more exaggerated. If the revenue generated by the Initiative's taxes does not fall within certain parameters by September 15, 2016, the Legislative Revenue Office must change the percentage per bottle sales tax, effective October 1, 2016. Initiative, §§75(1), (2). That new tax rate is permanent. *Id.* at §73(3). It is impossible to know now what the percentage tax rate will become on October 1, 2016. It could be lower than the 71.7% set forth in Section 16, or it could be much, much higher.

The phrase "similar to current state price markup" apparently has been added to the ballot title in response to the Chief Petitioners' representation that the Initiative is revenue neutral. The Chief Petitioners' "revenue neutral" assertion is inaccurate. The Chief Petitioners have offered no evidence of the existing revenue stream generated by liquor sales, and such a factual determination would be well outside the purview of the ballot title process, which is not an evidentiary proceeding. *See, e.g., Baker v. Keisling*, 312 Or 385, 388 (1991) (discussing limited scope of ballot title review). Moreover, the Initiative does not guaranty a replacement revenue stream. The Initiative sets an initial percentage tax rate that will be modified in October 2016 and an initial per bottle tax of that will be reduced effective July 1, 2017. The source of the revenue stream will change once, and maybe twice, in less than three years. That is not a stable or consistent revenue stream. Revenue neutrality may have been a *goal* of the Initiative's drafters, but it is not something the Initiative ensures.

The Chief Petitioner's "revenue neutrality" claim is misleading, because the Initiative modifies how revenues from liquor sales must be distributed. Under extant law, revenues generated from liquor sales are distributed to the General Fund, cities and counties. ORS 471.810(1)(a)-(d). The Initiative alters that formula, and dictates that funds from the new per bottle tax are first distributed to two different Initiative created government subaccounts. Initiative, §§26(1)(a), (b). Even if the revenue stream generated by the Initiative were "revenue neutral," as the Chief Petitioner's claim, the distribution of that revenue is altered by the Initiative. As a result, if the Initiative passes, it would decrease funding for the General Fund. The ballot title cannot properly introduce the inaccurate concept of "revenue neutrality," as the Attorney General and Chief Petitioners propose, without informing voters of "the reduction in the General Fund that would result from the proposed measure." *Novick v. Myers*, 333 Or 12, 15, 35 P3d 1017 (2001).

The Attorney General also appears to have confused revenue neutrality with taxes imposed. The phrase "taxes imposed" refers to the taxes that must be *paid* on the product. Revenue neutrality describes the amount of taxes *received* from sale of the product. Even if the Initiative were revenue neutral (which it is not), that would not mean that the taxes imposed

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<sup>3</sup> Attached is a document provided by OLCC which sets forth the current markup formula. For most alcohol, the current markup per bottle is calculated by: (a) adding \$14.45 to the wholesale cost of the case; (b) multiplying that sum by 1.798; (c) adding \$1.40 to that product; (d) dividing that total by the number of bottles in the case; (e) rounding the per bottle price up to the next highest five cents; and, (f) adding a fifty cent surcharge per bottle.

under the Initiative are the same as the current state markup. The taxes are calculated differently than the current state mark up.

The Initiative also eliminates the flexibility essential to maintain revenue neutrality. OLCC now has the authority to set and modify the markup charged on liquor and, accordingly, the revenue generated by that markup. *See* ORS 471.745 (providing that OLCC shall set liquor prices); ORS 471.805; ORS 471.810 (mandating distribution of funds collected by OLCC). If revenue from liquor sales in Oregon changes, OLCC can modify the markup to ensure a constant, inflation adjusted, revenue stream. The Initiative takes away that discretion. *See* Initiative, §74 (repealing ORS 471.745). Under the Initiative, after July 1, 2017, the taxes are locked in place and cannot be adjusted for inflation or otherwise. The revenue stream generated from liquor sales could remain static, drop or (if liquor sales boom) grow, depending on the amount of liquor sold and the wholesale price of that liquor. Actual revenue neutrality is stymied, not enhanced, by the Initiative. The phrase "similar to state markup price" is inaccurate, and the justification for adding it to the caption is flawed.

Finally, the word "qualified" is vague and uninformative. The caption does not tell voters what is required to be "qualified." *See, e.g., McCann* 354 Or at \_\_\_\_ (slip op at 4-5) (rejecting word "modifies" in caption as insufficient).

For those reasons, the draft caption is insufficient. The caption "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. 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:

**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.

The draft result of yes statement is flawed for the reasons set forth above. It is flawed for the following additional reasons:

- The word “expands” is speculative and inaccurate. The Initiative does not, in itself, increase either the number of retailers selling alcohol in Oregon or the volume of retail alcohol sales. It changes who can and cannot sell alcohol, but that is not necessarily an “expansion.”
- “Establishes regulatory requirements” is underinclusive. The Initiative actually adds new *statutory* requirements and creates a new regulatory board with new regulatory authority.

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 is flawed for the following additional reasons:

- It does not fully describe the result if the Initiative is rejected.
- The phrase “sales of liquor exclusively through Oregon Liquor Control Commission agents” is inaccurate. The sales occur at stores operated under agency agreements with OLCC. The individuals who sell the liquor are not OLCC agents.

A result of no statement that complies with the statutory requirements would provide:

**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 and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The summary is deficient for the reasons set forth above. The summary does not inform voters and potential petition signers that the Initiative:

- Provides preferential treatment to large-scale retailers;
- Provides new licensing requirements and procedures for distilleries and wholesalers;
- 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;

- Creates detailed bookkeeping requirements for licensed distillers, retailers and wholesalers; and,
- Gives the Attorney General new enforcement authority.

In addition:

- The statement "OLCC retains regulatory functions" is misleading, because it implies that OLCC would retain all of its regulatory functions when under the Initiative, OLCC's regulatory functions would be significantly curtailed.
- Voters are not informed that only a very restricted number of stores with retail space of less than 10,000 square feet would be permitted to sell liquor (which would have a disparate impact on rural areas).
- The role of the OLDB is understated and voters are not informed that the board is a new governmental agency, with regulatory and contracting powers, funded by revenue from a new tax created by the Initiative.
- Voters are not informed that the Initiative would reduce a source of General Fund revenues.

For those reasons, the summary also must be revised.

Thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

SCB:jjjs  
cc: client



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

March 18, 2014

Jim Williams  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

RECEIVED  
2014 MAR 18 PM 4 05  
KATE BROWN  
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Allows Qualified Retail Stores to Sell Liquor; Current Price Markup Replaced by Wholesale Sales Tax  
DOJ File #BT-58-14; Elections Division #58

Dear Mr. Williams:

We have reviewed the comments submitted on the draft ballot title for the above-referenced initiative petition. We provide the enclosed certified ballot title. We have revised all parts of the draft ballot title.

This letter summarizes the comments we received, our responses to those comments, and the reasons we declined to make some of the proposed changes. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

We note that commenter Doug Root did not comment on the draft ballot title.

**A. The caption**

The draft ballot title's caption reads:

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

**1. Commenter Elspeth McCann**

Commenter Elspeth McCann (through counsel Steven C. Berman) comments that the draft caption is underinclusive in that it understates the subject matter of the proposed measure.

In addition, she asserts, the second phrase of the caption ("similar to current state price markup") is inaccurate. Finally, McCann comments that the word "qualified" is vague and uninformative.

**2. Commenters Paul R. Romain and Ronald R. Dodge**

Commenters Paul R. Romain and Ronald R. Dodge (through their attorney, Paul R. Romain) similarly comment that the draft caption is incomplete. They comment that the second phrase of the draft caption is incorrect and could be very confusing, because the new taxes are not similar to the current state price markup. They recommend changing the caption to highlight the measure's imposition of a wholesale sales tax, to avoid potentially understating the scope of the legal changes the measure would make, to avoid vagueness, and to give petition signers and voters "a clear picture of what is at stake."

**3. Commenters Lauren G.R. Johnson and Lynn Guest (chief petitioners)**

Commenters Lauren G.R. Johnson and Lynn Guest (through their attorney John DiLorenzo, Jr.) object to the word "tax" as misleading, because the measure provides for "fees." They also object to characterizing the tax as similar to the current state markup. These commenters assert that the caption should highlight for voters that state revenues from liquor sales are to be maintained and that private liquor distribution will be regulated.

**4. Our responses to the comments**

We agree with the comments that the establishment of a new taxation system is a major effect of the measure that must be included in the caption. Accordingly, we incorporate that information into the caption. In review of the measure, we also believe that the phrase "wholesale sales tax" (as opposed to "fee") best captures the import of the measure. We disagree that "qualified" is vague, particularly given that its meaning is explained in the summary we certify, below.

Accordingly, we certify the following caption:

**Allows qualified retail stores to sell liquor; current price markup replaced  
by wholesale sales tax**

**B. The result statements**

The draft ballot title's "Yes" result statement reads:

**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.

The draft ballot title's "No" 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.

**1. Commenter Elspeth McCann**

Commenter McCann comments that the "Yes" result statement is flawed in the same way as the caption. In addition, McCann comments that the word "expands" is speculative and inaccurate, and that "establishes regulatory requirements" is underinclusive, because the measure adds new statutory requirements and creates a new regulatory board.

McCann comments that the draft "No" result statement does not fully describe the result if the measure is rejected, and the phrase "sales of liquor exclusively through [OLCC] agents" is inaccurate, because the individuals who sell liquor are not OLCC agents.

**2. Commenters Paul R. Romain and Ronald R. Dodge**

These commenters comment that, like the draft caption, the draft "Yes" statement is inaccurate. Specifically, they contend that the measure's imposed wholesale sales tax is not roughly comparable to the current state markup.

Romain and Dodge do not comment on the draft "No" result statement.

**3. Commenters Lauren G.R. Johnson and Lynn Guest (chief petitioners)**

Johnson and Guest comment that the draft "Yes" result statement erroneously suggests that the result will be an "expansion" of retail sales of liquor by retailers and that taxes will be imposed. In addition, they object that it does not state that the measure will allow qualified retail stores or that the measure maintains state revenues.

These commenters comment that the draft "No" result statement's description of the current system is incomplete in that it does not include retail sales through other than OLCC agents and does not state that OLCC is the exclusive distributor of liquor in the state. In addition, they assert that the "Yes" statement is inaccurate in characterizing the current markup as a tax.

**4. Our responses to the comments**

We believe that the "Yes" vote result statement accurately and adequately states that the measure "expands retail sales of liquor by qualified retailers." We disagree with the comments that the measure imposes a wholesale sales tax is not "roughly comparable" to the current state markup because that phrase identifies that the wholesale sales tax and bottle tax are intended to replace revenues from existing price markups. However, in clarifying a major effect of the measure, the creation of a new taxation system and replacement of the existing price markup system, we have removed the words "roughly comparable." We disagree that current retailers of

liquor are not OLCC agents given that under current law retailers are “agents” appointed by the OLCC to sell liquor on OLCC’s behalf.

Accordingly, we certify the following vote result statements:

**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.

**C. The summary**

The draft ballot title’s summary reads:

**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.

**1. Commenter Elspeth McCann**

Commenter McCann comments that the draft summary fails to inform voters that the measure: provides preferential treatment to large-scale retailers; provides new licensing requirements and procedures for distilleries and wholesalers; 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; creates detailed bookkeeping requirements for licensed distillers, retailers and wholesalers; and gives the Attorney General new enforcement power. McCann also objects that “OLCC retains regulatory functions” is misleading and that the summary should tell voters only a restricted number of small retailers will be licensed; it should give voters more information about the new regulatory board; and it should tell voters the measure would reduce a source of General Fund revenues.



## **2. Commenters Romain and Dodge**

These commenters comment that the three most important issues for the public are: the imposition of a wholesale sales tax and bottle tax; the expansion of those who can sell distilled liquor; and the termination of the contracts of private retailers current authorized by the OLCC to sell liquor. In addition, they assert that the summary should inform voters that the measure replaces a simple system with a complex one. They further assert, however, that the draft summary's attempt to describe the current pricing system is "very confusing and will give the voter no useful information." Finally, they suggest omitting reference to the new regulatory board as unimportant.

## **3. Commenters Johnson and Guest**

These commenters comment that the draft summary's description of both the current pricing system and the measure's rate of "surcharge" are not helpful to voters, because the details of each are subject to change. They also assert that the summary should tell voters the measure significantly increases penalties for distilled liquor violations.

## **4. Our responses to the comments**

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 125-word summary simply does not provide sufficient space to include all of the concepts included in the measure. 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 review of the measure itself, we certify the following summary.

**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.

We certify the attached ballot title.

Sincerely,

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Senior Assistant Attorney General  
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MJL:aft/5106915

Enclosure

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**BALLOT TITLE**

**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.

SECRETARY OF THE STATE  
KATE BROWN

2014 MAR 18 PM 4 05

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**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I hereby certify that on March 31, 2014, I electronically filed the original PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL FOR INITIATIVE PETITION NUMBER 58 (2014), and accompanying exhibits, with the Appellate Court Administrator.

I further certify that on March 31, 2014, I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL FOR INITIATIVE PETITION NUMBER 58 (2014), and accompanying exhibits, by regular first class mail on:

Lauren G.R. Johnson  
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Wilsonville, OR 97070

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Attorney General of the State of  
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Salem, OR 97301-4096

**Respondent**

DATED this 31st day of March, 2014.

Lynn Gust  
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**Chief Petitioner**

Kate Brown  
Secretary of State  
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STOLL STOLL BERNE LOKTING &  
SHLACHTER P.C.

By: /s/ Steven C. Berman  
Steven C. Berman, OSB No. 951769

**Attorneys for Petitioner Elspeth McCann**