



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 15, 2014

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

Re: *Elspeth McCann/Paul Romain and Ronald R. Dodge/Lauren G.R. Johnson and Lynn T. Gust v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S062154 (Control), S062157, S062158

Dear Chief Justice Balmer:

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

Sincerely,

/s/ Matthew J. Lysne

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

MJL:aft/5204071

cc: Steven C. Berman
Margaret E. Schroeder
Paul R. Romain
John DiLorenzo, Jr.

IN THE SUPREME COURT OF THE STATE OF OREGON

ELSPETH MCCANN,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062154 (Control)

PAUL ROMAIN and RONALD R.
DODGE,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062157

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

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S062158

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITIONS TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 58
(SUPREME COURT)

Petitioner Elspeth McCann, petitioners Paul Romain and Ronald R.

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

for review of the Attorney General's certified ballot title for Initiative Petition

(IP) 58 (2014). This court reviews ballot titles for "substantial compliance with

the requirements of ORS 250.035." ORS 250.085(5). In Case No. S062154,

petitioner McCann challenges the caption, “yes” vote result statement, and summary; in Case No. S062157, petitioners Romain and Dodge challenge the “yes” vote result statement and summary; in Case No. 062158, chief petitioners Johnson and Gust challenge all four parts of the ballot title. The Attorney General submits this answering memo pursuant to ORAP 11.30(6). For the reasons explained below, this court should certify the ballot title for IP 58 without modification.

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

Petitioners McCann and petitioners Johnson and Gust challenge whether the caption for IP 58 “reasonably identifies the subject matter of the state measure”—as required by ORS 250.035(2)(a). The caption states:

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

The Attorney General responds to petitioners’ arguments in turn.

1. Petitioner McCann’s arguments

Petitioner McCann objects that the caption fails to identify a “myriad” of other specified changes of “equal import” that IP 58 would make to existing law. (McCann Petition, 4-5). “The ‘subject matter’ of a ballot title is ‘the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).’” *McCann/Harmon*

v. Rosenblum, 354 Or 701, 706, ___ P3d ___ (2014) (citation omitted). When the Attorney General describes a measure by listing changes the measure would enact, “some changes may be of ‘sufficient significance’ that they must be included in the description.” *McCann/Harmon*, 354 Or at 706 (citations omitted). Although McCann identifies eight additional changes of “equal import,”¹, she does not supply any proposed 15-word caption that would reasonably identify those eight effects of “equal import.” For that reason alone, McCann’s objection is not well taken.

In any event, the caption substantially complies with ORS 250.035(2)(a) because it does identify the two “major effects” of IP 58—allowing qualified retail stores to sell liquor, and replacing the existing state markup with a wholesale sales tax. Compared to those two major effects, the additional eight effects McCann identifies are ancillary and need not be included in the caption.

Petitioner McCann also objects that the term “qualified” is “vague and uninformative” as it “does not inform voters as to what is required to be

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

‘qualified.’” (McCann Petition, 6, citing *McCann/Harmon*). However, in *McCann/Harmon*, this court concluded that the phrase “modifies minimum tax” was vague because it did not signal whether the measure would increase or decrease taxes. 354 Or at 706-07. Here, the term “qualified” does not suffer from a similar defect because it modifies and restricts the term “retail store.” That is, “qualified” reasonably identifies that not any (or all) “retail stores” could sell liquor if IP 58 passed, but those that met certain qualifications. Petitioner McCann’s reliance on *McCann/Harmon* is misplaced.

Petitioner McCann next objects that the phrase “current price markup replaced by wholesales sales tax” must be revised to identify that IP 58 would include a “per bottle flat tax” in addition to the wholesale sales tax. (McCann Petition, 6-7). However, the caption need not reference the “per bottle flat tax.” The major “effect” of IP 58 that the challenged phrase identifies is the replacement of the existing current state markup with a wholesale sales tax. IP 58 includes the potential revision of the wholesale sales tax rate to reach a specified range of revenue. (*See* IP 58, §73). Revenue generated by the “per bottle flat tax” McCann identifies—a 75-cent per-bottle tax (IP 58, § 16), which will be reduced to a 25-cent per-bottle tax in July 2017 (IP 58, § 78(2))—is included in any recalculation of the wholesale sales tax rate. (*Id.*). As such,

although the “per bottle flat tax” is one element (and revenue stream) in IP 58, it is ancillary to the major effect of IP 58: replacement of the state markup with a wholesale sales tax. The caption need not include each new possible revenue stream created by IP 58 to reasonably identify the major effect of that measure.

Petitioner McCann also objects that the phrase “current price mark up replaced by” is misleading to the extent that it may suggest that the amount of taxes generated by IP 58 would be equal to those generated by the current state markup. (McCann Petition, 7-8). However, the ballot title does not improperly speculate about whether IP 58 is revenue-neutral, and instead reasonably identifies the replacement of the existing state markup with a wholesale sales tax. Accordingly, the caption is not deficient in that regard.

2. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust contend that the caption improperly states that the measure would impose a “wholesale sales tax,” and should instead use the term “fee,” the term used in the measure to describe the previously discussed per-bottle tax and 71.7% wholesale sales tax. (Johnson/Gust Petition, 3-6). “In general—and absent a compelling reason to the contrary—the Attorney General should use the actual language of the measure * * *.”

Sampson v. Roberts, 309 Or 335, 340, 788 P2d 421 (1990) (citation omitted).

However,

the potential exists for the proponents of an initiative measure either intentionally or unintentionally to use words in the measure that obfuscate the subject, chief purpose, summary, or major effect of the measure. In reviewing the ballot title certified by the Attorney General, this court will not hesitate to go beyond the words of the measure where such an outcome has occurred. The law does not require that the certified ballot title use only the words that appear in the measure itself. The overriding requirement is that the ballot title substantially comply with the requirements of ORS 250.035.

Here, there is a compelling reason to include the phrase “wholesale sales tax” to reasonably identify the major effect of IP 58—the replacement of the a price markup with a wholesale sales tax. IP 58 provides that upon the sale of a container of liquor at the wholesale level, the seller “shall pay to the Oregon Liquor Control Commission” a “fee” of \$0.75 per bottle, plus 71.7% of the price of the container. (IP 58, § 16(1)). As IP 58 includes a fee that generates direct revenue for the state, it is appropriate to describe that fee as a tax.

Moreover, it is necessary to identify that the fee or tax imposed by IP 58 is imposed upon a sale at the wholesale level, and in an amount determined by the price of the liquor sold. (*Id.*). As such, the term “wholesale sales tax” reasonably identifies those important aspects of the “fees” imposed by IP 58. In contrast, the term “fee” does not reasonably identify (1) that the “fees” imposed

by IP 58 generate revenue for the state, (2) that the “fees” are assessed upon the sale of liquor products at the wholesale level, or (3) that the amount of the “fees” depends on the price of the liquor products sold. Accordingly, there is a compelling reason to use the phrase “wholesale sales tax” to better and reasonably identify the major effect of IP 58.

In contending otherwise, petitioners Johnson and Gust argue that, as a matter of law, IP 58 does not impose a “sales tax.” (Johnson/Gust Petition, 5). As support, they cite to *Eugene Theatre Co. v. City of Eugene*, 194 Or 603, 243 P2d 1060 (1952), in which this court explained:

An admissions or sales tax is not paid by the person who operates that business. He simply collects it from his patron or customer and later delivers it to the taxing agency. Thus it is the patron or customer who actually pays taxes of that type.

(Johnson/Gust Petition, 5). However, *Eugene Theatre* supports a contrary conclusion: that IP 58 does impose a “sales tax.”

In *Eugene Theater*, the City of Eugene had imposed a “license tax” on movie theaters that was computed at 3% of total admission charges (less other taxes). 194 Or at 609. Several theater companies sought a declaration that the City lacked authority to impose an “admissions tax” (or sales tax). In response, the City did not dispute that it lacked authority to impose an “admissions tax,” and instead argued that the 3% tax was a valid “license tax” or “occupation

tax”² imposed for the privilege of engaging in a movie theater business. *Id.* at 633-34.

After construing the City’s ordinance, the Court ultimately concluded that the 3% “license tax” *was* an “admissions tax” or “sales tax.” The Court observed that under the City’s ordinance, the “license tax” was “deemed to be held in trust” for the City until paid. The Court observed:

“[i]t is wholly immaterial whether the licensee adds this tax to the established admission price or absorbs the tax himself, either of which course he may pursue. It is a tax on admissions in either case, and he is simply the collector, custodian, and trustee of the tax so collected until he accounts to the city therefor and pays the same over. * * *

Eugene Theater, 194 Or at 632-33. The court explained that the “license tax” in question actually was “a type of sales tax”:

This tax does not possess any of the earmarks of a license or occupation tax. On the other hand, the ordinance clearly discloses that the tax imposed is a pure excise in the nature of an admissions tax. *It is a type of sales tax.* [Emphasis added.]

Id. at 633.³ Accordingly, this court concluded that the City lacked authority to impose the 3% “license tax.” *Eugene Theater*, 194 Or at 633.

² Before resolving whether the 3% tax was an “admissions tax” or “sales tax,” the Court first concluded that the City of Eugene had authority to impose an “occupation tax” for the privilege of conducting business, to generate revenue (and not limited to those taxes necessary to fund the regulation of those taxed businesses). *Eugene Theater*, 194 Or at 624

IP 58 imposes a sales tax as described in *Eugene Theater*. The measure imposes a 75-cent tax and a 71.7% tax on each sold container of distilled liquor payable to the OLCC. (IP 58, § 16). That tax must be paid by the seller and is subject to a penalty and interest for late payments. (IP 58, § 17). The tax imposed has the effect of a lien against any and all property that “is paramount to all private liens or encumbrances” and any person delinquent in paying owed taxes is subject to seizure of any property subject to the lien for sale at public auction. (IP 58, §§ 20, 21). The taxes IP 58 imposes are materially indistinguishable from the tax at issue in *Eugene Theater*: the taxes are tied to the sales and price of liquor, and the tax imposed immediately creates a lien with super-priority and that is subject to execution on any and all property that is subject to the lien. That is, IP 58 imposes, as *Eugene Theater* described, “a type of sales tax,” even if the tax was not directly collected from the customer,

³ The Court was not persuaded by the City’s attempt to distinguish the 3% tax from an “admissions tax” by virtue of the fact that it is not collected from the customer. *Id.* at 634 (“[t]he three per cent tax fastens upon each admission as it is paid by the patron, and it immediately becomes the property of the city. A specific requirement that the customer pay the tax in addition to the established admission price would in no way alter the situation”).

or disclosed to the customer during each sale.⁴ The phrase “wholesale sales tax” is not novel under Oregon law.

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

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

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

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

1. Petitioner McCann’s arguments

Petitioner McCann contends that the “yes” vote result statement is defective in two respects. First, petitioner McCann argues that the phrase “expands retail sales of liquor by qualified retailers” is “speculative and inaccurate” because IP 58 does not “increase either the number of retailers selling alcohol in Oregon or the volume of retail alcohol sales[.]” (McCann

⁴ For some out-of-state liquor sales, sellers must inform the purchaser whether the sale is exempt from the imposed tax. (IP 58, § 16(4)(b); *see also* IP 58, § 16(4), including exemptions for certain uses and sales of liquor).

Petition, 9). Second, petitioner McCann contends that “establishes regulatory requirements” is underinclusive because IP 58 adds new statutory requirements and the creation of a regulatory board. (*Id.*). Neither argument is persuasive.

First, the phrase “expands retail sales of liquor by qualified retailers” reasonably describes a major effect of IP 58. Under present law, one entity is responsible for the sale of liquor in retail liquor stores, OLCC. ORS 471.725. OLCC sells liquor through retail sales agents appointed by the commission. ORS 471.750(3). Those agents are prohibited from having financial interests in distilleries or businesses with on-premises sales licenses. ORS 471.710(3). In contrast, IP 47 provides that the OLCC shall issue an “distilled liquor sales endorsement,” which permits retail sales of liquor, to retail licensees that are in compliance with OLCC laws and have completed participation in the “responsible vendor program” established in ORS 471.344, IP 58, § 5, and without the prohibition on financial interests. IP 58, § 61. Thus, IP 58 expands the “retail sales of liquor” through the issuance of licenses to qualified retailers.

Second, the phrase “establishes regulatory requirements for sales and distribution” is not underinclusive. Petitioner McCann agrees that IP 58 creates new “statutory requirements” for liquor sales. Statutory requirements permit rules and thus “regulatory requirements” informs that regulation may occur by

statute or rule. Moreover, although the creation the Oregon Distilled Liquor Board (ODLB) is an effect of IP 58, it is not one of most significant or immediate effects of the measure. *See McCann/Harmon*, 354 Or at 707 (ballot titles must identify the most significant or immediate effects of a measure).

2. Petitioners Romain and Dodge's arguments

Petitioners Romain and Dodge argue that the “yes” vote result statement fails to identify that the OLCC will continue to collect the new taxes and regulate the sale and distribution of alcohol products. (Romain/Dodge Petition, 4). However, the retention of OLCC and its authority under IP 58 is not one of the most significant and immediate effects of the measure and need not be included in the “yes” vote result statement. *McCann/Harmon*, 354 Or at 707.

Romain and Dodge also contend that the “yes” vote result statement must inform voters that it may not be possible to legally adjust the 71.7% wholesale sales tax rate (as the measure purports to authorize) and that the taxation scheme in IP 58 may be unconstitutional and entirely void. (Romain/Dodge Petition, 4-5). However, the summary cannot speculate about whether there may be legal problems with adjusting the tax rate or that a court might declare the taxes provided in IP 58 to be unconstitutional. *See Pelikan/Tauman v.*

Myers, 342 Or 383, 389, 153 P3d 117 (2007) (a ballot title cannot speculate about possible major effects).

3. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust renew their arguments that the “yes” vote result statement improperly describes IP 58 as imposing a “wholesale sales tax.” For the reasons discussed above, those arguments lack merit.

Johnson and Gust further contend that the “yes” vote result statement is defective because it fails to explain that IP 58 is revenue-neutral.

(Johnson/Gust Petition, 6-7). However, it cannot be determined whether IP 58 would be revenue-neutral. Accordingly, the ballot title cannot speculate that revenue-neutrality is a major effect of IP 58. *Pelikan/Tauman*, 342 Or at 389.

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

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

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

Petitioners Johnson and Gust contend that the “no” vote result statement fails to identify that OLCC is also the “exclusive distributor of liquor in the state.” (Johnson/Gust Petition, 8). They also argue that the phrase “retains state markup for costs and taxes” improperly suggests that the existing state markup is a “tax.” (Johnson/Gust Petition, 8). Neither argument is persuasive.

First, the “no” result statement need not identify that OLCC would remain the exclusive distributor of liquor if IP 58 is rejected. “[A] ‘no’ vote result statement should ‘address[] the substance of current law on the subject matter of the proposed measure’ and ‘summarize[] the current law accurately.’” *McCann/Harmon*, 354 Or at 707 (quoting *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004)). “The ‘yes’ and ‘no’ vote result statements should be read together.” *Rasmussen*, 351 Or at 365 (citation omitted). Here, the certified ballot title explains that a “yes” vote would “require termination” of OLCC’s “retail sales agent agreements” and “establish[] regulatory requirements for sales and distribution,” whereas a “no” vote “retains the current system of retail sales of distilled liquor * * * by [OLCC] retail sales agents.” Considered together, the statement that IP 58 will establish regulatory “requirements” for distribution of liquor reasonably informs the voter that IP 58 would permit the distribution of liquor by private

entities—and not just by the state. The result statements need not identify that if IP 58 is rejected that the state would remain the one and only distributor of liquor in the state.

Second, the “no” vote result statement is not defective for describing the existing state markup in reference to “costs and taxes.” ORS 471.745 directs OLCC to “fix the prices”; in turn, OLCC may fix the price through “surcharges” and “change[s] in the mark-up formula.” OAR 845-015-0138. As a practical matter, unless OLCC sells liquor at a loss (a proposition Johnson and Gust likely dispute), the “the prices” so “fixed” include a cost-recovery component (“costs”) and a revenue component (“taxes”). Using the phrase “costs and taxes” reasonably identifies that the existing state markup provides for the costs of liquor sales and revenue to the state, revenue that is reasonably understood as being “taxes.”

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

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

‘breadth’ of a measure’s impact.’” *Whitsett v. Kroger*, 348 Or 243, 252, 230 P3d 545 (2010) (quoting *Caruthers v. Kroger*, 347 Or 660, 670, 227 P3d 723 (2010)) (brackets added in *Whitsett*). The summary states:

Summary: Under current law, retail sales of liquor 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.

As explained below, the summary sufficiently identifies the breadth of IP 58.

1. Petitioner McCann’s arguments

Petitioner McCann renews her arguments raised above,⁵ and contends that the summary fails to inform voters: (1) that only a “very restricted number of stores” with less than 10,000 feet of retail space would be permitted to sell

⁵ As explained above, petitioner McCann’s arguments against the caption and “yes” vote result statements are not well taken. For those same reasons, petitioner McCann’s renewed arguments against the summary lack merit. Again, McCann provides no summary that could reasonably identify the eight identified changes of “equal import” within the 125-word limitation for the summary.

liquor, which she contends would “have a disparate impact on rural areas”; (2) that the ODLB is a new governmental agency with regulatory and contracting powers that is funded by revenue from the taxes established in IP 58. (McCann Petition, 10). None of those arguments is well taken.

First, the summary need not identify the exact number of stores with less than 10,000 feet of retail space that may sell distilled liquor. IP 58 provides that OLCC may approve 50 such smaller stores for liquor sales in 2014, and 5 more stores each year thereafter. IP 58, § 39(2), (3). Identifying the number of smaller retailers permitted to sell liquor is not particularly informative without a basis of comparison (*i.e.* the number of larger retailers that may sell liquor). The summary also cannot speculate about whether the IP 58, if approved, would discriminate against rural areas. *Pelikan/Tauman*, 342 Or at 389.

Second, the summary sufficiently describes ODLB. The summary explains that IP 58 “creates [the ODLB] to encourage industry” and that “OLCC retains regulatory functions.” The summary’s description of the ODLB reasonably captures the breadth of ODLB’s role if IP 58 became law. IP 58 provides that ODLB may, among other things, support research on sustainable liquor manufacturing practices, advertise responsible drinking, provide technical assistance to encourage minority and women-owned businesses,

recommend smaller retailers for endorsements to sell liquor, and create a state repository of distilled liquors for specified purposes. (*See generally* IP 58, §§ 37, 39-40. ODLB’s regulatory or contracting authority is not helpful for identifying any major effect of IP 58).

2. Petitioners Romain and Dodge’s arguments

Petitioners Romain and Dodge argue that the summary is deficient because it fails to identify that the effects of IP 58 include “the imposition of a unique wholesales tax and bottle tax, the expansion of those who can sell distilled liquor, and the termination of the contracts of those private retailers currently authorized to sell the product.” (Romain/Dodge Petition, 6). However the summary sufficiently describes each of those three effects, respectively: “[c]urrent markup of prices replaced by 71.7% tax, plus per bottle tax”; “[m]easure would expand the number of retailers”; “current agreements with retail sales agents would be terminated[.]”

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

(Romain/Dodge Petition, 9). However, the summary should provide some explanation of what the “current price markup” is—so that voters can understand what is replacing what. The summary provides helpful information to compare the existing markup system with the proposed taxes imposed by IP 58, and should include some explanation of how the markup is determined.

Lastly, petitioners Romain and Dodge further assert because of the new taxes IP 58 would impose, the summary must explain that the OLCC will have to audit liquor sales, and expend resources in collections. (Romain/Dodge Petition, 8). However, the summary cannot speculate about what changes, if any, IP 58 would have on the state’s tax auditing procedures, or the potential expense in collecting tax revenues. *Pelikan/Tauman*, 342 Or at 389.

3. Petitioners Johnson and Gust’s arguments

Petitioners Johnson and Gust argue that the summary is deficient because it fails to identify that under existing law, OLCC may “fix the prices” of distilled liquor (pursuant to ORS 475.745) “to cover costs and make money for government programs.”⁶ (Johnson/Gust Petition, 9). However, the summary explains that under existing law, the price of a bottle of liquor is “determined by

⁶ Johnson and Gust renew their argument that the summary improperly refers to a “wholesale sales tax” and fails to inform that IP 58 maintains state revenues. (Johnson/Gust Petition, 9). For the reasons discussed above, that argument lacks merit.

multiplying cost/case by 1.798, adding operation and other costs.” In context, the summary makes it apparent that the OLCC makes that price determination. The summary need not include an explanation as to what general purposes the markup serves.

CONCLUSION

For the above reasons, this court should certify the ballot title for IP 58.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
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/s/ Matthew J. Lysne

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ELECTIONS DIVISION

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April 2, 2014

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

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

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #58. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi
Compliance Specialist

enclosures

Prospective Petition

State Initiative and Referendum

SEL 310rev 01/14
ORS 250.045

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information	General Election Date 1 st Tuesday after 1 st Monday, November of:
This filing is an <input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment <input checked="" type="checkbox"/> 2014 <input type="checkbox"/> 2016 <input type="checkbox"/> 2018 <input type="checkbox"/> 2020	
Title <u>Oregon Liquor Control Modernization Act #8</u>	
Website if applicable	Include website on templates <input type="checkbox"/> Yes <input type="checkbox"/> No

Type	Some Circulators may be Paid
<input checked="" type="checkbox"/> Statutory Initiative <input type="checkbox"/> Constitutional Initiative <input type="checkbox"/> Referendum	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Petition Correspondence Select the method of receiving notices or other correspondence from the Elections Division.
<input type="checkbox"/> Correspondence Recipient <input type="checkbox"/> Email Chief Petitioners <input type="checkbox"/> Mail Chief Petitioners

Recipient Information	
Name <u>Tim Mooney</u>	Email Address <u>@gmail.com</u>

Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.
→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name <u>Lauren G. R. Johnson</u>	Contact Phone <u>541</u>
Residence Address street, city, state, zip <u>1100 Harmon Blvd. Bend OR 97701</u>	
Mailing Address if different <u>8565 SW Salish Lane, Suite 100, Wilsonville, OR 97070</u>	Email Address <u>LGRJOHNSON@GMAIL.COM</u>
	Date Signed <u>1/20/14</u>

Name <u>LYNN T GUST</u>	Contact Phone <u>503</u>
Residence Address street, city, state, zip <u>1100 NE 17th Ave Portland, OR 97212</u>	
Mailing Address if different <u>8565 SW Salish Lane Suite 100 Wilsonville, OR 97070</u>	Email Address <u>@freemeyer.com</u>
	Date Signed <u>1/21/2014</u>

Name <u>U</u>	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed

RECEIVED
JAN 23 PM 4:18
CLERK OF THE STATE

1 OREGON LIQUOR CONTROL MODERNIZATION ACT #8

2014 JUN 23 PM 4 58
RECEIVED
KATE BROWN
SECRETARY OF THE STATE

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.

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*].

26 27 PRIVATE SALES OF DISTILLED LIQUOR

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

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.

4 RESPONSIBLE SALES

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.

15 INCREASED PENALTIES FOR DISTILLED LIQUOR VIOLATIONS

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 unincorporated 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 issued under 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 20th 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.
28

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 (1) Paying expenses of district attorneys; and

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

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

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

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

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

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

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

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

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

23
24 **OREGON DISTILLED LIQUOR BOARD**
25

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

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

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

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 successor 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 following 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:

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

(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

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

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

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

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

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

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

21 471.039. (1) Notwithstanding any provision of this chapter, the Oregon Liquor Control
22 Commission may not require the owners, operators and employees of a cruise ship to have a
23 license or permit issued under the provisions of this chapter for the purpose of possessing,
24 transporting, storing, selling or serving alcoholic beverages that are described in subsection *[(3)]*
25 **(2)** of this section.

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

28 *[(3)]* **(2)** The provisions of this section apply only to alcoholic beverages that are served
29 aboard a cruise ship and that are served solely for the purpose of onboard consumption by a
30 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;

1 (VV) ORS 162.117, relating to public investment fraud;

2 (WW) ORS 164.170 or 164.172;

3 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

4 (YY) ORS 164.886;

5 (ZZ) ORS 167.312 and 167.388;

6 (AAA) ORS 164.889;

7 (BBB) ORS 165.800; or

8 (CCC) ORS 163.263, 163.264 or 163.266.

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

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

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

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

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

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

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

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

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

25 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public
26 Contracting Code applies to all public contracting.

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

28 (a) Contracts between a contracting agency and:

29 (A) Another contracting agency;

30 (B) The Oregon Health and Science University;

31 (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

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

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

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

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

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

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

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

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

29 (i) The Department of Corrections, subject to any applicable provisions of ORS
30 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the
31 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

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

3 (2) If the amount determined under subsection (1) of this section is less than
4 \$190,791,582 or more than \$194,645,958, not later than September 15, 2016, the Legislative
5 Revenue Officer shall determine, within one-tenth of one percent, the amount the
6 percentage portion of the fee imposed by section 16 of this 2014 Act would need to have
7 been for the fee to have raised \$192,718,770 for the period July 1, 2015 to June 30, 2016.

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

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

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

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

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

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

24 (2) Notwithstanding subsection (1) of this section, the holder of a retail license,
25 including a retail license issued under section 47 of this 2014 Act, with an endorsement
26 issued under section 5 of this 2014 Act may, before April 1, 2015, take any action necessary
27 to permit the holder of the license to sell distilled liquor to the public on or after April 1,
28 2015.

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

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

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

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

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

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

Petition Submission

SEL 339rev 01/14
OAR 165-010-0005, 165-014-0005

This form must be completed and filed with each submittal of signatures. For monthly submittals of signatures on state initiative petitions an authorized agent or a chief petitioner may complete and file this form. If the initiative has multiple chief petitioners only one chief petitioner is required to sign when filing with a monthly submittal. To complete a petition all chief petitioners must sign the same form.

Filing Officer☒ State☐ County for both county and district petitions☐ City**Type of Petition**☒ Initiative☐ Referendum☐ Recall☐ Minor Party Formation**Petition Information**

Petition Title or Number

SP-2014-69

Type of Filing**Number of Signatures Submitted**☒ Sponsorship Submission

1,845

☐ Monthly Submission☐ Completed Petition**Authorized Agent Certification** Only allowed for monthly submittal of signatures for state initiative petitions.

→ By signing this document, I hereby state that all information on the form is true and correct to the best of my knowledge.

Name

Tim Mooney

Contact Phone

Email Address

Signature

Date Signed

1/27/2014

Chief Petitioner / Sponsor Certification To complete a petition all chief petitioners must sign the same form.

→ By signing this document, I hereby state that all information on the form is true and correct to the best of my knowledge and if marked completed petition I understand the petition cannot be withdrawn and request that the appropriate elections official conduct signature verification. Additionally if the petition is an initiative or referendum I attest that no circulators were compensated money or other valuable consideration based on the number of signatures obtained by the circulator.

Name

Contact Phone

Email Address

Signature

Date Signed

Name

Contact Phone

Email Address

Signature

Date Signed

Name

Contact Phone

Email Address

Signature

Date Signed

RECEIVED
2014 JUN 27 PM 1 39
KATE ROWLAND
SECRETARY OF THE STATE

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 14, 2014

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

Re: Proposed Initiative Petition — Allows Qualified Retail Stores to Sell Liquor; Imposes
Taxes Similar to Current State Price Markup
DOJ File #BT-58-14; Elections Division #58

Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to the retail sale of liquor by qualified retail stores, and the imposition of taxes similar to current state price markup.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

Alicia Thomas
Legal Secretary

AFT/4983698

Enclosure

Lauren G. R. Johnson
8565 SW Salish Lane, Ste 100
Wilsonville, OR 97070

Lynn T. Gust
8565 SW Salish Lane, Ste 100
Wilsonville, OR 97070

RECEIVED
2014 FEB 14 PM 3 01
KATE BROWN
SECRETARY OF THE STATE

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
2014 FEB 14 PM 3 01
KATE BROWN
SECRETARY OF THE STATE

From: Doug Root [mailto:dougrootpdx@gmail.com]

Sent: Friday, February 07, 2014 5:21 PM

To: SOS Irrlistnotifier

Subject: Modernization law will hamper agri-tourism and hurt local small businesses and farmers.

Imagine an Oregon with 75% fewer wineries and vineyards and 75% fewer Craft brewers. Would our tourism industry be the same? Would there be more or fewer small business owners in related industries? Would there be fewer jobs in the State?

Now, imagine a local craft distillery industry that can, within in a few years, double in number of distilleries. Then, imagine that within ten years Oregon is home to 200 craft distilleries that attract huge numbers of tourists and hospitality dollars to Oregon. These businesses would create more local jobs and enhance an authentic local culture and support hundreds of farmers and other businesses. The key to this possible bright future is to NOT allow the 250+ local businesses licensed by the OLCC to go out of business because Fred Meyer, Safeway, Albertson's, Costco, all of which are out of State employers, to sell the distilled spirits products of the mostly big brands. This effort to allow grocery stores and big box retailers to shift liquor purchase profits to their corporate balance sheets will be done under the guise and promises of more consumer choice and lower prices due to competition. The real outcome will be less choice and higher prices and will be yet another example of sending profits out of State and more evidence that people are shortsighted and lack a true understanding of business and job creation in our State.

The craft distillery industry in Oregon deserves a fighting chance and the OLCC stores give them that by proudly stocking and displaying products from our local emerging distillers.

Oregon has 56 distillers. We can have triple that or more - or we can have just a handful because most of the independently-owned licensed OLCC stores will put out of business by the big grocers.

The voters of Oregon don't always have the wisdom and insight to see the long-term consequences of solid economic development programs. When a complex issue with non-obvious consequences is before the State, as is the case with the coyly-named Modernization ballot measure, is when our leaders and elected officials and State government managers should step up and lead. I hope they will. The Oregon culture does not have to be a culture of more big chains and big box stores.

But, it looks likely that a ballot measure and huge advertising onslaught by out-of-State grocers could lead Oregonians to miss our golden opportunity to reject "modernisation".

We can reject the Measure and thereby enhance Oregon's worldwide lore and local culture and help nurture small businesses and bring hundreds of millions of tourism dollars to all businesses in Oregon.

I am not a grocer or employee at or owner of an OLCC store. I want to start a new distillery in Oregon but if the ballot measure passes that will likely make it less appealing or downright impossible.

I am also one Oregonian who finds it rather disappointing that chain stores and executives of out-of-State big box behemoths exert control and influence the once-proud independent-minded legislature and my fellow citizens.

Step up Oregonians and stand up for an Oregon that creates jobs and enhances our culture and attracts tourism dollars.

Doug Root
Tualatin, OR

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KATE BROWN
SECRETARY OF THE STATE

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 1:40
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.¹ The Initiative nearly eviscerates the extant statutory scheme

¹The 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.

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).²

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

²The Initiative refers to the new tax as a “fee.” However, whether a government assessed charge is a “tax” or a “fee” is based on what the charge does, not on how it is characterized by its proponents or labeled in legislation. *Automobile Club of Oregon v. State*, 314 Or 479, 485-486 (1992). The “fee” in the Initiative obviously is a tax, because the revenue generated is not used solely to administer the distribution or sale of alcohol in Oregon. *See e.g.*, Initiative, §26 (setting forth how the funds collected are distributed).

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.³ 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

³ 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.

Very truly yours,

 Steven C. Berman

SCB:jjjs
cc: client

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March 3, 2014

VIA FACSIMILE

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

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

Dear Secretary Brown:

Our office represents Paul Romain and Ronald R. Dodge, both of whom are electors and persons dissatisfied with the Attorney General's draft ballot title for Initiative Petition #58. Mr. Dodge and Mr. Romain object to the Attorney General's draft ballot title on the ground that the draft ballot title does not substantially comply with ORS 250.035(2).

For the reasons set forth below, we respectfully request that the alternative ballot title caption, statements, and summary set forth in this submission be certified in lieu of the Attorney General's draft ballot title.

1. THE DRAFT CAPTION DOES NOT COMPLY WITH ORS 250.035(2)(a).

The draft caption states:

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

ORS 250.035(2)(a) provides that the ballot title caption must contain "not more than 15 words that reasonably identif[y] the subject matter of the state measure." "The caption is the 'headline' of the ballot; it 'provides the context for the reader's consideration of the other information in the ballot title' and must describe the proposed measure's subject matter accurately." *Towers v. Rosenblum*, 354 Or 125, 129, 310 P3d 1136 (2013) (quoting *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995)).

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SECRETARY OF THE STATE

The "subject matter" of a measure refers to "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." *Buehler v. Rosenblum*, 354 Or 318, 323, 311 P3d 882 (2013) (quoting *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010)). "The caption must also identify the measure's subject matter in terms that will not 'confuse or mislead potential petition signers and voters,' *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001), and it cannot overstate or understate the scope of the legal changes that the measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004)." *Buehler*, 354 Or at 323.

"A caption may describe accurately the actual major effect of a measure and still not comply with the requirements of the statute if the description is 'too vague and gives voters no clear picture of what is at stake.'" *Girod v. Kroger*, 351 Or 389, 397, 268 P3d 562 (2011) (quoting *Hunnicuttt/Stacey v. Myers*, 343 Or 387, 391, 171 P3d 349 (2007)).

In this case, the draft caption for Initiative Petition #58 is partially correct, but incomplete. The first phrase about allowing qualified stores to sell liquor is correct. The second phrase is incorrect and can be very confusing. The new taxes imposed on liquor are not similar to the current state price markup. The measure imposes a wholesale sales tax; saying that the new tax is similar to the current markup understates the scope of the administrative and legal challenges that face the state in trying to collect the tax.

The current system has the state buying the product and marking it up to cover its costs of sale plus an amount that is a substitute for a direct tax. For example, if the state buys a bottle for \$10, it will sell that product to the general consumer for about \$20.80. Of that \$10.80 markup, \$2.40 covers the cost of wholesale and retail operations and \$8.40 is the tax equivalent that is distributed to the general fund and to local and state government for various programs.

The proposed measure imposes a wholesale sales tax of 71.7% on the acquisition price of the bottle by the first Oregon purchaser. Initiative Petition 58 (2014) at Section 16. In other words, if a bottle is sold by a supplier to a retailer or wholesaler for \$10, a tax of \$7.17 is added to the price and sent to the state as taxes. There also is a \$.75 per bottle tax that is added to the price to the retailer or wholesaler, making the tax on that container \$7.92.

The proponents of the measure contend that Section 73 of the initiative protects state revenue by allowing the "Legislative Revenue Officer" to adjust the tax rate. It is very questionable whether or not any one person can be delegated the legislative authority to raise or lower a tax. *Multnomah County v. Luihn*, 180 Or 528, 540, 178 P2d 159 (1947) ("The power to tax is a legislative power, and cannot be delegated to an administrative body."). Since each transaction where the sales tax would apply could be different, each with its own distinct wholesale price, the authority to set a rate is too much power for the legislature to delegate. It would be like the legislature telling the Legislative Revenue Officer that the state needs \$2 billion for the next year and allowing the Legislative Revenue Officer to set the rate of the income tax to be levied.

The additional major legal challenge that mitigates against calling this tax "similar" to the current state markup is that the tax exemption in Section 16(4)(a)(8) is unconstitutional and could render the entire tax invalid. The state could be left with no revenue from distilled liquor. The exemption only can apply to sales by a distiller located in the State of Oregon. Obviously, the purpose and effect of the exemption is to not impose the tax upon Oregon-based distillers for some of their

sales. No distiller or importer outside of the state would be able to qualify for the exemption. Under *Bacchus Imports, LTD. v. Dias*, 468 US 263 (1984), such a tax exemption is unconstitutional.

The concern is not that there is an effort to cater to Oregon distillers. The concern is that the Court remedy in such a situation is to declare the entire tax invalid. A court will not simply sever the offending exemption and impose the tax upon an entity that the initiative does not tax. *Vannatta v. Keisling*, 324 Or 514, 931 P2d 770 (1997); *Advocates for Effective Regulation v. City of Eugene*, 176 Or App 370, 32 P3d 228 (2001). Thus, the initiative's major effect may be to eliminate the tax on all distilled liquor sold in Oregon.

As discussed above, the second part of the draft caption is incorrect and confusing to the voter. Changing the draft caption to highlight the imposition of a wholesale sales tax avoids the potential problem of understating the scope of the legal changes that the measure would enact, avoids the issue of the caption being too vague, and gives signers and voters a clear picture of what is at stake.

For these reasons, we suggest the caption should read:

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

Alternatively, the caption should read:

**Allows qualified stores to sell liquor; current price markup replaced by
71.7% wholesale tax**

**2. THE DRAFT "YES" VOTE STATEMENT DOES NOT COMPLY WITH
ORS 250.035(2)(b).**

The draft "yes" vote statement reads as follows:

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.

ORS 250.035(2)(b) requires the "yes" vote statement to describe "the result if the state measure is approved" within 25 words. "[T]he result of a proposed measure's enactment that belongs in the 'yes' vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public. Stated differently, the legislature intended the 25-word 'yes' vote result statement to notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon." *Carley v. Myers*, 340 Or 222, 231, 132 P3d 651 (2006) (quoting *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004)).

The proposed draft "yes" vote statement is inaccurate for reasons similar to the discussion above regarding the "caption." The imposed wholesale sales tax is not roughly comparable to the current state markup in any respect. The simple costs of administering the sales tax system, with audits and collection mostly involving entities outside of the state or even the country, make the system totally different than a simple markup on product already in your possession. Accordingly, the "yes" vote

statement should instead read as follows:

Result of "Yes" Vote: "Yes" vote expands number of retailers authorized to sell liquor; replaces state price markup with wholesale sales tax; keeps state agency for tax collection/regulation.

3. THE DRAFT SUMMARY DOES NOT COMPLY WITH ORS 250.035(2)(d).

The draft summary states:

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

ORS 250.035(2)(d) requires that a ballot title contain "[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The purpose of an initiative ballot summary "is to help voters understand what will happen if the measure is approved, and...[it] should...be worded so that voters will understand the breadth of its impact." *Wyant v. Myers*, 336 Or 128, 139, 81 P3d 692 (2003) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)).

In *Novick/Crew*, the Oregon Supreme Court described the "major effect" requirement as follows:

Logically, those would include additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law.

337 Or at 574, 100 P3d 1064.

There are still so many confusing issues in this measure that writing an accurate summary is a daunting task. The three most important issues for the public are the imposition of a unique wholesale sales tax and bottle tax, the expansion of those who can sell distilled liquor, and the termination of the contracts of those private retailers currently authorized to sell the product. At a minimum, the ballot summary should include these three items in order to help voters understand what will happen if the measure is approved and in order for voters to understand the breadth of its impact.

In addition, the measure moves tax collection by the state from a simple system whereby all tax revenue is collected in-state to a very complex system where each separate sales transaction by a

supplier to a wholesaler or retailer has its own unique tax, and most of the taxes will have to be collected from suppliers who are out-of-state.

The tax due to the state depends upon the selling price, so a sale to two different entities will generate two different tax amounts depending on the price paid by the purchaser. For example, if a large box retailer negotiates a price of \$100 for a case of distilled spirits, and a smaller retailer negotiates a price of \$150 for that same case, the tax due on the two sales is unique. The former would generate a tax of \$71.70 plus \$9 (assuming a 12 bottle case), for a total of \$80.70, while the latter would generate a tax of \$107.55 plus \$9, for a total of \$116.55. The state will have to have a huge auditing staff to review all sales transactions wherever they are generated.

In addition, the tax provision in Section 16 of the measure has a provision that is unconstitutional and could render the entire tax invalid. See the discussion above.

The attempt in the draft ballot title to describe the current pricing system is very confusing and will give the voter no useful information. How does a person know what the cost per case is of a product, or what the operation costs are, or even what "other" costs are included in the price? It is far more useful for the voter to simply say that the current price markup is replaced by two taxes, a wholesale sales tax of 71.7% and a bottle tax of \$.75 per unit.

Finally, the statement in the summary that the proposed measure establishes a Distilled Liquor Board is not important enough to include in a ballot title, unless the summary stated that the measure would use taxpayer money to create another state agency to promote another Oregon product. The most important issues for the voter are the ones that should be explained in the limited number of words available for the summary.

For these reasons, we propose the following summary:

Summary: Under current law, retail sales of liquor by the bottle are made exclusively by agents of the Oregon Liquor Control Commission (OLCC). Measure removes state from the sale of liquor; keeps OLCC as tax collection/regulatory entity for alcoholic beverages. Current price markup replaced by 71.7% wholesale sales tax, plus \$.75 per bottle tax; taxes adjusted in 2017; establishes minimum price for bottle sale. OLCC required to audit individual sales transactions to determine amount of tax due. Measure expands number of retailers; current agreements with retail sales agents terminated, subject to right to continue to operate. Current beer/wine retailers over 10,000 square feet qualify as liquor retailers, provided they are in compliance with all liquor laws and successfully completed responsible vendor program. Other provisions.

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

The Romain Group, LLC, by Paul R. Romain
on behalf of Paul Romain and Ronald R. Dodge, individually



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March 3, 2014

SENT VIA FACSIMILE TO: 1-503-373-7414

Honorable Kate Brown
Elections Division
255 Capitol St NE, Ste 501
Salem, OR 97310-1306

Re: Ballot Title Comments to Initiative Petition No. 58 (2014)

Dear Madam Secretary:

This office represents Lauren G. R. Johnson and Lynn Gust, registered voters in the State of Oregon and the Chief Petitioners for IP #58. The purpose of this letter is to make comments on their behalf to the draft ballot title prepared by the Attorney General for Initiative Petition No. 58 (2014). We are mindful that ORS 250.035(2) requires: (a) a caption not more than 15 words that reasonably identifies the subject matter of the state measure; (b) a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved; (c) a simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected; and (d) a concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.

A. The Caption

The caption must "state or describe the proposed measure's subject matter accurately, and in terms that will not confuse or mislead potential petition signers and voters." *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citations omitted; internal quotation marks omitted). The caption is the "cornerstone for the other portions of the ballot title." *Greene v. Kulongoski*, 322 Or 169, 175 (1995). As the "headline" the caption "provides the context for the reader's consideration of the other information in the ballot title." *Greene*, 322 Or at 175.

The caption does not reasonably identify the subject matter of the measure as required by ORS 250.035(2)(a) because the caption mischaracterizes it as one imposing a "tax" and fails to

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mention the second most significant structural change, the regulation of private liquor distribution in this state.

The Attorney General's draft caption includes the phrase "imposes taxes similar to current state markup." It not only introduces the word, "tax", it also inaccurately suggests that the "tax" is "similar" to the current state markup. The similarity the Attorney General appears to be addressing has to do with the amount raised; the structure, however, is not similar at all.

The language of the initiative describes and provides for a State Revenue Replacement Fee, not a tax. "...the holder shall pay to the Oregon Liquor Control Commission a *fee* of 75 cents per container plus 71.7 percent of the price for which the holder sells the distilled liquor." [Section 16 (1); Emphasis added]

Whether an assessment is a fee or a tax depends on the context in which the assessment is imposed. In other words, why does it matter what the designation is? The designation may matter if, for example, one needs to know in which chamber of the legislative assembly a bill must originate. However, fees can mean taxes and taxes can mean fees.¹ See, e.g., ORS 825.005(12) ("Privilege taxes" means the weight mile tax *and* fees prescribed in this chapter; *emphasis added*). As a result, in Oregon law there are different definitions of fee and of tax depending on context. In this case, the context is that of a ballot initiative and the choice of words in the ballot title which will communicate to the voters information about a term of general understanding "fees" versus "taxes."

The Attorney General's reference in the caption to the measure's imposing a tax is misleading to voters, because the only payors are the small number of manufacturers that sell their product in Oregon. There is no requirement that the manufacturer pass the fee on to the consumer in the price of a bottle. A reference to a "tax" will make voters think they are paying a tax, when it is only a small number of companies that will.

In *Bernard v. Keisling*, 317 Or. 591, 858 P.2d 1309 (1993), a question arose as to whether a ballot title for a proposed initiative that would impose a chemical process mine license fee should have used the words "fees" or "taxes." The petitioner in that case asserted that the ballot title should reference a "tax" because the measure imposed a revenue requirement designated to raise money for public purposes and not for the cost of regulation. The attorney general, in turn, argued that the words of the measure consistently referred to the imposition of a license "fee" and that the Supreme Court has held that, generally, and in the absence of a compelling reason to

¹ For instance, a school impact fee imposed by a governmental unit would be a "tax" for purposes of Article XI, Section 11b if it would be imposed "upon property or upon a property owner as a direct consequence of ownership." However, a school impact fee could also be a charge assessed on developers of real property within a school district for the cost of capital construction of public schools needed to serve the residences of the development. These "system development charges" would not be imposed on property or on the owner of property as a direct consequence of ownership, but rather the charges would be imposed because the owner elects to exercise a right of ownership, and to burden public facilities. They would therefore be "fees" for that purpose. See Attorney General Op. 6407 (1991).

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the contrary, the words of the measure should be used in its title. *See Sampson v. Roberts*, 309 Or. 335, 340, 788 P.2d 421 (1990) (so holding).

The attorney general further argued that the question whether the proposed measure imposed a “fee” or a “tax” called for the attorney general to interpret the measure, and a ballot title challenge was not the appropriate forum for deciding legal issues regarding interpretation of a proposed measure.

The Supreme Court, in endorsing the choice to invoke the word “fee” also made clear that if the measure is enacted into law, the Court may later be required to decide the meaning and significance of words used in the measure and, therefore, it is generally inappropriate for the Court to do so in a ballot title proceeding. *Id.* at 595. That admonition should apply equally to the attorney general when she departs from the words of the measure.

In *Dirks v. Myers*, 329 Or 608, 616, 993 P2d 808 (2000) the Supreme Court also warned that ballot titles—especially captions—should not use terms or phrases that “tend more to promote or defeat passage of the measure than to describe its substance accurately”). The caption should either use the word “fee” as opposed to the politically loaded word “taxes” or eliminate the references altogether since neither fees nor taxes are subjects of the measure.

The Attorney General accepted Petitioners’ suggested initial comments for revision of the caption to include: “Allows qualified retail stores to sell liquor.” Petitioners’ suggestion during the comment phase added “maintains state liquor revenues; regulates liquor distribution.” Unlike the imprecise language of the Attorney General’s certified title, the proposed language highlights important information for taxpayers – that state revenues from liquor sales are to be maintained. It also highlights the initiative’s second most significant structural change, the regulation of private liquor distribution in the state.

In the caption petitioners also improve the draft ballot title, by including the word “bottled” before “liquor.” Because the Attorney General’s certified title doesn’t include “bottled,” there is room for an additional word.

In light of the foregoing, Petitioners suggest the following caption:

**Allows qualified retail stores to sell bottled liquor; maintains
state liquor revenues; regulates liquor distribution**

A. The result of “yes vote” statement.

The result of yes vote statement does not substantially comply with ORS 250.035(2)(b) because it erroneously suggests that the result will be an “expansion” of retail sales of liquor by retailers, and that taxes will be imposed. It also does not state that the result will be to allow qualified retail stores to sell liquor and to maintain state revenues.

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The Attorney General's draft Yes result statement reads: *"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.*

Under the status quo, no holder of an off premises liquor license (package stores) may sell liquor. There is therefore no "expansion" of those sales. What the measure results in as "allowing" qualified retailers to sell liquor, a reference that was present in the Attorney General's draft Yes Result statement. The initiative itself does not mandate expansion; it allows it under specified terms. Expansion may be the Attorney General's expectation about what will happen if the initiative is adopted, but it is not what the plain language of the initiative provides. *See Bauman v. Roberts*, 309 Or. 490, 497, 789 P.2d 258 (1990) ("The mention of a no-insurance provision is appropriate; making an attempt to predict what the effect of that provision would be is not"); *Kane v. Roberts*, 310 Or. 423, 428, 799 P.2d 639 (1990) ("While it would be useful if this court could predict the effects of a constitutional provision guaranteeing privacy, it is neither possible nor appropriate to do so.")

Also, the statement's clause regarding "taxes" has the same flaws as the caption.

One final result will be to approximate and maintain current state revenues. See Section 73 of the proposed measure. That Section provides for a "True Up" comparing the amount of revenue raised by the fees imposed by Section 16 of the Act for the period July 1, 2015 through June 30, 2016 with numbers that approximate total current revenues raised by the Oregon Liquor Control Commission from the sale of alcohol under the status quo. *See* Section 73(2).

Petitioners therefore suggest the following Result of Yes Vote:

"Yes" vote allows qualified retail stores to sell liquor; maintains current state liquor revenues; establishes state regulatory requirements for private liquor distribution, transportation and sales.

B. The result of no vote statement.

The result of no vote statement does not substantially comply with ORS 250.035(2)(c) because it fails to describe the current law. Rather, the draft No Result statement has an odd and inaccurate way of describing current law. It reads: *"No" vote retains the current system of retail sales liquor exclusively through Oregon Liquor Control Commission agents, retains state markup for costs and taxes.*

First, the current system description is incomplete. The current system involves more than just retail sales through OLCC agents; OLCC also is the exclusive distributor of liquor in the state.

Second, it is inaccurate to characterize the markup as a tax. ORS 471.745 directs the OLCC to "fix the prices" of liquor sold in the state. The commission has adopted a rule for setting the retail price of distilled spirits (OAR 845-015-0138). Its language refers to "a surcharge or change in the mark-up formula" for liquor, but never mentions a tax on liquor. This is in sharp contrast to the express description of privilege taxes on wine and malt beverages.

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Petitioners suggest the following Result of No Vote to substantially comply with ORS 250.035(3):

"No" vote retains the Oregon Liquor Control Commission's exclusive authority to distribute, transport and sell liquor at the wholesale and retail levels in the state.

C. The summary.

The Attorney General's draft summary does not substantially comply with ORS 250.035(2)(d) because it fails to note the proposed measure's major effects and fails to alert the voters to the state of the present law.

The Attorney General attempts to provide more detail on current law, including the current formula for setting prices and a description of the revenue replacement fee, calling it a tax.

The draft summary reads: Under current law, retail sales of liquor by the bottle are made exclusively by retail sales 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 Distiller Liquor Board to encourage industry; OLCC retains regulatory functions. Other provisions.

The specific language in the draft title regarding pricing reflects the current pricing which is set administratively. The current law gives OLCC general authority to "fix the prices." Prices are subject to change with 45 days' notice. The temporary arithmetic OLCC is using today by way of administrative rule is not current law so much as the *product* of current law. Voters are better served by an understanding that OLCC sets prices to cover costs and make money for government programs.

Similarly, the initial rate provided in the proposed measure of 71.7% plus 75 cents per container as the revenue replacement fee is subject to recalculation after the first year, and the sunset of the 50-cent-per-container surcharge at the end of the first biennium. See Section 16a.

The calculus for both current pricing and pricing under the measure is not enlightening for voters, and does not represent permanently fixed rates. The more important provision from voters' perspective is the maintenance of current state funding for state and local government programs.

Finally, Sections 14 and 15 of the Proposed Measure significantly increase penalties for distilled liquor violations. Among these are mandatory minimum penalties for sales to minors

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and sales to those who are visibly intoxicated. These effects will likely be of great interest to voters and merit mentioning in the summary over some of the other specifics.

Petitioners therefore propose instead the following:

Under current law, Oregon Liquor Control Commission has exclusive authority to distribute, transport, set prices for and sell liquor through its wholesale warehouse and retail sales agents. Liquor prices are set to cover costs and generate revenue for state and local government programs. Measure would allow sales of bottled liquor by qualified retail stores licensed to sell beer/wine that have completed successfully the responsible vendor program. Establishes state revenue replacement fee to maintain current state liquor revenues; adds funding for local public safety programs. Agreements with current retail sales agents would be terminated, subject to a right to continue to operate. Establishes Oregon Distilled Liquor Board to encourage development of distilling industry and related purposes. Commission retains regulatory functions. Increases penalties for violations. Other provisions

We ask that you request of the Attorney General a certified ballot title addressing these criticisms.²

Thank you for your courtesies and time concerning this matter.

Sincerely,

Davis Wright Tremaine LLP

John DiLorenzo, Jr.
JAD:rmp

cc: Lauren G. R. Johnson
Lynn Guest

² We have not made provisions in our suggested summary for the very important references relating to preservation of state revenues on the assumption that we might persuade you to include those references in the caption and result of yes vote statement. Should you fail to make those inclusions, however, some reference should, at minimum, be made in the summary.



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

March 18, 2014

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

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

Re: Proposed Initiative Petition — Allows Qualified Retail Stores to Sell Liquor; 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 I1.30(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

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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.

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M

Senior Assistant Attorney General
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MJL:aft/5106915

Enclosure

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(No mailing address furnished.)

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

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on April 15, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 58 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Steven C. Berman, attorney for petitioner Elspeth McCann; and served upon Margaret E. Schroeder and Paul R. Romain, attorneys for petitioners Ronald R. Dodge and Paul Romain; and served upon John DiLorenzo, attorney for petitioners Lynn Gust and Lauren G. R. Johnson; using the court's electronic filing system.

/s/ Matthew J. Lysne

MATTHEW J. LYSNE #025422
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Attorneys for Respondent
Ellen Rosenblum, Attorney General,
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