



Peace Officers Guide 2008

Promoting the public interest through the responsible sale and service of alcoholic beverages.

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The Peace Officer Guide refers to two types of laws:

1) Oregon Revised Statutes (ORS)

The Oregon Revised Statutes are laws that a peace officer may use to arrest or cite people into the court system.

2) Oregon Administrative Rules (OAR)

The OLCC writes and adopts administrative rules to make administrative decisions that affect people who have liquor licenses or service permits.

OARs have the full force and effect of the law. A law enforcement officer could cite a person into circuit court for violation of an administrative rule. Since some district attorneys will not issue complaints for these violations, we suggest you send your report of any activity involving violations of an administrative rule to your local OLCC office.

The OLCC evaluates the information for possible administrative action.

About the Oregon Liquor Control Commission

The mission of the Oregon Liquor Control Commission is to promote the public interest through the responsible sale and service of alcoholic beverages. The OLCC serves as a model for state alcohol programs and we count on strong partnerships with our stakeholders in government, law enforcement, alcohol abuse prevention, private industry, and others to help us carry out and improve agency mission functions and meet demand for services.

One of OLCC's long-term strategies is to curb alcohol problems with a balanced blend of liquor law enforcement, outreach education, publicity and communication. Much of this work is carried out by OLCC Public Safety Services, which includes enforcement, licensing, and administrative policy & process divisions. These divisions work to license only qualified people and businesses to sell and serve alcoholic beverages. OLCC inspectors and other enforcement personnel work extensively with licensees, often at their premises, to help them understand and comply with the laws that govern them.

Members of OLCC Public Safety Services work with law enforcement, neighborhood, civic and business groups, local governments and the public to educate them about liquor laws and policies and to gain their perspective on a variety of issues. The OLCC places strong emphasis on reducing underage drinking, which is at serious levels in Oregon. One strategy is to conduct a high volume of minor decoy compliance checks annually to make sure stores, restaurants, taverns and all liquor businesses are properly checking ID and not selling to minors. OLCC programs include reducing alcohol sales to visibly intoxicated persons, ensuring that all alcohol servers are properly trained and have permits, and investigating and taking enforcement action when necessary against those who violate liquor laws.

Authority of the OLCC

1. ORS 471.605 Duty of officers to enforce and to inform district attorney. The state police, sheriffs, constables and all police officers within the state shall enforce all provisions of the Liquor Control Act and assist the commission in detecting violations of that statute and apprehending offenders.

2. ORS 471.775 Service of subpoenas; authority of inspectors.

(1) The provisions of ORS 183.440 shall apply to subpoenas issued by each member of the commission or any of its authorized agents.

(2) Inspectors and investigators employed by the commission shall have all the authority given by statute to peace officers of this state, including authority to serve and execute warrants of arrest and warrants of search and seizure.

3. ORS 471.675 Resisting arrest or interfering with enforcement.

No person shall forcibly resist lawful arrest, or by physical contact recklessly interfere with an investigation of any infringement of the Liquor Control Act or the Oregon Distilled Liquor Control Act or with any lawful search or seizure being made by an officer or inspector of the commission, when such person knows or should know that such acts are being performed by an officer or inspector of the commission.

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4. ORS 471.351 Examination of books and premises of licensees.

(1) The Oregon Liquor Control Commission has the right, after a 72-hour notice to the owner or the agent of the owner, to make an examination of the books and may at any time make an examination of the premises of any person licensed under this chapter or to check the alcoholic content of liquors carried by the licensee, for the purpose of determining compliance with this chapter and the rules of the commission.

(2) The commission shall not require the books of any licensee to be maintained on the premises of the licensee.

5. ORS 471.615 Duty to notify commission of conviction of licensee. The county courts, district attorneys and municipal authorities, immediately upon the conviction of any licensee of the commission of a violation of any provision of the Liquor Control Act or the violation of any other law of this state or ordinance of any municipality therein, in which violation alcoholic liquor had any part, shall notify the commission thereof. Such officials shall notify the commission of any acts, practices or other conduct of any such licensee which may be contrary to the general welfare and the spirit of the Liquor Control Act and shall recommend such action on the part of the commission as will remove the evil.

If any holder of a liquor license (licensee) in the state of Oregon is convicted of a violation of the Liquor Control Act, or any other state law or city or county ordinance involving alcohol, the city or county who is filing the charges is required to notify OLCC of the charges. Reference ORS 471.315(1)(a)(l).

Liquor Licensing

In addition to liquor law enforcement, the OLCC is responsible for issuing liquor licenses to individuals and businesses who want to sell alcohol. The agency issues 11 different kinds of liquor licenses. The most common types are:

- **Off-Premises (O):** permits beer, wine and cider sales for off-premises consumption only. With prior OLCC approval, sample tastings may be conducted on the premises.
- **Limited On-Premises (L):** permits beer, wine and cider sales for on-premises consumption only, and the sale of kegs of malt beverages.*
- **Full On-Premises (F):** permits beer, wine, cider and hard alcohol sales for on-premises consumption only.

In addition to the licenses mentioned above, the OLCC issues other **special licenses** that allow people to sell and serve alcohol at special events such as concerts, festivals, fairs and rodeos.

*Licensees may sell malt beverages to go in a securely covered container provided by the customer. The container may hold up to 2 gallons.

Writing Your Reports

The information you obtain for us is very important. We use your reports to help us make administrative decisions regarding liquor-related activities. Included are some suggestions to help you gather the most useful information, followed by explanations of the statutes and administrative rules.

In your report, please:

- Identify and interview all available witnesses, if possible.
- Record their statement or direct quotes.
- Evaluate credibility when there are conflicting statements from witnesses.
- Evaluate facts that prove or disprove each of the elements of the violation you are investigating.

Laws for Investigating and Reporting Liquor Law Offenses

SELLING ALCOHOL WITHOUT A LIQUOR LICENSE

Class A Misdemeanor

ORS 471.475 No person who owns, operates or conducts a private or public club or place and who is not in possession of a license issued by the commission permitting the mixing, storing and serving of alcoholic liquor at said premises, and no agent, servant or employee of such person, for a financial consideration by way of a charge for service, membership fee, admission fee, initiation fee, club dues, contributions or other fee or charge, shall serve or permit to be served, or use or permit to be used, any room, place, bar, glasses, mixer, locker storage place, chairs, tables, cash register, music devices, furniture, furnishings, equipment or facilities, for the mixing, storing, serving or drinking of alcoholic liquor.

Elements

- Person(s) who owns, operates or conducts a place or agent, servant, or employee of such person.
- Mixes, stores, serves, or allows the drinking of alcohol or uses or permits to be used items for alcohol service.
- For financial consideration.
- Without a license.

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Whenever money is collected and alcohol is served, a person needs a liquor license. Often, people try to get around this statute by saying the money is really "for the band" or "a donation" to send someone on a trip.

If possible, seize the money collected and any signs referring to sales. If you wish to verify whether a location has a license, call your nearest OLCC office.

Examination of Licensed Premises

ORS 471.351 OLCC employees may examine a licensed premises and check the alcoholic content of liquors carried by the licensee at any time for the purpose of determining compliance with liquor laws.

Confiscation of Liquor and Property

ORS 471.610 When officers arrest anyone for violating the Liquor Control Act, they may seize all alcoholic liquor and other property that the persons arrested have in their possession or on their premises used to violate that law.

NOTE: We recommend that you follow your department policy and contact your district attorney before seizing any property under this statute.

SELLING ALCOHOL WITHOUT A SERVICE PERMIT

Class A Misdemeanor

ORS 471.360 (1)(a) All employees of businesses who sell, serve or dispense alcoholic liquor for consumption "on-premises" must have a valid service permit issued by the OLCC.

(b) No licensee of the OLCC will allow anyone to mix, sell or serve alcoholic liquor for consumption on a licensed premises unless that person has a valid service permit issued by the OLCC.

(c) While working on the premises, an employee must make the permit or a copy of the application available for inspection by law enforcement officers or OLCC inspectors.

Investigative Steps

1. Identify employee, premises, date and time.
2. Was employee selling or serving alcoholic liquor or supervising employees who do?
3. What were the employee's duties?
4. How long had the employee worked without a service permit? (Check employee records, if necessary.)
5. Who hired the employee?
6. Did the employee fill out a service permit application? Is a copy on the premises? Was it filled out correctly?

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7. Was the application submitted to the OLCC?
Call the OLCC's Service Permit Section 1-800-452-6522 ext. 5139 before 5 p.m. Monday through Friday, or call 503-872-5070 after 5 p.m. Tuesday through Saturday to determine if an application was received, and what actions, if any, were taken regarding the application.

Persons who mix, sell or serve alcoholic beverages for on-premises consumption without a service permit may be cited or charged criminally, if they have not completed a service permit application.

NOTE: Even though you can cite the licensee for allowing an employee to mix, sell or serve alcohol without a service permit (ORS 471.360 (1)(b)), we prefer that you report the incident to the OLCC, and we will take appropriate administrative action.

MISUSE OF A SERVICE PERMIT

Class A Misdemeanor

The service permit identifies the employee and has an expiration date. Restrictions are listed on the back of the permit. A licensee whose name appears on the annual license certificate does not need a service permit. (Some corporate officers might need a service permit.) Servers at licensed special events do not need service permits if the licensee is a charitable or nonprofit organization.

ORS 471.365 (2) No service permit shall be used by any person other than the person to whom it is issued. The licensee shall verify the identity of permittee and verify a service permit before allowing the permittee to mix, sell or serve alcoholic liquor.

Underage Persons and Related Offenses

Liquor laws define a minor as a person under 21 years of age.

MINORS IN POSSESSION OF LIQUOR (MIP)

Criminal Violation

ORS 471.430 (1) No minor under 21 years of age shall attempt to purchase or be in possession of alcoholic liquor, except when a minor is in a private residence accompanied by his/her parent or guardian, and with such parent's or guardian's consent.

(2) For the purposes of this section, personal possession of alcoholic liquor includes consumption of liquor. Minors may consume sacramental wine as part of a religious rite or service.

(4) Anyone who violates subsection (1) commits a class B violation.

NOTE: "MIP" is only a violation; peace officers may cite and release, but they may not arrest.

ORS 809.220 Failure to appear This section establishes procedures that are applicable if a person fails to appear on a citation for a traffic offense or for a violation of ORS 471.430.

(1) If a defendant fails to make any appearance required by the court or by law in a proceeding charging the defendant with a traffic offense

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or with a violation of ORS 471.430.

(a) Shall issue notice to the Department of Transportation to suspend for failure to appear if the defendant is charged with a traffic crime or with a violation of ORS 471.430. If a court issues notice under this paragraph, the department shall suspend the driving privileges of the person as provided under ORS 809.280.

MINOR SERVICE PERMITTEES

Class A Misdemeanor

ORS 471.482 (1) People 18, 19 or 20 years old may obtain minor service permits. This permit allows them to take orders for, serve or sell alcoholic beverages in all areas of a licensed business, except those areas that are prohibited to minors. The service of alcohol by a minor permittee must be incidental to the service of food.

(2) Servers under the age of 21 may enter areas prohibited to minors only for the purpose of ordering and picking up alcoholic liquor for service in other parts of the premises. They are not allowed to remain in the prohibited areas longer than necessary to perform those duties. Minors with minor service permits may not perform the duties of a bartender in an area prohibited to minors.

Minors on Licensed Premises

ENTRY OF LICENSED PREMISES BY PERSONS UNDER 21

Criminal Violation

ORS 471.430 (3) Except as authorized by rule or in an emergency, no one under 21 years of age shall enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as prohibited to minors.

(4) Any person who violates subsection (3) commits a Class B violation punishable by a fine of not more than \$360.

Elements

- A minor attempts to enter or actually enters a portion of a licensed premises prohibited to minors.
- There is a visible posting identifying the premises or portion of the premises as prohibited to minors.
- The minor is not on the premises to perform legal job duties.
- The minor is not accompanied by a spouse of legal age.
- No emergency situation exists.

NOTE: Since unlawful entry is only a violation, peace officers may cite and release, but they may *not* arrest.

Minor Posting Signs

OAR 845-006-0340 Minor posting signs inform the public whether or not minors may enter a licensed premises. Also, minor posting signs designate the portion of a licensed premises where minors are allowed.

Postings are more restrictive for those licensed premises that emphasize the sale of alcoholic beverages over the sale of food. The OLCC assigns five types of minor postings:

- Number I** No Minors permitted on these premises. (Taverns)
- Number II** No Minors permitted in this portion of the premises. (Lounges)
- Number III** Minors allowed in this portion of the premises if eating or other activities generally predominate over drinking. (No sign is posted)
- Number III-A** Minors allowed in restaurants or dining rooms only during posted times and days. Minors may use entertainment devices when allowed on premises. Minors may not be in posted areas after 9 p.m.
- Number IV** Minors allowed only during specified meal hours and days, and only for the consumption of food.
- Number V** No minors permitted unless with a parent. This minor posting is used for tasting rooms.

MINOR PATRONS

Administrative Violation

OAR 845-006-0335 (3) No licensee, permittee or licensee's employee will permit a minor:

- (a)** To buy, be served or drink any alcoholic beverages on licensed premises; or
- (b)** To be on a licensed premises or in an area of the licensed premises prohibited to minors, except as provided by statute or rule.

MINOR SPOUSES

Administrative Violation

OAR 845-006-0335(7)(a) A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

- (a)** If the licensee permits it, a minor may be in the immediate company of his/her spouse who is at least 21 years old. The minor must not buy, possess or drink alcoholic beverages.

MINOR EMPLOYEES

Administrative Violation

OAR 845-006-0335 (4) A minor employee may be in a Number II, III-A after 9 pm, IV or V posted area only to restock supplies and do food service-related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders and serve food during the specified meal periods.

MINOR VENDOR OR CONTRACTOR

Administrative Violation

OAR 845-006-0335 (5) A minor, other than licensee's employee, who has a legitimate business purpose, may be in the area of a licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area.)

GROCERY STORE CLERKS AND WHOLESALE DELIVERY PERSONS

Administrative Violation

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

(2) Any employee 18 years of age or older of a person who holds a wholesale malt beverage wine license from the Oregon Liquor Control Commission may assist a salesperson, as defined in ORS 471.287, in the delivery of any alcoholic liquor authorized by such license.

Sale, Service or Making Liquor Available to a Minor

FURNISHING ALCOHOLIC LIQUOR TO A MINOR

Class A Misdemeanor

ORS 471.410(2) No one other than the minor's parent or guardian may sell or give any alcoholic liquor to a person under the age of 21 years.

Elements

- The person receiving the alcoholic liquor is under 21 years of age.
- Furnisher sells, gives or makes alcoholic liquor available to a minor, or to an adult who the furnisher knows will make it available to a minor.
- The minor takes possession of the alcoholic liquor. The minor needs to separate from the purchaser to show this, unless the minor consumes. Other evidence such as seeing money exchanged may help show possession.
- The furnisher is not the minor's parent or guardian.

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Needed Information

When a bar, tavern or lounge sells alcohol to a person under 21:

1. Identify premises, date and time.
2. What alcoholic liquor was involved? *Identify the alcoholic beverage and photograph it if possible.*
3. Who sold to or served alcohol to the minor? Did the server have a valid service permit or an application for a service permit?
4. Did you observe the sale/service?
5. Did you observe the minor consume?
6. Who ordered/paid for the drink?
7. Who was cited besides the minor?
8. How old did the minor appear to be?
9. What specifically caused you to believe that the suspect was a minor?
 - (a) Youthful physical appearance
(face, haircut, height, weight, etc.)
 - (b) Dress
 - (c) Behavior
 - (d) Friends/associates
10. Was the minor asked for proof of age?
11. Were there any witnesses?

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12. Did the minor use any false ID? Who has it?
13. Briefly describe the premises as to the type of crowd, location of the minor, number of employees on duty and whether or not the licensee or manager was present on the premises.
14. Did the "Minor Posting" deny entry to minors?
15. Ask the bartender/server if he/she has seen the minor before, checked ID before or served the minor before.
16. Whenever possible, obtain a written statement about the incident from the minor.
17. Forward a copy of your report to your nearest OLCC office.

NOTE: The seller and licensee are subject to administrative sanctions.

When an off-premises grocery store sells alcohol to a person under 21:

1. Identify the location, date and time.
2. What alcoholic beverages and amounts were involved?
3. Ask the minor to identify the clerk, permittee or individual who made the sale or furnished the alcohol.
4. Obtain the sales receipt or carry-out bag, if it helps to identify the premises or seller.
5. Describe the minor: dress, youthful physical appearance, i.e., face, hair, height, weight, etc.
6. Was the minor asked for proof of age?

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7. Did the minor use any false ID?
8. Obtain a photo of the minor, if possible.
9. Forward a copy of your report to your nearest OLCC office.

NOTE: Since off-premises employees are not required to have service permits, they are not subject to OLCC administrative sanctions. However, they may be cited for sale to a minor under ORS 471.410(2) and the licensee may be sanctioned administratively.

ALLOWING ALCOHOL CONSUMPTION BY MINORS ON PRIVATE PROPERTY

Criminal Violation

ORS 471.410 (3) No person who exercises control over private real property may knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property. The prohibitions of this subsection apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this subsection do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(7) A person who violates subsection (3) of this section commits a violation. Upon violation of subsection (3) of this section, the court shall impose at least a mandatory minimum fine as follows:

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- (a) Upon a first conviction, a fine of \$350.
- (b) Upon a second conviction, a fine of \$1,000.
- (c) Upon a third or subsequent conviction, a fine of \$1,000 and not less than 30 days of imprisonment.

Elements

- Person is present and in control of private real property at the time the alcohol consumption occurs.
- Minor(s) consuming alcohol on property.
- Person in control of property knowingly allows minor(s) to consume alcohol or allows the minor(s) to remain on the property after consuming.
- Minor is not the child or minor ward of the person in control.
- Person in control is not the owner or owner's agent (like an apartment manager) of rental property, unless the violation occurs where the owner or agent lives.

Parents away on a trip, for example, are not responsible for an illegal party their son or daughter holds at their residence. The parents would not be present and in control at the time of the party. However, their son and/or daughter would be.

MISREPRESENTATION OF AGE
BY A MINOR

Class C Misdemeanor

ORS 165.805 (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of any age other than his/her true age with the intent of securing a right, benefit, or privilege which by law is denied to persons under that certain, specified age: or

(b) Being unmarried, the person knowingly represents that the person is married with the intent of securing a right, benefit or privilege which by law is denied to unmarried persons.

(2) Misrepresentation of age by a minor is a Class C Misdemeanor.

FALSE SWEARING

Class A Misdemeanor

ORS 162.075 (1) A person commits the crime of false swearing if the person makes a false sworn statement, knowing it to be false.

KEGS

What is a keg?

A keg is a brewery-sealed, individual container of malt beverage having a liquid capacity of more than seven (7) gallons. Kegs are normally 15.5 and 7.5 gallons (often called "pony kegs").

Keg Identification

Kegs must be identified with a keg number. The number is found on an adhesive strip put on the keg when purchased. **Possession of a keg without a keg tag is a Class A Misdemeanor (ORS 471.478(2)).** If no one claims ownership of an unlabeled keg, it is found property.

Because "party balls" hold less than 7 gallons of beer, there is no requirement for a keg tag or an OLCC keg receipt.

Keg Sales

A keg seller must complete an OLCC keg purchase receipt form. The purchaser's ID is checked. The purchaser notes the license number of the vehicle used to transport the keg and the location where the keg will be consumed. The premises retains a copy of the receipt and provides one to the purchaser.

Purchasers who provide false information on a keg receipt form can be charged with false swearing (ORS 162.075-Class A Misdemeanor). False swearing is committed when a person makes a sworn statement knowing the statement is false.

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Hints

When you respond to "keggers," which are usually parties involving unlicensed sale of alcohol to minors, locate the kegs and any money collected.

Tracking who bought the kegs is valuable to determine who provided it. Locate the keg receipt form. The purchaser should have the keg receipt. If you know where the kegs were purchased, phone the premises. They should have the receipt form on file.

Seize kegs and taps used in violation of liquor laws, such as unlicensed sale and minors consuming alcohol from them.

NOTE: To make a sale or furnishing alcohol to minor case, you need to cite or identify minors.

Checking ID, False ID

ID Requirements for Premises

ORS 471.130 outlines what identification licensees must request from alcohol purchasers if there is "reasonable doubt" that the purchaser is at least 26 years of age.

Acceptable ID

Oregon law says the only forms of identification that are acceptable on their own as proof of age are:

1. A valid **DRIVER LICENSE** with a photo from any state
2. A valid **DMV ID** card from any state
3. A valid **PASSPORT**
4. A valid **U.S. MILITARY ID** card

*Interim ID cards issued by DMV are acceptable as stand-alone ID as it matches the criteria for official ID. However, it is up to the business if they want to accept it without some other form of ID. If the ID is expired, it is not acceptable.

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If the purchaser doesn't have one of the acceptable pieces of ID, the licensee may accept alternate ID by filling out an **OLCC Statement of Age card**, and require two pieces of ID:

- 1) One with the person's name, address, date of birth, signature and physical description or photo (such as a federal employee ID card)
- 2) A backup piece with the person's name on it (credit card, Social Security card, checkbook, etc). Businesses are not required to accept alternate ID.

OAR 845-006-0335 (1) & (2) state "reasonable doubt" exists if a person appears to be under 26 years of age.

All licensees must check alcohol purchasers for ID if the customer appears to be under 26 years of age.

The OLCC can take administrative action against a premises if they sell alcohol to a minor who appears under 26 years of age, even though they look at least 21 years old.

If you notice a premises not checking the ID of people who appear under 26 years of age, inform the OLCC. Intervention may stop an alcohol sale to a minor.

Miscellaneous ID Statutes

PERMITTING MISUSE OF LICENSE

Class A Misdemeanor

ORS 807.590 (1) A person commits the offense of permitting misuse of a license if the person has been issued a license or driver permit and the person knowingly lends the license and/or driver permit to another or knowingly permits another person to use the license or driver permit.

FALSE APPLICATION FOR LICENSE

Class A Misdemeanor

ORS 807.530 (1) A person commits the offense of providing a false application for a license if the person in applying for a license or driver permit or for renewal or duplication thereof under the vehicle code knowingly:

- (a) Uses or gives a false or fictitious name or identity;
- (b) Gives or uses a false or fictitious address;
- (c) Gives or uses a false age;
- (d) Makes a false statement;

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- (e) Conceals a material fact;
- (f) Uses or attempts to use a false identification document; or
- (g) Otherwise commits fraud in the application.

MISUSE OF IDENTIFICATION CARD

Class A Misdemeanor

ORS 807.430(1) A person commits the offense of misuse of an identification card if the person performs any act in relation to an identification card issued under ORS 807.400 that is prohibited in relation to a license under ORS 807.530, 807.580, 807.600 or 809.500 or fails to perform any act in relation to an identification card issued under ORS 807.400 that is required in relation to a license under ORS 807.530, 807.580, 807.600 or 809.500.

USING ANOTHER'S LICENSE

Class A Misdemeanor

ORS 807.600(1) A person commits the offense of using another's license if the person knowingly displays or represents it as the person's driver license or driver permit that has not been issued to the person.

GIVING FALSE INFORMATION TO A PEACE OFFICER FOR A CITATION

Class A Misdemeanor

ORS 162.385(1) A person commits the crime of giving false information to a peace officer for a citation if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of the officer's issuing or serving the person a citation under authority of ORS 133.055 to 133.076, ORS Chapter 153, or for the purpose of the officer's arresting the person on an arrest warrant issued under ORS 133.110 or 133.120.

Elements

- A person gives false information to a peace officer for a citation.
- The person uses or gives a false or fictitious name, address or date of birth.

Visibly Intoxicated Persons (VIPs)

VISIBLY INTOXICATED PERSONS

Class A Misdemeanor

ORS 471.410(1) No one may sell, give or make available any alcoholic liquor to anyone who is visibly intoxicated.

Elements

- A patron displays visible intoxication by speech, behaviors or other indicators.
- The server or seller observes, or can be presumed to have observed, the patron's signs of intoxication before or at the time of service.
- A server or seller gives, sells or otherwise makes alcoholic liquor available to the patron.

Signs of Visible Intoxication

For the purpose of the Liquor Control Act, the Oregon Court of Appeals stated that visible intoxication is not a technical term requiring expert testimony to explain or define. A general guideline is when any prudent, rational person would believe that a person is visibly intoxicated. However, in court, you need to substantiate the case on many points from several sources to prove visible intoxication.

As a general guideline, a person is visibly intoxicated whose physical or mental control is diminished by alcohol or a drug to the point where such diminished control can be seen or observed.

Signs of Visible Intoxication

- Speech - slurred
- Eyes - watery, bloodshot, out of focus
- Walk - unstable
 - Hangs on to other people or objects
 - Staggering, swaying or stumbling
- Conduct - loud, boisterous or very quiet
 - Tries to pick fights
 - Swears
 - Is belligerent
 - Falls asleep
- Coordination - poor
 - Spills drinks
 - Unable to strike a match or light a cigarette
 - Cannot keep track of money
 - Bumping into things
- Obvious odor of alcohol on the person

ALLOWING VISIBLY INTOXICATED PERSON TO CONSUME ALCOHOL

Misdemeanor

ORS 471.412(1) No licensee or permittee shall knowingly allow a person to consume or continue to consume alcoholic beverages on the premises after observing the person is visibly intoxicated.

Elements

- A person displays visible intoxication by speech, behaviors or other indicators that would be evident to a reasonable person.
- A server observes that the person is visibly intoxicated.
- Server makes no physical attempt or verbal request to remove the drink.
- The visibly intoxicated person consumes an alcoholic drink.

Per ORS 471.412 (2), a server or seller is not in violation of this statute if they make a **good faith effort** to remove alcohol from an intoxicated person's possession, even if they are unsuccessful in removing the alcohol.

Good Faith Effort defined

OAR 845-006-0345 (9)(a)(A) "Good faith effort" means placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance.

Peace Officer Guide

Needed Information

1. Describe how seller/server knew that the person was intoxicated and consumed alcohol.
2. Describe seller/server's actions when attempting to remove alcohol from the intoxicated person.

NOTE: Remaining on Premises - Visibly intoxicated people may remain on licensed premises as long as no one sells or serves them alcoholic beverages or allows them to consume alcohol.

Alcohol-Related Crashes

ORS 471.703 requires the police to notify the OLCC of the name of the alleged provider of alcohol when:

1. The police investigate any motor vehicle accident where someone other than the operator is injured or incurs property damage;
2. The operator appears to have consumed alcoholic liquor;
3. A citation is issued against the operator that is related to the consumption of alcoholic liquor or could have been issued if the operator had survived; and
4. The provider of the alcoholic liquor is alleged to be an OLCC licensee or permittee.

Notice forms are provided by the OLCC.

DUII Information Program

If a DUII driver names a licensed premises as the last place they consumed alcohol, most police agencies voluntarily send the OLCC a copy of the report.

Peace Officer Guide

Through the OLCC's DUII information and Alcohol Related Crash Program, the OLCC:

1. Identifies licensed premises that may be over serving alcohol to their patrons.
2. Provides intervention at premises for over service concerns.
3. Reduces over service through licensee notification, education and other compliance methods.

A BAC over the legal limit to drive is not proof that a person was visibly intoxicated at the time they were served alcohol, however it may indicate that further investigation is needed.

Illegal Conduct

DRINKING ALCOHOL ON DUTY

Administrative Violation

OAR 845-006-0345 (1) No licensee, permittee, employee or agent will drink or be under the influence of intoxicants while on duty.

On Duty means from the beginning of a work shift to the end of the shift, including coffee and meal breaks, that involves the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, or supervising employees who perform these duties.

Elements

- Licensee, permittee, employee or agent is on duty at a licensed premises.
- Licensee, permittee, employee or agent's duties include the sale or service of alcoholic beverages, checking identification, or controlling conduct on the premises, or supervising those who do.
- Licensee, permittee, employee or agent drinks from an alcoholic beverage or is under the influence of intoxicants.

DESTRUCTION OF EVIDENCE

Administrative Violation

OAR 845-006-0345 (3) No licensee or permittee will:

- (a)** Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;
- (b)** Refuse to give an OLCC regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or
- (c)** Ask or encourage another person to do subsections (a) or (b) of this section.

ALLOWING ACCESS TO PREMISES

Administrative Violation

OAR 845-006-0345 (4)(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to an OLCC regulatory employee or police officer who enters or wants to enter to conduct a reasonable search to ensure compliance with alcoholic beverage laws. When the regulatory employee or officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit an OLCC regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

HOURS OF OPERATION

Administrative Violation

OAR 845-006-0425 (1) Alcoholic liquor may be sold, dispensed, served and consumed on, or removed from the licensed premises, only between the hours of 7 a.m. and 2:30 a.m.

(2) Alcoholic beverage wholesalers may make deliveries to licensees at any time.

Needed Information

- Identify the premises, time and date.
- Were the doors locked?
- How did you gain entry?
- Did you observe the consumption or sale of alcohol? If so, what?
- Confiscate the evidence, if possible.
- If a mixed drink, remove the ice immediately. Seal the container.
- Establish alcoholic liquor content by knowledge, observation or analysis.
- Get name(s) of people consuming, witness(es) and people on duty.
- Was the licensee or manager present?
- If an outlet allowed alcoholic beverages to be removed after 2:30 a.m., identify the person(s), who allowed the alcohol to be removed, and the person removing the alcohol.

REMOVING AN OPEN CONTAINER OF ALCOHOL FROM A LICENSED PREMISES

Administrative Violation

OAR 845-006-0345 (5) No licensee or permittee will permit anyone to remove open containers of alcohol from the licensed premises, except as the laws allow.

Primary exceptions: ORS 471.175 (3) and ORS 471.178 (4) Full on-premises sales licenses and limited on-premises sales licenses allow the removal of partially-consumed bottles of wine in the original closed containers under specific circumstances. Peace officers have the authority to remove open containers of alcoholic beverages for evidence purposes.

COMMENT: An open wine container in a motor vehicle is the responsibility of the person who possesses it, not the liquor licensee or server who allowed it to leave the premises. No alcohol can be removed from the licensed premises after 2:30 a.m.

LIQUOR ON A LICENSED PREMISES

Administrative Violation

OAR 845-006-0345 (6) No licensee will have or permit any alcoholic liquor on the licensed premises that the license does not allow him/her to sell or serve.

NOTE: The most common violation under this rule is distilled spirits, such as whiskey, in a tavern licensed only to sell beer and wine.

LICENSEE'S RESPONSIBILITY FOR CONDUCT OF OTHERS

Administrative Violation

OAR 845-006-0362 Each licensee may be held responsible for violation of any liquor law affecting the license privileges and for any act of any employee or representative in violation of any law affecting the license privileges.

NOTE: Because of this administrative rule, it is important that you send reports of violations involving employees of licensees to the OLCC.

NOISY OR DISORDERLY ACTIVITIES

Administrative Violation

OAR 845-006-0347 (2)(a) No licensee or permittee will permit noisy or disorderly activities on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises.

Definitions

Disorderly activities: Activities that harass, threaten or physically harm another person.

Noisy activities: Activities that a reasonable person would conclude interfere with normal living or business activities.

Peace Officer Guide

Elements

- Activity that threatens, causes physical harm to another, or is noisy occurs.
- The activity occurs on the licensed premises or in an area under the licensee's control.
- A licensee/employee knows about the activity.
- Licensee/employee fails to take reasonable corrective action to stop the activity, or prevent its occurrence or recurrence.

Peace Officer Guide

Address these questions:

- What kind of activity was involved?
- When and where did the activity occur?
- Who and how many people were involved?
- Who was in charge of the premises?
- What opportunity did an employee have to observe or know of the activity or behaviors leading to the activity?
- Where were each of the employees when the activity occurred?
- How long did the activity go on?
- What action did the licensee or employee take, or fail to take, to correct the problem?
- Who witnessed the activity?
- List all witnesses, addresses and what they witnessed.
- Analyze the problem as it occurred over time (e.g., same person causing disorder repeatedly, etc.)
- Get licensee to hear the noise, if possible.
- Make your own determination of the noise level whenever possible. How does it interfere with the person being affected (can't sleep, hear TV, etc.)
- Note what reasonable steps (if any) that employees on the premises took to prevent or correct the activity.
- Does the local government have a noise ordinance? If so, was a citation issued for violating this ordinance?

EVICTION OF PATRONS

Administrative Violation

OAR 845-006-0347 (5)(a) A licensee or permittee who knows that a patron has engaged in noisy disorderly or unlawful activities must evict that patron from the premises for at least a 24-hour period. The 24-hour period begins at the time the licensee evicts the patron.

PERMITTED UNLAWFUL CONDUCT ON LICENSED PREMISES

Administrative Violation

OAR 845-006-0347 (3)(a) No licensee or permittee will permit any unlawful activity on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises.

Elements

- An unlawful act that violates the Criminal Code or City Ordinance occurs on the licensed premises or in an area the licensee controls.
- The licensee/employee fails to take reasonable corrective action to stop the activity, prevent its occurrence or prevent its reoccurrence.

NOTE: A criminal conviction is not necessary except to prove an unlawful gambling act occurred, or to charge a licensee or permittee with permitting their own unlawful activity.

Peace Officer Guide

Address these questions:

- What was the criminal activity?
- When and where did the activity occur?
- Who committed the activity?
- Was there any arrest or conviction?
- Were there any witnesses?
- What was the knowledge/involvement of the licensee/permittee?
- What steps did the licensee/employee take to prevent the criminal conduct?

Recommended Actions

- Get photos and evidence and take written statements from witnesses.
- Prior instruction by police or OLCC staff may establish knowledge, aggravation or mitigation.

DRUG ACTIVITY ON LICENSED PREMISES

Administrative Violation

ORS 471.316 The Oregon Liquor Control Commission shall suspend the license of a Full On-Premises, Limited On-Premises Sales, Brewery-Public House if the OLCC determines that:

- (a) Unlawful drug use or sale is occurring on the licensed premises;

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(b) the licensee is aware of the unlawful drug use or sales due to arrests for unlawful drug sales on the licensed premises or seizures of unlawful drugs on the licensed premises, or because the licensee or employees of the licensee have personally witnessed unlawful drug use or sales on the licensed premises; and

(c) The licensee fails to take immediate and effective action to prevent unlawful drug use or sales on the licensed premises.

Elements

- Unlawful drug use or sale occurs on the licensed premises
- Knowledge is a result of arrests for unlawful sales on the licensed premises, or seizures of unlawful drugs on the licensed premises.

OR

- Licensees/employees have personally witnessed unlawful drug use/sales on the premises, and
- Licensee fails to take immediate and effective action to prevent the unlawful drug sales on the licensed premises.

The OLCC's rule clarifying this law is OAR 845-006-0348.

HISTORY OF SERIOUS AND PERSISTENT PROBLEMS

Administrative Violation

ORS 471.315 (1)(c) The OLCC may cancel or suspend a license or impose a civil penalty in lieu of or in addition to suspension if it finds or has reasonable ground to believe there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or

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noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for cancellation or suspension includes, but is not limited to, obtrusive or excessive noise, music or sound vibrations, public drunkenness, fights, altercations, harassment or unlawful drug sales, alcohol or related litter, trespassing on private property, and public urination.

Elements

- There is a history of problems (multiple incidents occurring over time).
- The problems are serious (interfere with normal living or business activities, harm or threaten harm to people living and working in the vicinity of the premises).
- Problems are inside the premises or involve patrons in the immediate vicinity of the premises if the activities are related to the sale or service of alcohol under the exercise of the license privilege.

For licensed premises, address these questions:

- What specific behavior is present (unlawful activities, fighting, etc.)?
- What is the effect of this behavior on persons around the premises?
- What injuries were sustained?
- When did the behavior occur? (Specific times, dates and places are preferable.)
- For outside problems, who is creating the problem behavior? Are there facts or inferences available to identify them as patrons?

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- How is the behavior connected to the sale and service of alcohol?
 - If the business is not operating as a bar or tavern when the behavior occurs, are the patrons there for the purpose of obtaining alcohol?
- What steps has the licensee taken, or does the licensee plan to take, to correct the problem?
- What are other possible sources of the problem?
- Have other licensees in the area been successful at controlling problems?
- Have there been successful or failed attempts at neighborhood mediation?
- How many contacts by police or neighborhood groups have been made?

Check law enforcement records to see if other problems have been documented.

Document all calls for service to premises (even if only an information report). Include employees' and patrons' names, addresses, etc., and any other relevant information. The better the detail, the better the report.

If you have any questions about the facts that the Commission can consider, call OLCC.

Forward all reports to OLCC.

Illegal Importation/Manufacture

ILLEGAL IMPORTATION

Class A Misdemeanor

ORS 471.405 (4) An individual entering the state may have in possession an amount not to exceed:

**Four liters (135.2 fluid ounces) of distilled liquor,
Two cases (620 oz.) wine, and
Two cases (576 fluid oz.) of malt beverages.**

These quantities are exempt from fees collected by OLCC.

This exemption arises from the concept that the above quantities would be for personal use only.

ILLEGAL MANUFACTURE

Class A Misdemeanor

ORS 471.440 (1) No person shall make, ferment, or possess mash, wort or wash fit for the manufacture of distilled liquor.

This section doesn't prevent the possession of mash for the purpose of manufacturing wine or beer for home consumption.

(2) A distillery shall be set up for the manufacture of alcoholic liquor for beverage purposes only if licensed. Any device or process that separates alcoholic spirits from any fermented substance is a distillery.

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A distillery is "set up" when the still is in position over a furnace, or is connected with a boiler, so that heat may be applied, although the wort tank is not in position.

(3) The finding of mash, wort, wash or distillery as above is prima facie evidence that it was made and fermented by, or set up by, and the property of the person who is in possession of a house, premises, or enclosure where it is found.

A second or subsequent violation for illegal manufacture is punishable by imprisonment for more that three years and by a fine of not more than \$3,000.

Definitions

Alcoholic beverage: Any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

Distilled spirits: Any alcoholic beverage other than wine, cider or malt beverage. Hard liquor.

Elements: Basic components needed to prove a crime/violation.

Juvenile: A person under the age of 18.

Licensee: The name(s) of the owners that appear on the liquor license. A licensee may be an individual person, a corporation, a limited liability company, etc. If the licensee is a corporate entity, the owners of the entity are also considered to be licensees.

Malt Beverage: Beer, ale, porter and/or stout with no more than 14% alcohol by volume.

Minor: A person under the age of 21.

Minor Posting: Signs posted by the OLCC that indicate where minors are allowed.

Permittee: Someone who holds or has applied for a service permit issued by the OLCC and who sells and serves alcoholic beverages for on-premises consumption or supervises people who do.

Premises: Location of a business.

Wine: Any fermented beverage containing no more than 21% alcohol by volume.

**Administrative
Violation and Penalty Schedule
OAR 845-006-0500 (7)**

Level Category	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th
I	Cancel						
II	30 days	Cancel					
II(a)	10 days	30 days	Cancel				
III	10 days or \$1650	30 days or \$4950	30 days	Cancel			
III(a)	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days or \$4950	30 days & \$4950	60 days	90 days
IV	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel		
V	3 days or \$495	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel	

These amounts are for licensees. For service permittees, multiply the number of days by \$25 (maximum of \$500 per violation.)

Frequently Used Liquor Control Statutes

- | | |
|---------------|---|
| 162.075 | False swearing on a keg purchase receipt
<i>Class A Misdemeanor</i> |
| 162.385 | Giving false information to a peace officer for a citation
<i>Class A Misdemeanor</i> |
| 165.805 | Misrepresentation of age by a minor
<i>Class C Misdemeanor</i> |
| 471.360(1)(b) | Mixing, selling or serving alcohol without a service permit
<i>Class A Misdemeanor</i> |
| 471.405(3) | Sell, solicit or peddle alcohol without a license (Kegger)
<i>Class A Misdemeanor</i> |
| 471.405(4) | Illegal importation of alcohol into state
<i>Class A Misdemeanor</i> |
| 471.410(1) | Making alcoholic liquor available to a visibly intoxicated person
<i>Class A Misdemeanor</i> |

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- 471.410(2) Making alcoholic beverage available to a minor (Furnisher)
Class A Misdemeanor
- 471.430(1) Purchase, attempt to purchase or possession of alcohol by minor (MIP)
Criminal Violation
- 471.412(1) Knowingly allowing a visibly intoxicated person to consume alcohol
Class A Misdemeanor
- 471.430(3) Minor's unauthorized entrance of a posted liquor establishment
Class B Violation
- 471.440 Manufacture of alcohol, possession of still, mash or wort
Class A Misdemeanor
- 471.475 Mixing, storing, serving alcohol without a license
Class A Misdemeanor
- 471.478(2) Possession of unlabeled keg of beer (No keg tag)
Class A Misdemeanor

OLCC OFFICES

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503-872-5070 (Monday - Saturday)
(or toll free in Oregon 1-800-452-6522 ext. 5070)
FAX: 503-872-5074

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Portland, OR 97222
Mailing address:
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FAX: 541-266-7235

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Coos Bay, OR 97420

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NOTES



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