

DRAFT

SUMMARY

Allows holder of full on-premises sales license to sell and deliver mixed drinks in sealed containers for off-premises consumption. Requires Oregon Liquor Control Commission to adopt rule providing that not more than two mixed drinks may be ordered per substantial food item ordered.

Requires third-party food platform to enter into agreement with restaurant before facilitating orders and deliveries from restaurant. Limits fees that third-party food platform may charge restaurant. Establishes private right of action against third-party food platform for specified violation. Defines “third-party food platform.”

Sunsetts 60 days after date on which declaration of state of emergency issued by Governor on March 8, 2020, and any extension of declaration, is no longer in effect.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to consumable items; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2020 third special session Act is added**
5 **to and made a part of ORS chapter 471.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **“Mixed drink” means a beverage that is a combination of dis-**
8 **tilled liquor and one or more mixers that is combined on a licensed**
9 **premises and sold in a sealed container for consumption off the li-**
10 **censed premises.**

11 (b) **“Sealed container” means a container:**

12 (A) **With a secure cap or lid that indicates whether the container**
13 **has been opened; and**

1 **(B) That is further defined by the Oregon Liquor Control Commis-**
2 **sion by rule.**

3 **(c) “Third-party food platform” means a website, mobile application**
4 **or other service that:**

5 **(A) Facilitates the order of food and beverages for sale to a con-**
6 **sumer by a licensee; and**

7 **(B)(i) Delivers, or arranges for the delivery of, the order to the**
8 **consumer; or**

9 **(ii) Arranges for the pickup of the order by the consumer from the**
10 **licensee.**

11 **(2)(a) Notwithstanding ORS 471.175, the holder of a full on-premises**
12 **sales license may:**

13 **(A) Sell for off-premises consumption mixed drinks if the mixed**
14 **drink is sold in a sealed container that meets the requirements of**
15 **subsection (3) of this section; and**

16 **(B) Deliver mixed drinks to consumers in this state if the mixed**
17 **drink is delivered in a sealed container that meets the requirements**
18 **of subsection (3) of this section.**

19 **(b) The retail sale or delivery of a mixed drink under this sub-**
20 **section, including a delivery carried out by the licensee through a**
21 **third-party food platform, is subject to rules adopted by the commis-**
22 **sion.**

23 **(3) The cap or lid, and any seal, of the sealed container must be**
24 **affixed to the container in a manner that makes it obvious when the**
25 **cap or lid, and any seal, has been removed or broken. The cap or lid,**
26 **and any seal, may be affixed with the use of tape or other adhesive.**

27 **(4)(a) The commission shall adopt rules to carry out this section.**
28 **The rules adopted under this subsection:**

29 **(A) Must provide that not more than two mixed drinks may be or-**
30 **dered per substantial food item ordered.**

31 **(B) May:**

1 (i) Define “substantial food item.”

2 (ii) Establish additional requirements for the retail sale of mixed
3 drinks for off-premises consumption.

4 (b) The commission shall adopt the rules described in this sub-
5 section not later than 30 days after the effective date of this 2020 third
6 special session Act.

7 **SECTION 3. (1) As used in this section:**

8 (a)(A) “Purchase price” means the menu price of an item displayed
9 for an online or telephone order.

10 (B) “Purchase price” does not include taxes, gratuities or other fees
11 that make up the total cost of an item to a consumer.

12 (b) “Restaurant” has the meaning given that term in ORS 624.010.

13 (c) “Third-party food platform” means a website, mobile application
14 or other service that:

15 (A) Facilitates the order of food and beverages for sale to a con-
16 sumer by a restaurant; and

17 (B)(i) Delivers, or arranges for the delivery of, the order to the
18 consumer; or

19 (ii) Arranges for the pickup of the order by the consumer from the
20 restaurant.

21 (2) A third-party food platform may not deliver, or arrange for the
22 delivery of, an order from a restaurant to a consumer without first
23 entering into an agreement with the restaurant to expressly authorize
24 the third-party food platform to facilitate orders to the restaurant
25 from consumers and deliver, or arrange for the delivery of, orders to
26 consumers.

27 (3)(a) If a restaurant that uses a third-party food platform to facil-
28 itate orders of food and beverages for sale to consumers includes with
29 an order the option of delivery of the order by the third-party food
30 platform, the third-party food platform may not charge the restaurant
31 total fees in excess of 10 percent of the purchase price of the order for

1 **the use of the third-party food platform’s services.**

2 **(b) If a restaurant described in paragraph (a) of this subsection does**
3 **not offer the option of delivery of the order by the third-party food**
4 **platform, the third-party food platform may not charge the restaurant**
5 **total fees in excess of five percent of the purchase price of the order**
6 **for the use of the third-party food platform’s services.**

7 **(c) A third-party food platform may not reduce the rate of com-**
8 **penetration paid to, or garnish the gratuities of, an individual who**
9 **makes deliveries of orders to consumers on behalf of the third-party**
10 **food platform as a result of the requirements of this subsection.**

11 **(4) An individual who makes deliveries of orders to consumers on**
12 **behalf of a third-party food platform may bring an action against the**
13 **third-party food platform for a violation of subsection (3)(c) of this**
14 **section and may recover damages in the amount of \$500 for each vio-**
15 **lation.**

16 **SECTION 4. Sections 2 and 3 of this 2020 third special session Act**
17 **are repealed 60 days after the date on which the declaration of a state**
18 **of emergency issued by the Governor on March 8, 2020, and any ex-**
19 **tension of the declaration, is no longer in effect.**

20 **SECTION 5. This 2020 third special session Act being necessary for**
21 **the immediate preservation of the public peace, health and safety, an**
22 **emergency is declared to exist, and this 2020 third special session Act**
23 **takes effect on its passage.**

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