



OREGON LIQUOR CONTROL COMMISSION

The Commission proposes to amend the following
Oregon Administrative Rules:

Liquor Liability Insurance

845-005-0400 Liquor Liability Insurance or Bond Requirement

NOTICE OF PUBLIC HEARING

Date and Time: 10:00 a.m. on Thursday, September 22, 2015

Location: Oregon Liquor Control Commission
9079 SE McLoughlin Blvd.
Portland, OR 97222

Presiding Officer: Bryant Haley
Phone: (503) 872-5136
E-mail: bryant.haley@oregon.gov

Auxiliary aids for persons with disabilities are available upon advance request.

CAPTION:

Clarifies proof of compliance and adds a graduated sanction schedule.

RULE SUMMARY:

Under ORS 471.168, certain licensees must maintain liquor liability insurance or a bond that provides coverage for personal injuries caused by intoxicated persons served alcoholic beverages on the licensed premises while visibly intoxicated. Failure to comply with the liquor liability insurance or bond requirement constitutes a serious threat to public health and safety, and allows the Commission to immediately suspend license privileges or refuse to renew the license in addition to sanctioning the licensee or refusing to license the applicant.

OAR 845-005-0400 implements this statute. However, the previous rule fails to adequately define proof of compliance during licensure or clearly distinguish between the Commission's authority to immediately suspend license privileges and its authority to sanction a licensee for past failure to comply. It also classifies all coverage gaps, regardless of their duration, as Category I violations.

The amendments: (1) Restructure the rule; (2) Clarify “proof of compliance” requirements; (3) Clearly distinguish between the Commission’s authority to immediately suspend license privileges and its authority to sanction licensees; (4) Establish a graduated sanction schedule; and (5) Address seasonal and temporary closures.

HOW TO OBTAIN THE PROPOSED RULE LANGUAGE:

A copy of the proposed rule language, dated August 7, 2015, is attached to this Notice. Alternatively, you may obtain a copy of the proposed rule language by calling the Oregon Liquor Control Commission at either of the phone numbers listed above. For your convenience, the proposed rule language is also available on our website at <http://www.oregon.gov/OLCC/pages/index.aspx>. Go to the “Laws and Rules” tab on the left side of the screen, and then follow the link to the “Proposed Rulemaking” section of our website. You will find all of the relevant rulemaking documents, including the proposed rule language, under the “Liquor Liability” section of this webpage.

HOW TO SUBMIT COMMENTS:

During the hearing, you may present oral or written testimony that includes opinions, information, concerns or proposals related to this rulemaking matter. The Commission also requests comments on whether other options exist and/or should be considered for achieving the rule’s substantive goals while reducing the negative economic impact of the proposed rule on business.

After the hearing, you may submit written comments in person, by mail, by fax or by e-mail (see above for relevant contact information). **However, all written comments must be received by 5:00 p.m. on Tuesday, October 6, 2015.**

The Commission reserves the right to request and receive additional comments at any time on or before the date the Commission takes final action on this rulemaking matter.

STATEMENT OF NEED AND FISCAL IMPACT:

In the Matter of: The amendments to **845-005-0400** Liquor Liability Insurance or Bond Requirement.

Statutory Authority: ORS 183.430 & ORS 471, including ORS 471.030, 471.040, 471.168, 471.313, 471.315, 471.730(1) & (5)

Other Authority: None.

Statutes Implemented: 471.168(5), 471.313(2), 471.315(1)(a)(C)

Need for the Rule:

Under ORS 471.168, certain licensees must maintain liquor liability insurance or a bond that provides coverage for personal injuries caused by intoxicated persons served alcoholic beverages on the licensed premises while visibly intoxicated.

The current rule fails to adequately define proof of compliance during licensure or clearly distinguish between the Commission’s authority to immediately suspend license

privileges and its authority to sanction a licensee for past failure to comply. It also classifies all coverage gaps, regardless of their duration, as Category I violations.

The amendments: (1) Restructure the rule; (2) Clarify “proof of compliance” requirements; (3) Clearly distinguish between the Commission’s authority to immediately suspend license privileges and its authority to sanction licensees; (4) Establish a graduated sanction schedule; and (5) Address seasonal and temporary closures.

Documents Relied Upon and Where They Are Available:

OLCC Advisory Committee Meeting Minutes dated July 9, 2015. Available from the Oregon Liquor Control Commission, Administrative Policy & Process Division.

Secretary of State Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact published in the Oregon Bulletin on September 1, 2015. Available from the Oregon Liquor Control Commission, Administrative Policy & Process Division, or from the Secretary of State, Archives Division. See:

<http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html>

Fiscal and Economic Impact Statement:

This statement takes into account the fiscal impact on: (a) Liquor Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Liquor Licensees.

The Commission expects no fiscal impact on Licensees. The commission is not requiring any new cost, but merely clarifying the rule. Further, the new sanction schedule allows for some leniency towards licensees that may run into administrative errors when purchasing or paying for insurance.

(b) Local Government.

The Commission expects no fiscal impact on Local government. The amendments do not make any changes that effect local government.

(c) State Agencies.

The Commission expects the proposed rules package to have a neutral fiscal impact on outside state agencies because these rules do not apply to outside state agencies.

(d) The Public.

The Commission expects the proposed amendments to have a positive fiscal impact on the public to the extent that the amendments will reinforce to licensees the cornerstone importance of maintaining liability insurance/bond.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Commission anticipates no new costs to comply with the proposed rules package for outside state agencies, units of local government or members of the public because these rules do not apply to these entities and do not include any new reporting or recordkeeping requirements.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Commission assumes that the majority of its licensees are small businesses. However, the Commission does not categorize its licensees, or applicants for a liquor license, according to the size of their underlying business operations. The Commission anticipates no new costs of compliance to comply with the amendments for businesses of any type or size because these rules do not impose any significant cost increases other than showing proof of insurance upon request. The commission has always had the authority to do so and is only clarifying this piece in these amendments.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The only new record keeping requirement would be to provide an Inspector with a certificate of insurance upon request. However, ORS 471.168(5) states "The commission may require a licensee to present proof of compliance with liquor liability insurance and bond requirements at any time upon request of the commission."

c. Equipment, supplies, labor and increased administration required for compliance: (See above.)

How were small businesses involved in the development of this rule?

Small businesses as well as interested licensees, industry representatives, law enforcement agencies, public safety organizations, members of the public, and other interested parties were invited to attend an advisory committee meeting that was held on July 9, 2015. Stakeholders will have an additional opportunity to comment on the proposed amendments at the public hearing that will be held in September of 2015.

Was an administrative rule advisory committee consulted?

Yes.

(This Notice was sent on August 18, 2015)