

For your information

The Oregon Liquor Control Commission has:

Amended
 Adopted
 Repealed

OAR 845-015-0190

Effective Date: January 1, 2012

Note: **Bold and underlined** = new text; ~~*strikethrough and italics*~~ = deleted text

845-015-0190

Resignation Buy-Out Program for Retail ~~Liquor~~ Sales Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail ~~liquor~~ sales agents when they resign ~~as a contracted liquor store agent~~. Retail ~~liquor~~ sales agents receive the buy-out, in part, to recognize their contribution in building a successful business.

(2) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0145. These terms also include any act or contact directed at a specific business, Full On-Premises Sales licensee or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On-Premises Sales licensee or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On-Premises Sales licensee" means any person or entity holding a Full On-Premises Sales license.

(c) "Commercial Accounts" means any business or association that purchases more than fifty 750 ml bottles of distilled spirits from the store in the twelve months immediately preceding turnover of the store to the incoming agent.

(d) "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail ~~liquor~~ sales agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out) ~~at the time of store takeover~~. The Except as provided in section (4), the Commission calculates the buy-out

by taking ~~two percent~~ **three percent** of the stores average annual gross ~~alcohol~~ **distilled spirits** sales for the last five years. **If a Retail Sales Agent's most current Annual Evaluation is outstanding, they will be eligible for a four percent buy-out percentage.** The Commission ~~manages this transaction by including~~ **includes** the buy-out amount **as part of the financial requirement** in the information sheet that all applicants receive.

(4) Recruiting Qualified Applicants. The outgoing ~~liquor~~ agent may supplement the Commission's recruiting process to assure finding qualified applicants. If the Commission's recruiting process does not generate a qualified applicant, ~~or the Commissioners do not appoint a new agent, the outgoing agent may continue to seek qualified applicants. If these efforts fail to result in a qualified applicant after 30 days,~~ the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

(5) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides ~~full~~ payment to the outgoing agent ~~at the time of the store takeover~~ **once the Commission has estimated any debt reimbursements to the Commission or the State of Oregon.** As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days ~~in~~ **at** the store working productively together before the store takeover, unless the incoming agent declines the opportunity **in writing.** During the 12-day period, the outgoing agent will introduce the incoming agent to Full On-Premises Sales licensees and commercial accounts, and orient the incoming agent to all aspects of the store operation except the required training and information provided by Commission staff. **The Commission may waive the buy-out requirement at the written request of the outgoing agent.**

(6) Family Transfer of ~~Agency~~ **Retail Liquor Store** When Agent Dies or is Disabled. If an agent dies or becomes unable to operate ~~an agency a retail liquor store~~ due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse ~~or~~ **Domestic Partner, or child, or a qualified spouse or Domestic Partner, or child of the disabled agent, in the appointment of a successor agent.** If the Commission does appoint a spouse ~~or~~ **Domestic Partner, or child** in this situation, the Commission ~~will~~ **may** waive the buy-out requirement at the request of the outgoing agent or the agent's estate **after the Commission has estimated any debt reimbursements to the Commission or the State of Oregon.**

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of ~~alcohol~~ **distilled spirits** sales that may occur following the relocation of one or more stores, or from the addition or closure of one or more stores.

(9) Exceptions. Despite sections (1) and (3), a retail ~~liquor~~ **sales** agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility ~~or the agent has shortages that~~ , **a history of high shortages exists, or the final estimated audit shortage exceeds** the estimated amount of compensation due that agent. In these situations, **the incoming agent will be instructed to hold payment until** the Commission ~~receives the buy-out amount, deducts~~ **calculates** any dollars owed **the Commission or** the State of Oregon, ~~and gives the outgoing agent whatever dollars, if any, remain from the buy-out amount~~ . **At that time the Commission will instruct the incoming agent as to the disbursal of the buy-out fund to the outgoing agent and the Commission. Any amount sent to the Commission in excess of the amount due to the Commission or the State of Oregon will be returned to the outgoing agent upon final financial settlement;**

(b) The agent is under suspension;

(c) The agent is a temporary **retail sales** agent;

(d) The Commission takes over a store for reasons other than suspension or termination. In this situation, the outgoing agent is not eligible for a buy-out until the agent resigns and ~~an~~ **a permanent** incoming agent is appointed and takes over the store- ; **or**

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date ~~of~~ the **Commission conducts the final audit of the permanent outgoing agent.**

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales licensee or commercial account (customers) of the retail liquor store the outgoing agent is leaving (store) for the purpose of selling or attempting to sell distilled spirits to such customers. The outgoing agent is also prohibited from using a customer list or any other information about the stores customers to assist any agent (other than the incoming agent) in soliciting the stores customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent;

(b) Relate only to Full On-Premises Sales licensees and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent;

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area;

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state;

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0130.

(11) Violation of Section (10). If, during the two-year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in section (10) remain in effect.

(12) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.750 & 471.752(2)

This version of the Oregon Administrative Rules has been published by the OLCC. The officially codified and compiled rules have been or will be published by the Secretary of State as provided by ORS 183.360.

The Oregon Administrative Rules Compilation, published by the Secretary of State as provided by ORS 183.360, has copyright status. The Commission has written permission from the Secretary of State to print the Commission's administrative rules to provide information to those affected by its rules.