

A-Engrossed
Senate Bill 841

Ordered by the Senate April 23
Including Senate Amendments dated April 23

Sponsored by COMMITTEE ON RURAL COMMUNITIES AND ECONOMIC DEVELOPMENT (at the request of Oregon Winegrowers Association, Southern Oregon Winery Association, Winegrowers Association of Central Oregon, Willamette Valley Wineries Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows winery to be sited on land zoned for mixed farm and forest use. Modifies provisions authorizing uses of winery on land zoned for exclusive farm use, including agri-tourism and other commercial events. **Permits local government to authorize siting of winery on land zoned for exclusive farm use if certain conditions are met.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wineries on land zoned for resource uses; creating new provisions; amending ORS
3 215.237, 215.452, 215.453, 624.010 and 624.046; repealing section 11, chapter 679, Oregon Laws
4 2011; and declaring an emergency.

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

6 **SECTION 1. Section 11, chapter 679, Oregon Laws 2011, is repealed.**

7 **SECTION 2.** ORS 215.452, as amended by sections 3 and 3a, chapter 679, Oregon Laws 2011, is
8 amended to read:

9 215.452. (1) A winery may be established as a permitted use **on land zoned for exclusive farm**
10 **use** under ORS 215.213 (1)(p) and 215.283 (1)(n) [*in an area zoned for exclusive farm use*] **or on land**
11 **zoned for mixed farm and forest use** if the winery produces wine with a maximum annual pro-
12 duction of:

13 (a) Less than 50,000 gallons and:

14 (A) Owns an on-site vineyard of at least 15 acres;

15 (B) Owns a contiguous vineyard of at least 15 acres;

16 (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a
17 vineyard contiguous to the winery; or

18 (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

19 (b) At least 50,000 gallons and the winery:

20 (A) Owns an on-site vineyard of at least 40 acres;

21 (B) Owns a contiguous vineyard of at least 40 acres;

22 (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a
23 vineyard contiguous to the winery; or

24 (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

25 [(2) *A winery described in subsection (1) of this section may:*]

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *[(a) Market and sell wine produced in conjunction with the winery, including the following activ-*
2 *ities:]*

3 *[(A) Wine tours;]*

4 *[(B) Wine tastings in a tasting room or other location at the winery;]*

5 *[(C) Wine clubs; and]*

6 *[(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunc-*
7 *tion with the winery; and]*

8 *[(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction*
9 *with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including*
10 *food and beverages served by a limited service restaurant, as defined in ORS 624.010.]*

11 **(2) In addition to producing and distributing wine, a winery established under this section**
12 **may:**

13 **(a) Market and sell wine produced in conjunction with the winery.**

14 **(b) Conduct operations that are directly related to the sale or marketing of wine**
15 **produced in conjunction with the winery, including:**

16 **(A) Wine tastings in a tasting room or other location on the premises occupied by the**
17 **winery;**

18 **(B) Wine club activities;**

19 **(C) Winemaker luncheons and dinners;**

20 **(D) Winery and vineyard tours;**

21 **(E) Meetings or business activities with winery suppliers, distributors, wholesale cus-**
22 **tomers and wine-industry members;**

23 **(F) Winery staff activities;**

24 **(G) Open house promotions of wine produced in conjunction with the winery; and**

25 **(H) Similar activities conducted for the primary purpose of promoting wine produced in**
26 **conjunction with the winery.**

27 **(c) Market and sell items directly related to the sale or promotion of wine produced in**
28 **conjunction with the winery, the marketing and sale of which is incidental to on-site retail**
29 **sale of wine, including food and beverages:**

30 **(A) Required to be made available in conjunction with the consumption of wine on the**
31 **premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or**

32 **(B) Served in conjunction with an activity authorized by paragraphs (b) or (d) of this**
33 **subsection.**

34 **(d) Carry out agri-tourism or other commercial events on the tract occupied by the**
35 **winery subject to subsections (5), (6), (7) and (8) of this section.**

36 **(e) Host charitable activities for which the winery does not charge a facility rental fee.**

37 **(3) A winery may include on-site kitchen facilities licensed by the Oregon Health Au-**
38 **thority under ORS 624.010 to 624.121 for the preparation of food and beverages described in**
39 **subsection (2)(c) of this section. Food and beverage services authorized under subsection**
40 **(2)(c) of this section may not utilize menu options or meal services that cause the kitchen**
41 **facilities to function as a café or other dining establishment open to the public.**

42 **(4) The gross income of the winery from the sale of incidental items or services provided**
43 **pursuant to subsection (2)(c) to (e) of this section may not exceed 25 percent of the gross**
44 **income from the on-site retail sale of wine produced in conjunction with the winery. The**
45 **gross income of a winery does not include income received by third parties unaffiliated with**

1 the winery. At the request of a local government with land use jurisdiction over the site of
2 a winery, the winery shall submit to the local government a written statement that is pre-
3 pared by a certified public accountant and certifies the compliance of the winery with this
4 subsection for the previous tax year.

5 (5) A winery may carry out up to 18 days of agri-tourism or other commercial events
6 annually on the tract occupied by the winery.

7 (6) For events described in subsection (5) of this section for a winery in the Willamette
8 Valley:

9 (a) Events on the first six days of the 18-day limit per calendar year must be authorized
10 by the local government through the issuance of a renewable multi-year license that:

11 (A) Has a term of five years; and

12 (B) Is subject to an administrative review to determine necessary conditions pursuant
13 to subsection (7) of this section.

14 (b) The local government's decision on a license under paragraph (a) of this subsection
15 is not:

16 (A) A land use decision, as defined in ORS 197.015, and is not subject to review by the
17 Land Use Board of Appeals.

18 (B) A permit, as defined in ORS 215.402 or 227.160.

19 (c) Events on days seven through 18 of the 18-day limit per calendar year must be au-
20 thorized by the local government through the issuance of a renewable multi-year permit
21 that:

22 (A) Has a term of five years; and

23 (B) Is subject to an administrative review to determine necessary conditions pursuant
24 to subsection (7) of this section.

25 (d) The local government's decision on a permit under paragraph (c) of this subsection
26 is:

27 (A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land
28 Use Board of Appeals.

29 (B) A permit, as defined in ORS 215.402 or ORS 227.160.

30 (7) To ensure that agri-tourism or other commercial events on a tract occupied by a
31 winery are subordinate to the production and sale of wine and do not create significant ad-
32 verse impacts to uses on surrounding land, the local government may impose conditions on
33 a license or permit issued pursuant to subsection (6) of this section related to:

34 (a) The number of event attendees;

35 (b) The hours of event operation;

36 (c) Access and parking;

37 (d) Traffic management;

38 (e) Noise management; and

39 (f) Sanitation and solid waste.

40 (8) A local government may charge a fee for processing a license or permit under sub-
41 sections (6) and (7) of this section. A fee may not exceed the actual or average cost of pro-
42 viding the applicable licensing or permitting service.

43 [(3)] (9) A winery operating under this section shall provide parking for all activities or uses
44 of the lot, parcel or tract on which the winery is established.

45 [(4)] (10) Prior to the issuance of a permit to establish a winery under this section, the applicant

1 shall show that vineyards described in subsection (1) of this section have been planted or that the
2 contract has been executed, as applicable.

3 [(5)] (11) A local government shall *[adopt findings for each of]* **apply** the standards described in
4 this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the
5 following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest
6 practices on adjacent lands:

7 (a) Establishment of a setback of at least 100 feet from all property lines for the winery and all
8 public gathering places **unless the local government grants an adjustment or variance allowing**
9 **a setback of less than 100 feet**; and

10 (b) Provision of direct road access and internal circulation.

11 [(6)] (12) A local government shall apply:

12 (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar
13 access and airport safety;

14 (b) Regulations **of general applicability** for the public health and safety; and

15 (c) Regulations for resource protection acknowledged to comply with any statewide goal re-
16 specting open spaces, scenic and historic areas and natural resources.

17 [(7)(a) A local government may issue a permit for a winery operating under this section to host
18 outdoor concerts for which admission is charged, facility rentals or celebratory events if the local gov-
19 ernment issued permits to wineries operating under this section in similar circumstances before August
20 2, 2011.]

21 [(b) A local government may not issue a permit for a winery operating under this section to host
22 outdoor concerts for which admission is charged, facility rentals or celebratory events if the local gov-
23 ernment did not issue permits to wineries operating under this section in similar circumstances before
24 August 2, 2011.]

25 (13) **When a bed and breakfast facility, as defined in ORS 624.010, is sited as a home oc-
26 cupation on the same tract as a winery established under this section and is in association
27 with the winery:**

28 (a) **The bed and breakfast facility may prepare and serve any meals for a maximum of
29 18 patrons; and**

30 (b) **Meals prepared at the bed and breakfast facility for a maximum of 18 patrons may
31 be served at the winery.**

32 (14) **As used in this section:**

33 (a) **“Agri-tourism or other commercial events” includes outdoor concerts for which ad-
34 mission is charged, educational, cultural, health or lifestyle events, facility rentals,
35 celebratory gatherings and other events at which the promotion of wine produced in con-
36 junction with the winery is a secondary purpose of the event.**

37 (b) **“On-site retail sale” includes the retail sale of wine in person at the winery site,
38 through a wine club or over the Internet or telephone.**

39 **SECTION 3. (1) A local government may authorize the siting of a winery, on land zoned
40 for exclusive farm use, as a commercial activity in conjunction with farm use under ORS
41 215.213 (2)(c) or 215.283 (2)(a) or other law if the winery:**

42 (a) **Does not qualify for siting under ORS 215.452 or 215.453; or**

43 (b) **Seeks to carry out uses or activities that are not authorized by ORS 215.452 or
44 215.453.**

45 (2) **If a county authorizes the establishment of a winery on land zoned for exclusive farm**

1 **use or mixed farm and forest use under provisions of law other than ORS 215.452 or 215.453**
2 **after the effective date of this 2013 Act, the gross income of the winery from any activity**
3 **other than the production or sale of wine may not exceed 25 percent of the gross income**
4 **from the on-site retail sale of wine produced in conjunction with the winery. The gross in-**
5 **come of a winery does not include income received by third parties unaffiliated with the**
6 **winery.**

7 **SECTION 4.** ORS 215.237 is amended to read:

8 215.237. If a winery sited on land zoned for exclusive farm use **or mixed farm and forest use**
9 under ORS 215.452 conducts **agri-tourism or other commercial events authorized in ORS**
10 **215.452 (5), the winery may not conduct agri-tourism or other commercial** events or activities
11 authorized by ORS 215.213 (11) or 215.283 (4).[, *the winery may not conduct events or activities, if any,*
12 *that are:]*

13 [*(1) Authorized by ORS 215.452; and]*

14 [*(2) Subject to the conditional approval of a county.]*

15 **SECTION 5.** (1) **A use or structure that is lawfully established at a winery located in an**
16 **exclusive farm use zone and that exists on the effective date of this 2013 Act, including**
17 **events and activities that exceed the income limit imposed by ORS 215.452, may be continued,**
18 **altered, restored or replaced pursuant to ORS 215.130.**

19 **(2) Subsection (1) of this section does not affect the lawful continuation, alteration, res-**
20 **toration or replacement of the winery sited on the same tract.**

21 **SECTION 6.** ORS 215.453, as amended by section 5a, chapter 679, Oregon Laws 2011, is
22 amended to read:

23 215.453. (1) A winery may be established as a permitted use **on land zoned for exclusive farm**
24 **use** under ORS 215.213 (1)(p) or 215.283 (1)(n) [*in an area zoned for exclusive farm use*] **or on land**
25 **zoned for mixed farm and forest use** if:

26 (a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is
27 a vineyard;

28 (b) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not
29 be contiguous to the acreage described in paragraph (a) of this subsection; and

30 (c) The winery has produced annually, at the same or a different location, at least 150,000 gal-
31 lons of wine in at least three of the five calendar years before the winery is established under this
32 section.

33 [*(2) A winery described in subsection (1) of this section may:]*

34 [*(a) Market and sell wine produced in conjunction with the winery, including the following activ-*
35 *ities:]*

36 [*(A) Wine tours;]*

37 [*(B) Wine tastings in a tasting room or other location at the winery;]*

38 [*(C) Wine clubs; and]*

39 [*(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunc-*
40 *tion with the winery;]*

41 **(2) In addition to producing and distributing wine, a winery described in subsection (1)**
42 **of this section may:**

43 **(a) Market and sell wine produced in conjunction with the winery;**

44 **(b) Conduct operations that are directly related to the sale or marketing of wine**
45 **produced in conjunction with the winery, including:**

1 (A) Wine tastings in a tasting room or other location on the premises occupied by the
2 winery;

3 (B) Wine club activities;

4 (C) Winemaker luncheons and dinners;

5 (D) Winery and vineyard tours;

6 (E) Meetings or business activities with winery suppliers, distributors, wholesale cus-
7 tomers and wine-industry members;

8 (F) Winery staff activities;

9 (G) Open house promotions of wine produced in conjunction with the winery; and

10 (H) Similar activities conducted for the primary purpose of promoting wine produced in
11 conjunction with the winery;

12 [(b)] (c) Market and sell items directly related to the sale or promotion of wine produced in
13 conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine
14 [on-site, including food and beverages served by a limited service restaurant, as defined in ORS
15 624.010, wine not produced in conjunction with the winery and gifts; and] on-site, including food and
16 beverages:

17 (A) Required to be made available in conjunction with the consumption of wine on the
18 premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or

19 (B) Served in conjunction with an activity authorized by paragraph (b) or (d) of this
20 subsection;

21 [(c)] (d) Provide services, including [private] agri-tourism or other commercial events, hosted
22 by the winery or patrons of the winery, at which wine produced in conjunction with the winery is
23 featured, that:

24 (A) Are directly related to the sale or promotion of wine produced in conjunction with the
25 winery;

26 (B) Are incidental to the retail sale of wine on-site; and

27 (C) Are limited to 25 days or fewer in a calendar year[.]; and

28 (e) Host charitable activities for which the winery does not charge a facility rental fee.

29 (3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection
30 [(2)(b)] (2)(c) of this section and services provided pursuant to subsection [(2)(c)] (2)(d) of this sec-
31 tion may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in
32 conjunction with the winery.

33 (b) At the request of a local government with land use jurisdiction over the site of a winery, the
34 winery shall submit to the local government a written statement, prepared by a certified public ac-
35 countant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.

36 (4) A winery operating under this section:

37 (a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery
38 is established.

39 (b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for con-
40 sumption on the premises of the winery.

41 (5)(a) A winery shall obtain a permit from the local government if the winery operates a res-
42 taurant that is open to the public for more than 25 days in a calendar year or provides for private
43 events occurring on more than 25 days in a calendar year.

44 (b) In addition to any other requirements, a local government may approve a permit application
45 under this subsection if the local government finds that the authorized activity:

1 (A) Complies with the standards described in ORS 215.296;

2 (B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the
3 winery; and

4 (C) Does not materially alter the stability of the land use pattern in the area.

5 (c) If the local government issues a permit under this subsection for private events, the local
6 government shall review the permit at least once every five years and, if appropriate, may renew
7 the permit.

8 (6) A person may not have a substantial ownership interest in more than one winery operating
9 a restaurant under this section.

10 (7) Prior to the issuance of a permit to establish a winery under this section, the applicant shall
11 show that vineyards described in subsection (1) of this section have been planted.

12 (8) A local government shall require a winery operating under this section to provide for:

13 (a) Establishment of a setback of at least 100 feet from all property lines for the winery and all
14 public gathering places; and

15 (b) Direct road access and internal circulation.

16 (9) A local government shall apply:

17 (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar
18 access and airport safety;

19 (b) Regulations for the public health and safety; and

20 (c) Regulations for resource protection acknowledged to comply with any statewide goal re-
21 specting open spaces, scenic and historic areas and natural resources.

22 (10) The local government may authorize a winery described in subsection (1) of this section to
23 sell or deliver items or provide services not described in subsection [(2)(b) or (c)] **(2)(c) or (d)** or (3)
24 of this section under the criteria for a commercial activity in conjunction with farm use under ORS
25 215.213 (2)(c) or 215.283 (2)(a) **or under other provisions of law.**

26 (11)(a) A local government may issue a permit for a winery operating under this section to host
27 outdoor concerts for which admission is charged, facility rentals or celebratory events if the local
28 government issued permits to wineries operating under this section in similar circumstances before
29 August 2, 2011.

30 (b) A local government may not issue a permit for a winery operating under this section to host
31 outdoor concerts for which admission is charged, facility rentals or celebratory events if the local
32 government did not issue permits to wineries operating under this section in similar circumstances
33 before August 2, 2011.

34 [(12) As used in this section, "private events" includes, but is not limited to, facility rentals and
35 celebratory gatherings.]

36 **(12) When a bed and breakfast facility, as defined in ORS 624.010, is sited as a home oc-
37 cupation on the same tract as a winery established under this section and is in association
38 with the winery:**

39 **(a) The bed and breakfast facility may prepare and serve any meals for a maximum of
40 18 patrons; and**

41 **(b) Meals prepared at the bed and breakfast facility for a maximum of 18 patrons may
42 be served at the winery.**

43 **(13) As used in this section:**

44 **(a) "Agri-tourism or other commercial events" includes outdoor concerts for which ad-
45 mission is charged, educational, cultural, health or lifestyle events, facility rentals,**

1 **celebratory gatherings and other events at which the promotion of wine produced in con-**
2 **junction with the winery is a secondary purpose of the event.**

3 **(b) “On-site retail sale” includes the retail sale of wine in person at the winery site,**
4 **through a wine club or over the Internet or telephone.**

5 **SECTION 7.** ORS 624.010 is amended to read:

6 624.010. As used in ORS 624.010 to 624.121, unless the context requires otherwise:

7 (1) “Authority” means the Oregon Health Authority.

8 (2) “Bed and breakfast facility” means any establishment located in a structure designed for a
9 single family residence and structures appurtenant thereto, regardless of whether the owner or op-
10 erator of the establishment resides in any of the structures, that:

11 (a) Has more than two rooms for rent on a daily basis to the public; and

12 (b) Offers [*a breakfast*] meal **service as provided in ORS 624.046** as part of the cost of the room.

13 (3) “Director” means the Director of the Oregon Health Authority.

14 (4) “Intermittent temporary restaurant” means an establishment:

15 (a) That operates temporarily at a specific location in connection with multiple public gath-
16 erings, entertainment events, food product promotions or other events, at least two of which are
17 arranged for by different oversight organizations; and

18 (b) Where food is prepared or served for consumption by the public.

19 (5) “Limited service restaurant” means a restaurant serving only individually portioned pre-
20 packaged foods prepared from an approved source by a commercial processor and nonperishable
21 beverages.

22 (6) “Operational review” means the examination of a plan of operation for an establishment in
23 order to ensure that the proposed operation conforms with applicable sanitation standards.

24 (7) “Oversight organization” means an entity responsible for organizing, managing or otherwise
25 arranging for a public gathering, entertainment event, food product promotion or other event, in-
26 cluding but not limited to ensuring the availability of water, sewer and sanitation services.

27 (8) “Restaurant,” except as provided in subsection (9) of this section, means an establishment:

28 (a) Where food or drink is prepared for consumption by the public;

29 (b) Where the public obtains food or drink so prepared in form or quantity consumable then and
30 there, whether or not it is consumed within the confines of the premises where prepared; or

31 (c) That prepares food or drink in consumable form for service outside the premises where pre-
32 pared.

33 (9) “Restaurant” does not mean a railroad dining car, bed and breakfast facility, intermittent
34 temporary restaurant, seasonal temporary restaurant or single-event temporary restaurant.

35 (10) “Seasonal temporary restaurant” means an establishment:

36 (a) That operates at a specific location in connection with multiple public gatherings, enter-
37 tainment events, food product promotions or other events that are arranged for by the same over-
38 sight organization; and

39 (b) Where food is prepared or served for consumption by the public.

40 (11) “Single-event temporary restaurant” means an establishment:

41 (a) That operates in connection with a single public gathering, entertainment event, food prod-
42 uct promotion or other event; and

43 (b) Where food is prepared or served for consumption by the public.

44 **SECTION 8.** ORS 624.046 is amended to read:

45 624.046. (1) The Oregon Health Authority shall allow a bed and breakfast facility to conduct

1 food service operations for its patrons in rooms used by the owner or operator[, *provided that:*]
2 [(1) *Such rooms are not used as sleeping quarters; and*]
3 [(2) *Persons not employed by the facility shall be excluded from such rooms during breakfast meal*
4 *hours.*] **if the rooms in which food service operations are conducted:**

5 **(a) Are not used as sleeping quarters; and**

6 **(b) Are off-limits during meal hours to individuals not employed by the bed and breakfast**
7 **facility.**

8 **(2) Except as provided in ORS 215.452 or 215.453, meal service in a bed and breakfast fa-**
9 **cility is limited to the preparation and service of breakfast.**

10 **SECTION 9. This 2013 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
12 **on its passage.**

13