

# Enrolled Senate Bill 841

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)

CHAPTER .....

## AN ACT

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

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

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 Section 11, chapter 679, Oregon Laws 2011, is repealed.**

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

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

- (a) Less than 50,000 gallons and:
  - (A) Owns an on-site vineyard of at least 15 acres;
  - (B) Owns a contiguous vineyard of at least 15 acres;
  - (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
  - (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or
- (b) At least 50,000 gallons and the winery:
  - (A) Owns an on-site vineyard of at least 40 acres;
  - (B) Owns a contiguous vineyard of at least 40 acres;
  - (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; [*or*]

**(D) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or**

[(D)] **(E)** Obtains grapes from any combination of subparagraph (A), (B) [*or (C)*], (C) **or (D)** of this paragraph.

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

[(a) *Market and sell wine produced in conjunction with the winery, including the following activities:*]

[(A) *Wine tours;*]

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

*[(C) Wine clubs; and]*

*[(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery; and]*

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

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

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

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

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

**(B) Wine club activities;**

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

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

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

**(F) Winery staff activities;**

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

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

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

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

**(B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.**

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

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

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

**(4) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (2)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.**

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

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

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

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

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

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

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

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

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

(A) Has a term of five years;

(B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (7) of this section; and

(C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

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

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

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

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

(a) The number of event attendees;

(b) The hours of event operation;

(c) Access and parking;

(d) Traffic management;

(e) Noise management; and

(f) Sanitation and solid waste.

(8) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. A fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.

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

[4] (10) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.

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

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

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

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

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

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

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

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

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

**(13) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:**

**(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and**

**(b) The meals may be served at the bed and breakfast facility or at the winery.**

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

**(a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.**

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

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

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

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

**(2) If a county authorizes the establishment of a winery on land zoned for exclusive farm use or mixed farm and forest use under provisions of law other than ORS 215.452 or 215.453 after the effective date of this 2013 Act, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.**

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

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

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

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

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

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

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

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

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

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

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

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

[*(a) Market and sell wine produced in conjunction with the winery, including the following activities:*]

[*(A) Wine tours;*]

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

[*(C) Wine clubs; and*]

[*(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;*]

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

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

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

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

**(B) Wine club activities;**

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

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

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

**(F) Winery staff activities;**

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

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

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

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

**(B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection;**

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

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

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

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

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

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

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

(4) A winery operating under this section:

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

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

(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for [*private events*] **agri-tourism or other commercial events authorized under subsection (2)(d) of this section** occurring on more than 25 days in a calendar year.

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

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

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

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

(c) If the local government issues a permit under this subsection for [*private*] **agri-tourism or other commercial** events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

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

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

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

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

(b) Direct road access and internal circulation.

(9) A local government shall apply:

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

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

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

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

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

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

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

**(12) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:**

**(a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and**

**(b) The meals may be served at the bed and breakfast facility or at the winery.**

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

**(a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.**

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

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

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

(1) "Authority" means the Oregon Health Authority.

(2) "Bed and breakfast facility" means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:

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

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

(3) "Director" means the Director of the Oregon Health Authority.

(4) "Intermittent temporary restaurant" means an establishment:

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

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

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

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

(7) "Oversight organization" means an entity responsible for organizing, managing or otherwise arranging for a public gathering, entertainment event, food product promotion or other event, including but not limited to ensuring the availability of water, sewer and sanitation services.

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

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

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

(c) That prepares food or drink in consumable form for service outside the premises where prepared.

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

(10) "Seasonal temporary restaurant" means an establishment:

(a) That operates at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events that are arranged for by the same oversight organization; and

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

(11) "Single-event temporary restaurant" means an establishment:

(a) That operates in connection with a single public gathering, entertainment event, food product promotion or other event; and

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

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

624.046. (1) The Oregon Health Authority shall allow a bed and breakfast facility to conduct food service operations for its patrons in rooms used by the owner or operator[, *provided that:*]

[*(1) Such rooms are not used as sleeping quarters; and*]

[*(2) Persons not employed by the facility shall be excluded from such rooms during breakfast meal hours.*] **if the rooms in which food service operations are conducted:**

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

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

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

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

Passed by Senate April 25, 2013

Received by Governor:

Repassed by Senate June 18, 2013

.....M.,....., 2013

Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2013

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 13, 2013

Filed in Office of Secretary of State:

.....M.,....., 2013

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Tina Kotek, Speaker of House

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Kate Brown, Secretary of State