

A-Engrossed
House Bill 2355

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative SMITH DB (Pre-session filed.)

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.

[Removes minimum orchard size requirements for] **Allows** cider businesses producing less than 100,000 gallons of cider annually on lands zoned for farm use **when businesses own certain orchards of at least one acre.**

A BILL FOR AN ACT

1
2 Relating to cider businesses; amending ORS 215.451.

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

4 **SECTION 1.** ORS 215.451 is amended to read:

5 215.451. (1) As used in this section:

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

10 (b)(A) "Cider" means an alcoholic beverage made from the fermentation of the juice of apples
11 or pears.

12 (B) "Cider" includes but is not limited to flavored cider, sparkling cider and carbonated cider.

13 (c) "Cider business" means a facility used primarily for the commercial production, shipping and
14 distribution, wholesale or retail sales, tasting, crushing, making, blending, storage, bottling, admin-
15 istrative functions or warehousing of cider.

16 (d) "Cidermaker" means a person who makes cider.

17 (e) "On-site retail sale" includes the retail sale of cider in person at the cider business site,
18 through a cider club or over the Internet or telephone.

19 (f) "Orchard" means a piece of land planted with apple or pear trees.

20 (2) A cider business may be established as a permitted use on land zoned for exclusive farm use
21 under ORS 215.213 (1)(aa) and 215.283 (1)(y) or on land zoned for mixed farm and forest use if the
22 cider business produces:

23 (a) Less than 100,000 gallons of cider annually and the cider business:

24 (A) Owns an on-site orchard of at least 15 acres;

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

26 (C) Has a long-term contract for the purchase of all of the apples or pears from at least 15 acres
27 of an orchard contiguous to the cider business; *[or]*

28 (D) Obtains apples or pears from any combination of subparagraph (A), (B) or (C) of this para-

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 graph; or

2 **(E)(i) Owns an on-site orchard of at least one acre;**

3 **(ii) Owns a farm tract of at least 20 acres that is used for other farm uses and that**
4 **contains the orchard; and**

5 **(iii) Owns a dwelling that is sited on the farm tract and that was constructed on or be-**
6 **fore January 1, 2020; or**

7 (b) At least 100,000 gallons of cider annually and the cider business:

8 (A) Owns an on-site orchard of at least 40 acres;

9 (B) Owns a contiguous orchard of at least 40 acres;

10 (C) Has a long-term contract for the purchase of all of the apples or pears from at least 40 acres
11 of an orchard contiguous to the cider business;

12 (D) Owns an on-site orchard of at least 15 acres on a tract of at least 40 acres and owns at least
13 40 additional acres of orchards in Oregon that are located within 15 miles of the cider business site;
14 or

15 (E) Obtains apples or pears from any combination of subparagraph (A), (B), (C) or (D) of this
16 paragraph.

17 (3) In addition to any other activities authorized for a cider business, a cider business estab-
18 lished under this section may:

19 (a) Market cider produced in conjunction with the cider business.

20 (b) Conduct operations that are directly related to the sale or marketing of cider produced in
21 conjunction with the cider business, including:

22 (A) Cider tastings in a tasting room or other location on the premises occupied by the cider
23 business;

24 (B) Cider club activities;

25 (C) Cidermaker luncheons and dinners;

26 (D) Cider business and orchard tours;

27 (E) Meetings or business activities with cider business suppliers, distributors, wholesale cus-
28 tomers and cider industry members;

29 (F) Cider business staff activities;

30 (G) Open house promotions of cider produced in conjunction with the cider business; and

31 (H) Similar activities conducted for the primary purpose of promoting cider produced in con-
32 junction with the cider business.

33 (c) Market and sell items directly related to the sale or promotion of cider produced in con-
34 junction with the cider business, the marketing and sale of which is incidental to on-site retail sale
35 of cider, including food and beverages:

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

38 (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this sub-
39 section.

40 (d) Subject to subsections (6) to (9) of this section, carry out agri-tourism or other commercial
41 events on the tract occupied by the cider business.

42 (e) Host charitable activities for which the cider business does not charge a facility rental fee.

43 (f) Site a bed and breakfast as a home occupation on the same tract, and in association with,
44 the cider business.

45 (4) A cider business may include on-site kitchen facilities licensed by the Oregon Health Au-

1 thority under ORS 624.010 to 624.121 for the preparation of food and beverages described in sub-
2 section (3)(c) of this section. Food and beverage services authorized under subsection (3)(c) of this
3 section may not utilize menu options or meal services that cause the kitchen facilities to function
4 as a cafe or other dining establishment open to the public.

5 (5)(a) The gross income of the cider business from the sale of incidental items or services pro-
6 vided pursuant to subsection (3)(c) to (e) of this section may not exceed 25 percent of the gross in-
7 come from the on-site retail sale of cider produced in conjunction with the cider business. The gross
8 income of a cider business does not include income received by third parties unaffiliated with the
9 cider business.

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

14 (6) Except as provided by subsections (7) and (8) of this section, a cider business may carry out
15 agri-tourism or other commercial events described in subsection (3)(d) of this section for up to 18
16 days per calendar year.

17 (7) A cider business in the Willamette Valley may carry out agri-tourism or other commercial
18 events as provided in subsection (6) of this section, provided:

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

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

22 (B) Is subject to an administrative review to determine necessary conditions pursuant to sub-
23 section (8) of this section.

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

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

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

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

30 (A) Has a term of five years;

31 (B) Is subject to an administrative review to determine necessary conditions pursuant to sub-
32 section (8) of this section; and

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

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

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

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

38 (8)(a) A local government with land use jurisdiction over the site of a cider business shall ensure
39 that agri-tourism or other commercial events occurring as described in subsection (3)(d) of this sec-
40 tion are subordinate to the production and sale of cider and do not create significant adverse im-
41 pacts to uses on surrounding land.

42 (b) A local government may impose conditions on a license or permit issued pursuant to sub-
43 section (7) of this section as necessary to meet the requirements of paragraph (a) of this subsection.
44 The conditions must be related to:

45 (A) The number of event attendees;

- 1 (B) The hours of event operation;
- 2 (C) Access and parking;
- 3 (D) Traffic management;
- 4 (E) Noise management; and
- 5 (F) Sanitation and solid waste.

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

9 (10) When a bed and breakfast facility is sited as a home occupation on the same tract as a cider
10 business as described in subsection (3)(f) of this section:

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

13 (b) The meals may be served at the bed and breakfast facility or at the cider business.

14 (11) A cider business operating under this section shall provide parking for all activities or uses
15 of the lot, parcel or tract on which the cider business is situated.

16 (12) A local government with land use jurisdiction over the site of a cider business shall ensure
17 that the cider business complies with:

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

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

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

23 (13)(a) For the purpose of limiting demonstrated conflicts with accepted farm and forest prac-
24 tices on adjacent lands, a local government with land use jurisdiction over the site of a cider busi-
25 ness shall:

26 (A) Except as provided in paragraph (b) of this subsection, establish a setback of at least 100
27 feet from all property lines for the cider business and all public gathering places; and

28 (B) Require cider businesses to provide direct road access and internal circulation for the cider
29 business and all public gathering places.

30 (b) A local government may allow a setback of less than 100 feet by granting a cider business
31 an adjustment or variance to the requirement described in paragraph (a)(A) of this subsection.

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