

Kathy Sharp

From: cindy's mail <cnhduncan@att.net>
Sent: Sunday, January 07, 2018 4:44 PM
To: Kathy Sharp
Subject: Oklahoma Grape Industry Council Response to ABLE Proposed Rules
Attachments: OGIC Response to ABLE Proposed Rules.pdf

Attached document includes a cover letter and our proposed changes to the ABLE Commission Rules.
Looking forward to attending the Public Hearing tomorrow.

Sent from [Mail](#) for Windows 10



REFERENCE: ABLE PROPOSED RULES

7 Jan 2018

Enclosed are our recommendations concerning the proposed rule changes for Oklahoma Wineries and Winemakers. In the spirit of cooperation, we've made suggestions to the proposals and hope you receive them as acceptable alternatives to consider. The Oklahoma Wine Industry was encouraged by the overwhelming passage of SQ792 in 2016 and the industry wants to continue to provide Oklahoman's the Wine products that they've grown accustomed to purchasing at their public events around the state. Our Industry was pleased to have legislation passed in 2017 that further defined our state laws to clearly authorize wine sales for consumption on the premises at the wineries and at public events as well as authorizing the wine slushy, spiced or mulled wine and sangria wine drinks. Currently, we are working on bills to be introduced this session to further the work to modernize our alcohol laws so that we can grow this agritourism industry into an industry that the state can proudly endorse.

The call went out to our industry members to review the proposed rules and their responses were focused on the area of losing the opportunity to market their wine products at public events such as the Farmer's Markets. Several licensees expressed that their income would be cut by up to 75% if Farmer's Markets were closed to Oklahoma Wineries. Another stated that the other vendors at their local markets benefit from having the wineries present and could therefore have a negative impact on the income of the other farmers. And another licensee that is also a member of the Veterans Farmer's Coalition responded saying they are not large enough to be on the shelves of liquor stores, so their income has always been from attending festivals and 5 different farmer's markets in the state. The narrowed definition of public events closes the door on numerous opportunities for our licensees to sell Oklahoma manufactured wines. This will adversely impact the entire Oklahoma Wine industry and surely drive our licensees to take their products to the neighboring states. Consequently, our state economy stands to lose out on this significant taxable income and our rural communities will have impacts due to lost jobs and ultimately losses in supplies and equipment purchases required in the grape growing and wine making processes. Subsequently, community organizers that have invited Oklahoma wineries to participate in their events because they see the value in having them present will of course see the loss of sales income which helped the community as well as the winery owner. Even the larger municipalities that have grown accustom to promoting tourism in their city by advertising local public events will have losses if this policy is enforced.

Growing the agricultural base of the Oklahoma Wine Industry, modernizing the states alcohol laws and adherence to state and local policies are and always will be the primary concerns of the Oklahoma Grape Industry Council, (OGIC). OGIC has been working to establish industry, community, business, educational, and state level partnerships that will help us to achieve our goals. We want to continue to build on those working partnerships especially including the Alcohol Beverage Laws Enforcement (ABLE) Commission. Working together we can ensure that the Oklahoma Wine Industry has an opportunity to grow. Looking forward to continuing our work to assure our industry members are kept up to date on our changing alcohol laws and of all the necessary reporting requirements.

Respectfully,

Cynthia Duncan

Oklahoma Grape Industry Council

GROWING THE OKLAHOMA WINE INDUSTRY FROM THE GROUND UP!

CHAPTER 25. WINEMAKERS, SELF-DISTRIBUTION, DIRECT SHIPMENT

Section

1. Winery Premises, Festivals, and Tradeshows.....45:25-1-1
2. Self-Distribution License.....45:25-3-1
3. Direct Shipment of Wine.....45-25-5-1

[Authority: 37A O.S., Section 1-101 et seq., and 75O.S., Sections 302, 305 and 307]

[Codified 10-01-18]

SUBCHAPTER 1. WINERY PREMISES, FESTIVALS, AND TRADESHOWS

Section

45:25-1-1. Samples and Sales on Winery Premises

45:25-1-2. Festivals Defined

45:25-1-3. Tradeshows Defined

45:25-1-4. Extension of Premises

45:25-1-5. Event Schedule Required

45:25-1-6. Separate Premises Required

45:25-1-1. Samples and Sales on Winery Premises

All samples and sales of wine by the glass on the winery premise shall be done in the designated tasting area on file with the commission. Sales of bottles of wine for off premise consumption may be completed either within or outside the designated tasting area.

OGIC Comment: This should be changed to read "All samples and sales of wine on the winery premise shall be done in the bonded area on file with the commission". The word premise is defined in the law as the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and used in connection with or in furtherance of the business covered by the license. Therefore, we would submit that tastings, sales and consumption of wine should be permitted anywhere on the wineries premise or bonded premises as long as no one under the age of 21 years is permitted to be served or sold alcohol.

45:25-1-X. Public Event Defined

A "public event" shall be defined as any event that can be attended by the general public such as state or county fairs, conferences, festivals, Community Bazaars, fundraisers, Made in Oklahoma Coalition Events, Okie Made Events, Oklahoma Department of Agriculture registered Farmer's Markets, Seasonal celebrations, Tradeshows, Home and Garden Shows, Bridal Fairs, Cultural or Artistic events, sporting competition of a seasonal nature, live music events, or any other activities held on an intermittent basis.

45:25-1-2. Festivals Defined

A "festival" shall be defined as a public event that is temporary in nature, the purpose of which is to celebrate, commemorate, or acknowledge a particular focus or topic.

OGIC Comment: Festival should fall under the public event definition which is not limited in the law.

45:25-1-3. Tradeshows Defined

A "tradeshow shall be defined as an event or gathering of individuals or groups of people concerning the alcoholic beverage industry, agriculture, or small business within

this state. A tradeshow shall not mean a "farmers market", "swap meet" or other such venue.

OGIC Comment: "Tradeshow" should fall under the public event definition which does not exclude farmers markets or swap meets or any other events. Oklahoma Wineries are an agriculture based industry and have been an appropriate and suitable addition to the Farmer's Markets and other such venues around the state especially in the small rural communities that depend on the taxable income made at these events. Additionally, no complaints have been filed against the wineries or have any had any underage incidents or alcohol intoxications reported to have occurred during these events in recent years.

45:25-1-4. Extension of Premises

When attending a trade show or festival (public event) the location becomes a licensed premises and extension of the licensed winery. Therefore, a 21 years of age and older consumption and tasting area shall be established. The licensee shall set up and define an area contiguous to their booth space being no larger than 500 square feet as a tasting area. A Type II sign stating, "No Persons under 21 Years of Age Permitted in This Area of These Premises" shall be posted at the entrance to the consumption area. Customers or consumers can only consume the wine in the designated tasting and consumption area. In the event that multiple winemakers are at the same festival they may combine their 21-year-old and older consumption area into one larger area (not to exceed 500 square feet per winemaker) as long as they are contiguous to the winemaker's booths. The Commission may approve additional square footage on a case by case basis.

OGIC Comment: Wineries/winemakers are required to rent booth space (typically 10X10 square foot area) at the public events and only the event organizer would have the ability to establish an over 21 years of age, 500 square foot consumption area. If deemed necessary, event organizers would end up charging the wineries for the additional space (if space is available) which could ultimately create the situation where wineries were being denied their legal right to sell at events because of limited space and or increased fees. Wine festivals that are solely for the promotion of the Oklahoma Wine Industry would be able to adhere to this policy only because the entire event could be designated a consumption area. Additionally, a waiver to allow underage individuals in the consumption area should be allowed as long as the underage individuals are under the direct supervision of their parents or legal guardians that are over the age of 21 years.

45:25-1-5. Event Schedule Required

Winemaker licensee shall complete an "Event Schedule" by the 1st day of the Month and submit it to the Commission along with a diagram/floorplan of any trade show or festival that they will be attending. Diagrams/floorplans shall be approved by the commission prior to the winemaker licensee attending the trade show or Festival. Licensees may amend their license schedule throughout the month with the Commission should events be added or removed from the licensee's schedule.

OGIC Comment: Event organizers are the only source for the diagram/floorplan and event organizers do not provide this information to the vendors in advance of the event. Wineries/Winemakers agree to provide a list of events they will be attending during the month, but do not want to wait for commission approval prior to attending; delays in approval could potentially create a situation where wineries were denied their right to sell at public events.

45:25-1-6 Separate Premises Required

No winemaker licensee shall attend or set up on the licensed premise of another licensee. If a winemaker wants to attend or set up at a public event that is a licensed premise, the winemaker may set up outside of the licensed premises and shall contain the consumption of their wine to within the designated tasting and consumption area.

SUBCHAPTER 3. SELF-DISTRIBUTION LICENSE

Section

45:25-3-1. License Required

45:25-3-2. Sales to be on Same Price Basis

45:25-3-3. Price Posting Procedure

45:25-3-4. Record of Sales

45:25-3-5. Pooled Transportation Prohibited

45:25-3-1. License Required

A self-distribution license shall be required of all wineries electing to self-distribute so long as the self-distributing winery does not produce more than 15,000 gallons of wine in a calendar year. In the event a licensed self-distributing winery exceeds the production limit in a calendar year, it shall cease self-distributing and only distribute using a wine and spirits wholesaler.

45:25-3-2. Sales to be on Same Price Basis

All sales by a self-distributing winemaker shall be made on the same price basis and without discrimination between every retail spirits, retail wine, beer and wine, and mixed beverage licensee.

45:25-3-3. Price Posting Procedure

Self-Distributing Wineries shall on the last day of each month publish & distribute a complete and final schedule of posted prices to all licensed customers within the State who have made purchases within the past (60) days immediately prior to such posting. Such list will contain the brands, types, kinds and sizes of wine offered for sale by the Self-Distributing Winery, and the selling price of each, together with the name, address and phone number of the licensed Self-Distributing Winery. Any request for such list by a licensed customer (verified by certified mail) must be immediately furnished by the licensed Self-Distributing Winery. These price lists shall be a full and complete price list of wine as posted with the Commission.

OGIC Comment: With the addition of monthly reporting for public events we would like to see this reporting changed to a quarterly or bi-annual requirement or as needed to report price changes that occur between reporting periods. Also, since this same information is already being provided to the commission it would be a more efficient use of time for the commission to post this information on wine prices to their website and provide access to the monthly wine price report to all the licensed customers.

45:25-3-4. Record of Sales

(a) Every licensed Self-Distributing Winery shall keep full, complete and accurate records of all sales of and receipts for its products. The minimum required records shall include a "sales and cash receipt record" showing clearly the following information:

- (1) Date of Sale
- (2) Invoice number
- (3) Name of Winery and purchaser
- (4) Amount of sale
- (5) Terms (cash or C.O.D.)
- (6) Date of payment

- (7) Method of payment (cash, money order, check, cashier's check, bank draft),
- (8) Merchandise returned from customer

(b) The Self-Distributing Winery may maintain a separate sales record and cash receipt record showing the information required in paragraphs (1) through (8) of (a) of this section, in lieu of the single "sales and cash record". If separate records are maintained, there shall be cross references between entries on the sales record and cash receipt record. Supporting invoices for each sale shall be filled in an orderly and consistent manner to permit the matching of invoices with the entries on the sales and receipt records.

45:25-3-5. Pooled Transportation Prohibited

A Self-Distributing Winery shall not pool resources or make any agreement concerning the delivery of alcoholic beverages with another Self-Distributing Winery.

SUBCHAPTER 5. DIRECT SHIPMENT OF WINE

Section

- 45:25-5-1. License Required
- 45:25-5-2. Limited Amount to be Shipped
- 45:25-5-3. Label, Signature, and other Shipping Requirements
- 45:25-5-4. Reporting Required
- 45:25-5-5. Direct Consumer's Permit

45:25-5-1. License Required

Any winery license within or without this State desiring to directly ship its wine products to consumers within the State shall first obtain a Direct Shipper's Permit. Proof of licensure as an Oklahoma winery or foreign winery must be submitted upon application along with the applicable fee proscribed by statute.

45:25-5-2. Limited Amount to be Shipped

No Direct Shipper's Permit holder shall ship more than (6) nine liter cases of wine per year to any one individual.

45:25-5-3. Label, Signature, and other Shipping Requirements

Every Direct Shipper's Permit holder shall be required to affix a label on every package being shipped to a consumer in this State the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY" Said label shall be a minimum (4) inches by (6) inches in size which shall be approved by the Director prior to use by the permit holder. Delivery confirmation for every direct shipment to a consumer including an electronic signature of the receiving person must be received by the Direct Shipper's Permit holder.

OGIC Comment: FedEx provides a 4" X 6" label (see attached) for alcohol shipments. If this label is acceptable to the Commission then prior approval by the Director would be unnecessary.

45:25-5-4. Reporting Required

No later than February 15th, every Direct Shipper's Permit holder shall submit an annual report to the Commission containing the amount of wine it directly shipped into the State, and to how many separate individual consumers such wine was shipped during the previous calendar year. Failure of a licensee to annually report such information to the Commission shall result in the revocation of the Direct Shipper's Permit.

45:25-5-5. Direct Consumer's Permit

A Direct Consumers Permit may be applied for in person or by mail at the ABLE Commission headquarters by completing an application form and providing a State issued photo identification card proving the applicant is over the age of 21 years. A Direct Consumers Permit shall be required of all residents receiving wine from a direct shipper's permit holder.

OGIC Comment: A bill is being introduced in the first legislative session of 2018 by Senator Bice to remove the Direct Consumers Permit requirement.

4" X 6" Label

Special Delivery Instructions

**This package contains ALCOHOL
Adult Signature Required - Check ID
Recipient Must be at least 21 years old**

Do not deliver to an intoxicated person

No signature release, driver release or indirect delivery allowed

Shipper certifies that this shipment complies with:

- all FedEx requirements
- all applicable government laws/regulations, including all requirements related to delivery in the destination state.

SEL169 304

FedEx.