

## Kathy Sharp

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**From:** Jim Hopper <jim@okrestaurants.com>  
**Sent:** Sunday, January 07, 2018 1:35 PM  
**To:** Kathy Sharp  
**Subject:** Written Comments on ABLE Rules  
**Attachments:** 2018ABLEHearing.docx

Kathy, please see the attached written comments on the Proposed Rules. I will also be at the hearing in the morning. Thank you.

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## Oklahoma Restaurant Association

January 7, 2018

### **Written Comments on ABLE Notice of Rulemaking Intent**

My name is Jim Hopper and I serve as President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association. Thank you for allowing me this opportunity to submit testimony on the proposed changes to ABLE's permanent rules. We commend the voters, the legislature, and the ABLE Commission on this huge undertaking to "modernize" Oklahoma's alcohol laws. This combined effort provides a unique opportunity for the public and every tier of the alcohol distribution system to create rules to better facilitate the business of alcohol sales and service. With these comments in mind, I would like to share with the ABLE Commission some areas that we believe may need some additional attention.

The rule change in Section 45:10-3-32 adding beer and wine licenses to those prohibited from being within 300 feet of a church or school will be a problem when low-point beer is discontinued and beer contains higher alcohol content and is treated in a different way by rule and statute. Some establishments legally operating under current rules will be in jeopardy of losing their license unless some change is made for them. We urge the Commission to review this issue for a solution.

We believe some of the penalties in Appendix A (Major Violations) calling for revocation of license on a first offense is overly harsh and does not take into account an innocent mistake by an employee of a licensee. We are very supportive of laws and regulations prohibiting the sale to minors and have trained servers for many years how to avoid those sales, but mistakes do happen. There is a difference between willful and inadvertent. Further, we believe revocation on a first offense is discriminatory toward mixed beverage licensees versus other sellers of alcohol who only face revocation after an escalating series of violations. We have asked the legislature and are asking this Commission to revise this rule for more equity between businesses who essentially do the same thing.

Appendix B (Minor Violations) requires a suspension of license and fine for Special, Public, and Charitable Event licenses who fail to provide barriers and diagrams for the events. We ask that consideration be given to a Letter of Caution for a first offense rather than suspension of the license and a fine.

The rules included in Section 45:15-1-1 through 15:3-4 contain provisions for employee licensing, mandatory employee training, and trainer certification. We have had several opportunities to visit with the ABLE Director and legal counsel about this training and certification. We appreciate the time given to us to discuss these issues. We would ask the Commission to look into the possibility of allowing a period of adjustment between hiring, and the required training. We have suggested a 60-day window within which the training would have to be obtained by the employee. We look forward to seeing the

written application procedures to be considered for training both in classroom and online. We believe that any training provided must include an online component. With the number of employee licenses anticipated to grow tremendously we believe the training must include options for receiving this training, including online. We are happy to work with the Commission on this aspect of the rules. There is no doubt that mandatory training will add expense to either the employee who has to be trained prior to licensing or the employer who may choose to pay for their employees training. For the sake of argument, and with the addition of many more employees who will require training under these modernization efforts, if 100,000 employees need training at a cost is \$20 per person, that creates a \$2 million expense that did not exist prior to this mandate. One question we believe will need to be addressed, if it hasn't been already, is the question of training for existing server/seller licensees after 10/1/18. Will servers/sellers who have existing licenses on 10/1/18 need to receive the mandatory training when their license comes up for renewal? In other words, will their license renewal after 10/1/18 be considered an "original license"?

We have spoken with ABLE staff about the issue of permissive versus mandatory revocation of mixed beverage licenses. We would ask that these rules reflect the ability of the Commission to look into the unique circumstances of each violation and allow for discretion on fines, violations, and possible revocation of licenses.

We would also ask the ABLE Commission to look into the issue of mixed beverage licensees having the ability to sell unopened bottles of wine and beer to go. There is some question on whether the law and rules already allow that and we would welcome the opportunity to address this issue with the Commission.

Thank you again for allowing us to present these comments for your consideration.