

# OKLAHOMA WINERY STATUTE OVERVIEW



## STATE OF OKLAHOMA ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION

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## **LICENSING**

### **1. HOW DO I QUALIFY FOR AN OKLAHOMA WINEMAKER LICENSE?**

*Title 37-Section 506 (42)*

Each of these qualifications must be met:

1. The business must be located in Oklahoma.
2. The licensee(s) must be Oklahoma residents.
3. Wine must be manufactured at the licensed premise.
4. The wine shall be made of grapes, berries and other fruits and vegetables imported into or grown in Oklahoma.

### **2. WHAT IS AN OKLAHOMA WINEMAKER LICENSEE AUTHORIZED TO DO?**

*Title 37-Section 521(C), OK Attorney General Opinion 2005 OK AG 24*

To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package and store the product on the licensed premise.

To sell wine in this state to licensed wholesalers and manufacturers.

To sell bottles of wine produced at the winery to consumers on the licensed premises of the winery.

To serve visitors, on the licensed premises, samples of wine produced on the premises.

To serve samples of wine produced at the winery at festivals and trade shows.

To sell bottles of wine produced at the winery, in original sealed containers, at festivals and trade shows.

To sell wine out of this state to qualified persons.

To purchase from licensed winemakers, distillers and rectifiers in this state.

To import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations.

**3. ARE the EMPLOYEES of an OKLAHOMA WINERY REQUIRED to HAVE an OKLAHOMA EMPLOYEE LICENSE?**

*Title 37-Section 521(O)*

No. State law specifies which licensed locations are bound by the statute. Oklahoma Wineries are not included.

**4. CAN I OWN MORE THAN ONE WINERY?**

Yes. There are no state statutes that prohibit the ownership of more than one winery.

**5. CAN I POSSESS A LOW-POINT BEER LICENSE at MY LICENSED OKLAHOMA WINERY.**

Yes. A low-point beer license will not be in conflict with your Oklahoma Winery license.

**6. WOULD I BE ABLE to ACQUIRE an OKLAHOMA MIXED BEVERAGE, BEER & WINE or BOTTLE CLUB LICENSE for MY WINERY PREMISE?**

No. This would be in direct violation of the “three-tier” system. Additionally, no location can have two liquor licenses in effect at the same time.

**7. DO I HAVE to PAY an OCCUPATIONAL TAX to the CITY or the COUNTY?**

*Title 37-Sections 554.1 and 554.2*

No. The Oklahoma statutes regarding City and County occupational taxes do not apply to Oklahoma Wineries.

It should be noted that Article 28 of the Oklahoma Constitution appears to allow the legislature to enact statutes that could require the payment of such taxes.

**8. DOES MY ENTIRE PREMISE HAVE to be LICENSED?**

No. You must only license the contiguous areas that involve the production, storage, sampling or sale of your wines. The vineyard, patios, decks, etc. do not have to be a part of the licensed premise.

**9. I AM EMPLOYED BY THE STATE, CAN I STILL BE CONSIDERED FOR an OKLAHOMA WINEMAKER’S LICENSE?**

Yes, you may apply and be granted a license.



## ***DIRECT SHIPPING***

### **1. CAN I SHIP MY WINE PRODUCTS to CONSUMERS OUTSIDE of OKLAHOMA?**

*Title 37-Section 521.3*

*OK Attorney General Opinion 2005 OK AG 25*

Yes. A law change went into effect on November 1, 2007. This statute allows an Oklahoma Winery to ship to consumers outside of Oklahoma so long as the recipient is of legal age and the laws of the recipient's state allow such shipments. You should check with each individual State you wish to ship in regards to specific requirements.

It should also be noted that an Oklahoma Winery that ships products to consumers in other states shall submit a monthly report of all shipments to the Oklahoma Alcoholic Beverage Laws Enforcement Commission. The report shall contain the name, address and age of the recipient and shall list the common carrier used to ship the product. This form is ABLE Commission form OKW1.

### **2. CAN I PROVIDE WINE DIRECTLY to an OKLAHOMA BED & BREAKFAST or OTHER BUSINESS?**

*Action Wholesale Liquors v. Oklahoma Alcoholic Beverage Laws Enforcement Commission (Summary Judgment - June 15, 2007)*

Businesses that are not required to have an Oklahoma Mixed Beverage License may purchase on-site at the winery and take delivery like any other individual. Additionally, you cannot deliver to them.

Additionally, you cannot provide your wine to anyone holding any Oklahoma liquor license. These license holders must purchase your wine through a licensed Oklahoma Wholesaler.



## **LABELING**

**1. CAN I PROVIDE A “PRIVATE” LABEL on WINE I PRODUCE?**

Yes. However, the label must be registered with the Oklahoma ABLE Commission. Additionally, this product must be solely sold “on premise” or it must be posted for sell throughout the state by an Oklahoma Wholesaler.

**2. CAN I PROVIDE A “PRIVATE” LABEL for a RESTAURANT and the WINE MADE ONLY AVAILABLE to THEM?**

No. The product, since it will be delivered to an Oklahoma Mixed Beverage licensee, must have its label registered, the wine posted and be made readily available for sell to Oklahoma Wholesalers for purchase and delivery throughout the State.



## ***PRODUCTION***

**1. CAN I SPLIT the COST of PRODUCING WINE WITH a RESTAURANT or OTHER COMPANY, INDIVIDUAL, ETC?**

No. Those you split the costs with would be considered “hidden owners” unless they were noted on the application. This is a serious criminal violation and upon successful prosecution, could result in revocation of your license.

The same would apply to “sharing” the profits from your winery as well.

**2. CAN I OFFER AN “ADOPT A PLANT” PROGRAM THAT ALLOWS a PERSON to ACQUIRE a SET NUMBER of BOTTLES of WINE PRODUCED at MY WINERY or a SIMILAR TYPE of PROMOTION?**

Yes. You must be sure that your promotion does not promote the consumption of an alcoholic beverage or utilize the alcoholic beverage as a prize or premium.

**3. MAY ONE WINERY or OTHER BUSINESS ENTITY DESTEM AND CRUSH OUR GRAPES and a SEPARATE WINERY PRODUCE the WINE FROM THAT PROCESS?**

*Title 37-Section 506 (42)*

Yes. Only the actual production of wine requires a licensed premise.



## **TRADE SHOWS and FESTIVALS**

### **1. DOES THE 300 FOOT RULE APPLY to a WINERY or SAMPLE BOOTH LOCATIONS?**

*Title 37-Section 518.3*

No. State law specifies which licensees are bound by the law. Oklahoma Wineries are not one of them.

### **2. WHAT IS THE DEFINITION of a FESTIVAL?**

*Assistant Director Opinion – August 2006 and March 2008*

*ABLE General Counsel Opinion – February 2008*

A “festival” is not defined by state statutes, ABLE Commission rules and regulations or court decision.

The ABLE Commission has decided to utilize the Webster’s dictionary definition to define a “festival.” This broad definition allows Oklahoma Wineries to have a presence at a large number of Oklahoma events. These events include, but are not necessarily limited to, any event that contains the wording “trade show or festival” in its title, farmer’s markets, concerts, etc. A “Grand Opening” associated with a business would not be within this definition and it therefore would not be legal for you to provide samples.

Webster’s defines a festival as: “An occasion for feasting or celebration, especially a day or time of religious significance that recurs at regular intervals. (2) An often regularly recurring program of performances, exhibitions, or competitions. (3) Conviviality: revelry.”

### **3. CAN I HOST A FESTIVAL, TRADE SHOW or OTHER EVENT at MY OKLAHOMA WINERY?**

Yes. There are no state statutes or court decisions that prohibit the holding of a festival, trade show or other event on the licensed premise of an Oklahoma Winery.

**4. CAN I INVITE OTHER OKLAHOMA WINERIES TO PARTICIPATE in a FESTIVAL HELD at MY OKLAHOMA WINERY?**

*Title 37-Section 521(C)*

Yes. However, this event can NOT take place on your licensed premise. Therefore, it is very important for you to know what has been licensed when you applied for your Oklahoma Winemaker License. Changes can be made to your licensed premise by providing a letter requesting the change and a new diagram. The change does not become effective until it has been approved by the ABLE Commission.

**5. DOES CITY or COUNTY ORDINANCES APPLY to MY FESTIVAL or TRADE SHOW?**

*Title 37-Section 503*

Yes.

**6. MAY I DONATE A BOTTLE of WINE for a DOOR PRIZE?**

*Title 37-Section 537(B)*

No. This would constitute utilizing the alcoholic beverage as a prize or premium and is a violation of State statutes.



## **WINE SAMPLES**

**1. CAN AN OKLAHOMA WINERY SELL SAMPLES?**

*ABLE General Counsel Opinion*

Yes. State law does not address it and the ABLE Commission General Counsel issued an opinion stating that it is permissible.

**2. WHAT IS the MAXIMUM SIZE of the SAMPLE I MAY SERVE?**

State statutes or ABLE Commission Rules and Regulation do not define the word "sample." Therefore, no maximum serving size is currently enforced by the ABLE Commission.

**3. AM I REQUIRED TO HAVE A DESIGNATED BAR AREA to SERVE SAMPLES?**

*Title 37-Section 598*

No. Title 37-Section 598 is not written in a way that applies to Oklahoma Wineries.

**4. DOES MY SAMPLING ROOM HAVE TO BE ON MY LICENSED PREMISE?**

*Title 37-Section 521(C)*

Yes. Title 37-Section 598 is very specific regarding this issue.

**5. CAN I SELL or PROVIDE SAMPLES on DAYS PROHIBITED by a PARTICULAR COUNTY'S VOTE or LACK of VOTING on LIQUOR-BY-THE-DRINK?**

*Oklahoma Constitution – Article 28*

Yes. The county-wide voting allowed by the Oklahoma Constitution was specific to liquor-by-the-drink.

**6. CAN I PROVIDE or SELL SAMPLES of MY WINES ALONG WITH a MEAL in MY SAMPLING ROOM?**

*Title 37-Section 521(C), OK Attorney General Opinion 2005 OK AG 24*

Yes. You may only provide or sell samples of the wine produced at your winery. You must also remember that you cannot permit bottles of your wine to be opened and consumed on the premise nor can you allow any other alcoholic beverage to be brought onto your winery's premise.

**7. CAN I ADVERTISE or PROVIDE a "PACKAGE" or "ONE PRICE" MEAL or EVENT that INCLUDES WINE SAMPLES?**

*Title 37-Section 537(B)*

Yes, but only for an event that occurs on your licensed premise.

Advertising in this manner for events that occur off your licensed premise would be a violation of the "Happy Hour" provisions of Oklahoma Statutes. You may not include alcoholic beverages in the cost of any dinner or event. Instead, you must advertise the cost with and the cost without wine samples. This provides a clear distinction of the wine sample cost.

**8. CAN I LIMIT the NUMBER of SAMPLES a PERSON MAY HAVE?**

*Title 37-Section 537(A) & 537(B)*

Yes, and you should. Oklahoma Statutes provides for a felony charge if you serve an intoxicated person.

You should also be aware that Oklahoma has had several civil court cases relating to the sale or the providing of alcoholic beverages to those who have been deemed "intoxicated."

**9. CAN I SERVE WINE SAMPLES to PERSONS UNDER 21 YEARS OLD?**

*Title 37-Section 537(A)*

No. Serving a wine sample to anyone under the age of 21 would be a felony.

**10. IS THERE a MINIMUM AGE for an EMPLOYEE of MY WINERY to POUR or PROVIDE SAMPLES?**

*Title 37-Section 537(A)*

Yes. Those person pouring or providing samples must be 21 years of age.

**11. CAN I CONDUCT a WINE TASTING EVENT FOLLOWING a MEETING or SEMINAR THAT HAS BEEN HELD at MY WINERY?**

*Title 37-Section 521(C)*

Yes, providing that the meeting or seminar has been held on your licensed premise you may only sample the wines from your winery.

**12. CAN VISITORS TAKE SAMPLES OFF MY LICENSED PREMISE?**

*Title 37-Section 537(B)*

No.



## **ABLE CONTACT NUMBERS**

**OKLAHOMA ABLE COMMISSION**  
4545 N Lincoln Blvd, Suite 270  
Oklahoma City, OK 73105

405-521-3484 (office)  
405-521-6578 (fax)  
[www.ok.gov/able](http://www.ok.gov/able)

### ***ENFORCEMENT***

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### ***LEGAL***

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### ***LICENSING***

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Licensing Division

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### ***REGISTRATION & POSTING***

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Business Office

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[kpilkington@able.ok.gov](mailto:kpilkington@able.ok.gov)



# **OK TAX COMMISSION CONTACT NUMBERS**

**OKLAHOMA TAX COMMISSION  
Wine & Spirits Compliance Division  
2501 N Lincoln Blvd  
Oklahoma City, OK 73194**

## ***WINE & SPIRITS COMPLIANCE***

Ray Freeman

405-522-4139

Sandra Harvey

405-522-0597

**NOTE:** Utilize the Oklahoma Tax Commission Form WL-85  
(Monthly Alcoholic Beverage Tax)

Wines under 14%	\$0.19 per liter
Wines over 14%	\$0.37 per liter
Sparkling Wines	\$0.55 per liter



## ***RELEVANT ABLE FORMS***

1. ABLE Commission Winery Shipping Report (ABLE Form OKW1)
2. Brand Registration Fee Schedule
3. Oklahoma Price Posting-New Item/Label Revision (ABLE Form ABLE23)
4. Oklahoma Price Posting-Spirits, Domestic & Imported Wines
5. Oklahoma Price Posting Affidavit (ABLE Form BUS32)