



2019 Senate Bill 829

Legislative Report

September 15, 2020

The Oregon Liquor Control Commission shall report to an interim committee of the Legislative Assembly relating to business, in the manner provided under ORS 192.245, no later than September 15, 2020, regarding the recommendations made by the advisory committee described in section 3 of this 2019 Act and the status of commission rule adoption proceedings under sections 2 and 4 of this 2019 Act.

I. Legislative Directive

2019 Senate Bill (SB) 829 Section 3 directed the Oregon Liquor Control Commission (OLCC) to appoint and convene a rules advisory committee (RAC) to assist the OLCC in developing rules to implement the wine labeling requirements set forth in Section 2 of SB 829 and to advise the OLCC about the need for rulemaking to address other related issues identified in Section 3 of the Act.

2019 SB 829 Section 5 directed the OLCC to prepare a report to an interim committee of the Legislative Assembly regarding the recommendations made by the advisory committee and the status of OLCC rule adoption proceedings under Sections 2 and 4 of this Act.

The following report fulfills that directive.

II. Wine Labeling Rules Advisory Committee Members

1	Carrie Kalscheuer Director of Sales, A to Z Wineworks and Rex Hill Willamette Valley Wineries Association (WVWA) Board Member	Willamette Valley Wineries Association
2	Mike McNally Co-Owner Fairsing Vineyard LLC WVWA Board Member	Willamette Valley Wineries Association
3	Scott Steingraber Owner/Winemaker, Kriselle Cellars	Southern Oregon and Rogue Valley
4	Justin King King Estate Winery Oregon Winegrowers Association (OWA), Board Member/Chair of Public Policy Committee	Oregon Winegrowers Association
5	David Adelsheim Founder/Director of Adelsheim Vineyard	Chehalem Mountains
6	Tracy Timmins Vice President Operations & Consumer Sales at Stoller Wine Group	Dundee Hills Winegrowers Association
7	Chad Johnson Co-Winegrower/Owner, Dusted Valley	Walla Walla Valley Wine Alliance and The Rocks District Winegrowers
8	Rob Wallace Owner and CEO, Del Rio Vineyard Oregon Wine Council (OWC) Board Member	Oregon Wine Council – Rogue Valley
9	Scott Kelley Co-Owner and Winemaker, Paul O’Brien Winery OWC Board Member	Oregon Wine Council – Umpqua Valley
10	Laurent Montalieu Winemaker, NW Wine Co/Hyland/Solena OWC Board Member	Oregon Wine Council – Willamette Valley
11	Ken Johnston COO, Winemakers LLC OWC Board Member	Oregon Wine Council – Willamette Valley
12	Ken Wright Owner and Winemaker, Ken Wright Cellars	Yamhill-Carlton Winegrowers Association
13	Gretchen Boock CEO, Wines by Joe OWC Board Member	Oregon Wine Council – Willamette Valley

III. Executive Summary

During the 2019 legislative session, members of the Oregon wine industry introduced several bills¹ designed to raise the standards for labeling Oregon wines that ultimately did not pass. However, the discussions around the bills related to wine labeling, content standards, and grape tonnage taxes highlighted for the legislature, the OLCC, and the interested public, just how varied the perspectives are on these topics within the Oregon wine industry. In the end, only one bill related to wine labeling became law during the 2019 session: Senate Bill 829.²

SB 829 directed the OLCC to convene a rules advisory committee (RAC) to assist with implementation of the law's requirements and to serve as a panel of experts on the topics contained within the law. Before identifying participants for the RAC, the OLCC decided to seek in person feedback from a broad cross section of the industry through "town hall" meetings held in their communities.

During July and August of 2019, the OLCC traveled around the state and met with members of the wine industry representing a variety of coalitions to discuss the wine related policy issues from the 2019 legislative session. OLCC commissioners and staff participated in the "listening tour" with the intent of creating space for honest dialogue and frank discussion about concerns and about how resources to support the wine-industry are allocated within the state. OLCC staff also spoke about the requirements of SB 829 and requested feedback from attendees about participation in the SB 829 RAC.

Through this listening tour, leaders in the Oregon wine community decided there was value in working on consensus building within the industry in a formalized mediation setting. Portland State University's Oregon Solutions³ program was selected as the medium for fostering this extended, industry-wide dialogue to dig in and get at the root of the problems that caused conflict among the industry members during the 2019 legislative session. This process began in parallel to the rulemaking effort focused on implementing SB 829.

In July of 2020, the OLCC prepared draft rule language addressing the SB 829 requirements and discussed the draft language with the RAC members during a virtual RAC meeting on August 3, 2020. Members of the RAC weighed in on the draft language, providing specific technical recommendations for additions and amendments. OLCC staff continue to work with the members of the RAC as of the drafting of this report to craft rule language that satisfies the SB 829 directives. After a public comment period, the SB 829 regulatory requirements are expected to be adopted in final rules at a meeting of OLCC commissioners on October 15, 2020.

A copy of this report is available electronically at:

<https://www.oregon.gov/olcc/docs/reports/2019-SB829-Legislative-Report-091520.pdf>

To obtain a paper copy, please contact Devon Morales at devon.morales@oregon.gov

¹ 2019 SB 830, 831, 111.

² Oregon Laws 2019, Chapter 425. ORS 471.802.

³ <https://orsolutions.org/about/what-we-do>

IV. Background

OLCC LISTENING TOUR

During July and August of 2019, the OLCC (commissioners and staff) conducted four wine industry listening events throughout the state in Medford, Roseburg, McMinnville, and Pendleton.⁴ The goal of the listening tour was to meet with wine industry leaders to cultivate working relationships and to hear firsthand about the concerns and issues important to the wine industry.

OLCC staff requested feedback from the groups related to the requirements of SB 829; however, much of the time was spent on issues contained in legislation that did not pass during the 2019 session. In addition, because SB 829 opened the door for consideration of additional wine labeling requirements imposed through OLCC regulations, OLCC staff sought feedback on whether there was interest in further rulemaking related to labeling.

Audience members at the Southern Oregon listening tour events

Participants in the listening sessions in Southern Oregon during July of 2019 had three key perspectives on SB 829 and how it could or should affect the wine industry in the region.

- First, winemakers in Oregon (anywhere in Oregon) should not be *required* to do conjunctive labeling. This should be left to winemaker choice.
- Second, acknowledging that the legislature passed a bill requiring conjunctive labeling for nested American Viticultural Areas (AVA) within the Willamette Valley, this requirement should not be extended to any of the Southern Oregon AVAs.
- Third, there was concern that the SB 829 RAC process would allow for “mission creep” into establishing other labeling requirements. The group was generally opposed to the implementation of additional labeling requirements in rule, expressing the sentiment of, “We don’t need additional regulations related to how we label our wines.”

Audience members at the Willamette Valley listening tour event

Participants in the listening session in the Willamette Valley on August 1, 2019 provided a great deal of feedback about the rationale behind legislation that did not pass during the 2019 session. Again, there were three key take-aways from the discussion.

- First, there seemed to be consensus around the position that protection of the Willamette Valley “brand” is fundamental to protecting “Brand Oregon” for wine.
- Second, the participants noted that the reputation of Oregon wine was built by wines and grapes produced within the Willamette Valley. Members of the industry have invested in building this reputation over many years and, from their perspective, the way that the Willamette Valley varietals are showcased in a wine-- in combination with reference to the appellation of origin-- matters.

⁴ Unfortunately, recorded minutes are unavailable for this listening session.

- Third, the requirements related to conjunctive labeling set forth in SB 829 are critical to building and enhancing the cache that the Willamette Valley AVA name has cultivated in the minds of wine consumers.

The OLCC appreciated this learning opportunity and worked with members of industry from throughout the state to round out two parallel efforts following the listening tour: the Oregon Solutions project (a more comprehensive endeavor) and the SB 829 rulemaking activities.

OREGON SOLUTIONS

The OLCC and the Governor's office connected with leaders in the Oregon wine community and collectively decided to use the services of a third-party problem solving system to work through the challenges causing division within the Oregon wine industry. This process began separately from the SB 829 rulemaking effort in the spring 2020, but has informed the working relationship between the members of the RAC, as many of those individuals are also involved in the Oregon Solutions effort.

Through the initial scoping conversations, Oregon Solutions heard from the wine industry that there are three primary areas of concern for which industry members believe they could benefit from third party assistance. The primary areas of concern include:

- The industry is experiencing impacts of external forces on the industry while it continues to grow. What outside forces are present now and in the future that pose a threat or opportunity and the need for a unified Oregon industry? How does that shape or define brand Oregon? How does it impact advocacy strategies?
- The organizations which represent the industry are in varying states of transformation. What do industry members need from the organizations that represent them? Where are changes needed to modernize the institutions to reflect the evolution of the industry?
- With awareness of the impacts of the 2019 legislative session on industry trust and unity, how does the industry envision working through areas of friction in the future? What communication or other process supports are needed to foster trust and unity?

Oregon Solutions will provide facilitation services to the members of the workgroup to collaboratively address the key issues raised through the strategic assessment and subsequent inquiries with industry leaders. The makeup of the workgroup includes representatives of wine associations from throughout the state, as well as support from the OLCC and from the Governor's office. The group's overarching goal is to reestablish trust and unity of the industry and the group will be working together over the next several months to achieve that goal.

IDENTIFYING MEMBERS FOR THE RAC

In Section 3(1) of SB 829, the Oregon legislature directed the OLCC to convene a rules advisory committee to assist with implementation of the bill's requirements and to serve as a panel of experts on the topics contained within the bill. The legislature provided the OLCC with specific instructions for the makeup of the SB 829 RAC. Specifically, Section 3(1) of SB 829 required:

- An odd number of members to the advisory committee;
- That members have expertise in the production and labeling of Oregon wines;
- That the Commission appoint at least one advisory committee member from within the Willamette Valley viticultural area and at least one member from outside of the Willamette Valley viticultural area; and
- In making appointments to the advisory committee, the Commission must consider nominees of winemaking industry associations or other organizations related to the winemaking industry.

SB 829 indicated that members should be representative of the various wine grape growing areas of this state in proportion to the relative acreage in those areas used for wine grape production.

In consultation with different representatives from wine industry associations and grape growing regions, the OLCC selected and appointed the 13 members for the RAC listed in Section II of this report.

ISSUES TO BE ADDRESSED THROUGH RAC

SB 829 Section 2 directed the OLCC to adopt rules that require any label containing the name of a nested AVA located wholly or partially within the Willamette Valley AVA to list the "Willamette Valley" on the label in addition to the nested AVA. Section 2 also lists specific font and size requirements and directed the OLCC to establish a penalty schedule for violations of the nested AVA labeling requirements.

SB 829 Section 3 explains that the duties of the advisory committee include making recommendations regarding the labeling of wine and developing recommendations for the Commission related to:

- Rules intended to carry out Section 2 of the Act;
- Recommendations to list American viticultural areas other than the Willamette Valley in any rule identifying the labeling requirements implementing Section 2 of the Act;
- Standards for a winery to request, and for the commission to approve, the use of existing stocks of non-conforming labels; and
- A penalty schedule for violations of section 2 of the 2019 Act.

V. Wine Labeling Rules Advisory Committee Feedback and Discussion

Although there was some discussion during the Listening Tour about expanding the scope of the rulemaking effort to be taken up by the RAC convened to address the SB 829 issues, ultimately, the scope of the rulemaking was narrowly limited to the requirements and permissions granted by SB 829.

On August 3, 2020, the OLCC convened the RAC to address the 2019 SB 829 requirements. The meeting was conducted virtually, due to the COVID-19 pandemic. Ahead of the RAC meeting, staff drafted a single new rule, OAR 845-010-0923, to address the SB 829 conjunctive or nested AVA labeling requirements. During the meeting, the draft rule was discussed, but staff also presented questions to the group about some of the optional language in Section 3 of SB 829.

DURING THE RAC, STAFF RECEIVED THE FOLLOWING KEY RECOMMENDATIONS FROM THE MEMBERS:

- Limit the conjunctive labeling requirement to nested AVAs within the Willamette Valley AVA.
- Although these are Oregon-specific requirements and not federal Alcohol Tobacco Tax and Trade Bureau (TTB) requirements, the producing winery is always the party to file the Certificate of Label Approval (COLA) with the TTB (controlling label content), therefore the producing winery should be the primary party responsible for meeting the labeling requirements of this rule.
- A violation of the labeling requirements established by SB 829 and implemented through this rule are fairly benign in that they represent an omission of information rather than an overt addition of inaccurate information. Therefore, the group recommended two approaches for addressing these violations:
 - As discussed in SB 829 Section 3(2)(b), licensees should have an option to request to “use-up” existing stocks of non-conforming labels after the requirements of the rule take effect. Whether the process for requesting the use-up is articulated in rule or established by policy was something the group deferred to the OLCC on to decide.
 - The group was in agreement with the penalty classification (Category IV) as a low-level penalty and also commented that actually charging a violation might be reserved for only the most egregious of violators. In other cases, the OLCC might focus on bringing licensees into compliance upon discovering a violation before charging the licensee.
- RAC members provided some technical feedback about how the required information should be displayed on a label.
- Some members requested that the OLCC acknowledge the authority provided to the OLCC in Section 2 (6) of SB 829 to adopt additional rules related to wine labeling by including that language in one of the wine labeling rules.

FEEDBACK RECEIVED FROM RAC MEMBERS LEADING UP TO PUBLIC COMMENT PERIOD AND AFTER RAC:

OLCC staff analyzed the feedback received during the RAC and expanded the list of rules involved to include OAR 845-010-0290 and 845-010-0910 in addition to the new rule, 845-010-0923. The key modifications that came out of this review process included:

- Modifying existing applicable penalty language in 845-010-0290 and removing reference to the penalty in 845-010-0923
- Including a process for using up labels that do not conform to the requirements of 845-010-0923

- Including language in 845-010-0910 acknowledging the OLCC’s express authority to adopt additional rules related to wine labeling

Staff presented the modified rule package to the RAC members and set an intermediary deadline for feedback. Staff received feedback from some RAC members and prepared a modified package based on the information provided. The OLCC opened the public comment period for the rule package on September 1, 2020.

CURRENT STATUS OF RULEMAKING PROCESS:

As of the drafting of this report, the rules package is in the public comment period. A public hearing on the rules package will be conducted on September 15, 2020 at the OLCC (virtually, due to the COVID-19 pandemic). The public comment period will close on September 21, 2020. Staff will incorporate public comments received during the public comment period and the final package is expected to be presented to the OLCC commissioners for final adoption during the October 2020 commission meeting.

VI. Conclusion and Next Steps

RULEMAKING

Staff will present the wine labeling rule package (OAR 845-010-0290, 845-010-0910, 845-010-0923) to the commissioners at the October 2020 commission meeting for final adoption. If passed, the rule requirements become effective on January 1, 2023.

OREGON SOLUTIONS PROCESS

The wine industry workgroup has had two meetings with the Oregon Solutions team. The workgroup is taking a two-month pause (September-November of 2020) for harvest, but will continue with the problem solving and coalition building activities in December of 2020. This timeline may be impacted by the devastating wildfires in September 2020.

The goal of the Oregon Solutions process is trifold: First, OLCC would like to see Oregon's wine industry develop a unified sense of the outside forces that challenge Oregon's wine industry and discuss how to approach these challenges. Second, identify what Oregon wine industry members need from their organizations. Finally, identify areas of friction between wineries and associations from across the state and create a sustainable governance structure and practices for working through future areas of friction.

POSSIBILITY FOR FUTURE RULEMAKING OPEN

Certain members of the wine industry are particularly interested in identifying options for more robust labeling requirements in rule, while others are looking for relaxation of some of the Oregon-specific labeling standards (aligning the standards with the federal standards). Both SB 829 Section 2 (6) and the draft amended version of OAR 845-010-0910 leave the door open for future rulemaking related to wine labeling in Oregon. Should the OLCC receive a formal petition for rulemaking in this regard, the OLCC is committed to including a broad cross section of perspectives from throughout the grape growing and wine producing regions of the state in the rulemaking process.