

**EHB 2219**

**THE STATE SENATE**  
**Tuesday, March 30, 2004**

**ENGROSSED**

**House Bill No. 2219**

**As Amended**

ENGROSSED HOUSE BILL NO. 2219 - By: MADDUX, POPE, COVEY, DeWITT,  
ARMES, BRADDOCK, NATIONS and HARRISON of the House and COATES,  
HELTON and KERR of the Senate.

**[ agriculture - Oklahoma Grape Resources and Wine Production  
Act - codification - emergency ]**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 18-350.1 of Title 2, unless  
there is created a duplication in numbering, reads as follows:

A. This subarticle shall be known and may be cited as the  
"Oklahoma Grape Resources and Wine Production Act".

B. The purpose of the Oklahoma Grape Resources and Wine  
Production Act shall be to develop programs that will enhance grape  
and wine production, grape and wine research, promoting market  
development and education, improving profitability of Oklahoma grape  
and wine products, providing for rural economic development and  
rural cultural preservation, and increasing and improving Oklahoma  
tourism relating to the grape and wine industry.

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 18-350.2 of Title 2, unless  
3 there is created a duplication in numbering, reads as follows:

4 As used in the Oklahoma Grape Resources and Wine Production Act:

5 1. "Commercial channels" means any person, public or private  
6 corporation, association or partnership which:

7 a. sells, through monetary exchange or barter, grapes  
8 grown in Oklahoma or another state for the purpose of  
9 producing wine or grape juice,

10 b. sells, through monetary exchange or barter, wine  
11 manufactured in another state for Oklahoma  
12 distribution entities to resell, or

13 c. sells, through monetary exchange or barter, wine or  
14 grape juice manufactured in the State of Oklahoma;

15 2. "Commission" means the Oklahoma Grape and Wine Commission;

16 3. "Department" means the Oklahoma Department of Agriculture,  
17 Food, and Forestry;

18 4. "First purchaser" means any person, public or private  
19 corporation, association or partnership which:

20 a. buys or otherwise acquires, through monetary exchange  
21 or barter, grapes from a grapes producer or grapes  
22 seller in Oklahoma or another state for the purpose of  
23 making wine or grape juice,

1           b.    buys or otherwise acquires, through monetary exchange  
2                    or barter, wine from a nonresident wine seller or an  
3                    in-state wine seller of wine manufactured in another  
4                    state for Oklahoma distribution entities to resell, or  
5            c.    buys or otherwise acquires, through monetary exchange  
6                    or barter, grape juice, wine or bulk wine from another  
7                    state for the purpose of manufacturing wine or grape  
8                    juice within the State of Oklahoma;

9           5.    "Fiscal year" means the accounting year beginning July 1 of  
10           each year and ending June 30 of the following year;

11           6.    "President" means the President of the State Board of  
12           Agriculture; and

13           7.    "Grapes producer, or grape juice or wine manufacturer" means  
14           a person engaged in the production of grapes, grape juice or wine,  
15           and who markets grapes, grape juice or wine for resale.

16           SECTION 3.        NEW LAW        A new section of law to be codified  
17           in the Oklahoma Statutes as Section 18-350.3 of Title 2, unless  
18           there is created a duplication in numbering, reads as follows:

19           A.    There is created until July 1, 2010, in accordance with the  
20           provisions of the Oklahoma Sunset Law, the Oklahoma Grape and Wine  
21           Commission.

1           B. 1. With the exception of the members appointed by the  
2 Governor pursuant to paragraph 2 of this subsection, the Commission  
3 shall be composed of nine (9) elected members who:

- 4           a. are at least twenty-five (25) years of age and are  
5               residents of Oklahoma,
- 6           b. have been actually engaged in the production of  
7               grapes, grape juice or wine in this state for a period  
8               of at least three (3) years, and
- 9           c. derive a portion of their income from the production  
10               of grapes, grape juice or wine.

11          2. a. The following membership positions shall be appointed  
12               by the Governor:

- 13               (1) one member representing the Oklahoma Department  
14                   of Commerce who shall be an ex officio member of  
15                   the Commission,
- 16               (2) one member employed by the Oklahoma Department of  
17                   Agriculture, Food, and Forestry who shall be an  
18                   ex officio member of the Commission, and
- 19               (3) one member employed by an institution of higher  
20                   education with experience in the production of  
21                   grapes, grape juice or wine who shall be an ex  
22                   officio member of the Commission.

- 1           b.    The terms of the members appointed by the Governor  
2                   shall be coterminous with that of the Governor.  The  
3                   initial members appointed by the Governor shall be  
4                   appointed by the Governor on or before August 1, 2004.
- 5           c.    Oklahoma grapes, grape juice and wine organizations  
6                   may submit names of individuals to the Governor for  
7                   appointment to the Commission.
- 8           C.   1.  Each of the elected members shall be a resident of, have  
9                   grapes production or grape juice or wine operation in, and be  
10                  elected by grapes producers, grape juice or wine manufacturers  
11                  within a district area designated by this subsection as District 1  
12                  through District 3.  Two members shall be elected from each  
13                  district.  The districts shall be as follows:
- 14                  a.   District 1 shall consist of the areas within the state  
15                          which lie west of Interstate Highway 35 and shall  
16                          nominate two members,
- 17                  b.   District 2 shall consist of the areas within the state  
18                          which lie east of Interstate Highway 35 and west of  
19                          State Highway 75 south to its intersection with State  
20                          Highway 69, and west of State Highway 69 to its border  
21                          with Texas and shall nominate two members, and
- 22                  c.   District 3 shall consist of areas within the state  
23                          which lie east of State Highway 75 south to its

1 intersection with State Highway 69, and east of State  
2 Highway 69 to its border with Texas and shall nominate  
3 two members.

4 2. a. The terms of office of the initial elected Commission  
5 shall be as follows:

- 6 (1) two (2) years for District 1,  
7 (2) three (3) years for District 2, and  
8 (3) four (4) years for District 3.

9 b. Thereafter the term of office for elected members  
10 shall be for four (4) years.

11 3. An elected member of the Commission may only serve for two  
12 full four-year terms.

13 D. The President of the State Board of Agriculture shall call  
14 the first meeting of the Commission within thirty (30) days  
15 following the last election for determination of membership.

16 E. 1. If for any reason there is a vacancy on the Commission  
17 due to resignation, death, or for any cause resulting in an  
18 unexpired term, the Commission may name a qualified person to serve  
19 as a provisional member of the Commission for the remainder of the  
20 term of the office vacated without an additional election.

21 2. The Commission shall submit, in writing, the name of the  
22 person to the Governor for approval. The Governor shall either  
23 approve or disapprove the named person as a provisional member of

1 the Commission within thirty (30) days of the submission of the name  
2 by the Commission.

3 3. The failure of the Governor to disapprove the person named  
4 as the provisional member of the Commission within the thirty-day  
5 period shall be deemed approval of the person as the provisional  
6 member of the Commission.

7 F. 1. The Commission shall meet at least once every calendar  
8 quarter. The Commission shall elect, at the initial meeting of the  
9 Commission, a chair, a vice-chair and a secretary-treasurer. At the  
10 first meeting in each fiscal year thereafter, the Commission shall  
11 elect a chair, vice-chair and secretary-treasurer for the ensuing  
12 year. In addition, at the first meeting of the fiscal year, the  
13 Commission shall discuss any new policy and review policies of the  
14 Commission, provide for public input, recommend changes for  
15 implementation and modification of the Oklahoma Grape Resources and  
16 Wine Production Act.

17 2. All of the meetings of the Commission shall be held within  
18 Oklahoma, as necessary, at a place and time to be fixed by the  
19 Commission. Special meetings may be called by the chair or by five  
20 members of the Commission by delivery of written notice to each  
21 member of the Commission.

22 3. Five members of the Commission shall constitute a quorum.

1 G. Except as otherwise provided by this subsection, Commission  
2 members shall not receive any compensation, but shall be reimbursed  
3 in accordance with the provisions of the State Travel Reimbursement  
4 Act for all actual and necessary expenses incurred in the  
5 performance of the duties imposed upon the Commission pursuant to  
6 the Oklahoma Grape Resources and Wine Production Act. Members shall  
7 not be reimbursed for any expenses for travel outside the boundaries  
8 of the United States.

9 H. Any member of the Commission may be removed for cause by a  
10 two-thirds (2/3) vote of the other members of the Commission. In  
11 addition to all other causes, a member ceasing to comply with the  
12 qualifications for membership required by this section shall be  
13 sufficient cause for removal from office.

14 SECTION 4. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 18-350.4 of Title 2, unless  
16 there is created a duplication in numbering, reads as follows:

17 A. Pursuant to the Oklahoma Grape Resources and Wine Production  
18 Act, the Oklahoma Grape and Wine Commission shall have the power and  
19 duty to:

- 20 1. Elect officers to provide leadership and organization;
- 21 2. Call and conduct meetings as necessary in carrying out the
- 22 provisions of the Oklahoma Grape Resources and Wine Production Act;

1           3. Formulate basic objectives and the general policies and  
2 programs of the State of Oklahoma respecting the discovery,  
3 promotion, development of markets and industries for the utilization  
4 of grapes, grape juice or wine, providing for rural economic  
5 development and rural cultural preservation, and increasing and  
6 improving Oklahoma tourism relating to the grape and wine industry;  
7           4. Develop and approve a budget and other financial matters;  
8           5. Maintain and enforce provisions of the Oklahoma Grape  
9 Resources and Wine Production Act;  
10          6. Adopt, modify, repeal, promulgate, and enforce rules  
11 implementing or effectuating the powers and duties of the Commission  
12 pursuant to the provisions of the Oklahoma Grape Resources and Wine  
13 Production Act;  
14          7. Provide for and assess administrative penalties pursuant to  
15 the provisions of the Oklahoma Grape Resources and Wine Production  
16 Act;  
17          8. Provide for the collection of the assessment levied pursuant  
18 to the provisions of the Oklahoma Grape Resources and Wine  
19 Production Act including, but not limited to, procedures for  
20 collection and refund of the assessment. The Commission shall  
21 promulgate rules for any refund of the assessment deemed necessary  
22 by the Commission;

1           9. Institute or cause to be instituted any necessary legal  
2 proceedings in any court of competent jurisdiction for an injunction  
3 or other appropriate relief to enforce the provisions of the  
4 Oklahoma Grape Resources and Wine Production Act;

5           10. Conduct a campaign of viticulture and enology research,  
6 promotion of Oklahoma wine and Oklahoma grape products, Oklahoma  
7 agritourism and education;

8           11. Find new markets for Oklahoma grapes, for wine made in  
9 Oklahoma by Oklahoma wine makers, and for Oklahoma-grown grape and  
10 wine products;

11          12. Accept and apply for grants and donations;

12          13. Sue and be sued;

13          14. Appoint an Executive Director and such other personnel as  
14 are needed and to prescribe their duties and fix their compensation;

15          15. Conduct programs consistent with the Oklahoma Grape  
16 Resources and Wine Production Act;

17          16. Develop bylaws for the due and orderly administration of  
18 the affairs of the Commission and for its responsibilities specified  
19 pursuant to the provisions of the Oklahoma Grape Resources and Wine  
20 Production Act;

21          17. Advise, consult, and cooperate with agencies of this state  
22 and its political subdivisions, other states, the federal  
23 government, and with affected groups;

1        18. Collect and disseminate information relating to grapes,  
2 grape juice and wine production;

3        19. Contract with agencies of this state and its political  
4 subdivisions, other states, the federal government, and other  
5 organizations or persons to comply and fulfill its mission pursuant  
6 to the provisions of the Oklahoma Grape Resources and Wine  
7 Production Act;

8        20. Hold public hearings for any purposes consistent with the  
9 provisions of the Oklahoma Grape Resources and Wine Production Act;

10       21. Identify and coordinate industry-wide programs for grapes,  
11 grape juice and wine production resources, grapes, grape juice and  
12 wine market development, grapes, grape juice and wine promotion,  
13 tourism and rural economic development and rural cultural  
14 preservation, and education relating to grapes, grape juice and  
15 wine;

16       22. Seek information from grapes producers, grape juice and  
17 wine manufacturers and users for purposes of planning and  
18 prioritizing expenditures of Commission funds;

19       23. Protect or represent the best interests of the grapes  
20 producers, and grape juice and wine industry; conduct production,  
21 utilization, and policy research that affects the grapes producers,  
22 and grape juice and wine industry and benefits manufacturers'  
23 profitability; disseminate reliable information; cooperate with

1 agencies of this state and other states and governmental entities to  
2 implement joint programs; receive gifts and grants; and implement,  
3 or cause to be implemented, programs to increase the commercial  
4 value of Oklahoma grapes, grape juice and wine; and

5 24. Take any other actions deemed necessary by the Commission  
6 to implement the provisions of the Oklahoma Grape Resources and Wine  
7 Production Act.

8 B. In addition, the Commission shall:

9 1. Make available for inspections during an annual independent  
10 audit each fiscal year by a competent accountant or auditor, all  
11 books, records of account, and minutes of proceedings maintained by  
12 the Commission. The Commission shall provide to the Secretary of  
13 Agriculture a copy of the annual audit performed pursuant to this  
14 section;

15 2. Not later than forty-five (45) days after the last day of  
16 the fiscal year, submit to the Secretary of Agriculture a report  
17 itemizing all income and expenditures and describing all activities  
18 of the Commission during the fiscal year;

19 3. Provide surety bonds in amounts determined by the Department  
20 of Central Services for any members who handle funds for the  
21 Commission; and

1       4. Receive, hold in trust, and disburse all assessments and  
2 other funds collected pursuant to the Oklahoma Grape Resources and  
3 Wine Production Act as trust funds of the Commission.

4       C. Any funds received by the Commission pursuant to the  
5 provisions of the Oklahoma Grape Resources and Wine Production Act  
6 shall not be used, directly or indirectly, or as a result of  
7 contract or agreement, with other persons or organizations in  
8 supporting or opposing political candidates or political  
9 officeholders, either state or national.

10       D. 1. Except for instances of gross negligence, individual  
11 criminal actions, or acts of dishonesty, the Commission and  
12 employees of the Commission are not individually liable to a grapes  
13 producer, grape juice or wine manufacturer or other person for  
14 actions or omissions taken pursuant to the Oklahoma Grape Resources  
15 and Wine Production Act that are:

- 16           a. errors in judgment, or  
17           b. mistakes.

18       2. A member of the Commission is not individually liable for an  
19 act or omission of another member of the Commission.

20       SECTION 5.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 18-350.5 of Title 2, unless  
22 there is created a duplication in numbering, reads as follows:

1           A. Except for the appointed members, each member of the  
2 Oklahoma Grape and Wine Commission shall be elected by the grapes  
3 producers, and the grape juice and wine manufacturers in the  
4 district that the member represents. Each member will represent the  
5 district in which the member resides and produces grapes or  
6 manufactures grape juice or wine.

7           B. Any election of a member to the Commission shall be  
8 conducted pursuant to the procedures specified by the Oklahoma Grape  
9 Resources and Wine Production Act and by rules promulgated pursuant  
10 thereto.

11           C. 1. A grapes producer, or grape juice or wine manufacturer  
12 who desires to be a candidate for the Commission shall file a  
13 petition signed by the potential candidate and at least ten grapes  
14 producers, grape juice or wine manufacturers in the district with  
15 the Oklahoma Department of Agriculture, Food, and Forestry for the  
16 initial election and with the Commission for subsequent elections.  
17 Along with the petition, the potential candidate shall submit an  
18 application for the applicant's name to be placed on the ballot.  
19 The application must be:

- 20           a. filed not later than thirty (30) days before the date  
21               set for the election, and  
22           b. on a form approved by the Department for the initial  
23               election and approved by the Commission thereafter.

1           2. Upon receipt of an application and verification that the  
2 application meets the requirements of this section, an applicant's  
3 name shall be placed on the ballot for election to the Commission.

4           3.    a.    The election shall be preceded by at least thirty (30)  
5                    days' notice published in one or more newspapers  
6                    published and distributed in the established election  
7                    districts.

8                    b.    The notice shall be published not less than once a  
9                    week for two (2) consecutive weeks. The public notice  
10                   shall include the date, time, and polling places for  
11                   voting in the election and any other information  
12                   deemed necessary by the Department for the initial  
13                   election, and thereafter deemed necessary by the  
14                   Commission to inform grapes producers, grape juice and  
15                   wine manufacturers of the election.

16                   c.    In addition, two (2) weeks before the date of the  
17                   election, written notice shall be provided to each  
18                   county agent of the cooperative extension service and  
19                   each grapes producer and wine and grape juice  
20                   manufacturer location within the district in which the  
21                   election is to be held.

22           D.    1.    Each grapes producer, grape juice or wine manufacturer  
23 in the district who is actively engaged in the commercial production

1 of grapes, grape juice or wine in the current fiscal year of the  
2 calling of the election shall be entitled to vote in any election.  
3 The Department shall determine any questions of eligibility, by  
4 rule, to vote in the initial election. Thereafter, the Commission  
5 shall determine questions of eligibility to vote.

6 2. It shall be the responsibility of each grapes producer,  
7 grape juice or wine manufacturer to prove eligibility to vote.

8 E. The initial elections shall be held by August 1, 2004. The  
9 Department shall bear all reasonable expenses incurred in conducting  
10 the election of the initial Commission. All the expenses shall be  
11 approved by the President prior to being incurred. Thereafter, any  
12 expenses incurred as a result of an election shall be borne by the  
13 Commission from any funds available to the Commission.

14 F. 1. For initial elections, the President shall prepare and  
15 approve the form of the ballot, and thereafter the Commission shall  
16 prepare and approve the ballot.

17 2. Ballots shall be prepared and distributed at least fifteen  
18 (15) days in advance of the elections.

19 3. The election ballots shall be printed with the names of  
20 candidates who have filed valid petitions and applications pursuant  
21 to this section.

22 4. Each ballot shall clearly state any voter eligibility  
23 requirements.

1           5. The ballot shall require the signature and place of  
2 residence of the grapes producer, and grape juice or wine  
3 manufacturer voting in the election.

4           6. For the initial election, all prepared ballots shall be  
5 mailed or delivered by the Department in person to the county  
6 election boards in the districts in which the elections are to be  
7 held. Thereafter, the Commission shall determine the location of  
8 obtaining ballots.

9           7. Rules promulgated by the State Board of Agriculture for the  
10 initial elections, and by the Commission thereafter, shall be  
11 promulgated pursuant to Article I of the Administrative Procedures  
12 Act. The rules shall include, but not be limited to:

- 13           a. instructions to voters,
- 14           b. conduct of elections,
- 15           c. in-person absentee ballots,
- 16           d. a central location for mail-in ballots,
- 17           e. canvassing and reporting of returns, and
- 18           f. other information deemed necessary by the Department  
19                 for the initial election and thereafter by the  
20                 Commission.

21           8. Ballots must be postmarked no later than the date of the  
22 election.

1 G. 1. Ballots in all elections will be counted by a committee  
2 consisting of the Secretary of Commerce and Tourism or designee, a  
3 representative designated by the Oklahoma Department of Agriculture,  
4 Food, and Forestry, the Secretary of Agriculture for the initial  
5 election and a representative of the Oklahoma Grape and Wine  
6 Commission following election of the initial Commission.

7 2. The two candidates receiving the largest number of votes  
8 cast in the district election shall be elected to office. In case  
9 of a tie vote, the Secretary of Agriculture will cast the tie-  
10 breaking vote.

11 3. In all elections, results will be certified to the Secretary  
12 of Agriculture for verification for the initial election and  
13 thereafter to members of the Commission.

14 4. Any contest of the election or investigation arising out of  
15 the election shall be submitted in writing to the Department within  
16 thirty (30) days after the day the ballots are counted. An  
17 investigation shall be conducted by the Department.

18 5. The investigation and its findings shall be based upon, but  
19 not limited to, fraud, improper signatures, and misstated volumes of  
20 production.

21 6. If no contests or investigations arise out of the election,  
22 the Department shall destroy all ballots by shredding or burning and  
23 notify the organization by mail.

1 H. The Department for the initial election, and thereafter the  
2 Commission, shall maintain a list of qualified voters pursuant to  
3 the provisions of the Oklahoma Grape Resources and Wine Production  
4 Act.

5 SECTION 6. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 18-350.6 of Title 2, unless  
7 there is created a duplication in numbering, reads as follows:

8 A. 1. Beginning ninety (90) days after the election of the  
9 initial Oklahoma Grape and Wine Commission, at every sale or barter  
10 of grapes in commercial channels, there is hereby assessed a fee of  
11 Fifteen Dollars (\$15.00) per ton of grapes sold or bartered in  
12 Oklahoma in commercial channels whether grown in Oklahoma or in  
13 another state. The fee shall be assessed against the grapes  
14 producer or grapes seller at the time of sale or barter of the  
15 grapes. The assessment shall be collected by the first purchaser  
16 and shall be shown as a deduction by the first purchaser from the  
17 price paid or bartered in settlement to the grapes producer or grape  
18 seller whether the grapes were grown in Oklahoma or in another  
19 state.

20 2. Upon the sale or barter of a gallon of bottled wine or grape  
21 juice sold by an in-state or nonresident wine seller to an Oklahoma  
22 licensed distributor, there is hereby assessed a fee of ten cents  
23 (\$0.10) per gallon whether the wine or grape juice was manufactured

1 in Oklahoma or another state. Such assessment shall be assessed  
2 against the in-state or nonresident wine seller as the first  
3 purchaser of bottled wine manufactured in another state.

4 3. Upon the sale or barter of a gallon of bulk wine or grape  
5 juice manufactured by an Oklahoma licensed wine or grape juice  
6 manufacturer, there is hereby assessed a fee of ten cents (\$0.10)  
7 per gallon of wine or grape juice, whether the wine or grape juice  
8 was manufactured in Oklahoma or another state. The fee shall be  
9 assessed against the Oklahoma licensed wine or grape juice  
10 manufacturer as the first purchaser of bulk wine or grape juice  
11 manufactured in this state or another state.

12 B. 1. The Commission, by either registered or certified mail,  
13 shall notify each first purchaser who purchases or barterers for  
14 grapes, grape juice or wine through commercial channels of the duty  
15 to collect the assessment, the manner in which the assessment is to  
16 be collected, and the date on or after which the first purchaser is  
17 to begin collecting the assessment.

18 2. The amount of the assessment collected shall be clearly  
19 shown on the sales invoice or other document evidencing the sale or  
20 barter of the grapes, grape juice and wine.

21 3. The Commission shall establish, by rule, the procedures for  
22 the collection and remittance of the assessment.

1 SECTION 7. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 18-350.7 of Title 2, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. 1. The first purchaser shall render and file a report along  
5 with remittance of the assessment collected pursuant to the Oklahoma  
6 Grape Resources and Wine Production Act to the Oklahoma Tax  
7 Commission at the same time and in the same manner as required for  
8 the payment of Oklahoma excise tax.

9 2. The Oklahoma Tax Commission and the Oklahoma Grape and Wine  
10 Commission shall cooperate in the development and preparation of any  
11 forms and instructions necessary to comply with the provisions of  
12 this subsection.

13 3. The report shall include the total amount of fees collected  
14 by the first purchaser, the total amount of grapes, grape juice or  
15 wine purchased or bartered and other information as may be required  
16 by the Oklahoma Grape and Wine Commission.

17 B. 1. If the first purchaser fails to make a report and  
18 remittance as required by the Oklahoma Grape Resources and Wine  
19 Production Act, the Commission shall determine the amount collected  
20 and owed by the first purchaser, which shall be prima facie correct.

21 2. Any first purchaser having failed to make the report as  
22 required by the Oklahoma Grape Resources and Wine Production Act  
23 shall, within ten (10) days after notice of the computed collection

1 amount established by the Commission is mailed to the first  
2 purchaser, pay the computed collection amount, together with a  
3 penalty of five percent (5%) of the computed collection amount.

4 3. The first purchaser may dispute the computed collection  
5 amount established by the Commission and request the Commission to  
6 hold a hearing to redetermine the amount of the computed collection  
7 and the penalty to be imposed.

8 4. No payment shall be made until the Commission enters its  
9 final order determining the amount of payment. The payment of the  
10 determined collection amount and penalty shall be paid within ten  
11 (10) days of notice of the decision.

12 C. The Oklahoma Tax Commission shall submit a monthly report to  
13 the Commission detailing the name, address and excise tax paid and  
14 assessment collected on the sale of wine required by law and the  
15 assessment paid upon the sale or barter of grapes and grape juice.

16 D. At any time the State Auditor and Inspector may request an  
17 audit of the first purchaser to determine whether the collection and  
18 proper disposition of the collected assessment were made pursuant to  
19 the provisions of the Oklahoma Grape Resources and Wine Production  
20 Act and rules promulgated thereto.

21 E. The first purchaser shall retain any records or reports  
22 relating to the collection of the assessment for at least three (3)  
23 years.

1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 18-350.8 of Title 2, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. 1. The chair of the Oklahoma Grape and Wine Commission  
5 shall make an annual report to the Governor, within forty-five (45)  
6 days after June 30 of each year, showing in detail all income and  
7 expenditures and any other facts relevant to the Oklahoma Grape  
8 Resources and Wine Production Act.

9 2. The annual report shall include a list of all officers and  
10 any employees of the Commission and shall indicate the official  
11 positions of officers and any employees and salaries paid.

12 B. The report shall be available to the public. A copy shall  
13 be sent upon request to any grapes producer, and any grape juice or  
14 wine manufacturer upon whom the assessment is assessed.

15 C. All records of the Commission shall be kept at least three  
16 (3) years.

17 SECTION 9. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 18-350.9 of Title 2, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. There is created the Oklahoma Grape and Wine Fund. The  
21 Oklahoma Grape and Wine Fund shall be administered by the Oklahoma  
22 Grape and Wine Commission for the benefit of the grapes producers,  
23 and grape juice and wine manufacturers in this state for the

1 purposes specified by the Oklahoma Grape Resources and Wine  
2 Production Act. The Oklahoma Grape and Wine Fund shall be  
3 established and maintained in a bank or other depository as approved  
4 by the Commission and the State Treasurer.

5 B. The Oklahoma Grape and Wine Fund shall consist of:

6 1. All monies received by the Commission as proceeds from the  
7 assessment imposed pursuant to the Oklahoma Grape Resources and Wine  
8 Production Act;

9 2. Interest attributable to investment of money in the Oklahoma  
10 Grape and Wine Fund; and

11 3. Monies received by the Commission in the form of gifts,  
12 grants, reimbursements, or from any other source designated by law  
13 for deposit to the Oklahoma Grape and Wine Fund.

14 C. Any costs incurred by the Commission pursuant to the  
15 provisions of the Oklahoma Grape Resources and Wine Production Act  
16 shall not exceed the actual collections of the Commission.

17 D. Monies in the Oklahoma Grape and Wine Fund shall only be  
18 expended for:

19 1. Implementation and management of the Oklahoma Grape  
20 Resources and Wine Production Act; and

21 2. Costs incurred by the Commission for the administration of  
22 the Oklahoma Grape Resources and Wine Production Act.

1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 18-350.10 of Title 2, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. Any person who has been determined by the Commission to have  
5 violated any provisions of the Oklahoma Grape Resources and Wine  
6 Production Act shall be liable for an administrative penalty of not  
7 more than Five Hundred Dollars (\$500.00) for each day that the  
8 violation continues. The maximum administrative penalty shall not  
9 exceed, for any related series of violations, the total value of the  
10 products upon which the assessment was based including court and  
11 administrative costs.

12 B. 1. The amount of the penalty shall be assessed by the  
13 Commission pursuant to the provisions of subsection A of this  
14 section, after notice and hearing. In determining the amount of the  
15 penalty, the Commission shall include but not be limited to  
16 consideration of the nature, circumstances, and gravity of the  
17 violation and, with respect to the person found to have committed  
18 the violation, the degree of culpability, the effect on ability of  
19 the person to continue to do business, and any show of good faith in  
20 attempting to achieve compliance with the provisions of the Oklahoma  
21 Grape Resources and Wine Production Act.

22 2. All penalties collected pursuant to the provisions of this  
23 subsection shall be deposited in the Oklahoma Grape and Wine Fund.

1 C. The Commission may request the Attorney General to bring an  
2 action in a court of competent jurisdiction for equitable relief to  
3 redress or restrain a violation by any person of a provision of the  
4 Oklahoma Grape Resources and Wine Production Act.

5 SECTION 11. It being immediately necessary for the preservation  
6 of the public peace, health and safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-23-04 - DO PASS,  
10 As Amended and Coauthored.