

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE JOINT
4 RESOLUTION 35

By: Jolley

5
6 AS INTRODUCED

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8 A Joint Resolution directing the Secretary of State
9 to refer to the people for their approval or
10 rejection a proposed amendment to the Oklahoma
11 Constitution, by repealing Section 2 of Article
12 XXVIII, which relates to the constitutional exemption
13 for beer and cereal malt beverages containing not
14 more than three and two-tenths percent (3.2%) of
15 alcohol by weight, adding a new Section 2a to Article
16 XXVIII, and amending Section 3 of Article XXVIII;
17 granting authority to the Alcoholic Beverage Laws
18 Enforcement Commission to enforce laws for all
19 alcoholic beverages; defining spirits, wine and beer;
20 deleting a manufacturer who markets or distributes
21 product through a brewer from the mandatory sale of
22 product to wholesalers and distributors; providing
23 ballot title; ordering election; and directing
24 filing.

18 BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
19 1ST SESSION OF THE 53RD OKLAHOMA LEGISLATURE:

20 SECTION 1. The Secretary of State shall refer to the people for
21 their approval or rejection, as and in the manner provided by law,
22 the following proposed amendment to the Oklahoma Constitution, by
23 repealing Section 2 of Article XXVIII, adding a new Section 2a to
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1 Article XXVIII, and amending Section 3 of Article XXVIII, to read as
2 follows:

3 Section 2a. Notwithstanding any other provision of this
4 Constitution to the contrary, the Alcoholic Beverage Laws
5 Enforcement Commission shall have authority to enforce laws, rules
6 and regulations for the sale of all alcoholic beverages, including
7 spirits, wine and beer and every liquid, patented or not, containing
8 spirits, wine or beer and capable of being consumed as a beverage by
9 human beings.

10 As used in this article:

11 1. "Spirits" means any beverage other than wine or beer
12 containing more than one-half of one percent (1/2 of 1%) of alcohol
13 measured by volume and obtained by distillation but not including
14 any alcoholic liquid completely denatured in accordance with the
15 Acts of Congress and regulations pursuant thereto. The sale of
16 spirits shall be subject to the provisions of this Constitution.

17 2. "Wine" means any beverage containing more than one-half of
18 one percent (1/2 of 1%) of alcohol measured by volume and not more
19 than twenty-four percent (24%) alcohol by volume at sixty (60)
20 degrees Fahrenheit obtained by the fermentation of the natural
21 contents of fruits, vegetables, honey, milk or other products
22 containing sugar. The sale of wine shall be subject to the
23 provisions of this Constitution. Provided, however, nothing in this
24 Constitution shall prevent the sale of wine for off-premises

1 consumption, either refrigerated or unrefrigerated, in any
2 supermarket or other grocery, except a convenience store, as those
3 terms are defined by the 2007 North American Industry Classification
4 System, or in any package store as provided hereafter. Wine shall
5 not be sold, however, in any convenience store or gasoline station
6 with convenience store as those terms are defined by the 2007 North
7 American Industry Classification System.

8 3. "Beer" means any beverage containing more than one-half of
9 one percent (1/2 of 1%) of alcohol measured by volume and obtained
10 by the alcoholic fermentation of an infusion or decoction of barley,
11 or other grain, malt or similar products. The Legislature shall
12 enact laws providing for the strict regulation, control, licensing,
13 and taxation of the manufacture, sale, distribution, possession, and
14 transportation of beer. Provided, however, nothing in this
15 Constitution or other law shall prevent the sale of beer for off-
16 premises consumption, either refrigerated or unrefrigerated, in any
17 supermarket or other grocery store, convenience store or gasoline
18 station with convenience store as those terms are defined by the
19 2007 North American Industry Classification System, including sales
20 on Sundays or, subject to the limitations in Section 6 of this
21 Article, in any package store.

22 Section 3. A. The Legislature shall enact laws providing for
23 the strict regulation, control, licensing, and taxation of the
24 manufacture, sale, distribution, possession, and transportation of

1 alcoholic beverages, consistent with the provisions of this
2 Amendment. Provided, that any manufacturer, or subsidiary of any
3 manufacturer, who markets his or her product solely through a
4 subsidiary or subsidiaries, a distiller, rectifier, bottler,
5 winemaker, ~~brewer~~, or importer of alcoholic beverages, bottled or
6 made in a foreign country, either within or without this state,
7 shall be required to sell such brands or kinds of alcoholic
8 beverages to every licensed wholesale distributor who desires to
9 purchase the same, on the same price basis and without
10 discrimination, and shall further be required to sell such beverages
11 only to those distributors licensed as wholesale distributors.
12 Winemakers either within or without this state shall be required to
13 sell wine they produce to every licensed wholesale distributor who
14 desires to purchase the wine, but winemakers shall not be required
15 to sell the wine they produce only to licensed wholesale
16 distributors. Winemakers either within or without this state may
17 sell wine produced at the winery to adult consumers who are at least
18 twenty-one (21) years of age and are physically present on the
19 premises of the winery or at a festival or trade show. Winemakers
20 either within or without this state that annually produce no more
21 than ten thousand (10,000) gallons of wine may sell and ship only
22 the wine they produce directly to licensed retail package stores and
23 restaurants in this state; provided, however, that any such
24 winemaker which elects to directly sell its wine to package stores

1 and restaurants shall not also use a licensed wholesale distributor
2 as a means of distribution, and shall be required to sell its wines
3 to every package store and restaurant licensee who desires to
4 purchase the same, as supplies allow, on the same price basis and
5 without discrimination. As used in this section, "restaurant" means
6 an establishment that is licensed to sell alcoholic beverages by the
7 individual drink for on-premises consumption and where food is
8 prepared and sold for immediate consumption on the premises.

9 B. Any winemaker within or without this state that annually
10 produces no more than ten thousand (10,000) gallons of wine and
11 elects to directly sell its wine to retail package stores and
12 restaurants in this state must self-distribute the wine using only
13 vehicle(s) owned or leased by the winemaker, and without the use of
14 a common or private contract carrier.

15 C. All laws passed by the Legislature under the authority of
16 the Article shall be consistent with this provision. All provisions
17 of this amendment are declared to be interdependent. If any
18 provision of this amendment applicable to winemakers is ruled to be
19 unconstitutional by a court of competent jurisdiction, then no
20 winemaker shall be permitted to directly sell its wine to retail
21 package stores or restaurants in this state.

22 SECTION 2. The Ballot Title for the proposed Constitutional
23 amendment as set forth in SECTION 1 of this resolution shall be in
24 the following form:

BALLOT TITLE

Legislative Referendum No. _____ State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure amends the State Constitution. It repeals Section 2, adds a new Section 2a, and amends Section 3 of Article 28.

It allows the ABLE Commission to enforce laws for all alcoholic beverages. It defines alcoholic beverages to include spirits, wine and beer. Spirits contain more than one-half of one percent (1/2 of 1%) of alcohol but is not wine or beer. Wine contains more than one-half of one percent (1/2 of 1%) and not more than twenty-four percent (24%) of alcohol at sixty degrees Fahrenheit. Wine must be fermented from fruits or vegetables. Beer contains more than one-half of one percent (1/2 of 1%) alcohol by volume. Beer is fermented from barley, grains or malts. A manufacturer that markets product through a brewer is not required to sell to all wholesalers and distributors.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL - YES _____

AGAINST THE PROPOSAL - NO _____

SECTION 3. An election is hereby ordered to be held throughout the State of Oklahoma on the date of the Presidential Election in November 2012, at which time the proposed amendment to the Oklahoma Constitution, as set forth in SECTION 1 of this resolution, shall be

1 submitted to the people of Oklahoma for their approval or rejection
2 as and in the manner provided by law.

3 SECTION 4. The President Pro Tempore of the Senate shall,
4 immediately after the passage of this resolution, prepare and file
5 one copy thereof, including the Ballot Title set forth in SECTION 2
6 hereof, with the Secretary of State and one copy with the Attorney
7 General.

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