ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE JOINT
RESOLUTION NO. 68

By: Jolley, Bingman and Bice of the Senate

and

Mulready of the House

A Joint Resolution directing the Secretary of State to refer to the people for their approval or rejection a proposed amendment to add a new Article XXVIIIA to the Oklahoma Constitution, and to repeal Sections 1, 1.A, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Article XXVIII of the Oklahoma Constitution, which relate to alcoholic beverages; providing that all beverages containing alcohol be subject to Article and applicable laws; requiring Legislature to enact laws regulating alcoholic beverages subject to certain provisions; prohibiting certain common ownership; providing exceptions; providing for automatic conversion and cessation of certain licenses; allowing continuation of certain operations for certain time period; authorizing enactment of certain legislation; specifying conditions of certain divesture; stating restrictions applicable to manufacturers, brewers, wholesalers and winemakers; requiring certain sales to be made on same price basis and without discrimination; prohibiting direct shipments of alcoholic beverages except under certain circumstances; prohibiting certain sales if provisions ruled unconstitutional; providing for certain licenses and setting forth restrictions thereon; defining term; prohibiting licensure of certain persons; providing exceptions; allowing license holders to enter into certain agreements; providing exceptions; specifying unlawful acts; requiring Legislature to designate days and hours of sales; providing for taxation of alcoholic beverage sales; prohibiting state or political subdivisions from engaging in alcoholic beverage business; providing exceptions; authorizing certain cities and

towns to levy occupation tax; providing effective dates; providing ballot title; and directing filing.

AMENDMENT NO. 1: Page 1, Line 6 1/2 though 23 1/2, strike the title to read

"[Constitutional amendment - repealing sections in Article XXVIII of Oklahoma Constitution - ballot title]"

Adopted by the House of Representatives the 21st day of April, 2016.

_____
Presiding Officer of the House of Representatives

Adopted by the Senate the ___ day of _____, 2016.

_____
Presiding Officer of the Senate

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BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 55TH OKLAHOMA LEGISLATURE:

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided by law, the following proposed amendment to the Oklahoma Constitution by adding Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 to a new Article XXVIIIA to read as follows, and the repeal of Sections 1, 1.A, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Article XXVIII:

Section 1. All beverages that contain alcohol, unless otherwise defined by law, shall be considered alcoholic beverages by this state and therefore governed by this Article and all other applicable laws.

Section 2. A. The Legislature shall enact laws providing for the strict regulation, control, licensing and taxation of the manufacture, sale, distribution, possession, transportation and consumption of alcoholic beverages, consistent with the provisions of this Article. Provided:

1. a. there shall be prohibited any common ownership between the manufacturing, wholesaling and retailing tiers, unless otherwise permitted by this subsection. Following the effective date of this Article, brewers may obtain beer wholesaler licenses to distribute

beer, also known as brewery-owned branches, to up to two (2) territories within the state. Any brewery-owned branch in operation on the date of adoption of this Article may not expand its distribution territory that was in effect on the date of adoption of this Article. If a brewer maintained one or more licenses to distribute low-point beer in the state prior to the effective date of this Article, then up to two (2) of the brewer's low-point beer distribution licenses shall automatically convert to beer distribution licenses upon the effective date of this Article. All low-point distribution licenses shall cease to exist following this conversion date,

b. from the date of adoption of this Article by the voters until the effective date of this Article, brewers may continue to obtain and operate up to two (2) low-point beer brewery-owned branches pursuant to the existing low-point beer laws pertaining to the distribution of low-point beer by brewery-owned branches,

c. only after the effective date of this Article, the Legislature may duly enact legislation to require, by statute, the divestiture of all brewery-branches. If the Legislature requires brewers to divest, it must

require full divestiture of every brewery-owned branch in the state, and it shall allow brewers at least (1) year but no more than three (3) years to complete said divestiture. Except as provided in this subsection, and except for a small brewer as defined by law, no other member of one tier may own an interest in a business licensed in a different tier;

2. A manufacturer, except a brewer, shall not be permitted to sell alcoholic beverages in this state unless such sales occur through an Oklahoma wholesaler. A manufacturer, except a brewer, or subsidiary of any manufacturer, who markets his or her product solely through a subsidiary or subsidiaries, a distiller, rectifier, bottler, winemaker or importer of alcoholic beverages, bottled or made in a foreign country, either within or without this state, may sell such brands or kinds of alcoholic beverages to any licensed wholesaler who desires to purchase the same. Provided, if a manufacturer, except a brewer, elects to sell its products to multiple wholesalers, such sales shall be made on the same price basis and without discrimination to each wholesaler;

3. A brewer, with the exception of a small brewer as defined by law, shall not be permitted to sell beer in this state unless such sales occur through an Oklahoma licensed wholesaler pursuant to a wholesaler agreement and remain at-rest in the licensed wholesaler's warehouse for at least twenty-four (24) hours, unless the sale

occurs through a wholesaler that has obtained a hardship exception to this twenty-four-hour at-rest requirement. The wholesaler agreement shall designate the territory within which the beer will be sold exclusively by the wholesaler;

4. Winemakers either within or without this state may sell wine produced at their wineries to any licensed wholesaler who desires to purchase the wine; provided, that if a winemaker elects to sell the wine it produces to multiple wholesalers, then such sales shall be made on the same price basis and without discrimination to each wholesaler. In addition to its sales through one or more licensed wholesalers, a winemaker may be authorized to sell its wine as follows:

a. winemakers either within or without this state may sell wine produced at the winery to adult consumers who are at least twenty-one (21) years of age and are physically present on the premises of the winery or at a festival or trade show, and

b. winemakers either within or without this state that annually produce no more than fifteen thousand (15,000) gallons of wine may sell and ship only the wine they produce directly to licensed restaurants or other retail stores and outlets that may be from time to time authorized by the state to sell alcoholic beverages; provided, however, that any such winemaker

which elects to directly sell its wine under this subparagraph shall not also use a licensed wholesaler as a means of distribution, and shall be required to sell its wines to every restaurant and other retail store or outlet that may be from time to time authorized by the state to sell wine for off-premise consumption who desires to purchase the same, as supplies allow, on the same price basis and without discrimination. As used in this section, "restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premise consumption and where food is prepared and sold for immediate consumption on the premises. Any winemaker within or without this state that annually produces no more than fifteen thousand (15,000) gallons of wine and elects to directly sell its wine to restaurants and other retail stores and outlets that may be from time to time authorized by the state to sell wine for off-premise consumption must self-distribute the wine using only vehicle(s) owned or leased by the winemaker, and without the use of a common or private contract carrier.

All provisions of this paragraph are declared to be interdependent; and

5. Every wholesaler, except a beer wholesaler, must sell its products on the same price basis and without discrimination to all on-premise and off-premise licensees, unless otherwise provided by law. Every beer wholesaler must sell its beer to all on-premise licensees on the same price basis and without discrimination and to all off-premise licensees on the same price basis within a particular county and without discrimination. Every wholesaler must receive payment in full upon receipt of the alcoholic beverage by all on-premise and off-premise licensees. It shall be unlawful for any wholesaler to grant to any member of the retail tier, directly or indirectly, any credit, loan, discount, rebate, free goods, allowance or other inducement not otherwise expressly permitted by state law.

B. No alcoholic beverage shall be shipped directly to a consumer from a manufacturer within or without the state, unless such shipment has been authorized by law. Provided, if direct shipment is authorized by law, it shall be limited to the direct shipment of wine by wineries within or without the state who have secured all necessary permits and remitted all necessary taxes as prescribed by the state, to Oklahoma residents:

a. who are at least twenty-one (21) years of age,

b. who intend the wine for personal use and not for resale,

c. who will not receive by direct shipment more than six (6) nine-liter cases of wine from any single winery per year, and

d. who will not receive by direct shipment more than thirty (30) nine-liter cases of wine per year.

C. All laws passed by the Legislature under the authority of the Article shall be consistent with the provisions of this section. If any provision of this Article applicable to winemakers is ruled to be unconstitutional by a court of competent jurisdiction, then no winemaker shall be permitted to directly sell its wine to restaurants or other retail stores and outlets that may be from time to time authorized by the state to sell wine for off-premise consumption or to consumers in this state.

Section 3. A. The Legislature shall, by law, prescribe a set of licenses for the sale of alcoholic beverages to consumers for off-premise consumption, which shall include but not be limited to:

1. A Retail Spirits License, which shall be required in order to sell the following:

a. spirits in their original sealed package, and/or

b. refrigerated and non-refrigerated wine and beer in their original sealed package.

A holder of a Retail Spirits License shall be permitted to sell at retail any item that may be purchased at a grocery store or convenience store, as defined by law, so long as the sale of items

other than alcoholic beverages do not comprise more than twenty percent (20%) of the holder's monthly sales;

2. A Retail Wine License, which shall be required in order to sell refrigerated or non-refrigerated wine in the original sealed package. Retail Wine Licenses may be owned without limitation on number by retail locations; and

3. A Retail Beer License, which shall be required in order to sell refrigerated or non-refrigerated beer in the original sealed package. Retail Beer Licenses may be owned without limitation on number by retail locations.

B. As used in this section, the term "retail location" shall include but not be limited to:

1. Supermarkets, grocery stores, convenience stores, drug stores, warehouse clubs and supercenters as defined by law; and/or

2. Retail outlets which were authorized to legally sell low point beer as of the effective date of this section.

C. The Legislature shall, by law, prescribe a set of licenses for the sale of alcoholic beverages to consumers for on-premise consumption, which may include the sale of spirits, wine and/or beer, provided that such sales of alcoholic beverages by the individual drink have been authorized by the voters in the specific county where the alcoholic beverages are sold, either prior to or after the enactment of this Article.

Section 4. A. A Retail Spirits License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement. A Retail Spirits License shall not be issued to a corporation, limited liability company or similar business entity, and no person shall have an ownership interest in more than two (2) Retail Spirits Licenses.

B. A Wine and Spirits Wholesaler's License shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement, except as otherwise provided in this section. A Wine and Spirits Wholesaler's License shall not be issued to a corporation, limited liability company or similar business entity, except as otherwise provided in this section.

C. The holder of a license specified in subsection B of this section may enter into an agreement with a corporation, limited liability company or similar business entity that would otherwise be prohibited from obtaining a license in this state under this section, provided that the corporation, limited liability company or similar business entity:

1. Has operated as the holder of a substantially equivalent license in another state for at least one (1) year immediately preceding its application to be added as a corporate partner;

2. Will actively participate in the day-to-day operations of the license holder;

3. Will secure all necessary permits with the state; and

4. Will not maintain more than a fifty percent (50%) equity interest in the license holder at any time.

D. The provisions of subsection B of this section shall not apply to beer wholesalers. A wholesaler of beer shall not be subject to any residency requirements and shall not be limited in the types of entities which may own such wholesalers.

E. The State of Oklahoma shall not issue a license to any person who has been convicted of a felony, or to any entity if any individual, partner, director or officer who maintains an ownership interest in the entity, has been convicted of a felony, unless otherwise provided by law.

Section 5. A. It shall be unlawful for any licensee to sell or furnish any alcoholic beverage to:

1. A person under twenty-one (21) years of age;

2. A person who has been adjudged insane or mentally deficient; or

3. A person who is intoxicated.

B. It shall be unlawful for any person under the age of twenty-one (21) years to misrepresent his or her age, for the purpose of obtaining the purchase of any alcoholic beverage.

C. The Legislature shall, by law, provide penalties for violations of the provisions of this section.

Section 6. The Legislature shall, by law, designate the specific days, hours and holidays on which alcoholic beverages may be sold or served to consumers for off-premise and/or on-premise consumption.

Section 7. The retail sale of alcoholic beverages shall be subject to the sales tax laws enacted by the Legislature and in addition thereto the Legislature may levy taxes upon the manufacture, possession and/or all sales of alcoholic beverages, including sales by any entity that sells alcoholic beverages to consumers for off-premise and/or on-premise consumption, the proceeds of which, except sales tax, shall be distributed provided by law.

Section 8. The State of Oklahoma, or any political subdivision thereof, or any board, commission or agency thereof, is hereby prohibited from engaging in any phase of the alcoholic beverage business, including the manufacture, sale, transportation or distribution thereof, at wholesale or retail, and the maintenance, ownership or operation of warehouses or alcoholic beverage stores; except that if the voters of a county in which a state lodge is

located approve retail sale of alcoholic beverages by the individual drink for on-premises consumption, and if the State Legislature enacts legislation approving such sales in any such lodges located in any such counties, then such sales are authorized. The Legislature may enact laws restricting the involvement of officers and employees of the state and political subdivisions thereof in the alcoholic beverage business.

Provided, that nothing herein shall prohibit the sale of alcoholic beverages legally confiscated as provided by law.

Section 9. Incorporated cities and towns wherein the sale of alcoholic beverages is lawful, may levy an occupation tax, not exceeding the amount of the State license fees, for the manufacture, distribution or sale of alcoholic beverages.

Section 10. The provisions of this Article, except for subparagraph b of paragraph 1 of subsection A of Section 2, shall become effective on October 1, 2018. The provisions of subparagraph b paragraph 1 of subsection A of Section 2 shall become effective upon certification of election returns favoring passage of the Constitutional Amendment set forth in this resolution.

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

BALLOT TITLE

Legislative Referendum No. ____ State Question No. ____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure enacts Article 28A and repeals Article 28 of the Oklahoma Constitution. Beverages that contain alcohol are governed by the new Article and other laws. It requires the Legislature to enact laws to regulate alcoholic beverages. Common ownership between tiers of the alcoholic beverage business is prohibited, with some exceptions. Some restrictions apply to manufacturers, brewers, winemakers and wholesalers. Direct shipments to consumers are prohibited unless direct shipments of wine are authorized by law, subject to limitations. Licenses to sell wine, beer and spirits at retail locations are required. The Legislature could prescribe other licenses. Sales of wine and beer are permitted at certain licensed retail locations. Licensees may sell refrigerated or non-refrigerated products, and Retail Spirits Licensees may sell products other than alcoholic beverages in a limited amount. Certain persons are prohibited from being licensed. Certain acts are made unlawful. The Legislature could by law, designate days and hours during which alcoholic beverages could be sold, and impose taxes on sales. Certain restrictions relating to the involvement of the state and political subdivisions and public employees are specified. Municipalities could also levy an occupation tax. The amendment will be effective October 1, 2018, with one provision becoming effective upon passage.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL — YES _____

AGAINST THE PROPOSAL — NO _____

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

Passed the Senate the 1st day of March, 2016.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2016.

_____
Presiding Officer of the House of Representatives