

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE FOR
SENATE JOINT
RESOLUTION 68

By: Jolley, Bingman and Bice

COMMITTEE SUBSTITUTE

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 XXVIII A 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; 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; providing an effective date; providing ballot title; and directing filing.

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

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

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

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

18 1. There shall be prohibited any common ownership between the
19 manufacturing, wholesaling and retailing tiers, unless otherwise
20 permitted by this subsection. A brewery may, following adoption of
21 this Article, maintain or obtain licenses to distribute beer to no
22 more than two (2) territories within the state, also known as
23 brewery-owned branches. However, the brewery must divest itself of
24 all brewery-owned branches within five (5) years following adoption

1 of this Article. Any brewery-owned branch in operation on the date
2 of adoption of this Article may not expand its distribution
3 territory beyond the distribution territory that was in effect on
4 the date of adoption of this Article. No other member of one tier
5 may own an interest in a business licensed in a different tier;

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

18 3. A brewer, with the exception of a small brewer as defined by
19 law, shall not be permitted to sell beer in this state unless such
20 sales occur through an Oklahoma licensed wholesaler pursuant to a
21 wholesaler agreement and remain at-rest in the licensed wholesaler's
22 warehouse for at least twenty-four (24) hours, unless the sale
23 occurs through a wholesaler that has obtained a hardship exception
24 to this twenty-four-hour at-rest requirement. The wholesaler

1 agreement shall designate the territory within which the beer will
2 be sold exclusively by the wholesaler;

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

- 11 a. winemakers either within or without this state may
12 sell wine produced at the winery to adult consumers
13 who are at least twenty-one (21) years of age and are
14 physically present on the premises of the winery or at
15 a festival or trade show, and
- 16 b. winemakers either within or without this state that
17 annually produce no more than fifteen thousand
18 (15,000) gallons of wine may sell and ship only the
19 wine they produce directly to licensed restaurants or
20 other retail stores and outlets that may be from time
21 to time authorized by the state to sell alcoholic
22 beverages; provided, however, that any such winemaker
23 which elects to directly sell its wine under this
24 subparagraph shall not also use a licensed wholesaler

1 as a means of distribution, and shall be required to
2 sell its wines to every restaurant and other retail
3 store or outlet that may be from time to time
4 authorized by the state to sell wine for off-premise
5 consumption who desires to purchase the same, as
6 supplies allow, on the same price basis and without
7 discrimination. As used in this section, "restaurant"
8 means an establishment that is licensed to sell
9 alcoholic beverages by the individual drink for on-
10 premise consumption and where food is prepared and
11 sold for immediate consumption on the premises. Any
12 winemaker within or without this state that annually
13 produces no more than fifteen thousand (15,000)
14 gallons of wine and elects to directly sell its wine
15 to restaurants and other retail stores and outlets
16 that may be from time to time authorized by the state
17 to sell wine for off-premise consumption must self-
18 distribute the wine using only vehicle(s) owned or
19 leased by the winemaker, and without the use of a
20 common or private contract carrier.

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

23 5. Every wholesaler, except a beer wholesaler, must sell its
24 products on the same price basis and without discrimination to all

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

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

- 17 a. who are at least twenty-one (21) years of age,
- 18 b. who intend the wine for personal use and not for
19 resale,
- 20 c. who will not receive by direct shipment more than six
21 (6) nine-liter cases of wine from any single winery
22 per year, and
- 23 d. who will not receive by direct shipment more than
24 thirty (30) nine-liter cases of wine per year.

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

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

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

- 14 a. spirits in their original sealed package, and/or
- 15 b. refrigerated and non-refrigerated wine and beer in
16 their original sealed package.

17 A holder of a Retail Spirits License shall be permitted to sell
18 at retail any item that may be purchased at a grocery store or
19 convenience store, as defined by law, so long as the sale of items
20 other than alcoholic beverages do not comprise more than twenty
21 percent (20%) of the holder's monthly sales;

22 2. A Retail Wine License, which shall be required in order to
23 sell refrigerated or non-refrigerated wine in the original sealed
24

1 package. Retail Wine Licenses may be owned without limitation on
2 number by retail locations; and

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

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

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

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

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

20 Section 4. A. A Retail Spirits License shall only be issued to
21 a sole proprietor who has been a resident of this state for at least
22 five (5) years immediately preceding the date of application for
23 such license, or a partnership in which all the partners have
24 satisfied the same residency requirement. A Retail Spirits License

1 shall not be issued to a corporation, limited liability company or
2 similar business entity, and no person shall have an ownership
3 interest in more than two (2) Retail Spirits Licenses.

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

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

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

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

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

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

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

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

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

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

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

16 or

17 3. A person who is intoxicated.

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

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

23 Section 6. The Legislature shall, by law, designate the
24 specific days, hours and holidays on which alcoholic beverages may

1 be sold or served to consumers for off-premise and/or on-premise
2 consumption.

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

11 Section 8. The State of Oklahoma, or any political subdivision
12 thereof, or any board, commission or agency thereof, is hereby
13 prohibited from engaging in any phase of the alcoholic beverage
14 business, including the manufacture, sale, transportation or
15 distribution thereof, at wholesale or retail, and the maintenance,
16 ownership or operation of warehouses or alcoholic beverage stores;
17 except that if the voters of a county in which a state lodge is
18 located approve retail sale of alcoholic beverages by the individual
19 drink for on-premises consumption, and if the State Legislature
20 enacts legislation approving such sales in any such lodges located
21 in any such counties, then such sales are authorized. The
22 Legislature may enact laws restricting the involvement of officers
23 and employees of the state and political subdivisions thereof in the
24 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 2. The provisions of this amendment, as set forth in Section 1 of this resolution, shall become effective on October 1, 2018.

SECTION 3. The Ballot Title for the proposed Constitutional amendment as set forth in SECTIONS 1 and 2 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 new sections and repeals Sections 1, 1.A, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Article 28 of the Oklahoma Constitution. Beverages that contain alcohol would be governed by the new Article and other laws. It would require the Legislature to enact laws to regulate alcoholic beverages. Common ownership between tiers of the alcoholic beverage business would be prohibited, with some exceptions. Some restrictions would be applied to manufacturers, brewers, winemakers and wholesalers. Direct shipments to consumers would

1 be prohibited unless direct shipments of wine are authorized by
2 law, subject to limitations. Certain retail licenses are
3 specified. The Legislature would prescribe other licenses.
4 Sales of wine and beer would be permitted at certain licensed
5 retail outlets. Licensees could sell refrigerated or non-
6 refrigerated products, and Retail Spirits Licensees could sell
7 products other than alcoholic beverages in a limited amount.
8 Certain acts would be made unlawful. The Legislature would by
9 law designate days and hours during which alcoholic beverages
10 could be sold, and would impose taxes on sales. Certain
11 restrictions relating to the involvement of the state and
12 political subdivisions and public employees would be specified.
13 Municipalities could also levy an occupation tax. The amendment
14 would be effective October 1, 2018.

15 SHALL THE PROPOSAL BE APPROVED?

16 FOR THE PROPOSAL — YES _____

17 AGAINST THE PROPOSAL — NO _____

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

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