

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

☐ FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_

☐ COMMITTEE AMENDMENT

\_\_\_\_\_  
(Date)

Mr./Madame President:

I move to amend Senate Joint Resolution No. 68, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

\_\_\_\_\_  
Senator Jolley

Jolley-CD-FS-Req#3182  
2/29/2016 3:56 PM

(Floor Amendments Only)    Date and Time Filed: \_\_\_\_\_

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

FLOOR SUBSTITUTE  
FOR  
SENATE JOINT  
RESOLUTION NO. 68

By: Jolley, Bingman and Bice

FLOOR SUBSTITUTE

[ Joint Resolution - Oklahoma Constitution -  
beverages containing alcohol - manufacturers,  
brewers, wholesalers and winemakers - effective date  
- ballot title - filing ]

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  
XXVIII A 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.

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

6       1. a.       there shall be prohibited any common ownership  
7                   between the manufacturing, wholesaling and retailing  
8                   tiers, unless otherwise permitted by this subsection.  
9                   Following the effective date of this Article, brewers  
10                  may obtain beer wholesaler licenses to distribute  
11                  beer, also known as brewery-owned branches, to up to  
12                  two (2) territories within the state. Any brewery-  
13                  owned branch in operation on the date of adoption of  
14                  this Article may not expand its distribution  
15                  territory that was in effect on the date of adoption  
16                  of this Article. If a brewer maintained one or more  
17                  licenses to distribute low-point beer in the state  
18                  prior to the effective date of this Article, then up  
19                  to two (2) of the brewer's low-point beer  
20                  distribution licenses shall automatically convert to  
21                  beer distribution licenses upon the effective date of  
22                  this Article. All low-point distribution licenses  
23                  shall cease to exist following this conversion date,  
24

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

8           c.    only after the effective date of this Article, the  
9                Legislature may duly enact legislation to require, by  
10               statute, the divestiture of all brewery-branches. If  
11               the Legislature requires brewers to divest, it must  
12               require full divestiture of every brewery-owned branch  
13               in the state, and it shall allow brewers at least (1)  
14               year but no more than three (3) years to complete said  
15               divestiture. Except as provided in this subsection,  
16               and except for a small brewer as defined by law, no  
17               other member of one tier may own an interest in a  
18               business licensed in a different tier;

19        2.   A manufacturer, except a brewer, shall not be permitted to  
20   sell alcoholic beverages in this state unless such sales occur  
21   through an Oklahoma wholesaler. A manufacturer, except a brewer, or  
22   subsidiary of any manufacturer, who markets his or her product  
23   solely through a subsidiary or subsidiaries, a distiller, rectifier,  
24   bottler, winemaker or importer of alcoholic beverages, bottled or

1 made in a foreign country, either within or without this state, may  
2 sell such brands or kinds of alcoholic beverages to any licensed  
3 wholesaler who desires to purchase the same. Provided, if a  
4 manufacturer, except a brewer, elects to sell its products to  
5 multiple wholesalers, such sales shall be made on the same price  
6 basis and without discrimination to each wholesaler;

7 3. A brewer, with the exception of a small brewer as defined by  
8 law, shall not be permitted to sell beer in this state unless such  
9 sales occur through an Oklahoma licensed wholesaler pursuant to a  
10 wholesaler agreement and remain at-rest in the licensed wholesaler's  
11 warehouse for at least twenty-four (24) hours, unless the sale  
12 occurs through a wholesaler that has obtained a hardship exception  
13 to this twenty-four-hour at-rest requirement. The wholesaler  
14 agreement shall designate the territory within which the beer will  
15 be sold exclusively by the wholesaler;

16 4. Winemakers either within or without this state may sell wine  
17 produced at their wineries to any licensed wholesaler who desires to  
18 purchase the wine; provided, that if a winemaker elects to sell the  
19 wine it produces to multiple wholesalers, then such sales shall be  
20 made on the same price basis and without discrimination to each  
21 wholesaler. In addition to its sales through one or more licensed  
22 wholesalers, a winemaker may be authorized to sell its wine as  
23 follows:  
24

- 1           a.   winemakers either within or without this state may  
2               sell wine produced at the winery to adult consumers  
3               who are at least twenty-one (21) years of age and are  
4               physically present on the premises of the winery or at  
5               a festival or trade show, and
- 6           b.   winemakers either within or without this state that  
7               annually produce no more than fifteen thousand  
8               (15,000) gallons of wine may sell and ship only the  
9               wine they produce directly to licensed restaurants or  
10              other retail stores and outlets that may be from time  
11              to time authorized by the state to sell alcoholic  
12              beverages; provided, however, that any such winemaker  
13              which elects to directly sell its wine under this  
14              subparagraph shall not also use a licensed wholesaler  
15              as a means of distribution, and shall be required to  
16              sell its wines to every restaurant and other retail  
17              store or outlet that may be from time to time  
18              authorized by the state to sell wine for off-premise  
19              consumption who desires to purchase the same, as  
20              supplies allow, on the same price basis and without  
21              discrimination. As used in this section, "restaurant"  
22              means an establishment that is licensed to sell  
23              alcoholic beverages by the individual drink for on-  
24              premise consumption and where food is prepared and

1 sold for immediate consumption on the premises. Any  
2 winemaker within or without this state that annually  
3 produces no more than fifteen thousand (15,000)  
4 gallons of wine and elects to directly sell its wine  
5 to restaurants and other retail stores and outlets  
6 that may be from time to time authorized by the state  
7 to sell wine for off-premise consumption must self-  
8 distribute the wine using only vehicle(s) owned or  
9 leased by the winemaker, and without the use of a  
10 common or private contract carrier.

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

13 5. Every wholesaler, except a beer wholesaler, must sell its  
14 products on the same price basis and without discrimination to all  
15 on-premise and off-premise licensees, unless otherwise provided by  
16 law. Every beer wholesaler must sell its beer to all on-premise  
17 licensees on the same price basis and without discrimination and to  
18 all off-premise licensees on the same price basis within a  
19 particular county and without discrimination. Every wholesaler must  
20 receive payment in full upon receipt of the alcoholic beverage by  
21 all on-premise and off-premise licensees. It shall be unlawful for  
22 any wholesaler to grant to any member of the retail tier, directly  
23 or indirectly, any credit, loan, discount, rebate, free goods,  
24

1 allowance or other inducement not otherwise expressly permitted by  
2 state law.

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

- 10 a. who are at least twenty-one (21) years of age,
- 11 b. who intend the wine for personal use and not for  
12 resale,
- 13 c. who will not receive by direct shipment more than six  
14 (6) nine-liter cases of wine from any single winery  
15 per year, and
- 16 d. who will not receive by direct shipment more than  
17 thirty (30) nine-liter cases of wine per year.

18 C. All laws passed by the Legislature under the authority of  
19 the Article shall be consistent with the provisions of this section.  
20 If any provision of this Article applicable to winemakers is ruled  
21 to be unconstitutional by a court of competent jurisdiction, then no  
22 winemaker shall be permitted to directly sell its wine to  
23 restaurants or other retail stores and outlets that may be from time  
24



1 to time authorized by the state to sell wine for off-premise  
2 consumption or to consumers in this state.

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

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

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

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

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

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

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

24

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

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

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

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

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

22 B. A Wine and Spirits Wholesaler's License shall only be issued  
23 to a sole proprietor who has been a resident of this state for at  
24 least five (5) years immediately preceding the date of application

1 for such license, or a partnership in which all the partners have  
2 satisfied the same residency requirement, except as otherwise  
3 provided in this section. A Wine and Spirits Wholesaler's License  
4 shall not be issued to a corporation, limited liability company or  
5 similar business entity, except as otherwise provided in this  
6 section.

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

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

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

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

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

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

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

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

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

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

10 or

11 3. A person who is intoxicated.

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

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

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

21 Section 7. The retail sale of alcoholic beverages shall be  
22 subject to the sales tax laws enacted by the Legislature and in  
23 addition thereto the Legislature may levy taxes upon the  
24 manufacture, possession and/or all sales of alcoholic beverages,

1 including sales by any entity that sells alcoholic beverages to  
2 consumers for off-premise and/or on-premise consumption, the  
3 proceeds of which, except sales tax, shall be distributed provided  
4 by law.

5 Section 8. The State of Oklahoma, or any political subdivision  
6 thereof, or any board, commission or agency thereof, is hereby  
7 prohibited from engaging in any phase of the alcoholic beverage  
8 business, including the manufacture, sale, transportation or  
9 distribution thereof, at wholesale or retail, and the maintenance,  
10 ownership or operation of warehouses or alcoholic beverage stores;  
11 except that if the voters of a county in which a state lodge is  
12 located approve retail sale of alcoholic beverages by the individual  
13 drink for on-premises consumption, and if the State Legislature  
14 enacts legislation approving such sales in any such lodges located  
15 in any such counties, then such sales are authorized. The  
16 Legislature may enact laws restricting the involvement of officers  
17 and employees of the state and political subdivisions thereof in the  
18 alcoholic beverage business.

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

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

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

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

10                               BALLOT TITLE

11 Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

12 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

13       This measure enacts new sections and repeals Sections 1, 1.A, 2,  
14       3, 4, 5, 6, 7, 8, 9 and 10 of Article 28 of the Oklahoma  
15       Constitution. Beverages that contain alcohol would be governed  
16       by the new Article and other laws. It would require the  
17       Legislature to enact laws to regulate alcoholic beverages.  
18       Common ownership between tiers of the alcoholic beverage  
19       business would be prohibited, with some exceptions. Some  
20       restrictions would be applied to manufacturers, brewers,  
21       winemakers and wholesalers. Direct shipments to consumers would  
22       be prohibited unless direct shipments of wine are authorized by  
23       law, subject to limitations. Certain retail licenses are  
24       specified. The Legislature would prescribe other licenses.

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

13 SHALL THE PROPOSAL BE APPROVED?

14 FOR THE PROPOSAL — YES \_\_\_\_\_

15 AGAINST THE PROPOSAL — NO \_\_\_\_\_

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

21  
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