

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

February 17, 2016

COMMITTEE SUBSTITUTE FOR
SENATE JOINT
RESOLUTION NO. 68

By: Jolley, Bingman and Bice

[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 and 9 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.

Section 2. A. The Legislature shall enact laws providing for the strict regulation, control, licensing and taxation of the

1 manufacture, sale, distribution, possession, transportation and
2 consumption of alcoholic beverages, consistent with the provisions
3 of this Article. Provided:

4 1. There shall be prohibited any common ownership between the
5 manufacturing, wholesaling and retailing tiers, unless otherwise
6 permitted by this subsection. A brewery may, following adoption of
7 this Article, maintain or obtain licenses to distribute beer to no
8 more than two (2) territories within the state, also known as
9 brewery-owned branches. However, the brewery must divest itself of
10 all brewery-owned branches within five (5) years following adoption
11 of this Article. Any brewery-owned branch in operation on the date
12 of adoption of this Article may not expand its distribution
13 territory beyond the distribution territory that was in effect on
14 the date of adoption of this Article. No other member of one tier
15 may own an interest in a business licensed in a different tier;

16 2. A manufacturer, except a brewer, shall not be permitted to
17 sell alcoholic beverages in this state unless such sales occur
18 through an Oklahoma wholesaler. A manufacturer, except a brewer, or
19 subsidiary of any manufacturer, who markets his or her product
20 solely through a subsidiary or subsidiaries, a distiller, rectifier,
21 bottler, winemaker or importer of alcoholic beverages, bottled or
22 made in a foreign country, either within or without this state, may
23 sell such brands or kinds of alcoholic beverages to any licensed
24 wholesaler who desires to purchase the same. Provided, if a

1 manufacturer, except a brewer, elects to sell its products to
2 multiple wholesalers, such sales shall be made on the same price
3 basis and without discrimination to each wholesaler;

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

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

- 21 a. winemakers either within or without this state may
22 sell wine produced at the winery to adult consumers
23 who are at least twenty-one (21) years of age and are
24

1 physically present on the premises of the winery or at
2 a festival or trade show, and

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

1 gallons of wine and elects to directly sell its wine
2 to restaurants and other retail stores and outlets
3 that may be from time to time authorized by the state
4 to sell wine for off-premise consumption must self-
5 distribute the wine using only vehicle(s) owned or
6 leased by the winemaker, and without the use of a
7 common or private contract carrier.

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

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

22 B. No alcoholic beverage shall be shipped directly to a
23 consumer from a manufacturer within or without the state, unless
24 such shipment has been authorized by law. Provided, if direct

1 shipment is authorized by law, it shall be limited to the direct
2 shipment of wine by wineries within or without the state who have
3 secured all necessary permits and remitted all necessary taxes as
4 prescribed by the state, to Oklahoma residents:

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

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

21 Section 3. A. The Legislature shall, by law, prescribe a set
22 of licenses for the sale of alcoholic beverages to consumers for
23 off-premise consumption, which shall include but not be limited to:
24

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

- 3 a. spirits in their original sealed package, and/or
- 4 b. refrigerated and non-refrigerated wine and beer in
- 5 their original sealed package.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 E. The State of Oklahoma shall not issue a license to any
20 person who has been convicted of a felony, or to any entity if any
21 individual, partner, director or officer who maintains an ownership
22 interest in the entity, has been convicted of a felony, unless
23 otherwise provided by law.
24

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

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

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

6 3. A person who is intoxicated.

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

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

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

16 Section 7. The retail sale of alcoholic beverages shall be
17 subject to the sales tax laws enacted by the Legislature and in
18 addition thereto the Legislature may levy taxes upon the
19 manufacture, possession and/or all sales of alcoholic beverages,
20 including sales by any entity that sells alcoholic beverages to
21 consumers for off-premise and/or on-premise consumption, the
22 proceeds of which, except sales tax, shall be distributed provided
23 by law.
24

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

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

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

21 SECTION 2. The provisions of this amendment, as set forth in
22 Section 1 of this resolution, shall become effective on October 1,
23 2018.
24

1 SECTION 3. The Ballot Title for the proposed Constitutional
2 amendment as set forth in SECTIONS 1 and 2 of this resolution shall
3 be in the following form:

4 BALLOT TITLE

5 Legislative Referendum No. _____ State Question No. _____

6 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

7 This measure enacts new sections and repeals Sections 1, 1.A, 2,
8 3, 4, 5, 6, 7, 8, 9 and 10 of Article 28 of the Oklahoma
9 Constitution. Beverages that contain alcohol would be governed
10 by the new Article and other laws. It would require the
11 Legislature to enact laws to regulate alcoholic beverages.
12 Common ownership between tiers of the alcoholic beverage
13 business would be prohibited, with some exceptions. Some
14 restrictions would be applied to manufacturers, brewers,
15 winemakers and wholesalers. Direct shipments to consumers would
16 be prohibited unless direct shipments of wine are authorized by
17 law, subject to limitations. Certain retail licenses are
18 specified. The Legislature would prescribe other licenses.
19 Sales of wine and beer would be permitted at certain licensed
20 retail outlets. Licensees could sell refrigerated or non-
21 refrigerated products, and Retail Spirits Licensees could sell
22 products other than alcoholic beverages in a limited amount.
23 Certain acts would be made unlawful. The Legislature would by
24 law designate days and hours during which alcoholic beverages

1 could be sold, and would impose taxes on sales. Certain
2 restrictions relating to the involvement of the state and
3 political subdivisions and public employees would be specified.
4 Municipalities could also levy an occupation tax. The amendment
5 would be effective October 1, 2018.

6 SHALL THE PROPOSAL BE APPROVED?

7 FOR THE PROPOSAL — YES _____

8 AGAINST THE PROPOSAL — NO _____

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

14 COMMITTEE REPORT BY: COMMITTEE ON RULES
15 February 17, 2016 - DO PASS AS AMENDED
16
17
18
19
20
21
22
23
24