

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 16, 2016

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SJR 68

By: Jolley et al of the Senate and Mulready of the House

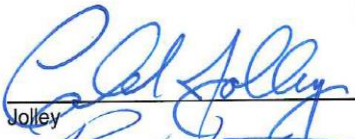
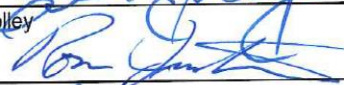
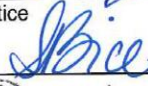
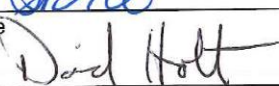
Title: Constitutional amendment; repealing sections in Article XXVIII; enacting new sections in Article XXVIII A; providing for regulation of alcoholic beverages. Ballot title.

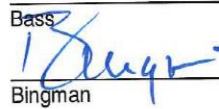
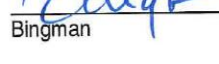
together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. The following conference committee amendment be adopted:
Page 13, line 2, by deleting the words "on-premises" and inserting the words "on-premise".

Respectfully submitted,

SENATE CONFEREES:


Jolley

Justice

Bice

Holt


Bass

Bingman
Floyd

HOUSE CONFEREES:
Conference Committee on Rules

Senate Action _____ Date _____ House Action _____ Date _____

epc

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE JOINT
RESOLUTION NO. 68

By: Jolley, Bingman and Bice of
the Senate

and

Mulready of the House

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

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

3
4 AMENDMENT NO. 1: Page 1, Line 6 1/2 though 23 1/2, strike the title
5 to read

6
7 "[Constitutional amendment - repealing sections in
8 Article XXVIII of Oklahoma Constitution - ballot
9 title]"

10
11 Adopted by the House of Representatives the 21st day of April,
12 2016.

13
14 _____
15 Presiding Officer of the House
of Representatives

16 Adopted by the Senate the ____ day of _____, 2016.

17
18 _____
19 Presiding Officer of the Senate

1 ENGROSSED SENATE
JOINT
2 RESOLUTION NO. 68

By: Jolley, Bingman and Bice of
the Senate

3
4 and

Mulready of the House
5

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7 A Joint Resolution directing the Secretary of State
to refer to the people for their approval or
8 rejection a proposed amendment to add a new Article
XXVIII A to the Oklahoma Constitution, and to repeal
9 Sections 1, 1.A, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of
Article XXVIII of the Oklahoma Constitution, which
10 relate to alcoholic beverages; providing that all
beverages containing alcohol be subject to Article
11 and applicable laws; requiring Legislature to enact
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22 from engaging in alcoholic beverage business;
providing exceptions; authorizing certain cities and
23 towns to levy occupation tax; providing effective
dates; providing ballot title; and directing filing.
24

1
2
3 BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
4 2ND SESSION OF THE 55TH OKLAHOMA LEGISLATURE:

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

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

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

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

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

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

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

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

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

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

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

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

- 13 a. winemakers either within or without this state may
14 sell wine produced at the winery to adult consumers
15 who are at least twenty-one (21) years of age and are
16 physically present on the premises of the winery or at
17 a festival or trade show, and
- 18 b. winemakers either within or without this state that
19 annually produce no more than fifteen thousand
20 (15,000) gallons of wine may sell and ship only the
21 wine they produce directly to licensed restaurants or
22 other retail stores and outlets that may be from time
23 to time authorized by the state to sell alcoholic
24 beverages; provided, however, that any such winemaker

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

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

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

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

- 21 a. who are at least twenty-one (21) years of age,
- 22 b. who intend the wine for personal use and not for
- 23 resale,
- 24

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

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

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

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

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

- 19 a. spirits in their original sealed package, and/or
20 b. refrigerated and non-refrigerated wine and beer in
21 their original sealed package.

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

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

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

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

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

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

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

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

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

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

18 C. The holder of a license specified in subsection B of this
19 section may enter into an agreement with a corporation, limited
20 liability company or similar business entity that would otherwise be
21 prohibited from obtaining a license in this state under this
22 section, provided that the corporation, limited liability company or
23 similar business entity:
24

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

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

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

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

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

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

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

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

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

22 or

23 3. A person who is intoxicated.

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

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

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

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

18 Section 8. The State of Oklahoma, or any political subdivision
19 thereof, or any board, commission or agency thereof, is hereby
20 prohibited from engaging in any phase of the alcoholic beverage
21 business, including the manufacture, sale, transportation or
22 distribution thereof, at wholesale or retail, and the maintenance,
23 ownership or operation of warehouses or alcoholic beverage stores;
24 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. _____

1 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

2 This measure enacts Article 28A and repeals Article 28 of the
3 Oklahoma Constitution. Beverages that contain alcohol are
4 governed by the new Article and other laws. It requires the
5 Legislature to enact laws to regulate alcoholic beverages.
6 Common ownership between tiers of the alcoholic beverage
7 business is prohibited, with some exceptions. Some restrictions
8 apply to manufacturers, brewers, winemakers and wholesalers.
9 Direct shipments to consumers are prohibited unless direct
10 shipments of wine are authorized by law, subject to limitations.
11 Licenses to sell wine, beer and spirits at retail locations are
12 required. The Legislature could prescribe other licenses.
13 Sales of wine and beer are permitted at certain licensed retail
14 locations. Licensees may sell refrigerated or non-refrigerated
15 products, and Retail Spirits Licensees may sell products other
16 than alcoholic beverages in a limited amount. Certain persons
17 are prohibited from being licensed. Certain acts are made
18 unlawful. The Legislature could by law, designate days and
19 hours during which alcoholic beverages could be sold, and impose
20 taxes on sales. Certain restrictions relating to the
21 involvement of the state and political subdivisions and public
22 employees are specified. Municipalities could also levy an
23 occupation tax. The amendment will be effective October 1,
24 2018, with one provision becoming effective upon passage.

1 SHALL THE PROPOSAL BE APPROVED?

2 FOR THE PROPOSAL — YES _____

3 AGAINST THE PROPOSAL — NO _____

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

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

10
11 _____
12 Presiding Officer of the Senate

13 Passed the House of Representatives the ____ day of _____,
14 2016.

15
16 _____
17 Presiding Officer of the House
18 of Representatives
19
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