

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE JOINT
RESOLUTION 33

By: Coleman

AS INTRODUCED

A Joint Resolution directing the Secretary of State to refer to the people for their approval or rejection a proposed amendment to Section 2 of Article XXVIII-A of the Constitution of the State of Oklahoma; providing that certain restrictions on manufacturers of alcoholic beverages shall not apply to small distillers; providing that the term "small distiller" shall be defined by law; updating statutory reference; providing ballot title; and directing filing.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
2ND SESSION OF THE 57TH 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 Section 2 of Article XXVIII-A of the Constitution of the State of Oklahoma to read as follows:

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

1 consumption of alcoholic beverages, consistent with the provisions
2 of this Article. Provided:

- 3 1. a. there shall be prohibited any common ownership between
4 the manufacturing, wholesaling and retailing tiers,
5 unless otherwise permitted by this subsection.

6 Following ~~the effective date of this Article~~ October
7 1, 2018, brewers may obtain beer wholesaler licenses
8 to distribute beer, also known as brewery-owned
9 branches, to up to two (2) territories within the
10 state. Any brewery-owned branch in operation on ~~the~~
11 ~~date of adoption of this Article~~ November 8, 2016, may
12 not expand its distribution territory that was in
13 effect on ~~the date of adoption of this Article~~
14 November 8, 2016. If a brewer maintained one or more
15 licenses to distribute low-point beer in the state
16 prior to ~~the effective date of this Article~~ October 1,
17 2018, then up to two (2) of the brewer's low-point
18 beer distribution licenses shall automatically convert
19 to beer distribution licenses upon ~~the effective date~~
20 ~~of this Article~~ October 1, 2018. All low-point
21 distribution licenses shall cease to exist following
22 this conversion date,

- 23 b. from ~~the date of adoption of this Article by the~~
24 ~~voters~~ November 8, 2016, until ~~the effective date of~~

1 ~~this Article~~ October 1, 2018, brewers may continue to
2 obtain and operate up to two (2) low-point beer
3 brewery-owned branches pursuant to the existing low-
4 point beer laws pertaining to the distribution of low-
5 point beer by brewery-owned branches,

6 c. only after ~~the effective date of this Article~~ October
7 1, 2018, the Legislature may duly enact legislation to
8 require, by statute, the divestiture of all brewery-
9 branches. If the Legislature requires brewers to
10 divest, it must require full divestiture of every
11 brewery-owned branch in the state, and it shall allow
12 brewers at least one (1) year but no more than three
13 (3) years to complete ~~said~~ the divestiture.,

14 d. ~~Except~~ except as provided in this subsection, and
15 except for a small brewer as defined by law or a small
16 distiller as defined by law, no other member of one
17 tier may own an interest in a business licensed in a
18 different tier;

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

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

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

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

- 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 off-premises consumption who desires to purchase the
20 same, as supplies allow, on the same price basis and
21 without discrimination. As used in this section,
22 "restaurant" means an establishment that is licensed
23 to sell alcoholic beverages by the individual drink
24 for ~~on-premise~~ on-premises consumption and where food

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

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

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

1 tier, directly or indirectly, any credit, loan, discount, rebate,
2 free goods, allowance or other inducement not otherwise expressly
3 permitted by state law.

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

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

19 C. All laws passed by the Legislature under the authority of
20 the Article shall be consistent with the provisions of this section.
21 If any provision of this Article applicable to winemakers is ruled
22 to be unconstitutional by a court of competent jurisdiction, then no
23 winemaker shall be permitted to directly sell its wine to
24 restaurants or other retail stores and outlets that may be from time
25

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

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

6 BALLOT TITLE

7 Legislative Referendum No. _____ State Question No. _____

8 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

9 This measure amends the Article of the Oklahoma Constitution
10 that deals with alcoholic beverages. The amendments pertain to
11 small distilleries. The amendments would exclude small
12 distilleries from the prohibition against manufacturers selling
13 at retail and would exclude small distilleries from the
14 requirement that sales can only be made to licensed wholesalers.
15 This mirrors the language currently in the Constitution
16 regarding small brewers. As is the case with small brewers, the
17 definition of small distiller would be provided by law.

18 SHALL THE PROPOSAL BE APPROVED?

19 FOR THE PROPOSAL — YES _____

20 AGAINST THE PROPOSAL — NO _____

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