

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE JOINT
RESOLUTION 34

By: Ikley-Freeman

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 28A of the Oklahoma Constitution; allowing persons making spirits to sell and distribute those spirits the same as winemakers; 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 Oklahoma Constitution 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 consumption of alcoholic beverages, consistent with the provisions of this Article. Provided:

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

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

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

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

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

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

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

- 20 a. winemakers either within or without this state may
21 sell wine produced at the winery to adult consumers
22 who are at least twenty-one (21) years of age and are
23 physically present on the premises of the winery or at
24 a festival or trade show, and

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

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

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

9 5. Distillers within this state may sell spirits produced at
10 their distillery to any licensed wholesaler who desires to purchase
11 the spirits; provided, that if a distiller elects to sell the
12 spirits it produces to multiple wholesalers, then such sales shall
13 be made on the same price basis and without discrimination to each
14 wholesaler. In addition to its sales through one or more licensed
15 wholesalers, a distiller may be authorized to sell its spirits as
16 follows:

- 17 a. distillers within this state may sell spirits produced
18 at the distillery to adult consumers who are at least
19 twenty-one (21) years of age and are physically
20 present on the premises of the distillery or at a
21 festival or trade show, and
- 22 b. distillers within this state that annually produce no
23 more than twenty-five thousand (25,000) proof gallons
24 of spirits may sell only the spirits they produce

1 directly to licensed restaurants or other retail
2 stores and outlets that may be from time to time
3 authorized by the state to sell alcoholic beverages;
4 provided, however, that any such distiller which
5 elects to directly sell its spirits under this
6 subparagraph shall not also use a licensed wholesaler
7 as a means of distribution and shall be required to
8 sell its spirits to every restaurant and other retail
9 store or outlet that may be from time to time
10 authorized by the state to sell spirits for off-
11 premises consumption who desires to purchase the same,
12 as supplies allow, on the same price basis and without
13 discrimination. As used in this section, "restaurant"
14 means an establishment that is licensed to sell
15 alcoholic beverages by the individual drink for on-
16 premises consumption and where food is prepared and
17 sold for immediate consumption on the premises. Any
18 distiller within this state that annually produces no
19 more than twenty-five thousand (25,000) proof gallons
20 of spirits and elects to directly sell its spirits to
21 restaurants and other retail stores and outlets that
22 may be from time to time authorized by the state to
23 sell spirits for off-premises consumption must self-
24 distribute the spirits using only vehicle(s) owned or

1 leased by the distiller, and without the use of a
2 common or private contract carrier.

3 All provisions of this paragraph are declared to be
4 interdependent; and

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

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

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

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

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

22 BALLOT TITLE

23 Legislative Referendum No. _____ State Question No. _____

24 THE GIST OF THE PROPOSITION IS AS FOLLOWS:
25

1 This amendment allows persons making liquor (spirits) to sell
2 and distribute the liquor (spirits) the same as how winemakers
3 sell and distribute wine including selling liquor (spirits) at
4 festivals, trade shows and directly to restaurants.

5 SHALL THE PROPOSAL BE APPROVED?

6 FOR THE PROPOSAL - YES _____

7 AGAINST THE PROPOSAL - NO _____

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

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