

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE JOINT  
4 RESOLUTION 1032

By: McEntire

5  
6 AS INTRODUCED

7  
8 A Joint Resolution directing the Secretary of State  
9 to refer to the people for their approval or  
10 rejection a proposed amendment to Section 2 of  
11 Article XXVIII-A of the Constitution of the State of  
12 Oklahoma; providing that certain restrictions on  
13 manufacturers of alcoholic beverages shall not apply  
14 to small distillers; providing that the term "small  
15 distiller" shall be defined by law; providing ballot  
16 title; and directing filing.

17 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE  
18 2ND SESSION OF THE 57TH OKLAHOMA LEGISLATURE:

19 SECTION 1. The Secretary of State shall refer to the people for  
20 their approval or rejection, as and in the manner provided by law,  
21 the following proposed amendment to Section 2 of Article XXVIII-A of  
22 the Constitution of the State of Oklahoma to read as follows:

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

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

1 the existing low-point beer laws pertaining to the  
2 distribution of low-point beer by brewery-owned  
3 branches,

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

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

17 2. A manufacturer, except a brewer or a small distiller as  
18 defined by law, shall not be permitted to sell alcoholic beverages  
19 in this state unless such sales occur through an Oklahoma  
20 wholesaler. A manufacturer, except a brewer, or subsidiary of any  
21 manufacturer, who markets his or her product solely through a  
22 subsidiary or subsidiaries, a distiller, rectifier, bottler,  
23 winemaker or importer of alcoholic beverages, bottled or made in a  
24 foreign country, either within or without this state, may sell such

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

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

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

23 a. winemakers either within or without this state may  
24 sell wine produced at the winery to adult consumers

1 who are at least twenty-one (21) years of age and are  
2 physically present on the premises of the winery or at  
3 a festival or trade show, and

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

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

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

12 5. Every wholesaler, except a beer wholesaler, must sell its  
13 products on the same price basis and without discrimination to all  
14 ~~on-premise~~ on-premises and ~~off-premise~~ off-premises licensees,  
15 unless otherwise provided by law. Every beer wholesaler must sell  
16 its beer to all ~~on-premise~~ on-premises licensees on the same price  
17 basis and without discrimination and to all ~~off-premise~~ off-premises  
18 licensees on the same price basis within a particular county and  
19 without discrimination. Every wholesaler must receive payment in  
20 full upon receipt of the alcoholic beverage by all ~~on-premise~~ on-  
21 premises and ~~off-premise~~ off-premises licensees. It shall be  
22 unlawful for any wholesaler to grant to any member of the retail  
23 tier, directly or indirectly, any credit, loan, discount, rebate,  
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1 free goods, allowance or other inducement not otherwise expressly  
2 permitted by 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  
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1 to time authorized by the state to sell wine for off-premise  
2 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 Chief Clerk of the House of Representatives,  
22 immediately after the passage of this resolution, shall prepare and  
23 file one copy thereof, including the Ballot Title set forth in  
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1 SECTION 2 hereof, with the Secretary of State and one copy with the  
2 Attorney General.

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