

OKLAHOMA CONSTITUTION

ARTICLE XXVIII - ALCOHOLIC BEVERAGE LAWS AND ENFORCEMENT

SECTION XXVIII-1

Creation of Commission - Appointment - Membership - Powers - Tenure.
Text effective until Oct. 1, 2018

There is hereby created the Alcoholic Beverage Laws Enforcement Commission. The purpose of the Commission shall be to enforce the alcoholic beverage laws of the State, and the Commission shall have such power and authority to enforce such laws, rules and regulations as shall be prescribed by the Legislature.

The Commission shall consist of seven (7) members, to be appointed by the Governor with the advice and consent of the State Senate. Five (5) of the members shall be at-large members representing the lay citizenry. The remaining two (2) members shall be persons with law enforcement experience in the State. Any time there is a vacancy on the Commission the Governor shall appoint a replacement, with the advice and consent of the State Senate, within ninety (90) days. Members of the Commission shall be appointed for a term of five (5) years. The Commission shall appoint a Director, whose duties shall be defined by the Legislature. No more than four (4) members of the Commission shall be appointed from the same political party. No more than two (2) members of the Commission shall be appointed from the same federal congressional district.

No member of the Commission shall hold any license authorized by this Article, or have any interest in any capacity, in the manufacture, sale, distribution or transportation of alcoholic beverages.

The members of the Commission shall be removable from office for cause as other officers not subject to impeachment.
Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1, 2018.

SECTION XXVIII-1.A

Transition from the Alcoholic Beverage Control Board to the Alcoholic Beverage Laws Enforcement Commission.

Text effective until Oct. 1, 2018

The Alcoholic Beverage Control Board shall continue to exist and operate after passage of this Article, until such time as the Commission is fully constituted, at which time the Alcoholic Beverage Control Board shall be abolished. The present five (5) members of the Alcoholic Beverage Control Board shall automatically become the five (5) at-large members on the initial transition Commission. For purposes of the initial transition Commission the five (5) year term of appointment shall not apply to these at-large members. These members shall serve from the date of the Commission's constitution until the time that their terms on the Alcoholic Beverage Control

Board would have expired, at which time a replacement at-large member shall be appointed by the Governor, with the advice and consent of the Senate, within ninety (90) days. The other two (2) members with law enforcement experience in the state shall be appointed by the Governor, with the advice and consent of the State Senate, within ninety (90) days after passage of this Article. For purposes of the initial transition Commission the prohibitions against appointing more than two (2) members from any federal congressional district and more than four (4) members from the same political party shall not apply.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1, 2018.

SECTION XXVIII-2

Exclusion of beer or cereal malt beverages containing not more than 3.2% of alcohol by weight

Text effective until Oct. 1, 2018

The terms and provisions of this Amendment, and laws enacted by the Legislature pursuant hereto, shall not include nor apply to any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) of alcohol by weight; provided, however, nothing shall prohibit a person authorized to sell alcoholic beverages by the individual drink for on-premises consumption from also becoming qualified to sell any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) of alcohol by weight in the same location.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1 2018.

SECTION XXVIII-3

Enactment of laws by Legislature - Nondiscriminatory sales to licensed wholesale distributors - Winemakers

Text effective until Oct. 1, 2018

A. The Legislature shall enact laws providing for the strict regulation, control, licensing, and taxation of the manufacture, sale, distribution, possession, and transportation of alcoholic beverages, consistent with the provisions of this Amendment. Provided, that any manufacturer, or subsidiary of any manufacturer, who markets his or her product solely through a subsidiary or subsidiaries, a distiller, rectifier, bottler, winemaker, brewer, or importer of alcoholic beverages, bottled or made in a foreign country, either within or without this state, shall be required to sell such brands or kinds of alcoholic beverages to every licensed

wholesale distributor who desires to purchase the same, on the same price basis and without discrimination, and shall further be required to sell such beverages only to those distributors licensed as wholesale distributors. Winemakers either within or without this state shall be required to sell wine they produce to every licensed wholesale distributor who desires to purchase the wine, but winemakers shall not be required to sell the wine they produce only to licensed wholesale distributors. Winemakers either within or without this state may sell wine produced at the winery to adult consumers who are at least twenty-one (21) years of age and are physically present on the premises of the winery or at a festival or trade show. Winemakers either within or without this state that annually produce no more than ten thousand (10,000) gallons of wine may sell and ship only the wine they produce directly to licensed retail package stores and restaurants in this state; provided, however, that any such winemaker which elects to directly sell its wine to package stores and restaurants shall not also use a licensed wholesale distributor as a means of distribution, and shall be required to sell its wines to every package store and restaurant licensee who desires to purchase the same, as supplies allow, on the same price basis and without discrimination. As used in this section, "restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises.

B. Any winemaker within or without this state that annually produces no more than ten thousand (10,000) gallons of wine and elects to directly sell its wine to retail package stores and restaurants in this state must self-distribute the wine using only vehicle(s) owned or leased by the winemaker, and without the use of a common or private contract carrier.

C. All laws passed by the Legislature under the authority of the Article shall be consistent with this provision. All provisions of this amendment are declared to be interdependent. If any provision of this amendment applicable to winemakers is ruled to be unconstitutional by a court of competent jurisdiction, then no winemaker shall be permitted to directly sell its wine to retail package stores or restaurants in this state.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Amended by State Question No. 591, Legislative Referendum No. 255, adopted at election held on Nov. 4, 1986; State Question No. 663, Legislative Referendum No. 297, adopted at election held on Nov. 8, 1994; State Question No. 688, Legislative Referendum No. 317, adopted at election held on Nov. 7, 2000; State Question No. 743, Legislative Referendum No. 346, adopted at election held on Nov. 4, 2008. Repealed by State Question No.

792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1, 2018.

SECTION XXVIII-4

Retail sales by package stores and wineries and by the individual drink

Text effective until Oct. 1, 2018

Except as hereinafter provided, retail sales of alcoholic beverages shall be limited to the original sealed package, by privately owned and operated package stores, in cities and towns having a population in excess of two hundred (200) persons or by wineries; provided that wineries shall be able to sell only wine which has been produced on the winery premises. No goods, wares, or merchandise shall be sold and no services shall be rendered on the same premises on which retail package alcoholic beverages are sold. Said premises are herein defined to be the entire space in which retail package alcoholic beverages are sold or displayed and said premises must be separated from any premises on which any other goods, wares, or merchandise are sold or services rendered by walls which may only be broken by a passageway to which the public is not admitted; provided, the restriction on the sale of merchandise and rendering of services shall not apply to the premises of a winery.

Not more than one retail package license shall be issued to any person or general or limited partnership.

Retail sale of alcoholic beverages by the individual drink for on-premises consumption is hereby authorized within a county if the voters of such county have previously approved such retail sale at an election.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept 18, 1984. Amended by State Question No. 591, Legislative Referendum No. 255, adopted at election held on Nov. 4, 1986; State Question No. 663, Legislative Referendum No. 297, adopted at election held on Nov. 8, 1994. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1, 2018.

SECTION XXVIII-5

Prohibition of sales to certain persons - Limitation on advertising - Penalties

Text effective until Oct. 1, 2018

It shall be unlawful for any licensee to sell or furnish any alcoholic beverage to:

A person under twenty-one (21) years of age; or

A person who has been adjudged insane or mentally deficient; or

A person who is intoxicated.

Sales, gifts, or deliveries to persons under twenty-one (21) years of age shall be deemed a felony; and any license issued

pursuant to any law, in compliance with this Amendment, shall be revoked, upon conviction for such sale, gift, or delivery.

It shall be unlawful for any person, firm, or corporation to advertise the sale of alcoholic beverages within the State of Oklahoma, except by a sign at retail package stores bearing the words "Retail Alcoholic Liquor Store."

Sales to insane, mentally deficient, or intoxicated persons shall be deemed a felony.

Any person under the age of twenty-one (21) years who misrepresents his age, for the purpose of obtaining the purchase of any alcoholic beverage, shall be guilty of a misdemeanor. Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, eff. Oct. 1, 2018.

SECTION XXVIII-6

Prohibition of sales on certain days - Penalties

Text effective until Oct. 1, 2018

(a) It shall be unlawful for any retail package store to sell, at retail, any alcoholic beverage:

On the first day of the week, commonly called Sunday; and

On Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(b) The voters of any county electing to authorize sales of alcoholic beverages by the individual drink for on-premises consumption under Section 4 hereof may designate as days on which such sales are not authorized, any or all of those days listed in subsection (a) of this section. It shall be unlawful for any licensee or person to make any such sale within any such county on days so designated.

(c) Any licensee or person violating the provisions of this section shall be deemed guilty of a misdemeanor and any license issued pursuant to provisions of this act shall be revoked upon conviction for such sale in violation of this section.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Amended by State Question No. 733, Legislative Referendum No. 341, adopted at election held on Nov. 7, 2006. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, effective Oct. 1, 2018.

SECTION XXVIII-7

Taxation and licensing - Distribution of funds

Text effective until Oct. 1, 2018

The retail sale of alcoholic beverages shall be subject to the sales tax statutes enacted by the Legislature and in addition thereto

the Legislature may levy taxes upon the manufacture, possession and/or all sales of alcoholic beverages, including sales by retail package stores and sales by the individual drink for on-premises consumption, the proceeds of which, except sales tax, shall be distributed as follows:

(a) The Oklahoma Tax Commission shall collect and distribute the taxes collected under the terms of this Article and shall distribute ninety-seven percent (97%) of such taxes as are levied and as are attributable to retail sales by package stores as follows:

(1) One-third (1/3) of taxes attributable to sales by retail package stores shall be allocated to the counties of the State of Oklahoma on the basis of area and population (giving equal weight to area and population) and all of said funds shall be appropriated by the Board of County Commissioners in each county to all incorporated cities and towns in said county on the basis of population within each city and town on a per capita basis based on the last preceding Federal Decennial Census.

(2) Two-thirds (2/3) of taxes attributable to sales by retail package stores shall be credited to the General Revenue Fund of the State of Oklahoma.

(b) The remaining three percent (3%) of taxes attributable to sales of alcoholic beverages by retail package stores; and up to (3%) of taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, as shall be determined by the State Legislature; shall be paid to the State Treasurer and placed to the credit of the Oklahoma Tax Commission Fund, to be paid out of said fund pursuant to appropriations made by the State Legislature.

(c) The remaining taxes attributable to sales of alcoholic beverages by the individual drink for on-premises consumption, shall be credited to the General Revenue Fund of the State of Oklahoma. The State Legislature shall appropriate to the Oklahoma Alcoholic Beverage Laws Enforcement Commission from all available taxes collected under this Article, whatever funds are necessary to provide for full enforcement of the alcoholic beverage laws of the State.

(d) All State license fees shall be collected by the Oklahoma Alcoholic Beverage Laws Enforcement Commission and deposited in the State Treasury and after the expenses of the Commission, as approved by the Legislature, have been deducted, the balance shall be credited to the General Fund.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, at election held on Nov. 8, 2016, effective Oct. 1, 2018.

SECTION XXVIII-8

State and political subdivisions prohibited from engaging in business

Text effective until Oct. 1, 2018

The State of Oklahoma, or any political subdivision thereof, or any board, commission or agency thereof, is hereby prohibited from engaging in any phase of the alcoholic beverage business, including the manufacture, sale, transportation, or distribution thereof, at wholesale or retail, and the maintenance, ownership, or operation of warehouses or alcoholic beverage stores; 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. Added by State Question No. 563, Legislative Referendum No. 319, adopted at election held on Sept. 18, 1984. Amended by State Question No. 638, Legislative Referendum No. 286, adopted at election held on Sept. 18, 1990. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held on Nov. 8, 2016, effective Oct. 1, 2018.

SECTION XXVIII-9

Occupation Tax

Text effective until Oct. 1, 2018

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. Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held Nov. 8, 2016, effective Oct. 1, 2018.

SECTION XXVIII-10

Restrictions on issuance of licenses.

Text effective until Oct. 1, 2018

No retail package store or wholesale distributor's license shall be issued to:

- (a) A corporation, business trust or secret partnership.
- (b) A person or partnership unless such person or all of the copartners including limited partners shall have been residents of the State of Oklahoma for at least ten (10) years immediately preceding the date of application for such license.

(c) A person or a general or limited partnership containing a partner who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony or misdemeanor.

(d) A person or a general or limited partnership containing a partner who has been convicted of a felony.

No license to sell alcoholic beverages by the individual drink for on-premises consumption shall be issued to:

(a) A person or a general or limited partnership containing a partner who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(b) A person or a general or limited partnership containing a partner who has been convicted of a felony.

(c) A corporation which has an officer or director who has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or the transportation of alcoholic beverages which constituted a felony.

(d) A corporation which has an officer or director who has been convicted of a felony.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984. Repealed by State Question No. 792, Legislative Referendum No. 370, adopted at election held Nov. 8, 2016, effective Oct. 1, 2018.

SECTION XXVIII-11

Repealer.

Article XXVII of the Constitution of the State of Oklahoma is hereby repealed. The Prohibition Ordinance and Section 7, Article I of the Constitution of the State of Oklahoma, previously repealed by Article XXVII of the Constitution of the State of Oklahoma, are not revived by this repealer.

Added by State Question No. 563, Initiative Petition No. 319, adopted at election held on Sept. 18, 1984.