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**FINAL REPORT  
OF THE GEORGIA SENATE  
STUDY COMMITTEE  
ON BREWPUBS AND ALCOHOLIC BEVERAGE TASTINGS**

Honorable Jack Murphy, Chair  
Senator, District 27

Honorable Frank Ginn, Vice Chair  
Senator, District 47

Honorable Steve Henson  
Senator, District 41

Honorable Burt Jones  
Senator, District 25

Honorable David Shafer  
Senator, District 48

Honorable Cecil Staton  
Senator, District 18

**Prepared by the Senate Research Office**

**2013**

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## **I. INTRODUCTION**

The Senate Study Committee on Brewpubs and Alcoholic Beverage Tastings was created pursuant to the authorization provided by Senate Resolution 427 (2013).<sup>1</sup> The Senate Study Committee on Brew Pubs and Alcoholic Beverage Tasting (BPAT Study Committee) was chaired by Senator Jack Murphy of Forsyth County. The purpose of this study committee was to review the current three-tier system of distribution which covers alcohol production, transportation, and sale in the State of Georgia; moreover, the BPAT Study Committee considered how brew pubs, growlers, and alcohol tastings are affected by existing complex alcohol laws and regulations.

The following members served on the BPAT Study Committee:

- Senator Frank Ginn of Jackson County;
- Senator Steve Henson of DeKalb County;
- Senator Burt Jones of Baldwin County;
- Senator David Shafer of Gwinnett County; and
- Senator Cecil Staton of Bibb County.

The BPAT Study Committee convened twice at the State Capitol in Atlanta, Georgia and once at the Cumming City Hall in Forsyth County:

- Thursday, August 22, 2013 (State Capitol);
- Thursday, September 26, 2013 (Forsyth County); and
- Thursday, October 24, 2013 (State Capitol).

The BPAT Study Committee received testimony from the Georgia Department of Revenue, industry and subject-matter experts, craft brewers, wine-makers (vintners), distilled spirits producers, and alcohol distributors who operate under the three-tier system. The hearings were open to the public with an open invitation to speak before the BPAT Study Committee.

## **II. EXECUTIVE SUMMARY**

Prohibition officially ended in 1933, but alcohol remains a highly and uniquely regulated product within American society.<sup>2</sup> The time, place, and manner in which it may be produced, labeled, imported, transported, purchased, and consumed is regulated by all levels of government. The three-tier system was created to facilitate the industry and discourage abuses at all levels of the trade; the three tiers (brewer, distributor, and retailer) are both linked, yet they are statutorily separated to ensure their independence

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<sup>1</sup> SR 427 was passed by the Georgia Senate on March 28, 2013: <http://www.legis.ga.gov/Legislation/en-US/display/20132014/SR/427>

<sup>2</sup> The Twenty-First Amendment ended Prohibition officially 80 years ago on December 5, 1933.

from each other. State and local alcohol licenses are enforced under this system. It is not perfect, but it performs adequately enough.

The tradition of beer dates back over 10,000; man has been consuming it since empires and great cities of Mesopotamia ruled the known world. Societies and cultures have evolved, as so has marketplace of alcohol. Prohibition failed miserably; the idea of extreme temperance was never purchased by the American public. New choices of beer, wine, and spirits emerge on a yearly basis, and the state's alcohol laws should breathe to reflect new suppliers and a more demanding public when it comes to alcohol consumption.

This is not a new or emerging issue; for the 2001 Georgia House Alcoholic Beverages Distribution System Study Committee delved into the subject at hand.<sup>3</sup> Entrepreneurs are doing good, productive work by creating and expanding brewpubs, wineries, and distilleries. This should not be ignored. Market forces are expanding choices available to the public, and this broadening economic bases is good for Main Streets all across Georgia. There is no desire to eliminate the three-tier system, but there needs to be additional debate on how best to meet the business needs and community expectations of all the good participants in this industry. There are other ways to encourage competition, honor the free market, and provide for changes which are in the best interest of Georgia. This committee wants to encourage all Georgia businesses without unduly undermining a general system that has worked for decades.

### **III. TESTIMONY & PERSPECTIVE**

#### **A. Thursday, August 22, 2013**

*"I am not allowed to take the same beer we produce and drink it in my own home." – Crawford Moran*

Mr. Michael Madigan, Esq., appeared before the committee and began by noting that alcohol maintains a duality because of its pleasurable and negative effects; due to this duality, and specifically the potential to benefit or harm, alcohol is appropriately one of the most heavily regulated products in our society. It is regulated so as to mitigate the negative impacts on society. It is the only product that is the subject of a Constitutional amendment, and in reality it is the subject of two amendments: the Eighteenth (which instituted prohibition) and the Twenty-First (which repealed prohibition and reserved to the states the right to regulate alcohol). Constitutional authority is correctly vested to the states and local governments because community standards on alcohol vary across the nation. Mr. Madigan asserted that there are several goals of alcohol regulation:

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<sup>3</sup> The 2001 Georgia House Alcoholic Beverages Distribution System Study Committee report is incorporated herein by reference, and is attached as Appendix A. It provides great background on Georgia's three-tier system; that report recommended no changes should be made to this system.

1. Ensuring purity, safety, and the accurate description of the product;
2. Enabling the efficient collection of taxes; and
3. Restricting availability; regulating the sale, promotion and advertisement of the product; and specifying who can purchase and consume the product.

Historically, alcohol was largely unregulated and a heated debate divided the country regarding the dangers of alcohol and the extent to which its sale and distribution should be limited or prohibited. The debate over alcohol was the issue that fundamentally divided Americans. Higher rates of drinking were met by reformers who desired to reduce these levels. Specifically, the country experienced waves of temperance activity through such groups as the Woman's Christian Temperance Union and the Anti-Saloon League, which was the National Rifle Association of its day. In response to a national temperance movement and spurred by excessive retail capacity, cutthroat competition, excessive sales, and intemperate consumption, the Eighteenth Amendment was passed (establishing the National Prohibition Act of 1919) which took effect on January 16, 1920.<sup>4</sup> Madigan opined that Prohibition failed miserably, and he quoted that,

“. . . [T]he regrettable failure of the 18th Amendment has demonstrated the fact that the majority of people in this country are not yet ready for total abstinence, at least when it is attempted through legal coercion. In an attempt to bring about total abstinence through prohibition, an evil even greater than intemperance resulted – namely a nation-wide disregard for law . . . .” John D. Rockefeller II.<sup>5</sup>

The Twenty-First Amendment was passed in 1933 ending Prohibition. Madigan noted that the amendment represented an extraordinary expression of our nation's will and a constitutional commitment to make permanent the policy that the state, not the federal government, is the primary authority over the regulation of alcohol. The failure of prohibition illustrated that the nation was too large and too diverse to accept a single standard of temperance or regulatory control. In passing the amendment, Congress and state conventions recognized that community norms and standards regarding alcohol differed across the country. Accordingly, they recognized that alcohol needed to be regulated at the state and local level in order to reflect those differences and in order to ensure that those regulations would be respected. He opined that it was recognized

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<sup>4</sup> The Eighteenth Amendment was commonly referred to as the Volstead Act; it simply stated that "the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited" and that "Congress and the several States shall have concurrent power to enforce this article by appropriate legislation." It was named for Representative Andrew Volstead (R-Minnesota).

<sup>5</sup> In 1933, John D. Rockefeller, Jr. commissioned Raymond Fosdick and Albert Scott to study alcohol regulation and prepare America for the return of legal alcohol and its regulation. They produced Toward Liquor Control, which provided guidance to policymakers as they set up regulatory systems for alcohol, and much of that framework still exists today, according to the Center for Alcohol Policy. This was known as the Rockefeller Commission.

that there was no “one size fits all” regulatory model and that what might be suitable in Georgia may not be suitable in Minnesota or Manhattan.

Madigan explained in order to avoid the prior excesses that led to prohibition. The Rockefeller Commission was formed to help guide states develop appropriate regulatory systems. The Commission was comprised of the best minds in the country. They recommended two different regulatory models: (1) the control model,<sup>6</sup> where the state monopolized the sale of alcohol, and (2) the license model,<sup>7</sup> where a three-tier system was created and vendors of alcohol were licensed and regulated by the state. No matter which model states adopted, states were urged to address the following goals: (1) temperance; (2) orderly markets; (3) respect for law; and (4) collection of revenue.

Further, the Rockefeller Commission cited “tied houses” as one of the primary reasons why the country had been plagued by intemperate consumption. Under the old system, brewers could own retailers “lock, stock, and barrel,” which was the origin of that phrase. Tied houses inevitably led to excessive promotion, irresponsible marketing and sales, and ultimately to intemperate consumption. The Commission understood that locally-based sellers of alcohol were likely to be more responsive to community norms and standards and more responsible with regard to their sales and promotion practices. As noted in Fosdick & Scott,

“The ‘tied house’ system had all of the vices of absentee ownership. The manufacturer knew nothing and cared nothing about the community. All he wanted was increased sales. He saw none of the abuses, and as a non-resident he was beyond local social influence. The ‘tied house’ system also involved a multiplicity of outlets, because each manufacturer had to have a sales agency in a given locality. In this respect the system was not unlike that used now in the sale of gasoline, and with the same result: a large excess of sales outlets. Whether or not this is of concern to the public in the case of gasoline, in relation to the liquor problem it is a matter of crucial importance because of its effects in stimulating competition in the retail sale of alcoholic beverages.”<sup>8</sup>

Madigan explained that without “tied-house” laws,<sup>9</sup> it is nearly impossible for communities to effectively limit the number of retail outlets within their borders. There are tens of thousands of distillers, wineries, and brewers operating in the global market.

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<sup>6</sup> North Carolina

<sup>7</sup> Georgia

<sup>8</sup> Fosdick and Scott, Toward Liquor Control at 43 (Hansen & Bros. Publishers 1st Ed. 1933).

<sup>9</sup> State and federal law prohibit certain relations between those engaged in the production, wholesale, and retail sale of alcoholic liquor, including wine. Tied house laws are found in the United States Code Title 27, Part 6. The name “tied house” is derived from a common practice in England whereby a bar was “tied”—by ownership, contractual obligations, or other influences—to a specific producer.

Without tied-house laws, if a state legislature, county board, or city council decides to limit the number of retail licenses in a particular geographic area in the interest of promoting responsible consumption, they would be creating a monopoly for those few suppliers who are granted retail licenses and they would be effectively barring from their markets those suppliers who are not successful in securing a license. This would not only dramatically reduce consumer choice, but it would ultimately create inexorable pressure on the legislative body to expand the number of licenses in order to equitably grant suppliers an access to market. There is an undeniable causal relationship between the number of retail outlets and the price of alcohol, on the one hand, and consumption patterns and alcohol abuse, on the other. If retail outlets expand and if prices drop, per capita consumption and alcohol abuse will rise.

Madigan further explained that the architects of our current regulatory system also understood that vertical integration of the industry, and the creation of monopolies at any industry tier, threatens the effective regulation of alcohol. Such integrated entities, in practical terms, could grow so powerful that they would be beyond the reach of effective regulation. As a result, the most essential feature of our alcohol regulatory structures is the three-tier system, which divides the industry into a brewer, distributor, and retailer tier, each restricted to its own service focus. The three-tier system has been likened to an hourglass with the distribution tier as the constriction point. Because all alcohol is funneled through in-state distributors with a mandated physical presence, they are most amenable to audit, compliance checks, and community pressure to sell alcohol responsibly. They are also the vehicle through which the state ensures the efficient collection of taxes (and alcohol is one of the most heavily taxed commodities in our economy). Madigan then cited to a Supreme Court case regarding the efficacy of the three-tier system in Manuel v. State of Louisiana:

“Without the three-tier system, the natural tendency historically has been for the supplier tier to integrate vertically. With vertical integration, a supplier takes control of the manufacture, distribution, and retailing of alcoholic beverages, from top to bottom. The result is that individual retail establishments become tied to a particular supplier. When so tied, the retailer takes its orders from the supplier who controls it, including naturally the supplier’s mandate to maximize sales. A further consequence is a suppression of competition as the retailer favors the particular brands of the supplier to which the retailer is tied to the exclusion of the other suppliers’ brands. With vertical integration, there are also practical implications for the power of regulators. A vertically integrated enterprise - comprising manufacture, distribution, and retailing - is inevitably a powerful entity managed and controlled from afar by non-residents.

The three-tier system was implemented to counteract all these tendencies. Under the three-tier system, the industry is divided into three tiers, each with its

own service focus. No one tier controls another. Further, individual firms do not grow so powerful in practice that they can out-muscle regulators. In addition, because of the very nature of their operations, firms in the wholesaling tier and the retailing tier have a local presence, which makes them more amenable to regulation and naturally keeps them accountable. Further, by separating the tiers, competition, a diversity of products, and availability of products are enhanced as the economic incentives are removed that encourage distributors and retailers to favor the products of a particular supplier (to which distributor or retailer might be tied) to the exclusion of products from other suppliers.”<sup>10</sup>

Madigan explained that state-based regulatory systems are a victim of their own success. While not perfect, these systems have done a remarkably good job at balancing effective control, on the one hand, with unprecedented choice, variety, and competition on the other. The yardstick against which any state alcohol regulatory system should be measured is the degree to which it effectively balances these competing goals. Pre-prohibition and prohibition experiences illustrates that the two extremes of deregulation and prohibition are both failed models. It is the golden mean between the two that has been proven successful and we should be careful not to begin a well-meaning descent down the slippery slope of deregulation. In addition, it is important to note that these regulatory systems have allowed tens of thousands of local, small businesses to survive and thrive. The beer industry is one of the last commercial bastions still dominated by family-owned businesses (at primarily the distributor and retail levels). These businesses provide stable, quality jobs on which you can raise a family; are mainstays in their communities; and are a very significant source of tax revenue. Madigan noted that state alcohol regulatory systems have come under significant pressure by certain vested economic interests seeking to deregulate the industry for their own benefit: large suppliers, small suppliers, large retailers. and others. These systems are being challenged in state legislatures and the courts.

Madigan also noted that there are Constitutional limitations to state alcohol regulations. Under the dormant commerce clause as held in Granholm v. Heald,<sup>11</sup> states may not

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<sup>10</sup> See Manuel v. State of Louisiana, 2008 WL 1902437 (April 30, 2008 La. App. 3 Cir.)

<sup>11</sup> See Granholm v. Heald, 544 U.S. 460 (2005); the Granholm decision addresses the constitutionality of laws addressing the direct shipment of wine to consumers. Consider, under OCGA §3-6-21.1, a Georgia Farm Winery is permitted to sell its wine at retail to customers in a face-to-face transaction, for consumption off-premises, provided the wine is sold in a closed package. This mirrors the intents of HB 314/SB 174 which would allow Georgia craft brewers to do coupled with volume limits (288 ozs. per individual, per day) on the direct retail sales of craft beer. These transactions are in-person which is wholly different than the direct shipping transactions that the Granholm decision addresses. For judicial authority that is more directly applicable to both HB 314/SB 174, refer to Cherry Hill Vineyard v. Baldacci, 505 DF.3d 28, 34 (1st Cir. 2007)(“[d]espite some superficial similarities, the fit between Granholm and [the farm winery cases] is not exact, and thus, the [Granholm] decision is of limited utility here; Black Star Farms v. Oliver, 600 F3d 1225 (9th Cir. 2010)(Arizona's in-person purchase requirement does not discriminate against out-of-state wineries and does not impose any new burden on out-of-state wineries); see



discriminate between in-state and out-of-state suppliers in their liquor laws. Discrimination under the Commerce Clause means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter, as opposed to state laws that regulate evenhandedly with only incidental effects on interstate commerce. State liquor laws which confer privileges on small brewers, but deny those privileges to large brewers, may be challenged under the dormant Commerce Clause if it can be shown to have a “discriminatory effect” or a “discriminatory purpose” on out-of-state entities.

Additionally, no state may pass a law which embodies a social or economic classification which is not rationally-related to a legitimate governmental interest.<sup>12</sup> Some states permit small brewers to sell or provide their beer to consumers on the brewery premises for consumption on the premises with various limits on production, volume, and sample size, for example (on-premises exceptions). A small minority of states permit brewers to sell their packaged product to consumers from the brewery premises for consumption off the premises (off premises exceptions). A brewpub is a specialty retailer which may sell any spirits, wine, or beer on-sale and has the added privilege of brewing beer on the premises for consumption on the premises.

Madigan further noted that if brewpubs are permitted to sell packaged product off-sale, they are transformed from a specialty retailer to a production brewer. From a legal perspective, this is dangerous because they become an in-state production brewer who has the right to hold a full retail license while an out-of-state production brewer would be prohibited from holding a retail license. As such, it is vulnerable to legal challenge. It will be difficult to defend against a dormant commerce clause challenge; moreover, an off-sale privilege limited to growlers would be less likely to be challenged and easier to defend. Madigan concluded his testimony.

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also, Brown & Williamson Tobacco Corp. v. Pataki, 320 F.3d 200, 212-14 (2d Cir. 2003)(upholding, as against a dormant commerce clause challenge, state law requiring that all tobacco sales be conducted in face-to-face transactions). As the First Circuit stated in Cherry Hill Vineyard, “an effect is not discriminatory, in violation of the dormant commerce clause, if it results from natural conditions.” Cherry Hill Vineyard, 505 F.3d at 38 n. 7. See also Baude v. Heath, 538 F.3d 608, 612 (7th Cir.2008), cert. denied, 129 S.Ct. 2382 (2009) (upholding an Indiana statute that required consumers who wanted to receive direct shipments of wine from a winery—whether located in state or out of state—to visit the winery and supply proof of age).

<sup>12</sup> See United States v. Carolene Products Co., 304 U.S. 144 (1938). The level of judicial review for determining the constitutionality of a federal or state statute that does not implicate either a fundamental right or a suspect classification under the Due Process Clause and the Equal Protection Clause of the Constitution. When a court concludes that there is no fundamental liberty interest or suspect classification at stake, the law is presumed to be Constitutional unless it fails the rational basis test. Under the rational basis test, the courts will uphold a law if it is rationally related to a legitimate government purpose.

Mr. Jay Hibbard of the Distilled Spirits Council provided testimony regarding tastings of distilled spirits at specific locations.

Senator Ginn immediately questioned the difference between a tasting and drinking; Mr. Hibbard replied that it turns on the controlled amount of consumption.

Mr. Hunter Limbaugh, southeast counsel for the Wine Institute, said he represents primarily California wine growers. He noted that the three-tier system is not magical, for it is an 80 year-old legislative tool to regulate alcohol. He explained that Georgia has numerous exceptions to old system. Limbaugh stated that opponents to alcohol tastings have two general objectives: 1) retailers' liability insurance concerns; and 2) forced tastings onto retailers.

Mr. Al Zachary of the LaGrange Grocery Company in Troup County, Georgia, provided testimony.<sup>13</sup> Mr. Zachary asserted that Georgia's three-tier system provides a level playing field for healthy in-brand competition. Further, it offers access to an otherwise inaccessible marketplace, provides for a stable means for tax collection, and its regulatory scheme has value under license enforcement. Zachary disagrees with the brewpubs' requests for direct sales; he opines that direct sales outside the three-tier system would allow those producers to become retailers and enjoy participation in all three tiers at one time, which would be difficult to enforce. He asked would each tier be granted exceptions? The current system is a delicate balance. Further, Zachary warned that under Granholm, out-of-state brewpubs could litigate in order to sell their product in Georgia.

Mr. Jay Roberts is a brewmaster at Max Lagers Downtown in Atlanta.<sup>14</sup> He stated that his brewpub enjoys 100,000 visitors annually and has 50 employees. Mr. Roberts wishes to expand the brewery--which would increase payroll by adding jobs and full-time employment. He offers six to eight craft beers on tap, but prefers to offer growlers for retail sale which are 64 ounces.

Mr. Crawford Moran represents the 5 Seasons Brewpub<sup>15</sup> and the new Slice and Pint.<sup>16</sup> He does not wish to challenge the existing three-tier system, but does desire to sell growlers of beer made on premises. It would provide greater local revenue. He is frustrated by the fact he cannot drink his own beer in his own home because of the restrictions placed on craftbrew retail sales even within growlers.

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<sup>13</sup> Mr. Zachary is former president of the Georgia Beer Wholesalers Association. The LaGrange Grocery Company is located at 143 Busch Drive LaGrange, Georgia 30241.

<sup>14</sup> Visit <http://maxlagers.com/>

<sup>15</sup> Visit <http://www.5seasonsbrewing.com/>

<sup>16</sup> Visit <http://sliceandpint.com/>

Chairman Murphy inquired whether food would need to be purchased first before buying a growler; Marann answered that it would not be necessary.

Mr. John Pinkerton of Moon River Brewery<sup>17</sup> in Savannah, Chatham County, Georgia, provided testimony and referenced Senate Bill 174. Pinkerton offered three points to consider: 1) he values the relationships with wholesale and retail partners, for it is mutually beneficial; 2) he does not attack the three-tier system; and 3) allowing an exception for brewpubs to sell craft beer on-premises is pro-growth because it is about jobs and promotes small business. Pinkerton asserted it is the best way to create good jobs in this economy, and would even give rise to beer tourism. He noted there are only two global brewing entities, and that the three-tier system is not a sacred cow. Georgia Craftbrewers now has 28 members, and he expects that number to double. He cited to a New Yorker study about craftbreweries in the United States.<sup>18</sup>

Ms. Carly Wiggins of Southbound Brewery<sup>19</sup> in Savannah, Chatham County, Georgia, provided testimony. She stated that it took two years and over \$2.5 million to produce their first beer. She noted that Sweetwater Brewery offers over 1,200 tours daily. South Carolina allows up to 288 ounces per person in daily sales.

Mr. Bob Sandredge of the Wrecking Bar Brewpub<sup>20</sup> offered testimony. Wrecking Bar has been open over two years, and it took three months to establish a distributorship. He asserted that Michigan is similarly situated to Georgia in terms of alcohol regulations. He stated that a barrel has 32 gallons, and that Wrecking Bar has sold over 1000 barrels.

Mr. Stony McGill of the Georgia Alcohol Dealers Association provided testimony.<sup>21</sup> His association represents 65 percent of Atlanta area sales. He voiced concerns about on-premises tastings noting that there are great liability concerns and that insurance premiums would increase up to four times with such tastings.

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<sup>17</sup> Visit: <http://www.moonriverbrewing.com/>

<sup>18</sup> See <http://www.newyorker.com/sandbox/business/beer.html>. In 2012, the United States was home to nearly 2400 craft breweries, and are rapidly colonizing what one might call the craft-beer frontier: the South, the Southwest, and, really, almost any part of the country that isn't the West or the Northeast.

<sup>19</sup> Visit <http://southboundbrewingco.com/>.

<sup>20</sup> Visit <http://www.wreckingbarbrewpub.com/>

<sup>21</sup> Located at 215 Piedmont Ave NE, Atlanta, Georgia 30308.

## B. Thursday, September 26, 2013

*“This issue is more about competitive economic development than it is about alcohol distribution systems.”—Nick Tanner*

The BPAT Study Committee convened at the Cumming City Hall in Forsyth County.

First to appear before the committee was Mr. Jay Hibbard of the Distilled Spirits Council. He noted there are over 5,500 brands of distilled spirits on the market, and this includes hundreds of new brands and flavor extensions annually. Mr. Hibbard stated that tastings allow customers to sample new brands before committing to a purchase of a full-size product; moreover, these tastings are customary, longstanding, and effectively responsible way to introduce spirits while providing a benefit to customers. Further, he stated that 44 states allow some form of distilled spirits tastings; he referred to a map which showed Georgia’s neighbors depicting such tastings: Alabama, Florida, South Carolina, and Tennessee.<sup>22</sup> Hibbard opined that tastings are an important tool for large and small manufacturers. Craft distillers endure larger route-to-market challenges, for a tasting can make the important difference between a sale or no-sale. He then turned back to the science of alcohol, and it is the same regardless of what form it is consumed. A standard serving of alcohol--whether beer, wine, or spirits--all contain the same amount of alcohol. Hibbard urged the committee to respect and maintain a level marketplace, noting laws which discriminate against spirits and prevent spirits from competing effectively in the marketplace. There is a mistaken perception that spirits are harder than other forms of alcohol; he asserted that there is no alcoholic beverage of moderation, but there is only the practice of moderation.

Further, Hibbard explained that the fear that liability insurance would increase by allowance of tastings is not accurate. The Distilled Spirits Council surveyed other states and conferred with the Georgia Department of Insurance to make this conclusion. There is no basis to conclude that mere passage of a statute would result in significant increases in liquor liability insurance. Further, from insurance officials there is no difference between beer, wine, and spirits, and ultimately important to understand is that no retailer would ever be required to hold a tasting, for it is simply another marketing opportunity. The state already permits the practice in restaurants and bars, but while there is express permission in state law; however, local ordinances may restrict such tasting.

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<sup>22</sup> Three states adopted or expanded tastings in 2013: Maine, Rhode Island, and Washington.

Senator Shafer questioned the accuracy of the map showing consumer tastings of distilled spirits—specifically about Alabama--whether broad authority exists or does it require local government permission.<sup>23</sup>

Mr. Eric Johnson of Athens-Clarke County, Georgia, presented testimony; he owns the Trappeze Pub<sup>24</sup> and Wild Heaven Craft Beers<sup>25</sup> in Georgia. He recited the story of New Belgium brewery out of Colorado not selecting Georgia for a new facility because of Georgia's restrictive laws governing brewpubs and direct sales; moreover, he said the same applied to Sierra Nevada brewery. Mr. Johnson disclosed that he serves as a board member on the Athens-Clark Development Authority.

Senator Shafer commented that the three-tier system allows for small-beer distribution; without it, big producers could squeeze out the little guys. Further, he noted there perhaps could be a small exception for small craft brewers to sell on-site. Mr. Johnson responded by asserting that perhaps one case per customer per day could be sold (a small amount in his opinion), and that small craft brewers need to be able to build customer bases.

Dr. Matthew Walsh of the Georgia Craft Brewers Guild discussed the potential economic impact that could stem from expansion of craft breweries in Georgia.<sup>26</sup> Dr. Boss noted that 399 million barrels of beer is consumed annually with an average national consumption of craft beer at 6.5 percent; however, in Georgia it is less than 1 percent.<sup>27</sup> He stated that there were approximately 150,000 barrels of craft beer produced in Georgia in 2012, and this was with only 16 operations at the time (there were near 30 as of autumn 2013); moreover, he expected that data for 2013 will show that 200,000 barrels were produced. Walsh explained that over \$45 million is lost in revenue to surrounding states. The average retail value of a barrel of craft beer in 2012 was \$770.60 which translates to \$56 per case/\$16 per six pack/\$12.40 per growler. These amounts provide an approximate sum of \$116 million in Georgia craft retail value in 2012, with an anticipated value of \$154 million in 2013. There were over 260,000 craft brewery tours in Georgia in 2012, but Georgia ranks 47<sup>th</sup> nationally in craft brew production.<sup>28</sup> Georgia is the largest state which restricts craft beer sales. Walsh theorized that passage of Senate Bill 172 would lift Georgia to the middle of the pack.

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<sup>23</sup> Alabama does not permit Sunday liquor sales; moreover, two-thirds of counties in Alabama are dry so they prohibit the production, distribution, and sale of any alcoholic beverages. Alabama does allow for tastings under limited and specific circumstances.

<sup>24</sup> Visit: <http://www.classiccitybrew.com/trappeze08.html>

<sup>25</sup> Visit: <http://wildheavencraftbeers.com/>

<sup>26</sup> Dr. Walsh holds a Ph.D in Economics from the University of Chicago.

<sup>27</sup> It was noted that the Beer Institute shows about 185 million barrels produced in the US in 2012.

<sup>28</sup> This equates 1 per 400,000 Georgia residents.

Mr. Nick Tanner of the Cherry Street Brewing Cooperative<sup>29</sup> in Forsyth County, Georgia, appeared to discuss the need for craft brewers to be able to sell direct to their customers so they can better compete with big producers and provide good service to their customers. He noted that it is more about competitive economic development it is about alcohol distribution systems.

Mr. Fred Kitchens of the Georgia Wine & Spirits Wholesalers<sup>30</sup> provided testimony regarding the three-tier system. He noted that the system was not created for the benefit of the wholesalers; it is important public policy to maintain a careful balance in the alcohol marketplace. The system should not be altered just because it is inconvenient for a specific business model. Mr. Kitchen then briefly mentioned Granholm applying it to the potential for litigation, and opening up Georgia to outside craft beers sales.

Senator Shafer commented that changes cannot just benefit domestic craft breweries.

Mr. Stony McGill of the Georgia Alcohol Dealers Association appeared again before the committee; he asserted the map shared by the Distilled Spirits Council of the United States was incorrect in what it depicts. He reclaimed that there would be a liability issue for authorizing tastings, and there would be about a 2.5 percent increase in costs. He noted there could be controlled beer/wine tastings. Mr. McGill stated that there are two large producers in Georgia: Anheiser-Busch/InBev in Cartersville, Bartow County and Coors in Albany, Dougherty County.

Chairman Murphy asked whether there should be tastings in grocery stores. Mr. McGill said it was not prohibited under state law, but package stores require no broken seals on beverage goods.

Ms. Christie Hanes of Dawson County Chamber of Commerce and Tourism Development testified that tourism is a large industry in Georgia and is the largest industry in Dawson County.<sup>31</sup> She noted there is a distillery in Dawsonville City Hall. Ms. Hanes noted that other southern states are outpacing Georgia when it comes to local tourism and redevelopment.<sup>32</sup> She cited to House Bill 185 which would allow on-premises sales up to two liters per day, and that customers could want to have souvenir bottles which are not for resale.

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<sup>29</sup> Visit: <http://www.cherrystreetbrewing.com/>

<sup>30</sup> Located at 3565 Piedmont Rd NE Building 2-320 Atlanta, Georgia 30305

<sup>31</sup> Visit: <http://www.dawson.org/Home.html>

<sup>32</sup> She cited the Bourbon Trail in Kentucky.

### C. Thursday, October 24, 2013

*“Is it commonly known that 12 fluid ounces of beer=5 fluid ounces of wine=1.5 fluid ounces of spirits (40 percent alcohol) because they all contain .6 fluid ounces of alcohol.”—Jay Hibbard*

Mr. Matt Simpson is an independent craft beer consultant and beer sommelier.<sup>33</sup> He noted that Generation Y, also referred to as Millennials are largest American generation<sup>34</sup>, and are fast communicators. They share their information through social media, and it is a useful tool. Growlers are popular, and it represents a freedom to choose which is predominant among Millennials. This age group desires to enjoy expanded options in their choices, including beer and its consumption.

Senator Henson asked about Mr. Simpson’s expert status; Simpson replied that he is an expert on beer and providing information, but not legally.

Mr. David Larkworthy of the 5 Seasons Brewery provided testimony regarding growlers. He suggested that growlers’ revenue potential is huge, and that it continues to represent lost revenue and a lack of business expansion. He thinks it is a challenge to present arguments opposing growler and beer sales on-site; moreover, he believes there should be a brewpub exception to the existing three-tier system. Larkworthy believes they can work with distributors which would enable startups to grow in the very fertile business landscape of Georgia. He further suggested that brewpubs should be allowed to self-market so that distributors are not compromised. It is very important to invest locally in Georgia. He concluded by asserting that artisan, craft-driven breweries are the best avenue to support jobs and business growth in an otherwise still stagnant economy.

Senator Ginn inquired as to how much is consumed or sold at his location; Larkworthy replied that they are prohibited from selling for off-premises consumption; beer must be consumed on-site. Senator Ginn noted that wineries have incremental premises sales.

Senator Jones asked how many brewpubs are in Georgia; Larkworthy responded that at least 14 were fully operational, but compared Georgia against the City of Portland, Oregon, which enjoys 51 brewpubs. He noted that microbreweries are not brewpubs.

Senator Murphy asked how much tax is levied on growlers, but Larkworthy noted that they cannot sell growlers. It would be estimated that those sales would provide hundreds of thousands of dollars in potential additional tax revenue; moreover, “sin”

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<sup>33</sup> Visit: <http://www.thebeerexpert.com/>

<sup>34</sup> Until “Gen Y” came along, baby boomers represented the largest generational demographic in the United States; moreover, millennials are nicknamed the “Echo Boomers” for a reason: At about 90 million strong, millennials have baby boomers outnumbered by an estimated 20 million people. Born between the years 1977 through 1994, Gen Y will remain the largest generation in existence for the next 40 years (at minimum).

taxes are usually heavy for a reason—because they provide much revenue on great amounts of consumption. Further, it was noted that a gallon has \$.24 excise tax placed upon it plus applicable sales taxes.

Mr. Brooks Binder, Esq., provided testimony in support of House Bill 314/Senate Bill 174. He explained that he provides legal service pro bono for the Georgia Craft Brewers Guild. He stated that this is a critical issue for this industry and for Georgia. He suggested that it is possible to execute reforms without eliminating the existing three-tier system. Mr. Binder referenced the 2001 study committee report mentioned in the Executive Summary of this report.

Mr. Binder explained that current Georgia law impedes the free market or “stymies entrepreneurship.” A clear example of this can be found in laws which allow individuals to transport up to four (4) cases of beer into Georgia from other states, but which do not allow that same individual to purchase even an ounce of beer for off-premises consumption from our Georgia craft breweries.<sup>35</sup>

Binder theorized that Georgia residents can take a short drive and come home with up to four (4) cases of out-of-state craft beer; moreover, these same residents could even take multiple trips across the Georgia state line and back into the state of Georgia in any day. They could buy four (4) cases from a craft brewer in North Carolina, drive their car into Georgia, put the beer in a refrigerator in their house or a friend’s house, then drive across the border again and buy four (4) more cases, bringing those additional cases back to the same refrigerator.<sup>36</sup>

Then he conversely noted that those same Georgia residents and guests cannot buy even an ounce of craft beer directly from a Georgia craft brewer. Binder opined that laws which favor out-of-state brewers over our local Georgia craft brewers are contrary to basic free-market principles. The playing field is not level or fair when a Georgia craft brewer is prohibited from engaging in the *de minimis* direct sales that craft brewers from other states are allowed to engage in. This prohibition stymies entrepreneurship in Georgia because the local craft brewers are legislatively held out of this small--yet important—market, and local entrepreneurs cannot and will not invest in the facilities,

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<sup>35</sup> Please see OCGA § 3-3-8, which sets the limits for the amount of alcoholic beverages that an individual (whether citizen or guest) can bring into our State. That amount includes four (4) cases of malt beverages, if the individual has paid the applicable tax. This means that all around our borders, citizens of Georgia and citizens of other states can buy 4 cases of craft beer from out-of-state craft breweries and brewpubs, and drive that beer into Georgia. At least 40 states permit consumers to purchase some limited amount of craft beer directly from craft brewers. In fact, each of our bordering states of South Carolina, North Carolina, Tennessee and Florida permit their craft breweries to make limited direct sales to consumers for off-premises consumption.

<sup>36</sup> Theoretically, if refrigeration is closely available to the border, that individual might be able to bring as much or more than 138 cases of out-of-state craft beer into Georgia (assuming an 8-hour day and 15 minutes per retail transaction and travel time).



operations and jobs that are required to participate in that market, until the laws are changed to bring this basic fairness to the market.

Binder concluded by noting that this is an anomaly in Georgia law that has existed for 30 or more years. This is a great opportunity to eliminate this anti-free market anomaly by passing the legislation under consideration. The alternative is pretty stark and unattractive because continued inaction on support of the local craft beer industry sends a message to the voters that Georgia values the rights of foreign business interests over the rights of our local small business entrepreneurs.

Mr. Mark Allen of the Lazy Guy Distillery<sup>37</sup> in Kennesaw, Cobb County, Georgia, presented testimony in support of the two bills under consideration.<sup>38</sup> He said there are six distilleries in Georgia. He supports House Bill 185 which expressly limits sales of no more than two 750mL of spirits 1.5 oz of spirit tastings per person, per day, for neighboring states already all for such limits. Mr. Allen believes these are reasonable limits, nor do they burden the three-tier system's distributors or wholesalers. He noted this distillery depends on this system as the only distribution system to restaurants, retail stores, and outlets. The three-tier system will not be jeopardized because it is required for producers' operations, and there is simply no intent to circumvent. Tax collection and record-keeping is tightly controlled by ample federal and state laws and regulations. Further, Allen suggests that businesses like his only help promote and support Georgia Agritourism.

Chairman Murphy asked when Lazy Guy is set to open; Allen replied that he has been open since March 2013, but he is not fully operational, and that it has taken 200-plus days to obtain federal permits for operation. Consider that alcohol labels must be pre-approved by the federal government, and that alone takes over 60 days, at best.

Mr. Martin Smith of the Georgia Beer Wholesalers Association appeared before the committee. He suggested that it is a small constituency of primarily brewpub owners who seek modifications to the current three-tier system. Georgia's beer distributors believe that the state's interests are best served by the existing, properly regulated structure for alcoholic sales for several reasons.

The first, he noted, applies to Dormant Commerce Clause limitations. The 2005 Granholm decision held that states may not discriminate between in-state and out-of-state suppliers in their alcohol laws. This means that if Georgia law changes to allow an in-state brewery to sell directly to the consumer, the state must extend that same privilege to out-of-state brewers. As challenging as it would be for the Department of Revenue to track in-state direct retail sales from Georgia brewers, out-of-state brewers

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<sup>37</sup> Visit: <http://lazyguydistillery.com/>

<sup>38</sup> Lazy Guy will be the first whiskey-exclusive distiller (opening in 2014) in the Atlanta metro region.

present an even greater difficulty in terms of regulating lawful sale, minor access, product quality, and tax collection. Laws which regulate brewers differently based upon their production capacity have been struck down by courts as violating the Dormant Commerce Clause.

Second, Smith explained that under the existing structure, Georgia's beer distributors directly contribute \$285 million to the federal, state, and local tax base and collect and remit nearly \$200 million in alcohol excise taxes to state and local government. Georgia's beer distributors ensure that every single tax dollar is accounted for. There are little assurances that the state would continue to be remitted if existing safeguards are bypassed.

Third, alcohol is a controlled substance because of its intoxicating characteristics and potential for harm. By requiring that all alcohol destined for Georgia consumers must be sold to in-state distributors who are licensed, subject to audit, and amenable to enforcement, Georgia has created a transparent and accountable distribution system. Equally important, the three-tier system safeguards retailer independence and stability by inserting distributors as a buffer between brewers and retailers. In this way, brewers may not utilize their dominant market power to create excessive retail capacity, excessive sales stimulation, and cutthroat competition, all to the detriment of the state's core goals of promoting responsible alcohol consumption and creating orderly alcohol markets. Beer distributors also protect against illegal sales by requiring that deliveries are made only to licensed retailers; this partnership underpins state efforts to monitor underage sales and other illegal business practices. Further, existing safeguards ensure that contaminated products can quickly be traced and recalled.

Fourth, Georgia's beer distributors save the state money. They check licenses before delivery, then collect and remit excise taxes to each local government and the Georgia Department of Revenue – all without compensation. The existing structure provides an audit trail that is 100 percent verifiable; however, Smith opined, short-sited proposals to bypass Georgia's three-tier structure would likely require additional agents to ensure proper tax remittance, even while they weaken the audit trail. In short, changes embodied in Senate Bill 174 and House Bill 314 expose the state to lost tax revenue and greater administrative expenses.

Further, more than 3,000 Georgians are directly employed by local beer distributors, while many thousands more work in the production of beer or in related retail outlets. It is Georgia's beer distributors who own warehouses, purchase trucks, pay motor fuel and payroll taxes, and invest heavily in the local economy. Wholesalers spend over a half a million dollars each year on alcohol awareness programs and millions more marketing our brands.

Finally, Smith explained that there is a remarkable selection of beers from around the world available at Georgia grocery and package stores. The existing structure helps balance alcohol regulation with unprecedented choice, variety, and competition. Consumers benefit through access to a vast array of beer brands and styles – and the booming “craft beer” sector illustrates the effectiveness of existing distribution laws.

He concluded by stating that Georgia’s beer distributors will continue to work with their supplier and retail partners to promote their products within the existing distribution structure. He firmly believes that it is in the best interest of the state to support the existing, properly-regulated model for the sale of alcohol.

Mr. Smith referenced a recent *Atlanta* magazine cover story about local beers.<sup>39</sup>

Senator Henson asked whether sales at brewpubs equate to lost sales at a retailer. Smith replied that retailers do not like to be specific competition, but admitted it is counterproductive to allow brewpubs to on-premises sales.

Mr. Howard Tyler is the Alcohol Division Director for the Georgia Department of Revenue. He stressed that the Georgia DOR does not take sides, but three concerns exist under Title 3 of the Georgia Code. He noted concerns based upon: (1) current versus potential law; (2) how do legislative statutory changes affect tax law; and (3) does there exist differential treatment under existing law?

Ms. Katie Jones of the Georgia Restaurant Association<sup>40</sup> appeared before the committee; she expressed that they support on-premises sales. She noted that growlers are pitchers of beer only; they are not single cans.

Senator Henson asked if they support growler sales, too; she affirmed.

Mr. Jay Hibbard appeared before the committee again. He noted that Georgia law is silent on the issue of spirits’ tasting and that an on-premises (restaurant or bar) consumption licensee could generally offer a patron a sample of product, but he opined that general interpretation of specific silence means it is prohibited, which is common under state statute. A restaurant or bar customer asking for a taste of a specific spirit is not the question at hand. Mr. Hibbard stressed that tasting events which are under consideration are industry marketing tools where industry members organize marketing events which include organized tastings that are advertised, promoted, or otherwise made know to the public, and most importantly is regulated by law and/or regulation. This is currently prohibited in Georgia, and this should be understood; however, forty-four states allow this practice as common industry marketing. Mr. Hibbard reflected upon the map presented at the this hearing, and questioned at the second hearing and

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<sup>39</sup> See: <http://www.atlantamagazine.com/issues/2013/10/01/october-2013-beer>

<sup>40</sup> Visit: <http://www.garestaurants.org/>

defends it by stating the map is accurate because Georgia prohibits tastings contrary to Alabama to the west. Hibbard stressed continued support of a statutory scheme in which off-premise retail licensees and on-premise consumption licensees can conduct organized, promoted, tasting events featuring specific alcoholic beverage products.

Hibbard concluded by pointing out that 12 fluid ounces of beer=5 fluid ounces of wine=1.5 fluid ounces of spirits (40 percent alcohol) because they all contain .6 fluid ounces of alcohol.

Senator Shafer asked about the citation of authority for tastings, but Hibbard replied that it was silent on the issue, and because it was silent, it is prohibited in keeping with the high regulation of alcohol. He suggested it must be expressly permitted in order that specific activity to be legal.

Senator Ginn inquired about the difference in tasting and drinking; Hibbard replied it turns on the amount of alcohol offered for consumption.

Senator Staton inquired whether it is wrong to suggest retailers assume tastings are prohibited. Senator Shafer further noted that is surely prohibited that tastings are prohibited in bars.

Mr. Tyler from the Georgia DOR answered, explaining that it depends on who is sponsoring the event: the bar or an industry marketer? The answer would vary greatly.

#### **IV. RECOMMENDATIONS**

The BPAT Study Committee appreciates and values all the information received during this important process. The adult beverage industry is a broad and important component of Georgia's diverse business community. Many of these existing businesses and startup enterprises are crucial for economic development, and are vital for the very tourism that many Georgia towns and cities heavily rely upon. Local governments should continue to be able to make decisions that best reflect their community; this is an important policy declaration.

Suggested legislation is as follows:

Retail locations should be allowed to engage in tastings of malt beverage and wine on licensed premises as permitted by local ordinance or resolution. This will not apply to distilled spirits.

Growlers up to 64 ounces per-person should be allowed to be sold by brewpubs for off-premises consumption if food was consumed on-premises with the purchase; this is somewhat similar to Senate Bill 55 (2008) known as "Merlot-to-go." Specifically: one

partially consumed growler per patron may be removed from brewpub premises so long as:

1. The growler contains malt beverages manufactured on the premises;
2. The patron purchased and consumed a meal on the premises and consumed a portion of the growler containing 64 ounces of malt beverages manufactured on the premises;
3. The partially consumed growler is capped by the patron and placed by the licensee or its employees in a bag or container that is secured in such a manner that it is visibly apparent if the bag or container has been subsequently opened or tampered with, and a dated receipt for the growler and meal shall be provided by the licensee and attached to the bag or container; and
4. If transported in a motor vehicle, the bag or container with the capped growler is placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Georgia wineries should be authorized to blend their own wine with purchased distilled spirits to produce fortified wines; definitions of wine, fortified wine, and distilled spirits should also be amended to be consistent with federal law in terms of the alcohol content percent by volume. This would include a change from 21 percent to 24 percent which mirrors federal law.

There should be continued efforts to enhance and strengthen Georgia's Title 3 governing alcohol including clarification of the licensing process, streamlining of definitions, and a consistent usage of the term "malt beverage."

This committee recommends further study of these issues specifically the three-tier system and how it can continue to accurately reflect both the nature of alcohol regulation in Georgia and the evolution of the alcohol consumption with the expanding market.

*Information presented and discussed herein has been provided in part by the Fiscal Research Center at the Andrew Young School of Policy Studies, Georgia Public Policy Foundation, Georgia Department of Revenue, NCSL, Distilled Spirits Council, Brewers Association, Georgia Craft Brewers Guild, Beer Advocate, Michael Madigan, Esq., and Brooks Binder, Esq., and the Center for Alcohol Policy.*

*Drafted and Compiled by: Brian Johnson, Senate Research Office*