

# APPENDIX A

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**LEGISLATIVE SUMMARY**  
**HOUSE ALCOHOLIC BEVERAGES DISTRIBUTION SYSTEM STUDY**  
**COMMITTEE**

On April 26, 2001, Speaker Murphy appointed the **House Alcoholic Beverages Distribution System Study Committee** to review the 3-tier system of distribution of alcohol under which the manufacturers, wholesale distributors, and retailers are kept separate and distinct.

The Committee was authorized to meet no more than 10 days to study this issue, and was instructed to report its findings and recommendations on or before December 31, 2001.

The Committee was composed of five members of the Georgia House of Representatives appointed by Speaker Murphy. They were:

Representative Robert Reichert (D), Chairman  
Representative Bobby Parham (D)  
Representative Carl Von Epps (D)  
Representative Kathy Ashe (D)  
Representative Scott Dix (R)

The Committee began work on May 22, 2001. A meeting was held in Atlanta, at the Legislative Office Building, and all members of the Committee were present. Members received an overview of the existing 3-Tier Distribution System for Alcoholic Beverages in Georgia from the Department of Revenue. Assistant Commissioner of Revenue, Bobby Lenihan, introduced Chet Bryant and Dennis Rich from the Alcohol Division of Revenue who made the presentation to the committee showing the origin of the 3-tier system, the value of the 3-tier system in Georgia, the protection of revenue collection, revenue collected in 2000, the efficiency of revenue collections, and the Department's position supporting the 3-tier system of distribution in Georgia.

The Committee also developed ground rules and set future meeting dates, i.e.

July 3, 2001

**Retailers:**

Jim Tutor  
Roger Lane  
Ed McGill

July 24, 2001

**Wholesalers Distributors:**

Bryan Fiveash  
Fred Kitchens  
Pete Robinson

August 7, 2001

**Producers, Brewers, Manufacturers, Importers:**

Mike Wolfe/Jim Hammock

The **second meeting** of the House Alcoholic Beverages Distribution System Study Committee was held on July 3rd, 2001, in the Legislative Office Building, Atlanta, Georgia, at 10:00AM.

Members attending were as follows:

Representative Robert Reichert, Chairman  
Representative Carl Epps  
Representative Kathy Ashe  
Representative Scott Dix

Presentations were made by Mr. Lou Litchfield, Attorney representing the Georgia Oilmen's Association and Georgia Association of Convenience Stores; Mr. Jim Tudor, President of the Georgia Association of Convenience Stores; Mr. Henry Colley, Chairman of the Georgia Association of Convenience Stores and Vice President of Retail Operations for Sprint Foods in Wrens, Georgia; Ms. Kathy Kuzava, President of Georgia Food Industry Association; Mr. Tim Brown, Vice President of Merchandising for Kroger, Atlanta Division; and Mr. Ed McGill, Executive Director, Georgia Alcohol Dealers Association, Inc.

The **third meeting** of the House Alcoholic Beverages Distribution System Study Committee was held on July 24, 2001, in the Legislative Office Building, Atlanta, Georgia, at 10:00AM.

Members attending were as follows:

Representative Robert Reichert, Chairman  
Representative Robert Parham  
Representative Kathy Ashe  
Representative Scott Dix

Members heard presentations from Mr. Brian Fiveash, of the Georgia Beer Wholesalers and Mr. Fred Kitchens, Georgia Wine & Spirits Wholesalers.

The **fourth meeting** of the House Alcoholic Beverages Distribution System Study Committee was held on October 2, 2001, in the Legislative Office Building, Atlanta, Georgia at 1:30P.M.

Members attending were as follows:

Representative Robert Reichert, Chairman  
Representative Robert Parham  
Representative Carl Von Epps  
Representative Kathy Ashe  
Representative Scott Dix

Members heard presentations from Mr. Mike Wolfe, Director of State Affairs for Anheuser Busch Company; Mr. Paul DeLoach, Miller Brewing Company; Mr. Bob Livingston, Coors Brewery; Terry Micek, General Council for Coors; Mr. Bob Benton, Governmental Affairs Consultant for Wine Institute; and Mr. David Wojnar, Vice President, Distilled Spirits Council of the United States.

The fifth meeting of the House Alcoholic Beverages Distribution System Study Committee was held on October 30, 2001, in the Legislative Office Building, Atlanta, Georgia at 1:30P.M.

Members attending were as follows:

Representative Robert Reichert, Chairman  
Representative Robert Parham  
Representative Carl Von Epps  
Representative Kathy Ashe  
Representative Scott Dix

Members heard presentations from Spencer Kanner, Retailer, Line Creek Liquor Store, Peachtree City, Georgia; and Mohammed Khimani, Retailer, Line Creek Liquor Store and Peachtree Beer and Wine. Mr. Chet Bryant and Mr. Bobby Lenihan of the Revenue Department, and Mr. Wright Banks, Jr., Asst. Attorney General. The Revenue Department commended the participation before the Committee from every level of the 3-tier system of the alcohol beverage industry. Mr. Banks gave the Committee an update on the status of the pending court case in the Fulton County Superior Court.

The Committee was to review such laws to determine whether any reform, revision, or modernization of such laws is necessary and appropriate under current economic and regulatory conditions so as to better fulfill the purpose of such laws.

In addition, the Committee was to undertake a study of the conditions, needs, issues and problems mentioned above or related thereto and recommend any action or legislation which the committee deems necessary or appropriate.

Finally, the Committee shall make a report back to the Speaker of the House of its findings and recommendations on or before December 31, 2001.

## ORIGIN OF THE THREE-TIER SYSTEM

In 1920, the 18th Amendment created the "Volstead Act" (Prohibition). Prohibition banned the manufacture, sale or transport of intoxicating liquor. In 1933, after 12 years of prohibition, the 21st Amendment of the U.S. Constitution ended prohibition. The Amendment outlined the importance of local control and the different views regarding alcoholic beverage control across the country. It gave the states virtually total control over the distribution and sale of alcoholic beverages within their borders. At the same time, Congress enacted the Federal Alcohol Administration (FAA) Act that would require all suppliers and wholesalers to obtain Federal Basic Permits.

Each state enacted laws governing how alcoholic beverages would be sold in their state. The states generally fall within one of two categories: control (monopoly) or license (open). According to the Georgia Dept. of Revenue, there are 18 control states and 32 license states. What distinguishes control states from license states is the fact that the state takes ownership of the product at some point and becomes the exclusive seller in a particular sector of the business.

In a license (or open) state, the sale of alcoholic beverages is placed in the hands of the private sector through the issuance of privileged licenses issued by local and state authorities. Those local and state authorities establish a regulatory framework under which the private sector operates.

Each of the license states established a clearly identifiable wholesale channel of distribution. In many instances (as in Georgia), the wholesale operation had to be physically located within the state.

States immediately began using alcoholic beverages as an important revenue source. Thus, a means of insuring substantial financial compliance were an important consideration in writing state laws and regulations. States, such as Georgia, required that wholesale operations be bonafide businesses and retain copies of invoices and other transactions on the premises for potential audit. State regulators wanted responsible, local firms as wholesalers and they wanted a clear trail of product movement from supplier to wholesaler to retailer.

In Georgia, this has been accomplished by establishing a framework of laws and regulation designed to insulate the retailer from the influence of the supplier, make enforcement easier and compliance rates higher and full voluntary payment of excise taxes more likely. The resulting framework is known as Georgia's "Three-Tier System".

Control states like Washington, directly control the sale of liquor at the wholesale level. Twelve of these states also control retail sales, which means the state takes ownership of the product at some point and becomes the exclusive seller in a particular sector of the business. Their citizens purchase liquor at a state liquor store or designated agency outlet.

## GEORGIA'S RESPONSE

Georgia adopted a system of alcoholic beverage distribution, which prohibited the tied houses, i.e. A system where the distribution and/or retail sale of alcoholic beverages was tied to the manufacturer by direct ownership or control. The laws and regulations in Georgia prohibit the direct or beneficial ownership by any individual or business organization in more than one tier of distribution. A manufacturer may not own a distributorship or retail store nor may a distributor own a retail store, hence three separate and distinct tiers. Furthermore, there are regulations and statutory restrictions that apply to all three tiers.

In order for a manufacturer to obtain a license to ship alcoholic beverages into or within the state of Georgia, the manufacturer is required to appoint a single distributor for a specified territory within the state (as determined by the manufacturer but recorded and enforced by the state). Thereafter, the manufacturer may not change that designated distributor without demonstrating due cause for the change and obtaining the approval of the Department of Revenue. This provides a balanced relationship between the manufacturer and the designated distributor, and precludes undue influence of the distributor by the manufacturer. In fact, the Independence of the distributor is a necessary and desirable component of the Three-Tier System, and manufacturers are specifically prohibited from forced deliveries of additional alcoholic beverages, fixing prices at which beverages are sold to retailers, or controlling the selection/retention of personnel. (See for example O.C.G.A. 3-5-33.)

A designated distributor, however, must serve all licensed retailers of alcoholic beverages which are located within the designated territory, regardless of whether the individual account is profitable or not, and the distributor is required to sell to every retailer in the designated territory at the same prices, which must be posted with the Department of Revenue and maintained for at least six months. While the posted prices may contain volume discounts, those discounts must be uniformly available to every retailer. The failure to adequately service any account in the territory or the distribution of out-of-date product can constitute due cause for the revocation of the distributor's designation by the manufacturer. Thus, retailers have a guaranteed uniform price throughout the territory and significant leverage for obtaining prompt and attentive service by the wholesaler. Each retail location is licensed and requires both state and local licenses. While retailers of beer and wine may have an unlimited number of locations, retailers of distilled spirits are limited to a maximum of two locations. The alcoholic beverages to be sold at any particular licensed premise must be delivered to that licensed premise by the designated distributor for the geographic territory in which that specific licensed premise is physically located. The distributor is responsible for insuring that the specific premise is in fact licensed and may not deliver alcoholic beverages to any unlicensed premise. The distributor also collects all appropriate state and local taxes from the retailer at the time of delivery or, in certain limited cases, within a very short time period following delivery.

The retailer may not move or relocate any of the alcoholic beverages delivered to that licensed premise to any other location, not even to another licensed premise owned by the

same retailer. Retailers are required to purchase the desired alcoholic beverages only from the single, designated distributor of that alcoholic beverage for that physical location and may not shop for lower prices for a particular alcoholic beverage from a different distributor. The retailer does have the option of buying a comparable brand of alcoholic beverage from a competing distributor in the same territory, and inter-brand competition allegedly keeps the price of any single brand of alcoholic beverage competitive. While allegedly the most onerous part of the system, the designated territorial supplier is perhaps the most important part of the system as far as providing for the tracking of alcoholic beverage sales in Georgia which insures not only that appropriate taxes are paid, but also that the taxes revenues are distributed to the proper local governments.

This basic framework provides for the availability of alcoholic beverages at uniform prices throughout the designated territories while concurrently providing a tracking system whereby taxes can be collected, license laws can be enforced, and wholesome alcoholic beverages can be provided in legitimate retail establishments at modest prices.



## PERCEIVED PROBLEMS WITH THREE-TIER SYSTEM AND DISCUSSION

The Department of Revenue is currently struggling with several perceived problems with the alcohol distribution system in Georgia, and these perceived problems are not only the topic of a pending lawsuit against the Department of Revenue but also constituted a major portion of the discussion of the Special Study Committee:

### 1. **MONOPOLY OF DISTRIBUTORS**

Even though wholesale prices charged by a distributor are uniform throughout a designated territory, there can be a disparity in the wholesale price charged by the wholesalers in the adjacent designated territory. Also, some distributors may carry different packaging options, which are not available from other distributors. Retailers, however, are precluded from purchasing product from any wholesaler other than their designated distributor, and thus the perceived problem of a monopoly exists.

**DISCUSSION:** The designated distributor feature of the Three-Tier System does resemble a monopoly in that the retailer has only one choice of distributor from whom to purchase a specific brand of alcoholic beverage, but inter-brand competition keeps prices competitive. Artificially high prices which result in reduced market share also subjects a distributor to allegations of "cause" which would allow the manufacturer to seek change in distributors in that territory. It appears that there are sufficient market forces in the current system to keep the designated distributor from being a true monopoly, and the designated distributor feature is a key component of tracking the shipment of alcoholic beverages in the state so that un-licensed beverages can be minimized and all appropriate taxes on licensed beverages can be collected and remitted to the appropriate local government. Additionally, the designated distributor feature provides for the service of **all** accounts in the territory, even the unprofitable ones, and eliminates the tendency to service only high volume or readily accessible account locations.

### 2. **SPLIT DELIVERIES/ RELOCATION**

Retailers are precluded from relocating alcoholic beverages from the licensed premise to which they were delivered by the distributor, even to other locations the same retailer may own, thereby preventing the retailer from taking advantage of volume discounts which would be available if the retailer were allowed to order larger quantities and split the delivered beverages among multiple locations.

**DISCUSSION:** If retailers were allowed to order split deliveries to multiple locations, they could enjoy the volume discounts frequently offered by distributors, but this could result in shipments across territorial boundaries (which is strictly prohibited under the designated territory distributor concept) and even if restricted to multiple locations within the same territory, would eliminate the efficient delivery of a larger volume to a single destination which

serves as the inducement for the discount. If you allowed the retailer to relocate the alcoholic beverages at its own expense, the tracking system is compromised, the tax collection/ allocation/distribution system is complicated and the cost savings to the retailer are lost by the transportation/labor costs associated with the relocation. Finally, the obligation for stock rotation, inspection and replacement of out-of-date product is shifted away from the distributor to the retailer, but the responsibility remains with the distributor, at least in the eyes of the manufacturer.

**3. POSTED PRICES**

Distributors are required to post their prices with the Department of Revenue and maintain them for a minimum of 180 days. This can result in the reluctance of distributors to change prices (even reduce them) because of the inability to change them back should market conditions change. It may also result in less intense inter-brand competition since price posting *ipso facto* reveals the competitive price and allows nominal undercutting.

**DISCUSSION:** Price posting insures that all retailers within a specified territory get a uniform price from the designated distributor. Also, maintaining the posted prices for 180 days reduces the volatility of the market and prevents price wars which may be good in some consumer areas but may not be appropriate in the sale of alcoholic beverages. Some reduction in the length of time a price must be maintained may be appropriate, but this can be accomplished through regulatory change. Furthermore, price posting does **not** dictate the ultimate price to the consumer; the disparity in wholesale prices between territories is very small in comparison to the disparity in retail prices. Retail prices depend primarily on the amount of retail mark-up, and comparison shopping by the consumer which is unaffected by the price posting requirement is still the best tool for regulating the price of any item.

**4. DIFFERING PRICES TO WHOLESALERS**

Wholesale distributors in Georgia are not always charged the same prices by the manufacturers, and this may contribute to the disparity in prices paid by retailers in different territories. Shouldn't all distributors in the state be charged a uniform price?

**DISCUSSION:** Uniform pricing to all distributors in the state would not guarantee uniform pricing to the consumer and would prevent the manufacturer from taking into consideration the disparity in freight costs to different distributors and the differing market conditions among the different territories in the state, i.e. a certain alcoholic beverage may be extremely popular in one area of the state and require more aggressive pricing by competing brands whereas in other areas of the state the brands may be equally popular and a uniformly reduced price to the distributor of the competing beverage would be unnecessary to maintain market share and would not be passed along to the retailers thereby resulting in a windfall to that distributor.

**5. PRICE INCENTIVES**

Manufacturers are precluded from fixing or maintaining the price at which a wholesaler may resell the product, yet they can and do have different incentive programs that are made available in their discretion which directly or indirectly affect the price charged to the consumer. For example, a manufacturer may offer an incentive directly to the consumer in the form of a rebate coupon incorporated into the product packaging or a manufacturer may make different contributions to the amount of a volume discount offered to the retailers. Doesn't this amount to fixing or maintaining prices by the manufacturer?

**DISCUSSION:** The price charged by a manufacturer to one of its distributors is neither regulated nor posted. (See discussion above pertaining to uniform pricing to distributors.) However, once the price is set and delivery made to the distributor, the manufacturer is prohibited from further efforts to set or maintain the price charged by the distributor to the retailers. Yet, the manufacturer can and frequently does participate in various programs to promote sales of its product around the state, and other than rebate coupons incorporated into the product packaging, it would be extremely difficult to track the specific inventory to which the incentives would apply. Therefore, an agreement by the manufacturer to participate in a volume discount offer by a distributor to the retailers in that territory needs to be carefully scrutinized for its potential to violate pricing prohibitions. While a manufacturer needs to be able to respond to market conditions as they change, participation in pricing rebates has dangerous potential for control over distributors and fixing or maintaining prices. Likewise point-of-sale advertising material costs should be tied to the quantity of product sold by the manufacturer to the distributor. Subsequent charge-backs to the distributors' accounts that alter the price of previously delivered product should be prohibited. Mass media advertising, reduced initial price to the distributor, and rebate coupons incorporated into the product packaging should provide ample and adequate response for the manufacturers to changing market conditions.

6.

#### **RE-SETS**

Currently, a retailer can receive assistance from the designated distributors of alcoholic beverages for re-setting the display of merchandise and reallocating shelf space among the various products only on a semi annual basis and only after receiving permission from the Department of Revenue for the re-set at a specific time. Shouldn't those requirements be relaxed?

**DISCUSSION:** Retailers can always re-set their own shelves, but to obtain the assistance of the designated distributors, the retailer must currently request permission for the re-set from the Department of Revenue, and if granted, conduct the re-set at the time specified by the Department with all designated distributors in attendance. This apparently cumbersome system is designed to promote equity among the retailers, regardless of volume sold and actually prevents high volume retailers from demanding and receiving assistance from the designated distributor on a favored customer basis, while other reduced volume retail accounts can't get any help. Re-stocking the shelves should not be equated with re-setting the shelves, the former being only the replacement of merchandise while the latter is the relocation of the shelves and reallocation

of shelf space among product to be displayed. Restrictions on re-sets also serve to prevent undue influence by a designated distributor on the retailer to allocate more shelf space to a certain product against the wishes of the retailer. For example, if 50% of the sales are of Product A, the designated distributor of Product A may attempt to coerce the retailer into allocating 50% of the shelf space for alcoholic beverages for Product A. Even if that makes good business sense, it impacts the inter-brand competition, which helps maintain prices in the marketplace. The ultimate decision of shelf space allocation should remain with the retailer, and supervision of re-sets by designated distributors should continue under Department of Revenue supervision and only at periodic intervals. Specific requirements for the manner and timing of re-sets may need to be revised, but that can be accomplished by regulation rather than legislation.

**ALCOHOL DISTRIBUTION SYSTEM**  
**STUDY COMMITTEE**

**EXECUTIVE SUMMARY**

The Alcohol Distribution System of Georgia is based on a Three-Tier System where manufacturers (brewers and distillers), wholesalers and retailers are kept separate and autonomous yet bound together and inter-dependant. The Three-Tier System in Georgia seeks to maximize private enterprise participation in all three tiers yet to maintain strict accountability and regulation by public sector officials, both state and local. The Three-Tier System in Georgia has as its purpose the maximum accommodation and accomplishment of the competing and conflicting principles underlying the 18<sup>th</sup> and 21<sup>st</sup> Amendments to the U.S. Constitution, i.e. the prohibition of the evils and abuses associated with alcoholic beverages while providing the availability and ready access to high quality, wholesome alcoholic beverages at modest prices, which include substantial state and local taxes.

To achieve the multiple, competing and conflicting objectives, the Three-Tier System in Georgia has evolved over a period of the last 70 years into a rather Byzantine System, (difficult to comprehend because of a multiplicity of interrelated elements), which is often frustrating and confusing even to those individuals and business organizations who are operating under it and who are somewhat familiar with the laws and regulations.

The work of the Special Study Committee has been hugely successful in educating key members of the House of Representatives on the Three-Tier System in Georgia as well as providing a forum wherein members of the three different tiers could be educated on the system, discuss the reasons for some of the regulations and better understand the significant potential for problems if certain requested changes were implemented.

The consensus of the Special Study Committee is to refrain from any significant legislative changes to the system at this point, but to urge the Department of Revenue to seriously consider some requested regulatory changes that would allow some minor modifications to the Three-Tier System.

Respectfully submitted,

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Rep. Robert Reichert, Chairman

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Rep. Kathy Ashe

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Rep. Carl Von Epps

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Rep. Scott Dix

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Rep. Bobby Parham

**APPENDIX**

- ◆ Georgia Department of Revenue - Three-Tier Distribution System for Alcoholic Beverages
- ◆ Attorney Lou Litchfield, representing the Georgia Oilman's Association
- ◆ Ed McGill, The Georgia Alcohol Dealers Association
- ◆ Jim Tudor, The Georgia Association of Convenience Stores
- ◆ Brian Fiveash, The Georgia Beer Wholesalers
- ◆ Fred Kitchens, The Georgia Wine & Spirits Wholesalers
- ◆ Mike Wolfe, Anheuser Busch Company
- ◆ Paul DeLoach, Miller Brewing Company