

Alcohol Distribution Laws Bottle Up Options for Consumers and Retailers

By Morgan Smith

I. Summary

In 2001, the Georgia Legislature convened a Study Committee in the House of Representatives to examine complaints raised by the state's alcohol retailers about some businesses practices on the part of alcohol wholesalers. The subsequent examination of the state's regulation of the alcohol distribution industry brought to light serious questions about the structure and value of economic protections provided to the wholesalers.

It is widely accepted that state regulation of alcohol distribution is an important and necessary undertaking. But it is also clear that some elements of Georgia's regulatory policy haven't kept pace with changes in both the industry's participants and the shape of the marketplace. As with all instances of state intervention in "special" industries, regulatory protections require ongoing critical review to determine their efficiency within the current market environment and the costs being imposed on businesses and consumers.

Historically, regulation of alcohol distribution has focused on the creation and support of a "three-tier system" consisting of separated suppliers, wholesalers and retailers. This framework grew out of post-Prohibition "tied-house" laws, which emphasized the need to separate the supplier from the retailer because of concerns about overconsumption and consumer safety. Georgia's current regulations are predicated on the long-standing assumption that the three-tier system is the best framework for regulating the alcohol distribution industry. Consequently, state regulators vigorously support the system despite the significant economic advantages that state policies provide to wholesalers – a relatively small group of businesses – at the expense of other groups.

In today's system, wholesalers serve as a physical and economic partition between alcohol suppliers and retailers. To a large degree, state regulations are responsible for defining and supporting this role. In return, the state makes use of wholesalers as the lever with which to intervene in the alcohol market. Enforcement at the wholesale level is an easy way for regulators to monitor the flow of alcohol products and to collect significant excise tax revenues. For their part, alcohol wholesalers enjoy state-enforced guarantees on their market position in the form of strict protections from intrabrand competition (e.g. Miller versus Budweiser).

This system has been in effect for decades. However, the alcohol distribution industry has experienced important changes since the Prohibition era. In particular, the number and nature of industry participants have evolved dramatically. More suppliers now operate in the market, offering an exponentially broader range of products, including fast-growing "specialty" brands. At the same time, consumers have begun to seek direct access to brands not generally available through their local wholesalers, and increasingly attempt to sidestep the wholesale level entirely. Finally, wholesalers themselves have evolved into large, well-entrenched businesses that are likely quite different from the "mom-and-pop" distributors envisioned in the 1930s. Taken together, these market realities suggest that the current regulatory system may be anachronistic, and that new approaches to regulating this industry might be overdue.

Strong evidence exists that the current regulatory framework needs to be examined closely, and perhaps significantly reformed. Regulators should consider a range of issues in evaluating the efficiency of the current system, including the following:

- The current regulatory emphasis on tied-house concerns is too narrow. While the separation of alcohol suppliers and retailers is still a critical element of regulatory policy, other factors are shaping the marketplace and deserve equal consideration.
- Inflexible regulations create tax revenue risk. The continuation of outdated or inappropriate regulatory policies generates real economic consequences in terms of loss of efficiency and incentives for non-compliance.
- Restrictive policies hurt Georgia businesses as well as consumers. Protections for wholesalers have negative consequences throughout the marketplace, and adversely affect the state's retailers, small suppliers and – in the long run – perhaps the wholesalers themselves.
- Wholesaler protections provide unequal advantages to one economic group, and thereby result in a state policy that creates specific winners and losers. While some degree of economic distortion may be an unavoidable consequence of state intervention, regulators should minimize both the magnitude and inequality of the advantages created for any one group.

State policymakers have a range of options available to address these concerns. Possible approaches can be grouped into three general alternatives: maintain the current system, implement modifications to address specific areas of concern, or abandon the three-tier system entirely in favor of a new regulatory structure. Each option represents a compromise to some degree, and the prospect of regulatory change always creates some risk of unintended negative consequences. However, Georgia regulators must take the initiative to ensure that the state's policies are as efficient and fair as possible, and that the interests of consumers and all industry participants are considered in balance. The best foundation for sound regulatory policy is an explicit dialogue about what trade-offs are being made within the current system, and whether consensus exists for interventions that favor one group at the expense of others.

II. Introduction

Unlike most other consumer goods, the market for alcohol in the United States has a long history of regulation and intervention from both state and federal entities.¹ These regulatory controls have been driven by the unique social and economic effects that differentiate alcohol consumption from other types of purchases. Consequently, there is little debate about *whether* states should regulate the alcohol industry. There is, however, a wide range of options for *how* such regulatory controls should be imposed.

The Prohibition Era, during which the manufacture and sale of alcohol was constitutionally forbidden, represents the most extreme example of government control over the alcohol market.² Following Prohibition, government regulations were designed to achieve two purposes: to reduce incentives for overconsumption and to minimize the opportunities for black market production and distribution. Despite today's more relaxed social attitudes regarding alcohol consumption, these goals continue to be important foundations for any regulatory policy. And because overconsumption of alcohol creates significant consequences to individuals and communities³, widespread support persists for both the strict regulation of alcohol distribution, and for the substantial taxes levied on its purchase.

There is good evidence, however, to suggest that the mechanics of current alcohol regulations in Georgia and other states have not kept pace with the changing character and growth of the marketplace. Ongoing changes have reshaped both the nature of the alcohol industry's participants, as well as the context in which alcohol sales take place. Given the scope of these developments, the state's historical approach to controlling alcohol distribution may no longer be the most effective or appropriate policy.

In markets such as alcohol distribution, where state regulation is deemed to be necessary, interventions should be structured in a manner that best achieves the policy goals that were developed through consensus (in this case temperance and safety), while causing a minimum of market distortion. State regulation should not create a system that artificially selects industry winners and losers, or that perpetuates historical practices that are no longer relevant to market conditions. Good regulatory policy should seek the most effective means for control in conjunction with the least distortion to industry participants. In this spirit, Georgia's policymakers must take a hard look at the state's alcohol regulations and related franchise laws, to evaluate their appropriateness in the current marketplace and the costs they impose on the state's businesses and consumers.

III. The Three-Tier System

Some history is necessary to better understand the particulars of Georgia's current alcohol regulation scheme, and the origin of key assumptions about the alcohol industry's structure.

Before Prohibition, it had become common practice for alcohol retailers to be closely controlled by large distillers and brewers, in effect to become “tied” to the more economically powerful suppliers:

“Control took the form of leases, chattel mortgages, credit and other financial interests. This control by the supplier level forced retailers to adopt programs to promote consumption and increased sales.... [T]hese tied-houses sponsored activities and fostered levels of beverage alcohol consumption that flagrantly offended the moral and social values of many of the communities in which they were located.”⁴

In other words, the suppliers’ hands-on involvement in the retailing of alcohol created financial incentives to increase alcohol sales to levels that were perceived to be excessive and detrimental to both consumers and society as a whole.

Following the repeal of Prohibition, the states were given responsibility for the regulation of alcoholic beverages. The intent was to permit each state to determine the character of alcohol distribution within its borders, in order to accommodate varying regional preferences for temperance. Across the board, prevention of close retailer-supplier financial ties was at the center of the states’ new regulatory policies.

Across the country, each state has chosen to follow one of two models of alcohol distribution: “control” or “license.” Control states not only regulate the distribution of alcohol within their borders, but also use state agencies to assume the role of alcohol wholesaler and sometimes retailer (as in state-run “ABC” stores).⁵ License states, on the other hand, allow private businesses to operate as retailers and wholesalers, albeit under strict supervision and regulation. Georgia is one of 32 license states.⁶

Each license state has also enacted a framework of “tied-house” laws – strict rules designed to ensure the separation of the retail segment from alcohol suppliers and distributors. To implement these rules, states have universally adopted a control structure known as the “three-tier” system. Three levels – or tiers – within the alcohol market are identified: supplier, wholesaler, and retailer. The physical and economic separation of each tier is enforced by strict regulations and policies.

The origin of this regulatory emphasis on tied-house issues is probably – at root – simply a reflection of the historical movement in the early 20th century to impose structural separation within industries. In numerous other examples (banking, insurance, etc.), vertical integration was viewed with suspicion and regulation was used to intercede with the intent of preventing abuse of market power. In many other industries, the regulatory structure supporting vertical separations has long since fallen away and such restraints are now viewed as anachronistic. In the alcohol distribution market, however, the economic assumptions that were adopted decades ago still prevail.

The three-tier system is sometimes described as a pyramid, evoking an image of an industry in which a product moves progressively from a few large suppliers, through a middle wholesale stage, on to a broad base of retailers. Because this vision of the three-tier system has

not changed since it was instituted almost 70 years ago, it is not surprising that the regulations which control the system have not evolved much either. It is increasingly clear, though, that ongoing changes are reshaping the alcohol distribution industry, creating effects that challenge state regulatory systems in Georgia and across the country.

IV. The Role of the Wholesaler

The center of Georgia's alcohol distribution industry, both literally and figuratively, is the wholesaler. The wholesaler acts as both an intermediary and a partition between alcohol suppliers and retailers. In this capacity, wholesalers are subject to a broad and explicit set of regulations that govern their business activities, most of which are grounded in the post-Prohibition fear of tied-house "evils."

The role of today's wholesaler is complex and multi-faceted. On the one hand, wholesalers act as exclusive agents for alcohol suppliers, and assume responsibility for product marketing, availability and freshness. On the other hand, wholesalers are intrinsically involved in their retailers' operations, providing guidance on product placement within stores, distributing promotional materials and training retail employees.⁷ Consequently, wholesalers have important, hands-on responsibilities at both ends of the alcohol supply chain and develop close relationships with both their retail customers and alcohol suppliers.

Wholesalers in Georgia are private entities, but their business operations are almost entirely governed by state regulations. For example, state franchise law mandates that each alcohol supplier designate one wholesaler for each product brand for each region.⁸ Thus, the state not only permits but in fact *requires* that each wholesaler hold a monopoly on the brands he carries for his particular territory.

At the other end of the transaction, state law also requires that wholesalers handle sales to every retailer in their area, from the largest grocery store to the smallest restaurant. This guarantees that all retailers, no matter the size of the account, will have access to alcohol product. State regulations further stipulate that there be no price differentiation among a wholesaler's retail customers, and that wholesalers post their prices with the state Department of Revenue and maintain those prices for a set period of time.⁹

Clearly, some of these policies create outcomes that are very different than the results that would occur in an open and competitive market. Taken in sum, the state's regulations construct an environment in which transactions between wholesalers and their customers and suppliers are artificially controlled, and prices are therefore unavoidably distorted. These interventions may be justified by the state's interest in promoting temperance and safety, but it is still important to acknowledge the degree to which regulatory distortions influence the economics of this industry.

In perhaps their most significant role, wholesalers also act as proxy agents for the state's revenue department. Wholesalers are responsible for collecting significant excise tax revenues on behalf of the state – nearly \$255 million in 2000¹⁰ – and for assuring the security and control of

their alcohol inventories. In this respect, it is actually Georgia's wholesalers who undertake the state's policy goals of reducing incentives for overconsumption (through the imposition and collection of excise taxes) and controlling black market distribution (through the securing of inventories).

Because wholesalers occupy a pivotal position within the industry, it is natural for state regulators to use the wholesale level as the point of enforcement. Control via wholesalers is an efficient way for the state to monitor and tax the flow of alcoholic beverages, since there are far fewer businesses to supervise at the wholesale level than the retail level.¹¹ In addition, locally based wholesalers are presumed to be more accountable and easier to audit than alcohol suppliers, who may be located in another state.

Regulatory influence pervades all aspects of alcohol wholesalers' business, stipulating how and when wholesalers will undertake almost every transaction. And in several respects, state regulation provides important benefits to the wholesalers themselves. Because state franchise laws guarantee monopoly privileges within sales territories, wholesalers are completely protected from intra-brand competition. This means retail customers are not free to choose their wholesale supplier, but must instead deal with whatever firm has been designated for their sales area. In addition, Georgia's alcohol franchise laws explicitly dictate many aspects of the distribution contracts used between suppliers and wholesalers. Some of the rules governing these contracts are heavily weighted in favor of wholesalers, making it difficult for a supplier to change or terminate their relationship with a specific wholesaler.¹² While these regulatory protections are not *quid pro quo* for the wholesalers' role as the state's regulatory instrument, such issues are unavoidably intertwined.

Ultimately, there are trade-offs to maintaining a regulatory policy that, like Georgia's, places so much emphasis on supporting and protecting the hegemony of the traditional wholesaler. The strong regulatory bias toward wholesalers is causing increased friction between the state's wholesalers and suppliers, consumers and other participants in the alcohol industry. Under the current system, Georgia's alcohol wholesalers have been insulated from open-market pressures and have been guaranteed certain economic benefits. But new market realities and industry trends raise questions about whether such protections are still justifiable, and whether the historical system suits the more complicated demands of a changing marketplace.

V. Changes in Industry Participants and the Marketplace

Recent economic changes – outside and within the wholesale level – are having a significant impact on the alcohol industry. No longer truly a pyramid, the alcohol distribution market is now more like an hourglass, with a far greater number of actual and would-be participants at both the top and the bottom than ever before.¹³ As a wider range of interests enter the marketplace, it becomes particularly important to gauge the effectiveness of traditional regulatory structures.

At the base of Georgia's three-tier system are the state's alcohol retailers and – by extension – consumers. At the top of the system are alcohol suppliers, both the traditional large

brewers and importers and more recent entrants such as small brewers and wineries. Increasingly, these different groups have demonstrated a shared frustration with the state's restrictive and perhaps outdated regulatory policies. A recurring issue raised in the ongoing industry dialogue is the degree to which state rules emphasize the role of the wholesaler at the expense of other participants' welfare, economic efficiency and market competition.

Retailer Requests for Flexibility

Alcohol retailers in Georgia fall into many categories, including package stores, restaurants, bars, convenience and grocery stores. These varied establishments of necessity have very different business needs and methods of operation. For some retailers, Georgia's system of exclusive territories for wholesalers has become a point of contention. Recently, a coalition of Georgia's convenience store owners lobbied the Legislature to re-examine the state's alcohol regulations because of concerns that wholesalers in some territories were charging higher prices than others.¹⁴ Because of Georgia's franchise law limitations, retailers are prohibited from purchasing from wholesalers outside their own territory, thus leaving them powerless to respond to price disparities.

Other logistical aspects of the state's regulations have come under scrutiny. Some larger retailers (i.e. grocery and convenience store chains) want the ability to take advantage of their economies of scale and use their own labor and equipment to redistribute alcohol purchases from one delivery point to multiple store locations. Retailers have also requested the ability to pick up alcohol purchases at the wholesaler, and thereby assume responsibility for the entire delivery process. Finally, some retailers have suggested changes to the requirement that wholesalers post their prices with the Department of Revenue¹⁵, and further loosening of the restrictions on wholesalers who help retail customers to reset their shelf displays.

Discussion of this set of retailers' concerns prompted the creation of a legislative study committee convened by the Georgia House of Representatives in the spring of 2001. After a series of hearings, the Study Committee released a majority report recommending that the General Assembly refrain from "significant" legislative changes, although recommendations for some "minor modifications" were noted.¹⁶ The Study Committee also issued a minority report more critical of the current system. In part, the minority report criticized the state's regulations for creating "state protected monopolies" and for preserving a structure that "unfairly benefits a very small group of distributors at the expense of the consumers and citizens of Georgia."¹⁷ While the committee hearings provided an opportunity for airing of different opinions on the current regulatory scheme, disagreements clearly persist about the need for reforms and the degree to which changes might be justified.

Overall, the concerns raised before the House Study Committee reflect a momentum building at the retail level to move the retailer-wholesaler relationship to a more flexible and competitive framework. The current regulatory structure ties each retailer to one wholesaler (per brand) based on territory. There is little recourse for the retailer if that relationship is not mutually satisfactory. Opening up the wholesale transaction to permit cross-territory sales and other flexibility (such as split deliveries or self-pickup) would encourage wholesalers to compete not just on price, but also on level of service and range of delivery options. Wholesalers would

be free to choose which, if any, of these options they would provide, and retailers would be free to select wholesalers according to their preferences. In a more open market, cross-territory price disparities should be minimized and retailers could choose which auxiliary services best matched their business' needs. The net result would be improved economic efficiency and a more consistent level of service across the state.

The demands from alcohol retailers for increased flexibility are not unique to Georgia, nor are they limited to the alcohol distribution industry. Many other states are under pressure to re-examine the foundations of the three-tiered system, and the role of the wholesaler in particular. Policy dialogues on this point are under way in Florida, Minnesota, Indiana, Maryland and elsewhere.¹⁸ Indeed, the movement to permit more flexibility in alcohol distribution processes mirrors trends in other distribution markets, and reflects the influence of innovations such as just-in-time inventory planning, order automation, etc. Given the clear benefit from these processes in other industries, many alcohol industry participants believe that the adoption of more flexible markets and advanced technologies will be an important and necessary part of their industry's future growth.¹⁹

Georgia's wholesalers have resisted such changes on several grounds. Primarily, wholesalers have complained that cross-territory sales would unnecessarily complicate the administrative and enforcement aspects of their business. Because excise tax receipts are shared between the state and local communities, it is important to track the final destination of alcohol products and to assign revenue shares accordingly. While this is a valid concern and an important detail, it is ultimately an administrative problem which could be solved by the use of new accounting and auditing practices. Georgia's wholesalers already sell products in multiple local jurisdictions and are able to allocate tax revenues proportionately.²⁰ Adding the flexibility to sell across territories is likely to be an incremental accounting change, rather than a systemic one.

The state's wholesalers also cite legitimate concerns about license enforcement and inventory tracking as obstacles to retailers' requests for self-pickup and split delivery options. However these issues are not insurmountable, and could certainly be accommodated by expanding and adjusting the Department of Revenue's current rules and procedures. And as noted above, there should be no requirement that a wholesaler must offer these more complicated services. But where the market demand for these options exists (as proven by retailers' requests), the state should develop a regulatory structure that will allow and support more flexible transactions. If retailers were free to choose wholesalers based on a range of criteria (price, level of service, etc.), the net result would be a more efficient and open marketplace.

In general, the state's wholesalers point out that, although the current system is not perfect, it represents an effective compromise between the need for strict control of alcohol supplies (for the purposes of safety and taxation) and the state's desire to ensure universal service to all retailers. Specifically, wholesalers perceive a trade-off between their ability to provide full service to all retailers (large and small) and their ability to offer a wider range of services (in the form of either a greater number of products or more labor-intensive delivery options). In this view of the industry, there is a cross-subsidy provided to the state's small retailers – who get full-service treatment at a reduced cost – at the expense of consumers, who face a reduced selection of brands and/or non-competitive, potentially distorted prices.

Wholesalers vigorously oppose modifications to the current system, citing potential ill effects on the state's revenue stream, public health and consumer safety. Certainly there are legitimate concerns about how deregulation might create unintended consequences in addition to significant administrative challenges. But it is important to separate these valid public policy questions from the protectionist impulse that underlies many of the wholesaler's arguments. The alcohol distribution industry has some unique characteristics that merit special attention and consideration. But beyond a certain point, the state must take steps to ensure that its regulatory policy does not create excessive special protections that benefit this group at the expense of other, equally deserving industries.

And while the prospect of significant changes may seem radical to some industry participants, a broader view of the importance of flexibility is useful. Modern business models emphasize and reward operational agility more than ever before. Businesses that are able to adapt and adjust to change are more successful and more sustainable over the longer term.

The fact that alcohol distribution is a regulated industry does not remove it from these rules of engagement. Certainly the adoption of more flexible transactions would be beneficial to retailers, but in a larger sense such changes may also benefit wholesalers themselves. Some industry observers predict that the future marketplace will be dominated by multi-brand distributors serving a greater number of smaller suppliers.²¹ Such conditions would require distributors to adopt more flexible and complex operational systems, or be beaten out by more innovative firms.²² In advance of these trends, state policies that permit greater competition across territories could create incentives for Georgia's wholesalers to modernize their administrative capabilities, and thus better prepare for industrywide changes in the marketplace.

Consumer Requests for Access

In recent years, an extensive policy debate has emerged over whether consumers should be able to purchase specialty alcohol products directly from suppliers, without the participation of a wholesaler. The controversy has centered on state regulations that prevent or limit consumer wine purchases via the Internet. But there are other, related topics that deserve review, such as regulations that restrict consumers' access to smaller, specialty brewers and the restrictions placed on purchases from out-of-state wineries.

The main impetus for direct-purchase reforms has come from consumers who wish to purchase small batch or hard-to-find wines from out-of-state suppliers. To some degree, the direct purchase movement evolved from wine consumers' interest in and access to Internet sites promoting boutique wines and small vineyards. Consequently, the debate over direct purchase has often included an element of "old economy versus new economy" rhetoric.

As consumer demand for all wine products has boomed in recent years, the demand for specialty wines has enjoyed particular growth.²³ There are approximately 6,000 different brands of wine produced domestically, and the average wine wholesaler cannot practically provide more than a sampling of this selection.²⁴ Consequently, specialty wine consumers (and to a lesser extent, consumers seeking beer brands from smaller breweries) have pressured state regulators to

find mechanisms to permit consumers' purchase of alcohol products that are not available through regular wholesale channels.

In the late-1990s, the direct purchase debate descended into an acrimonious, state-by-state battle over whether to rework states' regulatory policies. Wholesalers across the United States worried that direct purchase reforms would result in significant loss of market share and would set a precedent that threatened their historic monopoly over alcohol supplies. State regulators opposed direct purchase transactions because of concerns about lost tax revenues from sales placed outside the three-tier system, as well as the loss of control over out-of-state alcohol shipments. In 1999, wholesaler lobbying groups pushed for federal legislation to stiffen penalties for direct purchase violations, an effort that revealed the intensity of wholesalers' opposition to direct purchase.²⁵ At the same time, proponents of direct-purchase reforms filed lawsuits in a series of states to challenge the legitimacy of direct purchase prohibitions. Today, these lawsuits continue to work their way through the court system, with varying outcomes from case to case.²⁶

The State of Georgia has shifted its position on the direct purchase issue. Early on, the state passed legislation to strengthen the penalties for direct purchase violations, adding itself to the list of states that imposed felony status on such transactions.²⁷ After another round of public debate, however, the state took a more liberal position. Legislation passed in 2000 repealed some of the earlier penalties and provided mechanisms for Georgia consumers to make direct wine purchases under certain circumstances. Specifically, consumers may purchase wine during on-site visits to U.S. wineries and can arrange to have up to five cases shipped to their home.²⁸ Consumers may also order wines directly from wineries that do not have a designated Georgia distributor. In these cases, the winery must obtain a "special-order" shipping license from the state, which provides a mechanism for collecting and remitting the appropriate excise taxes.²⁹

Georgia's regulatory changes represent a move to allow increased consumer access to specialty suppliers, but there are still aspects of the state's policy that prompt debate. For example, industry opponents continue to criticize direct-purchase transactions on principle, citing the increased risk of sales to minors and the possibility for out-of-state suppliers to evade the collection of excise taxes.³⁰ At the same time, advocates of direct purchase refer to Georgia's legislation as simply a "first step," noting potential problems with the law's differential treatment of wineries within the three-tier system and outside the system.³¹ And because the revised Georgia law still maintains restrictions on many forms of direct purchase, Georgia's own wineries are blocked from direct shipments to the 13 "reciprocal states" (see below). In addition, Georgia residents are still prohibited from purchasing alcoholic beverages through mail-order beer and wine clubs, since these products are shipped via out-of-state suppliers.

In each of the examples described above, regulatory controls have collided head-on with consumer preferences for access to alcohol products that are not readily available in-state. The legitimacy of these consumer demands (and their inevitability, given broader e-commerce trends) should not be debated: It is clearly lawful for Georgia consumers to purchase and consume alcohol produced and supplied out-of-state. The crux of the issue is simply how to deliver these products to consumers in a way that ensures the safety of their use and the enforcement of Georgia's excise tax regime.

The historical three-tier model is based on the assumption that all alcohol products must flow through an in-state wholesaler. But the consumer direct-purchase transactions discussed above don't fit that model, and are therefore anathema to the state's regulatory framework. It is important to acknowledge that these types of direct purchases are problematic only because they circumvent the wholesaler-centered structure upon which Georgia and other states have based their revenue and control methods.

There are three possible responses to this situation. One is to enforce a prohibition on all consumer direct purchases. This approach risks criminalizing an activity that is both ongoing and difficult to monitor. It also bases regulatory policy on administrative concerns rather than consensus goals. This is the path many states have followed in recent years, only to confront increasing legal challenges to their regulatory structures and growing incentives for black market sales. The other two options are to either redefine the *role* of the wholesaler (by inserting his participation in direct-purchase transactions), or to change the *definition* of a wholesaler (thus bringing out-of-state purchases under the umbrella of state regulatory policies).

Experiments with both approaches are under way in the marketplace, and the results should be of particular interest to regulators. For example, earlier Web-based firms such as Wine.com and WineShopper.com adopted a model to provide by-the-bottle direct shipment to consumers. However, many of these companies found significant challenges to their business, and frequently cited regulatory issues as a main obstacle to their economic survival.³² More recent market entrants have continued to sell their products via an Internet presence, but have implemented different strategies for the actual delivery to the consumer. For example, eVineyard.com has established a physical (and licensed) retail presence in each of the 27 states it serves.³³ Alternatively, New Vine Logistics attempts to act as a clearinghouse for wine, brokering sales between a wide stable of suppliers and pre-identified, in-state wholesalers and retailers, thereby working within each state's three-tier system.³⁴

Recent events prove that the public and legal pressure to accommodate consumers' demand for direct purchases of out-of-state specialty products is substantial. In this area, some states have clear incentives to act as trendsetters in regulatory reforms. In states like California, where alcohol sales play an important role in the economy, regulatory policy is connected with significant economic effects in addition to the usual safety and temperance concerns. For states on the sidelines, though, it is still important to be aware of market trends, and to craft regulatory and legislative policies that accommodate the evolution of new industry practices. The alternative – to ignore inherent market changes because they are inconvenient to established participants or challenging to administrative structures – is both inefficient and shortsighted. With this in mind, Georgia should continue to take note of regulatory developments in other states and adapt its own policies and laws accordingly.

Small Suppliers and New Markets

Just as consumers are influencing the industry through their demands for better access to specialty products, the suppliers of these products are eager to forge new distribution paths. Small brewers and wineries are often shut off from distributing their products through traditional wholesale channels, since wholesalers typically focus on larger, more recognizable brands with

established markets. This effect has been accelerated in recent years by two forces at work. First, movement toward consolidation within the wholesale level has created ever-larger wholesale entities that concentrate on fewer brands:

“...wholesalers are increasingly attempting to rationalize their portfolios and achieve economies of scale by distributing fewer, high volume brands. As a result of these and other pressures, many small brewers have been dropped by wholesalers in recent years.”³⁵

Second, the significant growth in the total number of specialty/smaller wine and beer producers has made it even more unlikely that the average new entrant will be able to obtain sufficient market share to attract a large wholesaler’s attention.

The growth in the number of small suppliers proves that there is a strong consumer-driven market for small batch, specialty beer and wine products. However, the traditional three-tier system is not structured to help make these products available to the average consumer. Brewers and vintners alike complain that the economics of large wholesale operations means that their small-market products are effectively left out of established distribution channels.^{36, 37}

The question of whether and how to improve small suppliers’ access to markets is more than an attempt to expand consumers’ choices. In states with established or nascent wine industries, the issue of direct purchase has merged into economic development concerns. In states like California, New York and Virginia, the debate over the role of alcohol wholesalers has included challenges from in-state small businesses (brewers and vintners), who wish to improve their access to local and out-of-state markets. In many states, support for liberal direct-purchase mechanisms represents a form of support for the state’s own small alcohol suppliers, many of whom depend on out-of-state sales for a significant portion of their revenue.

Toward this end, 13 states have joined together to enforce reciprocity arrangements in support of their regional wine industries. Within these “reciprocal states,” consumers may legally make direct purchases, but only from suppliers located in other reciprocal states; purchases from non-reciprocal states are prohibited.³⁸ Although Georgia’s law currently permits direct purchase under limited circumstances, the state has not joined the reciprocity coalition. Consequently, Georgia’s small producers are excluded from making direct sales to a significant segment of the consumer market.³⁹

Georgia’s consumers have been well served by the state’s liberalization of its direct purchase laws. However, the current direct purchase rules should be viewed as a starting point in the exploration of how the market for alcohol might be expanded and made more efficient, for both the state’s consumers and its producers. Georgia boasts a small but noteworthy wine industry, with at least 14 vineyards producing quality boutique wines as well as providing important tourism opportunities.⁴⁰ Georgia is also recognized as the leading U.S. producer of muscadine grapes, with 1,100 acres cultivated.⁴¹

These small businesses fill an important and increasingly visible niche in the state’s agriculture and tourism industries. As such, they deserve recognition and a voice in the state’s

regulatory policy development. Under the current three-tier system, these small producers are largely left out of the mainstream distribution process. In the case of wineries, their access to new customers is further limited by Georgia's exclusion from direct sales to customers in the 13 reciprocal states.

In addition, there are approximately 25 independent breweries or brewpubs located across the state, many of which would benefit from the increased exposure and market opportunities that more liberal access laws could provide.⁴² For these small brewers, access to store shelf space is hindered by the economics of the current distribution system, which favors large, established brands. As a result, other, non-retail forms of marketing – such as on-site visits or Internet resources – are especially important for these businesses.

Small brewers also face particular challenges from the state's franchise laws, which create burdensome restraints on how small producers can manage their agreements with wholesale distributors. For example, a brewer cannot change or terminate his link to a particular wholesaler without first proving "good cause" according to a list of criteria.⁴³ These rules were designed to insulate wholesalers from the economic strength of large, national suppliers. But when imposed upon small brewers who already operate at a relative disadvantage, the state's regulations unfairly favor alcohol wholesalers at the expense of the small producer.⁴⁴

Georgia has already taken steps to liberalize its alcohol policy in support of the state's emerging domestic alcohol producers. For example, the recent passage of the farm wineries law permits small wineries to cross-market for each other by allowing these wineries to sell products from other in-state vineyards.⁴⁵ Regulators should consider enacting similar rules for the state's small brewers. And in general, the state should continue to move ahead in its pursuit of programs that help the development and growth of small vineyards and breweries. As a complement to traditional economic development assistance, more balanced regulatory policies could facilitate wider exposure and better distribution for Georgia-based suppliers, and help them to better connect with consumers both within and outside of the state.

Changes At the Wholesale Level

As with other layers of the alcohol industry, there are also important economic and operational changes affecting wholesalers. The wholesalers' position within the three-tier system was defined in an era in which strong community sentiments about the sale and use of alcohol helped shape public policy. At that time, residual fears of tied-house problems contributed to a belief that the layer of "mom-and-pop" wholesalers would be more accountable and more transparent than the larger and more powerful alcohol suppliers.

The reality of today's market, however, is that alcohol wholesalers are no longer the small, local establishments that may have once prevailed. Wholesalers now operate at a truly national level, with some of the largest firms conducting business in as many as 10 different states. Overall, it is a very concentrated industry, with a few large firms controlling the lion's share of the market. Recent mergers among top firms have contributed to further consolidation, and the five largest wholesalers are now truly giant operators in the market. For example, the largest wine and spirits wholesaler – Southern Wine & Spirits Inc. – boasts over 6,000

employees and generated \$4 billion in sales in 2001, which represents 12 percent of the entire U.S. market.⁴⁶

As individual wholesalers get bigger, the total number of distributors has dropped. According to some estimates, the number of wine wholesalers decreased from over 10,000 in the early 1980s to fewer than 3,000 by the mid-1990s.⁴⁷ This contraction was particularly notable because it occurred during a period in which the number of wineries was experiencing dramatic growth.⁴⁸ Consequently, the ratio of wholesalers to producers within the industry has decreased sharply.⁴⁹

Georgia's wholesalers have also experienced consolidation within their ranks. Among beer distributors, the number of individual firms has declined by more than 15 percent in the past 10 years.⁵⁰ Similarly, in 1987 there were at least 18 wine and spirits wholesalers in the state, while today there are only eight.⁵¹ Industry observers suggest that the national trend towards consolidation may not be as sharply evident in Georgia as in other states, but it is clear that the state has not been immune to these pressures.⁵² Continued aggregation towards large, statewide wholesalers will certainly be a factor in the industry's future and this trend should be acknowledged when evaluating the state's regulatory policies.

In fact, many of Georgia's alcohol wholesalers are already large firms with a considerable economic and political presence. The trade association for the state's beer distributors estimates that their members collect roughly \$170 million in state and local tax revenues annually, which suggests that wholesalers are handling upwards of \$750 million worth of products, spread across fewer than 40 firms.⁵³ Similarly, the state's wine and spirit wholesalers employ roughly 2,300 individuals across only eight firms.⁵⁴ While there are certainly some smaller establishments surviving in the wholesale industry, there is clear evidence to suggest that many – perhaps most – of Georgia's alcohol wholesalers are large, entrenched businesses.

There is no question that the alcohol distribution industry continues to experience unprecedented momentum towards consolidation and aggregation. Not only are current distributors merging to create larger and larger entities, but new entrants in the marketplace are few and far between. Some observers note that, in today's context, it is increasingly unlikely that a given market will be served by more than two beer distributors. One specialist in the field offers a "pop-quiz" for beer distributors which suggests good reasons for wholesalers in the number 3 or 4 position in their area to either "sell or merge."⁵⁵

Changes in the number and vitality of distributors in a given market should be a matter of keen interest from a regulatory perspective. State protections are designed to guarantee exclusive sales territories for wholesalers and thereby insulate them from intra-brand competition. This system is based on the assumption that inter-brand competition (e.g. Miller versus Budweiser) can create sufficient limits on a wholesaler's market power, and thus his ability to raise prices or take other non-competitive action.

Increased industry consolidation has the potential to dramatically reduce inter-brand competition. As the industry moves towards a state of fewer wholesalers within a given market,

each remaining wholesaler necessarily collects additional brands. The degree of inter-brand competition is thereby unavoidably diminished, since it becomes increasingly likely that one or two wholesalers will hold all of the major brands. In this setting, wholesalers that survive the wave of consolidation can find themselves in the enviable position of facing even fewer challenges to their control of the market.

Given the facts discussed above, it is important to question whether today's wholesalers should operate under the same regulatory protections that were designed to support their predecessors. The consolidation evident across the national industry suggests that pursuit of economies of scale will continue to build larger and larger wholesale firms, both outside and within Georgia. What should concern policymakers is the degree to which contraction at the wholesale level will amplify and exacerbate the shortcomings of the current three-tier system.

The wholesalers' monopoly has been built upon the guarantees inherent in the state's regulatory structure. Before determining the degree to which this monopoly should be preserved (which is done at the expense of other market participants), regulators should have an accurate picture of the state's wholesalers themselves. With this knowledge, policymakers can better gauge wholesalers' true ability to withstand the changes brought about by an incrementally more competitive market.

VI. Policy Implications for Georgia

In light of the ongoing changes in the structure of the alcohol industry, the influence of new market participants and the facts about wholesalers' own economic strength, there are several conclusions that can be drawn about Georgia's alcohol distribution regulations:

- Emphasis on tied-house concerns is too narrow.

While the separation between alcohol suppliers and retailers is still a critical element of regulatory policy, other factors are shaping the marketplace and deserve equal consideration. Growth in the number of industry participants has changed the character of the alcohol market, creating challenges for the traditional, wholesaler-based system. Increasing numbers of small suppliers are seeking a mechanism through which to connect with technology-savvy consumers. At the same time, a shrinking number of wholesalers means that this middle layer of the three-tier system sometimes becomes a barrier to new entrants rather than a viable channel for access. Although tied-house concerns have historically emphasized a ubiquitous wholesaler presence, modern market pressures create incentives for participants to side-step the wholesale level. The trend towards more direct transactions between suppliers and consumers should be acknowledged and accommodated, in tandem with traditional tied-house concerns.

- Inflexible regulations create tax revenue risk.

Inflexible or outdated regulatory policies create real economic consequences in terms of both loss of efficiency and decreased compliance. Particularly in the area of direct supplier-to-consumer purchases, the state's failure to adequately accommodate emerging forms of alcohol sales creates incentives to move such purchases outside of the regulatory system. To the degree that these "black market" sales become broadly accepted, the state loses opportunities for revenue collection and risks lowering consumers' commitment to voluntary compliance with state laws. Although direct-purchase transactions represent only a fraction of total alcohol sales, the issue is highly visible to consumers and points to broader weaknesses in the wholesaler-based system. For these reasons, resolution of remaining direct purchase obstacles should continue to be a priority for policymakers.

- Restrictive policies hurt Georgia businesses as well as consumers.

Protections for alcohol wholesalers create negative consequences throughout the marketplace. Clearly, the state's consumers face restricted access to specialty products, since the vast majority of small brands will never be sourced by mainstream wholesalers. But consumers are not the only victims. The state's small wineries and independent brewers lose access to important new markets such as out-of-state consumers. Retailers lose the ability to fully exploit their economies of scale by being tied to a single distribution mechanism (versus the flexibility of self-pickup or split deliveries). Finally, wholesalers themselves lose the opportunity to embrace a more competitive regulatory structure, which would help encourage modernization and more strategic business practices within their industry.

- Wholesaler protections provide unequal advantages, and create winners and losers.

Regulatory emphasis on wholesalers' monopoly position is maintained at the explicit expense of other groups. Suppliers face additional costs due to the pro-wholesaler bias embedded in state franchise laws. Retailers absorb distorted prices due to the absence of cross-territory competition between wholesalers. Price posting requirements may create artificially higher wholesale prices across the state. Retailers – and by extension, consumers – are presented with limited product choices due to wholesalers' tendency to focus on fewer, established brands. Some degree of economic distortion may be an unavoidable consequence of state intervention, but regulators should strive to minimize both the magnitude and inequality of advantages created for any one group within the industry.

VII. Guidelines for Change

- Increase competition and openness in the relationship between wholesalers and retailers.

The best way to correct the effect of historical advantages given to wholesalers is to allow the market to smooth out the biases created by state protections. The state should adopt new policies to encourage greater flexibility in the wholesaler-retailer relationship. One example would be granting permission for a more sophisticated range of delivery options (such as self-pickup or split deliveries). Another improvement would be to permit retailers to purchase products from any in-state distributor, thus promoting cross-territory competition. A freer, more competitive wholesale market is the best safeguard against wholesaler transgressions in pricing and level of service. By improving the balance of control between the wholesale and retail levels – even incrementally – the state will generate benefits for both groups in the long run and will improve the performance of the industry overall.

- Revise and update regulations to promote flexibility and reduce intervention.

The state should undertake a thorough review of the current regulatory procedures to find ways to streamline its intervention in the market. Georgia regulators continue to micro-manage some aspects of alcohol sales that could be safely negotiated by the market's participants themselves. One example is the state's control over the timing and method of retailer resets, which is both overly intrusive and only tangentially relevant to the goals of temperance and safety. Another candidate for review is the outdated mechanism of price posting, which is both unwieldy and anti-competitive. Finally, the state should examine the pro-wholesaler biases in the franchise laws, which place significant burdens on suppliers who wish to cancel or change their distribution contracts. The state has a clear role in the oversight and enforcement of alcohol regulatory policy. But perpetuating outdated or burdensome administrative practices only acts to cloud the central mission of regulators and to antagonize other market participants.

- Participate in – or at least prepare for – evolving trends in the marketplace.

Georgia has made important progress in its movement towards a more liberal policy on suppliers' direct sales to consumers. It is important that this progress continue in step with trends emerging in other states and at a national level. While Georgia has removed many of the penalties on consumers' direct purchases, many other restrictions remain. It will be critical for regulators to continue to evaluate the effect of these prohibitions in light of the actions of other states. For example, despite its own progressive legislation, Georgia's exclusion from direct sales to other "reciprocal" states drastically limits the marketing opportunities for the state's small producers. The Internet will continue to encourage a national market for specialty products. At the same time, consolidation in the wholesale industry

creates strong incentives for wholesalers to focus on only a small number of established brands. The consequence of these and other trends (including the continued aggregation among wholesalers themselves) should be carefully monitored and incorporated into new regulatory practices.

- Do not let revenue concerns drive regulatory policy; adapt regulations and administrative processes to fulfill sound policy.

Since Prohibition, the explicit goals of the state's alcohol regulation have been safety and temperance. The regulatory tools to achieve these goals are excise taxes and rules for controlling distribution. It is clear that the strong protections provided to wholesalers are derived to some degree from wholesalers' value as state-sponsored revenue collectors. But sound regulatory policy originates first from close adherence to policy goals, with regulations and practices that are then designed accordingly. While bureaucratic concerns about how best to collect assigned taxes are important, these should be secondary to the primary question of how best to implement state intervention with a minimum of market distortion. There are likely to be good arguments for continuing to use wholesalers as the lever for excise tax collection. However, alternative methods should be critically examined, such as shifting tax collection to the retail level. The wholesalers' usefulness as revenue collectors should be – at most – a sidebar to the state's regulatory policy development, not a starting point. Only then can the state guarantee that it has developed interventions that are directly relevant to the established policy goals, and that best serve the interests of the wide range of industry participants.

VIII. Approaches to Reform

State regulators and policymakers should carefully examine whether changes in the alcohol distribution industry merit accompanying reforms to Georgia's regulatory system. Possible approaches can be grouped into three general alternatives:

- **Maintain current system**
 - Pro:** The current system provides a successful mechanism for the control of alcohol products and the collection of state tax revenues, while also guaranteeing that all retailers – regardless of size – receive distribution service.
 - Con:** Wholesalers are insulated from intra-brand competition and therefore may offer a different set of brands, services or prices than would be provided under a free market arrangement. Retailers are compelled to purchase from a single distributor and have no recourse in cases of pricing disparities, and no options for alternative delivery mechanisms. Consumers are largely denied access to product brands other than those

offered through their local wholesalers and may face retail prices that are distorted by wholesalers' unrestricted market power.

- Modify the three-tier system to increase market competition
 - Pro: A more open, less-regulated market would cause fewer distortions in terms of the products, services and prices being provided by wholesalers. Increased competition could spark innovation and improvements within the distribution industry, and potentially enhance the long-term competitiveness of the state's wholesalers. Easing restrictions on small suppliers' direct access to consumers and retailers could provide economic opportunities for the state's specialty wine and beer producers.
 - Con: Changes in the state's regulatory framework could create unintended consequences. Significant administrative change would be required to adapt current safety and revenue regulations and oversight structures. Short-term and long-run revenue streams from excise tax collections could be compromised if administrative modifications are insufficient or unsuccessful.

- Eliminate the three-tier system entirely
 - Pro: Removal of a mandatory wholesale level would allow alcohol suppliers and retailers the freedom to choose the products and services that are best-suited to their business needs, either via self-service distribution options or the use of a third-party distributor whose operation is guided by free-market incentives. The state would no longer be in the position of providing special economic protections to the alcohol distribution industry at the expense of other groups.
 - Con: The transition to an entirely new industry framework could have significant and unpredictable effects on state excise tax revenues and retail alcohol prices and – as a consequence – consumer and community safety. Adopting a regulatory model that departed entirely from the historical three-tier structure would place Georgia in a unique position with respect to other states, which condition might further complicate issues of compliance and administration.

Each of these options represents a compromise to some degree, and the prospect of regulatory change always creates some risk of unintended negative consequences. However Georgia regulators must take the initiative to ensure that the state's policies are as efficient and fair as possible, and that the interests of consumers and all industry participants are considered in balance. The best foundation for sound regulatory policy is an explicit dialogue about what trade-offs are being made within the current system, and whether consensus exists for interventions that favor one group at the expense of others.

¹ Alcohol (and to a similar degree, tobacco) has historically been restricted in its distribution and subjected to significant sumptuary or “sin” taxes. These excise taxes are designed to raise prices in order to reduce consumption and/or to compensate for the externalities created by the product’s use. See Bruce F. Davie, “Sumptuary Taxes” in Encyclopedia of Taxation and Tax Policy, Urban Institute (1999).

² Prohibition was enacted by the 18th Amendment to the U.S. Constitution (1919) and was repealed by the 21st Amendment (1933).

³ Cook, Philip J. and Michael J. Moore, “Alcohol,” NBER Working Paper No. w6905 (1999).

⁴ From statement of Douglas W. Metz, counsel to Wine and Spirits Wholesalers of America, before the Special Joint Hearing of the California Senate Committee on Government and the Select Committee on California’s Wine Industry (1/23/96).

⁵ National Alcohol Beverage Control Association, which represents jurisdictions that “directly control the distribution and sale of beverage alcohol within their borders.” www.nabca.org

⁶ National Conference of State Liquor Administrators, which represents non-control states. www.ncsla.org

⁷ From testimony presented to Georgia House of Representatives Study Committee on Alcohol Beverages Distribution System by Bryan Fiveash, Georgia Beer Wholesalers Association, and Fred B. Kitchens, Wine and Spirits Wholesalers of Georgia (7/24/01).

⁸ GA Dept. of Revenue Rule 560-2-3-24 and 560-2-4-02.

⁹ GA Dept. of Revenue Rule 560-2-3-45 and 560-2-4-11.

¹⁰ Reflects combined state and local excise taxes. From testimony presented to GA House Study Committee by T. Jerry Jackson, Commissioner and Chet C. Bryant, Director, GA Dept. of Revenue, Alcohol and Tobacco Division (5/24/01).

¹¹ According to testimony presented to the Georgia House Study Committee, there are approximately 54 beer distributors and 8 wine and spirits wholesalers in Georgia, as compared to approximately 15,000 licensed retailers. By enforcing taxation at the wholesale level, the DOR is able to collect roughly \$170 million in annual excise taxes using fewer than 40 revenue agents.

¹² According to one industry observer, most state franchise laws are “nothing short of a blatant power grab ... designed to benefit a relatively small number of large wholesalers.” For a specific discussion of the degree of restriction placed on suppliers who wish to alter or discontinue an existing wholesaler contract, see Marc Sorini, “Breaking Up is Hard To Do: Transfers of Distribution Rights,” McDermott, Will & Emery (4/28/00). See also Grace Yang’s note on the recent passage of New York’s Senate Bill 5577, giving wholesalers “unprecedented franchise protection.” Source: Alcohol Beverage Update, v. 6 issue 3 (2001), Holland & Knight, LLP.

¹³ From statement of Bill MacIver, Matanzas Creek Winery, before the Special Joint Hearing of the California Senate Committee on Government and the Select Committee on California’s Wine Industry (1996).

¹⁴ “Big Brew Ha-Ha? Beer Retailers Say Ga.’s Distribution System Is No Laughing Matter,” *Atlanta Journal-Constitution* (6/21/01).

¹⁵ Across the country, only a few states continue to impose price posting restrictions. Roughly one-third of the 32 license states currently require price posting and posting requirements have proven vulnerable to legal challenges in the past. For a complete listing and comparison of state statutes, see Connecticut Office of Legal Research, Research Report 2000-R-0175 (2/14/00). Significantly, the Maryland Court of Appeals recently ruled that state price posting regulations had to *directly* promote temperance, and that revenue officials could not simply require wholesalers to post prices without reviewing the prices for reasonableness. See note by David Broucke on the ruling on *TFW Inc. v. Schaefer*, in Alcohol Beverage Update, v. 7 Issue 1, Holland & Knight, LLP (2002).

¹⁶ “Report of the Georgia House of Representatives Study Committee on Alcohol Beverages Distribution System: Executive Summary” (12/01).

¹⁷ *Ibid.*

¹⁸ For example, a Minnesota legislative study committee (under S.B. 1752) was convened in response to small brewers’ complaints over access to markets. Ongoing legislative challenges in several states are tracked by Wine Spectator magazine via the “Wine Wars” section of their website: www.winespectator.com.

¹⁹ See notes from the annual meeting of the Brewer’s Association of American in Brewer’s Advocate, v. 4 No. 3, (12/00). See also the website for BevAccess, an information technology firm focusing on business-to-business automation within the alcohol industry, via “communications, e-commerce, and technology solutions”: www.bevaccess.com

²⁰ According to Georgia Beer Wholesalers Association (GBWA), the state’s 54 beer wholesalers collect and remit taxes to more than 500 local jurisdictions on a monthly basis (see GBWA website: www.gbwa.org).

²¹ Boyer, Sam, “It’s Fractionalization,” (2002): www.samboyer.com/sb/beerarticles.asp.

²² According to Boyer, “[T]hose distributors that begin now to install management and operational systems capable of taking advantage of fractionalization . . . will grow and prosper. The distributors that do not recognize the changing industry or refuse to adapt will struggle, and their long-term survival will be in question.”

²³ Wine Institute, “Press Release: 2001 California Wine Sales,” (4/9/02) www.wineinstitute.org.

²⁴ According to the Wine Institute, there are approximately 1,800 wineries in the U.S., including over 800 in California alone. While the number of wineries has tripled in the last 20 years, roughly half of U.S. wineries sell fewer than 5,000 cases per year. Source: www.wineinstitute.org, “Industry Statistics: Number of California Wineries” (3/00).

²⁵ Wine Institute “Statement: President Signs ‘21st Amendment Enforcement Act,’ ” (10/29/00) www.wineinstitute.org.

²⁶ Most recently, a federal District court ruling overturned Virginia’s law banning out-of-state direct purchases (See “Law on Va. Wine Sales Struck Down” Washington Post (3/31/02). For a summary of current legal and legislative activity across the states, see the Wine Spectator website (“Wine Wars” at www.winespectator.com).

²⁷ See 1997 Ga. Laws 399, Sec. 1, at 399; codified at O.C.G.A. Sec. 3-3-32 (Supp. 2000).

²⁸ O.C.G.A. Sec. 3-6-32.

²⁹ The law also includes provisions that require shippers to obtain an adult signature for all deliveries. For specifics, see H.B. 1273 (codified at O.C.G.A. Sec. 3-3-8, 3-6-30, 3-6-31 and 3-6-32).

³⁰ For wholesaler industry response, see C. Boyden Gray, “21st Amendment Grants States Unique Authority to Regulate Distribution of Alcohol,” Washington Legal Foundation Legal Backgrounder (3/17/00).

³¹ For example, the Wine Institute actively opposes the current Georgia law because it “discriminates against small and non-resident wineries” by distinguishing between manufacturers that use the state’s three-tier system and those who do not. See “Wine Institute Developments,” Alcohol Beverage Update, v. 6 issue 1 (2001), Holland & Knight, LLP.

³² Weber, Thomas, “To Sell Wine on Net, Retailers Untangle Web of Vintage Laws,” Wall Street Journal (5/22/00) at p. B1. See also “Bad News Hits Wine.com,” Wired News Report (4/2/01) at www.wirednews.com/news/business.

³³ Gunn, Eileen, “A Good Year,” Smart Business (9/1/02).

³⁴ See press releases and company background at www.newwinelogs.com.

³⁵ Sorini, Marc, “Breaking Up is Hard to Do: Transfers of Distribution Rights,” McDermott, Will & Emery (4/28/00).

³⁶ See comments from R. Weinberg in “Brewer’s Advocate” (12/00) regarding the fact that the three-tier system is not structured to accommodate many small transactions, leaving “few opportunities for the third tier to achieve economies of scale in distribution.” See also editor’s note that “consolidation at the wholesale level removes distribution channels from small brewers.”

³⁷ For a discussion of distribution problems and industry statistics, see affidavit from Simon Siegl, president, American Vintners Association (in the U.S. District Court for the Southern District of NY “Swedenburg v. Kelly” Case No. 00 CV 778 (RMB) (10/18/01). Available at www.americanwineries.org, “What’s New.”

³⁸ See American Vintners Association classification of states’ status as reciprocity, limited shipment, shipper permit, consumer permit, constrained or felony, at www.americanwineries.org, “Direct Shipment.”

³⁹ The 13 reciprocal states include roughly 30 percent of the total U.S. population (U.S. Census Bureau July 1, 2001 Estimate).

⁴⁰ See the Web site for Southern Vine Inc., which provides a listing of Georgia wineries: www.southernvine.com. See also the winery listing provided at www.georgiawinetrail.com.

⁴¹ See Georgia Wine Country website: www.georgiawinecountry.com.

⁴² See Beer South listing of Georgia microbreweries and brewpubs: www.homestead.com/beersouth.

⁴³ O.C.G.A. Sec. 3-5-29 to 3-5-34. Also, GA DOR Rule 560-2-4.

⁴⁴ Sorini, “Breaking Up is Hard to Do.”

⁴⁵ Senate Bill 155 was signed by Gov. Roy Barnes on 4/27/01.

⁴⁶ From company history and market statistics for Southern Wine & Spirits Inc. at the company’s website: www.southernwineandspirits.com.

⁴⁷ Bill MacIver’s statement to the California Legislative Select Committee (1996).

⁴⁸ See footnote 24 above.

⁴⁹ In his statement to the California Legislative Select Committee, Bill MacIver suggested that the ratio of wine wholesalers to producers in the mid-1960s was almost 30-to-1. Today, that ratio would be less than 2-to-1 (roughly 3,000 wholesalers per 1,800 wine producers).

⁵⁰ GBWA membership has declined from 44 firms in 1991 to 37 in 2002. Source: Katrina Anderson, Georgia Beer Wholesalers Association.

⁵¹ Fred Kitchens, Wine and Spirits Wholesalers of Georgia.

⁵² As a comparison, the state of Tennessee has a total population only two-thirds as large as Georgia, but currently has at least 17 active wine and spirits wholesalers, almost twice the number serving the state of Georgia. Sources: Tennessee Department of Revenue; Henry Hildebrand, Counsel, Wine and Spirits Wholesalers of Tennessee.

⁵³ Based on a combined state and local excise tax collection of \$2 per case of beer, which suggests an annual tax base of roughly 75 million cases. Using an estimate of \$10 average retail price per case, this amounts to at least \$750 million in annual retail sales.

⁵⁴ Source: Fred Kitchens, Wine and Spirits Wholesalers for Georgia.

⁵⁵ Boyer, Sam, "Same Market Consolidations" (2002): www.samboyer.com/sb/beerarticles.asp.

Morgan Smith is a freelance public policy analyst and an adjunct scholar with the Georgia Public Policy Foundation. The Foundation is an independent think tank that proposes practical, market-oriented approaches to public policy to improve the lives of Georgians. Nothing written here is to be construed as necessarily reflecting the views of the Georgia Public Policy Foundation or as an attempt to aid or hinder the passage of any bill before the U.S. Congress or the Georgia Legislature.

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