

Proposed Law Allows Local Breweries and Distilleries to Sell Directly to Consumers

By Ashley Oblinger, Esq.

If it seems like craft beer breweries are popping up everywhere now, it's because they are. In 2012 there were 2,420 craft breweries¹ in the United States. However, just four years later, there are 5,234 craft breweries across the United States, an amazing 116% increase since 2012. Georgia has not been left out of the industry explosion of craft breweries. Since 2011, the number of craft breweries in Georgia has more than doubled from 21 to 45. Nevertheless, while the number of craft breweries in Georgia is keeping pace with the trend across the country, the law regulating the direct sale of alcohol from these breweries in Georgia to consumers has lagged woefully behind.

Currently, 48 of the 50 states allow for breweries to sell beer directly to consumers, thereby allowing those breweries to earn income outside of going through the traditional distributor route. The two states that do not allow breweries to sell beer directly to consumer are Mississippi and Georgia. Under the current state law, Georgia breweries are only allowed to sell their beer to wholesalers and distributors who then place the product in retail stores.

In 2015, Georgia took a step to rid itself of the distinction of being only one of two states not to allow breweries to sell beer directly to consumers by passing a new law aimed at allowing consumers to obtain beer on visits to local breweries. However, due to lobbying efforts from various groups including beer distributors and wholesalers, the new law ended up to be just a weak alternative to allowing breweries to sell their product directly to consumers, as it only allowed consumers to pay for a brewery tour and receive a free souvenir beer during the tour.

Shortly after that law was passed by the Georgia Legislature in 2015, the Georgia Department of Revenue implemented regulations on to the new law which permitted breweries to offer different tour packages to costumers at varying price levels. These regulations effectively allowed breweries to vary the pricing of the tours they offered based on the type of beer given to the customer at the end of the tour. Thus, a brewery could charge more for tours that provided more expensive or special beers during the tour, which allowed breweries to make a little extra money while getting different products to customers.

However, within a few months of instituting these new regulations, and after receiving numerous complaints from beer wholesalers on the new law affecting their business, the Department of Revenue backtracked and issued a policy bulletin stating that breweries could continue to offer different tour packages to customers at varying price levels, but the price differences could not be based on the value of the beer provided to the customers during the tour.

The rule change was controversial enough to cause the Speaker of the House to call for the Department of Revenue to reverse its bulletin, as he said it thwarted the legislative intent of the law. The controversy led to the Department of Revenue reversing its stance in April of 2016 and announcing that they would implement new regulations which again would allow local breweries to offer tours of their brewery at different prices with the price of the tour based on the type and

¹ Defined by the Brewers Association to include Regional Craft Breweries, Microbreweries and Brewpups.

amount of beer customers received as a free souvenir during the tour. The new regulations also allow local breweries to promote the location of their product through social media, serve food and hold charitable events. These new regulations went into effect in May of 2016.

Nonetheless, the legislature was not satisfied with the law and, on January 26, 2017, Sen. Rick Jeffares (R-McDonough) introduced Senate Bill 85, which would finally allow consumers to purchase directly from local breweries. Specifically, the Bill would allow breweries to sell up to 3,000 barrels of beer each year directly to consumers. The Bill also would allow consumers to purchase one beer to drink at the brewery and up to a case a beer a day to take home directly from a brewery. The local breweries in the state and the beer wholesalers in the state were happy with the new Bill and viewed the new law as a compromise to their long running dispute over direct to consumer sales.

When Senate Bill 85 went to the House of Representatives for approval, the House made a few changes to it. The most significant change being that the House included liquor distilleries in the Bill. Now, under the amended version of Senate Bill 85, in addition to the new allowances for breweries, liquor distilleries could sell up to 500 barrels of distilled liquor per year directly to customers, with customers being allowed to purchase up to three 750-milliliter bottles of liquor per day directly from the distillery to take home.

The amended version of Senate Bill 85 went back to the Senate for a vote and was approved by the Senate on March 22, 2017, meaning that the Bill is now on the Governor's desk for final approval. Should Governor Deal sign Senate Bill 85, and there are no indications that he will not, the new law will go into effect on September 1, 2017 and ending the variable level tour system currently in use.

Senate Bill 85 is a huge victory for local breweries and consumers alike, as it finally brings Georgia on equal standing with virtually every other state. If the law is signed, consumers would be able to purchase beer directly from breweries, enabling them to try and purchase beer that may not be available in their local stores. For the breweries, the new law opens up a revenue stream which could allow new breweries to pay rent and other costs necessary to survive and establish themselves without having to rely solely on distributors, who may or may not be pushing the product to the breweries satisfaction. In turn, this may also lead to more breweries and distilleries opening in Georgia in the near future. For more established breweries, the additional revenue would allow them to expand their operations and offer more products to consumers. The ability to offer samples and sell that beer or liquor directly to consumers would also allow breweries and distilleries to get their product into the hands of the consumer without having to go through a distributor to get it into a store. This would provide additional brand and product awareness and create a desire for the product from consumers outside of distributorship deals, effectively creating demand for a product before it gets into stores with the hope that these consumers will spread the word and also purchase the product from their local store. If a brewery is able to create this type of demand, it may even give the brewery additional leverage in negotiating deals with distributors.

Finally, not to be left out, the Department of Revenue will also benefit from the new law as it will receive an additional revenue stream through taxes collected on sales at the breweries and distilleries.

It is a new day in Georgia for local breweries and distilleries. Senate Bill 85 provides a shot in the arm to an already booming industry. By allowing breweries and distilleries to sell directly to consumers, the new law will not only provide a new revenue stream to help breweries and distilleries survive and thrive, but it will provide additional revenue to businesses throughout the state with the expected increased tourism. It truly is a law with numerous benefactors.

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