

UNTAPPED POTENTIAL: HOW GEORGIA’S BEER DISTRIBUTION LAWS STIFLE THE CRAFT BEER INDUSTRY

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I. INTRODUCTION

Beer consumption in the United States is a \$100 billion annual industry¹ and is composed of five different kinds of drinks: domestic beer, imported beer, craft beer, hard ciders, and flavored malt beverages.² Brewing goliaths Anheuser-Busch InBev and SABMiller dominate the American beer industry, comprising over 75% of the market.³ While the domestic-beer category comprises the largest segment of the beer market,⁴ most of the top domestic brands have experienced a reduction in sales in recent years.⁵ Some of the reduction in sales has been attributed to consumers' desire for more flavorful beer.⁶ Consequently, many consumers are turning to craft beer.⁷

As defined by the Brewers Association,⁸ a craft brewery is a small brewery which is "less than 25 percent . . . owned or

¹ *National Beer Sales & Production Data*, BREWERS ASS'N, <https://www.brewersassociation.org/statistics/national-beer-sales-production-data/> (last visited Mar. 27, 2016).

² Stephanie Cernivec, *Domestic Beer Case Sales Decline*, BEVERAGE INDUS. (Mar. 10, 2014), <http://www.bevindustry.com/articles/87228-domestic-beer-case-sales-decline>.

³ See E.J. Schultz, *What a SABMiller-AB InBev Merger Would Mean in the U.S.*, ADVERTISINGAGE (Oct. 6, 2011), <http://adage.com/article/news/a-sabmiller-ab-inbev-merger-u-s/230264/> (stating that if a merger between the two companies were to take place, the merged company would have control of more than 75% of the United States beer market). The merger of Anheuser-Busch InBev and SABMiller does not appear as though it will be hypothetical for much longer, as the two breweries have recently agreed in principle to a merger. Philip Blenkinsop & Martinne Geller, *AB InBev, SABMiller Brew Up \$100 Billion Deal*, REUTERS (Oct. 13, 2015, 5:33 PM), <http://www.reuters.com/article/2015/10/13/us-sabmiller-m-a-a-b-i-idUSKCN0S70GJ20151013>.

⁴ See BREWERS ASS'N, *supra* note 1 (showing that domestic beer constitutes nearly 75% of beer-sale volume in the United States).

⁵ See Cernivec, *supra* note 2 (showing that Bud Light, Budweiser, Miller Lite, Natural Light, Busch, Keystone Light, and Miller High Life had decreased sales in 2013).

⁶ See *id.* (explaining that "consumer demand for more flavorful beers has impacted the sub-premium segment" of the beer industry).

⁷ See Stephanie Cernivec, *Craft Beer Boasts Fastest Revenue Growth of All Alcohol Segments*, BEVERAGE INDUS. (Dec. 12, 2014), <http://www.bevindustry.com/articles/88055-craft-beer-boasts-fastest-revenue-growth-of-all-alcohol-segments?v=preview> (noting that craft beer is the "fastest-growing alcohol category by revenue in the United States").

⁸ The Brewers Association is a 501(c)(6) not-for-profit trade association. The association is an organization of brewers, for brewers and by brewers. More than 2,900 U.S. brewery members and 45,000 members of the American Homebrewers Association are joined by members of the allied trade, beer wholesalers, retailers, individuals, other associate members and the Brewers Association staff to make up the Brewers Association.

controlled . . . by an alcoholic beverage industry member that is not itself a craft brewer” and produces beer “whose flavor derives from traditional or innovative brewing ingredients and their fermentation.”⁹ Since the opening of the first craft brewery in 1976, the craft beer industry has experienced constant and sometimes rapid growth.¹⁰ In 2014, there were 3,418 craft breweries in operation in the United States—up from 1,521 in 2008.¹¹ In 2014, craft beer had an 11% volume share (up from 7.8% in 2013), and a 19.3% dollar share, of the American beer economy.¹² While the numbers may indicate that the craft beer industry is flourishing, craft brewers must overcome an array of challenges in order to survive and be successful.¹³

Upon the ratification of the Twenty-First Amendment in 1933, states gained control over alcohol distribution and many implemented a “three-tiered” alcohol-distribution system.¹⁴ The alcohol industry was broken into separate tiers in order to prevent the evils alcohol caused pre-Prohibition.¹⁵ Today, many states still have some form of the three-tiered distribution system in place,

Purpose, BREWERS ASS’N, <https://www.brewersassociation.org/brewers-association/purpose/> (last visited Mar. 27, 2016).

⁹ *Craft Brewer Defined*, BREWERS ASS’N, <https://www.brewersassociation.org/statistics/craft-brewer-defined/> (last visited Mar. 27, 2016).

¹⁰ See *History of Craft Brewing*, BREWERS ASS’N, <https://www.brewersassociation.org/brewers-association/history/history-of-craft-brewing/> (last visited Mar. 27, 2016) (explaining that the number of craft breweries has grown immensely, with the periods of most rapid growth being in the early 1990s and mid 2000s).

¹¹ *2014 Craft Beer Data Infographic*, BREWERS ASS’N (Mar. 16, 2015), <https://www.brewersassociation.org/industry-updates/2014-craft-beer-data-infographic/>.

¹² *Id.*

¹³ See, e.g., James Fisher, *Craft Brewers Count Pennies Instead of Calories*, USA TODAY (Feb. 14, 2016, 7:56 PM), <http://www.usatoday.com/story/money/nation-now/2016/02/14/craft-beer-calories/80388132/> (noting that new laws requiring the listing of calories in beer will likely cause craft breweries to reconsider their business plans because the caloric calculation will cost craft breweries between \$12,000 to \$24,000 per beer).

¹⁴ See David Scott, *Don’t Forget the Beer*, COMPETITIVE ENTER. INST. (May 28, 2013), <https://cei.org/sites/default/files/David%20Scott-%20Don't%20Forget%20the%20Beer.pdf> (explaining that every state has adopted some form of the three-tiered system).

¹⁵ See Evan T. Lawson, *The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages*, in SOCIAL AND ECONOMIC CONTROL OF ALCOHOL 31, 31 (Carole L. Jurkiewicz & Murphy J. Painter eds., 2008) (explaining that the industry was divided into suppliers, wholesalers, and retailers to minimize incentives of excessive consumption of alcohol).

although most systems are not as pure and rigid as they were when first enacted around 1933.¹⁶

Georgia's beer laws are not conducive for the growth of the craft beer industry. Aside from having the fourth-highest state tax on beer,¹⁷ the three-tiered alcohol-distribution system currently in place in Georgia is among the nation's strongest, and as a result, is outdated and inefficient.¹⁸ Since brewers are unable to sell their beer directly to consumers, brewers are forced to sell their beer through a system of wholesalers, making it difficult for new, smaller, craft breweries to become established and stunting their growth if they do become established.¹⁹ Part II will discuss the history of alcohol-distribution laws, Part III will discuss the modern effects of the three-tiered system, Part IV will discuss the three-tiered system specifically in Georgia, and Part V will advocate for a change in Georgia's alcohol distribution laws that allows breweries to sell a limited amount of beer directly to consumers. This change would allow breweries to have more freedom in selling their beer and would promote a free market that is tailored to consumers' demands.

II. BACKGROUND

In order to gain a better understanding of why Georgia's beer-distribution laws are so constricting, it is helpful to look back to the pre-Prohibition era.

¹⁶ See Scott, *supra* note 14 (stating that "most states permit a few exceptions" to the three-tiered system).

¹⁷ Liz Malm et al., *Map: Beer Excise Tax Rates by State, 2014*, TAX FOUND. (Feb. 13, 2014), <http://taxfoundation.org/blog/map-beer-excise-tax-rates-state-2014>.

¹⁸ See, e.g., Nancy Badertscher, *Advocate for Craft Beer Brewers Correct on Claim*, POLITIFACT (Mar. 11, 2015, 12:00 AM), <http://www.politifact.com/georgia/statements/2015/mar/11/georgia-craft-brewers-guild/advocate-craft-beer-brewers-correct-claim/> (noting that Georgia has uniquely strong restrictions on breweries compared to other states); Christy Simo, *Popping the Cap on Georgia's Craft Brewing Industry*, GEORGIA TREND (July 2014), <http://www.georgiatrend.com/July-2014/Popping-the-Cap-on-Georgias-Craft-Brew-Industry/> (explaining that Georgia is "behind the rest of the country when it comes to craft beer").

¹⁹ See Adam Ragusea, *To Dismay Of Craft Brewers, Georgia Sticking With 'Three-Tier' System*, GEORGIA PUB. BROAD. (Feb. 17, 2014, 2:14 AM), <http://www.gpb.org/news/2014/02/17/to-dismay-of-craft-brewers-georgia-sticking-with-three-tier-system> (explaining that cash-flow is critical for small breweries).

A. HISTORY OF ALCOHOL DISTRIBUTION IN AMERICA

Beginning in the 1880's, a grass-roots political movement opposing "society's ills" began to form.²⁰ The movement targeted alcohol, gaining societal support with the help of "muckraking" journalism which was prevalent in the media at the time.²¹ Early leaders of the anti-alcohol movement realized that absolute prohibition would be too drastic of a step for the American populous.²² Instead, saloons, a main source of alcohol for the general public, became the primary target of the anti-alcohol movement and muckraking media.²³ Initially, the anti-alcohol movement attempted to reduce the existence of saloons through economic means, namely higher costs for operating licenses.²⁴ As a way to combat the high license costs that threatened the survival of many saloons, brewers would agree to pay the license fee in exchange for the saloon selling the brewer's beer.²⁵ These types of arrangements gave brewers an enormous amount of influence over beer sales.²⁶ The relationship between brewers and saloons was known as a "tied house" and was frowned upon because many believed that alcohol consumption was being too heavily promoted, and oftentimes, by improper means.²⁷ For instance, it was

²⁰ See MAUREEN OGLE, *AMBITIOUS BREW* 137 (2006) (noting that a generation of Americans was concerned about how society was changing with urbanization).

²¹ See *id.* at 138–39 (explaining that many white, educated, Protestants believed alcohol was an evil because of the way the media portrayed it).

²² See *id.* at 147 (noting that even though the movement eventually called for outright prohibition of alcohol, incremental steps were taken to get to Prohibition).

²³ See *id.* at 146–50 (explaining that saloons were an easy target for the anti-alcohol movement because of their ties to crime).

²⁴ See *id.* at 141 (explaining that license costs raised the operating costs of saloons and ran saloonkeepers out of business).

²⁵ See *id.* (explaining that by paying for the license fee, brewers would become tied to specific saloons).

²⁶ See Carole L. Jurkiewicz & Murphy J. Painter, *Why We Control Alcohol the Way We Do*, in *SOCIAL AND ECONOMIC CONTROL OF ALCOHOL*, *supra* note 15, at 1, 7 (noting that brewers could be connected to saloons by providing free equipment, offering interest-free loans, or even owning the saloons).

²⁷ See *id.* ("Besides pressuring retailers to handle only their brands, suppliers pushed retailers to increase sales whatever the social costs."); see also RAYMOND B. FOSDICK & ALBERT L. SCOTT, *TOWARD LIQUOR CONTROL* 29 (1933) (explaining that tied houses led alcohol retail outlets to be owned by producers who did not care about the effects of alcohol on the community and wanted to increase sales at any cost).

common for saloons to attract business by offering access to illegal gambling operations and even prostitution.²⁸ Also, the tied house system led to alcohol monopolies that stifled competition.²⁹ Without an organized lobbying force to oppose the anti-alcohol movement,³⁰ Prohibition went into effect on January 17, 1920 after the passage of the Volstead Act and the ratification of the Eighteenth Amendment.³¹

B. POST-PROHIBITION AND THE THREE-TIERED DISTRIBUTION SYSTEM

After the ratification of the Twenty-First Amendment and the repeal of Prohibition in 1933, every state followed the model set forth by Raymond Fosdick and Albert Scott in their book, *Toward Liquor Control*,³² and implemented a three-tiered system of alcohol distribution.³³ The three tiers were producers, wholesalers, and retailers.³⁴ This system was implemented largely in part to prevent tied houses from coming back into existence.³⁵ Beyond preventing tied houses, the three-tiered system also sought to increase the price of alcohol to make it less accessible and therefore less likely to be abused.³⁶ Finally, creating a tier of

²⁸ See OGLE, *supra* note 20, at 154 (stating that every saloon in Salt Lake City had slot machines); see also Ragusea, *supra* note 19 (pointing out that saloons would do a number of things to get customers in the door, ranging from free lunch to prostitutes).

²⁹ See Jurkiewicz & Painter, *supra* note 26, at 11 (explaining that communities will have choices as to what alcohol they wish to buy, instead of being forced to buy the alcohol that was produced by the owner of the tied house).

³⁰ See OGLE, *supra* note 20, at 151 (demonstrating that the anti-alcohol movement was largely successful because alcohol producers “refused to acknowledge the enemy at the gates” and believed that the government would never shut down such a profitable industry).

³¹ Jurkiewicz & Painter, *supra* note 26, at 5.

³² FOSDICK & SCOTT, *supra* note 27.

³³ See Scott, *supra* note 14 (explaining that every state has adopted some form of the three-tiered system).

³⁴ See Lawson, *supra* note 15, at 31.

³⁵ See, e.g., FOSDICK & SCOTT, *supra* note 27, at 29 (explaining that the tied-house system should “be prohibited, and every opportunity for the evasion of this system should, if possible, be foreseen and blocked”); Jurkiewicz & Painter, *supra* note 26, at 7 (“The most significant post-Prohibition regulations aimed to prevent direct interaction between the suppliers and the retailers of alcohol.”).

³⁶ See Jurkiewicz & Painter, *supra* note 26, at 9 (demonstrating that each tier would require a markup in price).

wholesalers allowed for a more reliable system of tax collection, a problem that had previously existed with bootleggers.³⁷

C. MODERN ALCOHOL-DISTRIBUTION LAWS

The three-tiered system is still the foundation for modern alcohol-distribution laws in most states.³⁸ In Georgia, brewers cannot sell their beer directly to consumers unless they fall under the “brewpub” exception, which also requires the brewer to sell food and operate much like a restaurant.³⁹ Georgia also has a narrow exception to the three-tiered system for breweries that are not classified as brewpubs. These breweries cannot sell their product directly to consumers, but they can provide up to thirty-six ounces of “free souvenir” beer to drink on-premises if a “brewery tour” is purchased.⁴⁰ As of July 1, 2015, Senate Bill 63⁴¹ expanded the free souvenir exception to allow breweries to give those who purchased a brewery tour to take up to seventy-two ounces of beer with them for off-premises consumption (on top of the thirty-six ounces available for on-premises consumption).⁴² Aside from these narrow exceptions, Georgia is one of only two states that do not allow brewers to sell their product to consumers for consumption on or off-premises.⁴³

³⁷ See Ragusea, *supra* note 19 (quoting an attorney who formally chaired the American Bar Association’s Committee on Beverage Alcohol Practice as saying that the wholesalers in the three-tiered system were essentially “private tax collectors” used by the government to control the alcohol industry).

³⁸ See Scott, *supra* note 14 (acknowledging that the three-tiered system is still in use today).

³⁹ O.C.G.A. § 3-5-36 (2015).

⁴⁰ *Id.* § 3-5-38.

⁴¹ S.B. 63, 2015–2016 Reg. Sess. (Ga. 2015).

⁴² A recent Policy Bulletin was issued by the Georgia Department of Revenue restricting the application of Georgia Senate Bill 63. GA. DEP’T OF REVENUE, POLICY BULLETIN ALCOHOL & TOBACCO DIVISION-2015-01, FACILITY TOURS (Ga. 2015), https://dor.georgia.gov/sites/dor.georgia.gov/files/related_files/document/LATP/Policy%20Bulletin/Policy%20Bulletin%20Tours%20and%20Tastings%202015.pdf.

⁴³ See Badertscher, *supra* note 18 (explaining that Mississippi is the only other state that does not allow brewers to sell their product to consumers).

III. ANALYSIS

It is questionable whether the three-tiered distribution system is necessary in modern society. After all, society and the economy have drastically changed since the three-tiered system was initially put into effect.⁴⁴ So, if the three-tiered system has so many flaws, why is it still in use?

One explanation can be chalked up to politics. Phenomena like the “status quo bias” make legislative change very difficult in the American political system.⁴⁵ Thus, any bill to amend or replace an entrenched economic arrangement, like the three-tiered system, is typically difficult to pass even if the suggested bill appears to be superior to the existing system.⁴⁶ Another political factor that has significantly contributed to the widespread survival of the three-tiered system is wholesaler lobbying. Nationwide, beer wholesalers have a notoriously strong lobbying force.⁴⁷ Every year, beer wholesaler—lobbying groups donate millions of dollars to political campaigns and advocate for the three-tiered system to remain intact.⁴⁸ Whenever a bill is proposed to weaken the three-tiered system, the wholesaler—lobbying force will adamantly oppose it.⁴⁹

⁴⁴ See, e.g., Lawson, *supra* note 15, at 34 (discussing economic differences between 1933 and present day).

⁴⁵ See generally William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7 (1988) (explaining that people have the tendency to make decisions that maintain their position rather than change their position a disproportionate amount of the time).

⁴⁶ See generally Raquel Fernandez & Dani Rodrik, *Resistance to Reform: Status Quo Bias in the Presence of Individual-Specific Uncertainty*, 81 AM. ECON. REV. 1146 (1991) (analyzing reforms that likely would be supported but cannot be implemented into law).

⁴⁷ See, e.g., David White, *Wholesale Robbery in Liquor Sales*, N.Y. TIMES, Apr. 3, 2011, http://www.nytimes.com/2011/04/04/opinion/04white.html?_r=1 (“The National Beer Wholesalers Association maintains the nation’s third-largest political action committee, and since 2000, it has donated \$15.4 million to candidates for federal office . . .”); Liz Essley Whyte, *Alcohol Distributors Ply Statehouses to Keep Profits Flowing*, TIME, Aug. 6, 2015, <http://time.com/3986536/alcohol-distributors-lobbying/> (stating that wholesalers focus mostly on state elections and “state alcohol wholesaler alliances had at least 315 registered lobbyists spread across every state and the District of Columbia, except Wyoming”).

⁴⁸ Whyte, *supra* note 47.

⁴⁹ See *id.* (noting that “[a]t least 22 states had bills in 2015 seeking to allow alcohol makers to circumvent distributors and sell their products directly to customers” and these bills faced firm opposition from wholesaler lobbyists).

The three-tiered system is criticized and flawed in the eyes of many, but is there a better alternative? As previously discussed, wholesalers benefit most from the three-tier system and fight for it to be kept in place.⁵⁰ Even though wholesalers fight for the preservation of the three-tiered system, most states have passed laws that at least slightly erode the traditional system established post-Prohibition.⁵¹ Reducing regulations and relaxing distribution laws often leads to a more efficient system in which price savings can be passed along to consumers.⁵² In determining how, or even if, Georgia should change its beer-distribution laws, it is imperative to analyze which changes would be legally permissible, whether a nationwide solution is a more suitable answer, and the laws governing beer industries in other states.

A. *GRANHOLM V. HEALD*

While the Twenty-First Amendment gives states an immense amount of power,⁵³ states' alcohol distribution systems cannot go as far as violating constitutional requirements. In *Granholm v. Heald*, the Supreme Court held that the Twenty-First Amendment did not prevent distribution laws from being challenged under the Commerce Clause.⁵⁴ The Court determined that states could not pass laws that give in-state producers of alcohol an advantage over out-of-state producers.⁵⁵ As a result, parts of both New York and Michigan's alcohol-distribution systems were deemed invalid.⁵⁶ The laws in those states allowed in-state producers of alcohol to self-distribute, but required similar out-of-state producers to distribute through wholesalers in the three-tiered system.⁵⁷ It is important to note that this holding neither invalidates nor

⁵⁰ *Id.*

⁵¹ Scott, *supra* note 14, at 1.

⁵² See White, *supra* note 47 (stating that consumers pay 18% to 25% more with the wholesalers tier than without it).

⁵³ U.S. CONST. amend. XXI.

⁵⁴ 544 U.S. 460, 493 (2005).

⁵⁵ *Id.* at 472 ("States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses.")

⁵⁶ *Id.* at 473–75.

⁵⁷ *Id.*

requires the use of the three-tiered system.⁵⁸ States may pass laws that establish a three-tiered system, or that allow for self-distribution, and still be in compliance with *Granholm*. All that is required is that in-state and out-of-state producers are treated equally.⁵⁹

B. FEDERAL LEGISLATIVE POSSIBILITIES

Even though the Twenty-First Amendment provides states with almost exclusive control over alcohol laws, the federal government is still capable of affecting the alcohol industry. One of the most notable ways the federal government affects breweries is by imposing a federal excise tax on the production of beer. Currently, the federal excise tax on beer is \$18 per barrel.⁶⁰ An important exception, especially relevant to craft brewers, is that the tax is only \$7 per barrel on the first 60,000 barrels produced per year, provided the brewery does not produce more than two million barrels annually.⁶¹ With craft beer booming across the nation, Congress has taken notice, and both chambers have introduced legislation intended to facilitate the growth of craft breweries.⁶²

Known as the Craft Beverage Modernization and Tax Reform Act of 2015,⁶³ the proposed legislation would lower the federal excise tax on beer and make compliance with regulations less burdensome for breweries.⁶⁴ The Act proposes to set the excise tax at \$16 per barrel for the first six million barrels produced, rising to \$18 per barrel for every barrel over six million.⁶⁵ The Brewers Association estimates that this would provide a savings of \$36

⁵⁸ See Scott, *supra* note 14 (noting that a distribution system is constitutional so long as it applies equally to in-state and out-of-state producers).

⁵⁹ See *Granholm*, 544 U.S. at 493 (noting that a state can allow for self-distribution so long as it is on “evenhanded terms”).

⁶⁰ See 26 U.S.C. § 5051(a)(1) (2012) (defining a barrel as thirty-one gallons).

⁶¹ *Id.* § 5051(a)(2)(A).

⁶² Craft Beverage Modernization and Tax Reform Act of 2015, S. 1562, 114th Cong. (2015); Craft Beverage Modernization and Tax Reform Act of 2015, H.R. 2903, 114th Cong. (2015).

⁶³ S. 1562; H.R. 2903.

⁶⁴ *Talking Points and Resources*, BREWERS ASS'N, <https://www.brewersassociation.org/government-affairs/craft-beverage-modernization-and-tax-reform-act/talking-points-and-resources/> (last visited Feb. 17, 2016).

⁶⁵ S. 1562 § 201(a)(1)(A)(i)–(ii).

million per year for “small brewers”—those breweries that produce six million barrels or less annually.⁶⁶ Further, the Act seeks to lower the tax rate per barrel for the first 60,000 barrels, from \$7 to \$3.50, for those breweries that produce two million barrels or less annually.⁶⁷ This change is estimated to provide a savings of \$37.5 million per year for affected brewers.⁶⁸

While this legislation would likely create great benefits for craft brewers, many complaints about Georgia’s beer-distribution laws would remain. Georgia craft brewers would still not be able to sell their product to consumers for on or off-site consumption, small breweries would still struggle to gain access to distribution channels, and Georgia’s state tax on beer production would still be higher than most other states.

C. DISTRIBUTION LAWS IN OTHER STATES

Virtually every other state has less restrictive beer-distribution laws than Georgia.⁶⁹ In light of the recent craft-beer boom, some states have passed laws that allow their craft-beer industry to blossom.⁷⁰ For example, Florida brewers are now able to obtain licenses that allow the sale of beer directly to consumers for on-premises consumption in up to eight locations.⁷¹ Further, Florida legislation allows breweries to fill growlers up to sixty-four-ounces for off-premises consumption.⁷² Another one of Georgia’s neighbors, North Carolina, has even less restrictive beer laws than Florida. Known as a craft-beer-friendly state, North Carolina not only allows breweries to sell their product for on and off-premises

⁶⁶ BREWERS ASS’N, *supra* note 64.

⁶⁷ S. 1562 § 201(b)(1)–(2).

⁶⁸ BREWERS ASS’N, *supra* note 64.

⁶⁹ See Simo, *supra* note 18 (quoting a co-founder of Sweetwater Brewing in Georgia as saying “Georgia has one of the most restrictive laws pertaining to microbrewing in the whole nation at this point.”).

⁷⁰ See generally Kincaid C. Brown, *Michigan Craft Beer Legislation*, 94 MICH. B.J. 54 (2015) (demonstrating that Michigan recently passed many laws that favor the craft beer industry including allowing certain small brewers to self-distribute to retailers, increasing the number of locations brewers can sell beer directly to consumers, and amending the tax system to benefit craft brewers).

⁷¹ FLA. STAT. ANN. § 561.221 (West 2016).

⁷² *Id.* § 563.06.

consumption,⁷³ it also allows breweries that produce 25,000 barrels or less annually to self-distribute,⁷⁴ bypassing the wholesaler tier of the traditional three-tiered system. Tennessee is yet another neighboring state that has significantly more favorable beer laws than Georgia. On top of allowing breweries to sell their beer to customers for on and off-premises consumption,⁷⁵ Tennessee also allows breweries to self-distribute within the county in which they are located.⁷⁶ This limited self-distribution scheme is an innovative solution that seems to balance the interests of distributors and craft brewers.⁷⁷

IV. OVERVIEW OF GEORGIA'S THREE-TIERED SYSTEM

As previously discussed, the main reasons for the implementation of the three-tiered system were to prevent tied houses,⁷⁸ make alcohol less accessible to the public,⁷⁹ and create a system that made tax collection easier.⁸⁰ Today, Georgia wholesalers make similar arguments, stating that the system “prohibits promotions that foster heavy consumption” and “ensures proper collection of state and local taxes.”⁸¹ Further, wholesalers argue that the three-tiered system is the “fastest, cheapest way to

⁷³ N.C. GEN. STAT. § 18B-1001 (2015).

⁷⁴ *Id.* § 18B-1104.

⁷⁵ TENN. CODE ANN. § 57-5-101(e)(1)(A) (2015).

⁷⁶ *Id.* § 57-5-101(c)(2).

⁷⁷ See Interview with Alan Fey, Taproom Manager, Yazoo Brewing Co. (Feb. 17, 2016) (noting that small brewers benefit greatly from being able to “load up a few kegs in the back of pickup trucks and deliver them to local bars” rather than rely on distributors); see also Interview with Kevin Armstrong, Tour Guide, JailHouse Brewing Co., in Hampton, Ga. (Dec. 19, 2015) (stating that in order for the brewery’s beer to be delivered to a pub across the street, the beer has to be picked up by a distributor, transported to the distributor’s plant, then transported back to the pub, taking several days).

⁷⁸ See, e.g., FOSDICK & SCOTT, *supra* note 27, at 29 (explaining that the tied-house system should “be prohibited, and every opportunity for the evasion of this system should, if possible, be foreseen and blocked”); Jurkiewicz & Painter, *supra* note 26, at 7 (“The most significant post-Prohibition regulations aimed to prevent direct interaction between the suppliers and the retailers of alcohol.”).

⁷⁹ See Jurkiewicz & Painter, *supra* note 26, at 9 (demonstrating that each tier would require a markup in price, making alcohol less affordable).

⁸⁰ See *supra* note 37.

⁸¹ About GBWA, GEORGIA BEER WHOLESALERS ASS’N, <http://gbwa.org/about-us/> (last visited Feb. 17, 2016).

handle beer distribution and sales.”⁸² On the other hand, most craft brewers feel as though Georgia’s three-tiered system limits cash flow that is necessary for Georgia breweries to grow and be competitive with breweries from other states.⁸³ In turn, the breweries’ lack of growth causes consumers not to have access to craft beer because the beer is not readily available at retail outlets or elsewhere.⁸⁴

Since Georgia does not allow any form of brewery self-distribution or direct sales to customers, there is plenty of opportunity for the Georgia General Assembly to implement sensible reform that promotes the growth of the beer industry. This reform could take the form of lowering state taxes on beer, allowing some degree of self-distribution, or allowing breweries to sell beer directly to consumers. The Note posits that the best option, or at least the best first step, is for Georgia to allow breweries to sell their product directly to consumers.

V. PROPOSED ADJUSTMENT TO GEORGIA’S ALCOHOL DISTRIBUTION SYSTEM

Since Georgia has the fourth highest tax rate on beer of any state,⁸⁵ it is conceivable that lowering the tax rate is possible. In theory, lowering the tax would lead to lower beer prices for consumers allowing consumers to buy more beer.⁸⁶ There are obvious issues with this approach. Lowering the tax on beer would not only reduce the price of craft beer, but all kinds of beer. Alcohol is a hazardous substance, and an all-out reduction in price that leads to increased consumption could create serious negative

⁸² *Id.*

⁸³ See Ragusea, *supra* note 19 (noting that North Carolina breweries have been able to sell directly to consumers since the 1980s).

⁸⁴ *BA Position Statements*, BREWERS ASS’N, <https://www.brewersassociation.org/government-affairs/ba-position-statements/> (last visited Feb. 17, 2016).

⁸⁵ Malm et al., *supra* note 17.

⁸⁶ See Tim Stockwell et al., *The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health*, 102 AM. J. PUB. HEALTH e103, e107–09 (2012) (finding that the price of alcohol is directly correlated to the level of alcohol consumption).

effects to public health.⁸⁷ The goal of craft-beer-distribution reform should be to increase the availability of different varieties of beer for consumers, not to increase the availability of beer in general. Thus, tax reductions are likely not the most effective route in promoting the craft-beer industry.

Instead of reducing taxes, Georgia could follow in the footsteps of North Carolina and other states and allow some breweries to self-distribute their beer to retailers. In effect, this would cut out the required use of wholesalers for a limited number of breweries.⁸⁸ Other states have incorporated this change by allowing breweries that produce a certain number of barrels to self-distribute.⁸⁹ A law like this allows breweries to have more control as to where their beer is sold. Also, small breweries that are able to self-distribute would not have to worry about being too small to distribute through a wholesaler as they could distribute the beer themselves. While a reform like this might greatly benefit small craft breweries, such a drastic deviation from the three-tiered system would likely prompt a strong lobbying effort by wholesalers that would be difficult for the craft beer industry to overcome.⁹⁰ Further, Georgia craft brewers have expressed a desire to cultivate consumer loyalty.⁹¹ Since this reform would not allow breweries to sell beer directly to consumers, a personalized brewer-consumer relationship would still be lacking.

The best law for Georgia's craft beer industry would be one that allows breweries to sell beer directly to consumers.⁹² Brewers

⁸⁷ See *id.* at e103 (noting that effects from alcohol use and abuse is the leading cause of death for young adults worldwide and alcohol is the "leading cause of the preventable loss of disability-adjusted life years").

⁸⁸ Just because the use of wholesalers for distribution is not required does not mean that breweries would self-distribute. See Ragusea, *supra* note 19 (noting that at least some small breweries have no interest in distributing their beer).

⁸⁹ See N.C. GEN. STAT. § 18B-1104 (2015) (setting the production maximum at 25,000 barrels).

⁹⁰ See Whyte, *supra* note 47 (acknowledging that the beer-wholesaler lobbying force is strong nationwide and opposes legislation that erodes the three-tiered system).

⁹¹ See *Georgia Craft Brewers Prepare for 2015 Legislative Push*, SAVANNAH MORNING NEWS, Nov. 7, 2014, <http://savannahnow.com/exchange/2014-11-07/georgia-craft-brewers-prepare-2015-legislative-push> (noting that selling beer at a brewery helps to build a customer base).

⁹² It is worth noting that the original version of Senate Bill 63 set out to allow breweries to sell limited amounts of beer directly to customers for on and off-premises consumption.

claim that this change would not bypass the three-tiered system, it would simply give the consumer what they want, and foster more consumer loyalty.⁹³ Compared to a self-distribution scheme, a law such as this seems to be a less-severe departure from the three-tiered system because the use of wholesalers to distribute beer to retailers would still be necessary. Breweries would not have the ability to distribute their product to liquor stores, gas stations, or any other kind of retailer, leaving distributors in the same vital role they occupy within the current system. Further, since breweries could only sell beer to consumers on the premises of the brewery, it seems unlikely that distributors' business will be seriously threatened by these sales. From a brewery's standpoint, these sales would be more about fostering customer loyalty and having a steady flow of income, not reducing the amount of beer they distribute.

Overall, such a law appears to be a good compromise between brewers and wholesalers. The law would allow breweries to have more cash-flow, allow consumers the ability to access more brands and varieties of beer, foster a consumer-brewer relationship, and would only marginally infringe upon wholesalers' business. Further, if the craft beer industry grows, wholesalers' business will inevitably increase as well.

Georgia's craft-beer industry is unable to reach its potential because of the antiquated and overly-restrictive laws in place. While heavy regulation of alcohol is reasonable, the limits on Georgia's craft beer industry are extreme and create a competitive disadvantage for Georgia's breweries.⁹⁴ Ultimately, if no meaningful change is made, breweries may begin to move to different states or never open in Georgia at all. There is plenty of

See Reid Ramsay, *Georgia Beer Jobs Bill Threatened [UPDATED]*, BEER STREET J., Mar. 4, 2015, <http://beerstreetjournal.com/Georgia-beer-jobs-bill-threatened/> (showing that the bill would have allowed breweries to sell beer directly to consumers "in an amount not to exceed 72 ounces per person, per day and to sell no more than 144 ounces of packaged beer to-go per person, per day").

⁹³ BREWERS ASS'N, *supra* note 84.

⁹⁴ See Michelle Wirth, *Brewers, Distributors Battle Over Beer Bill*, WABE (Feb. 19, 2015), <http://news.wabe.org/post/brewers-distributors-battle-over-beer-bill> (noting that other states' craft beer industries are growing faster than Georgia's).

room for compromise between the brewers and wholesalers.⁹⁵ A rigid three-tiered system of alcohol distribution no longer serves society's needs. Some reform, such as allowing breweries to sell limited amounts of beer directly to consumers, would enable Georgia to compete with other states and open up the distribution market for craft breweries.

⁹⁵ See SAVANNAH MORNING NEWS, *supra* note 91 (showing that many brewers are in favor of the three-tiered system overall).