

# Model Guidance on Senate Bill 85

## SUMMARY

Governor Nathan Deal signed Senate Bill 85 into law on May 8, 2017. SB 85 allows manufacturers of distilled spirits and malt beverages to sell a limited amount of the products they produce directly to the public for consumption both on and off a manufacturer's premises. These manufacturers may only sell distilled spirits and beer that have been manufactured on-site, and they may only sell to consumers who visit the distiller's or brewer's manufacturing location.

The bill enumerates the quantity of distilled spirits and beer distilleries and breweries may sell on both a "per year" basis and "per consumer per day" basis. It also specifies that distillers and brewers may sell their products on all days and at all times that sales by retailers of these products would otherwise be allowed, including Sundays.

SB 85 requires distilleries and breweries to remit local sales and excise taxes for all distilled spirits and beer sales made directly to consumers.

Additionally, SB 85 amended the "brewpub" exception to the three-tier alcohol distribution system by allowing the holder of a brewpub license to sell wine and beer by the package, subject to local approval.

The effective date for SB 85 is September 1, 2017. Therefore, none of the model provisions found below should have an effective date before September 1, 2017.

## **SECTION ONE - DISTILLERIES**

SB 85 provides an exception to Georgia's three-tiered system for the distribution and sale of distilled spirits. In addition to manufacturing distilled spirits, distillers can now sell up to 500 barrels per year of distilled spirits directly to consumers, provided:

- the distilled spirits are produced at the distiller's facility, AND
- consumers purchase the distilled spirits while on the distiller's premises.

The 500 barrels include sales of distilled spirits directly to consumers for consumption both on and off the distiller's premises. Thus, a distillery can sell 500 barrels total of distilled spirits per year when the distillery is acting as a retailer.<sup>1</sup>

Under SB 85, distilleries will continue to operate solely as manufacturers from a licensing standpoint in Georgia's three-tiered system for the distribution and sale of distilled spirits. Although the state has chosen to treat distilleries as manufacturers and not retailers, minimum distance requirements still apply on the location of businesses that engage in sales of alcohol from churches, school buildings, alcoholic treatment centers, and housing authority property. The distance requirements imposed by state law are set forth in O.C.G.A. § 3-3-21.

Under SB 85, distilleries may now act in three distinct capacities:

1. Manufacturer
2. Retailer (e.g. package Store)
3. Retail Consumption Dealer (e.g. bar or restaurant)

### ***Important and Relevant Definitions***

"Bar" means any premises at which a retailer licensed to sell alcoholic beverages derives 75 percent or more total annual gross revenue from the sale of alcoholic beverages for consumption on the premises.<sup>2</sup>

"Barrel" means 53 gallons.<sup>3</sup>

"Distiller" means a manufacturer.<sup>4</sup> In the case of distilled spirits, "manufacturer" means any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.<sup>5</sup>

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<sup>1</sup> O.C.G.A. § 3-4-24.2(a)

<sup>2</sup> O.C.G.A. § 3-1-2(2.1)

<sup>3</sup> O.C.G.A. § 3-4-1(1)

<sup>4</sup> O.C.G.A. § 3-4-1(3)

<sup>5</sup> O.C.G.A. § 3-1-2(14)(A)

"Distilled spirits" means any alcoholic beverage obtained by distillation or containing more than 24 percent alcohol by volume.<sup>6</sup>

"Package" means a bottle, can, keg, barrel,<sup>7</sup> or other original consumer container.<sup>7</sup>

"Retail consumption dealer" means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.<sup>8</sup>

"Retailer" or "retail dealer" means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term shall have the same meaning as the term "retail package liquor store."<sup>9</sup>

"Retail package liquor store" means a retail business establishment owned by an individual, partnership, corporation, association, or other business entity:

- (a) Primarily engaged in the retail sale of distilled spirits, malt beverages, and wine in unbroken packages, not for consumption on the premises; and
- (b) Which derives from such retail sale of alcoholic beverages in unbroken packages at least 75 percent of its total annual gross sales from the sale of a combination of distilled spirits, malt beverages, and wine.<sup>10</sup>

"Wholesaler" or "wholesale dealer" means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.<sup>11</sup>

### ***When a Distiller acts as a Manufacturer***

SB 85 does not alter the traditional role of distillers as manufacturers in Georgia's three-tiered system for the distribution and sale of distilled spirits. Distillers can continue to produce distilled spirits for sale to wholesalers, and wholesalers can continue to sell the distilled spirits to retail establishments and other wholesale dealers.

### ***When a Distiller acts as a Retailer (Package Store)***

SB 85 allows distilleries to sell distilled spirits directly to consumers (who are on the distiller's premises) for consumption off the distiller's property.

When a distiller sells distilled spirits directly to consumers for consumption off the distiller's property, the distiller is acting as a retailer or a retail consumption dealer. Distillers can sell packages of distilled spirits through their state and local manufacturer's licenses and are not required to secure a local retailer license or retail consumption dealer

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<sup>6</sup> O.C.G.A. § 3-1-2(8)

<sup>7</sup> O.C.G.A. § 3-1-2(16)

<sup>8</sup> O.C.G.A. § 3-1-2(18)

<sup>9</sup> O.C.G.A. § 3-1-2(19)

<sup>10</sup> O.C.G.A. § 3-1-2(19.1)

<sup>11</sup> O.C.G.A. § 3-1-2(23)

license. Additionally, because distillers will be acting as retailers or retail consumption dealers without the ability of the local government to require a local retailer license or retail consumption license, it is possible that municipalities may be able to instead charge a regulatory fee upon distillers if the city “customarily performs investigation or inspection of such businesses...as protection of the public health, safety, or welfare.”<sup>12</sup> If a city chooses to charge a regulatory fee it cannot be for revenue purposes and most likely should be related to the state’s requirement that the distiller abide by the local days and times of sale.<sup>13</sup>

Additionally, distillers cannot sell distilled spirits for off-premises consumption at a price less than the price at which a person licensed to sell distilled spirits by the package is permitted to sell distilled spirits.<sup>14</sup> Retail package liquor stores cannot sell distilled spirits by the package for carry-out purposes less than the cost paid for the distilled spirits (cost paid = wholesale price plus the local excise tax imposed).<sup>15</sup> This means that distillers can only sell distilled spirits by the package for carry-out purposes at a price equal to or greater than the price at which a person licensed to sell distilled spirits by the package is permitted to sell distilled spirits.

A distiller may sell a maximum of 2,250 milliliters (or three 750 milliliter bottles) of distilled spirits per consumer per day for consumption off premises.<sup>16</sup>

### ***When a Distiller acts as a Retail Consumption Dealer (Bar or Restaurant)***

SB 85 also allows distilleries to sell distilled spirits directly to consumers for consumption on the distiller’s property.

When a distiller sells distilled spirits by the drink for consumption on the distiller’s premises, the distiller is effectively acting as a bar. Distillers can sell distilled spirits by the drink for consumption on the premises through their state license and are not required to secure a local pouring license.

### ***Times and Days of Sales***

While SB 85 contains language establishing that distillers may sell distilled spirits for consumption on the premises and a capped amount per customer for consumption off the premises on all days and times that sales of distilled spirits by retailers (i.e. package stores) and retail consumption dealers (i.e. bars and restaurants) are allowed in the municipality, including Sundays, the statutory language can be interpreted in a few different manners in regards to how to apply the new law. Until some clarity is provided as to which method of interpretation is correct, it may be up to the municipality to determine how it will interpret this provision of the new law. Clarity may come in the form

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<sup>12</sup> O.C.G.A. § 48-13-9

<sup>13</sup> Id and O.C.G.A. § 48-13-9(c)(22)

<sup>14</sup> O.C.G.A. § 3-4-24.2(c)

<sup>15</sup> O.C.G.A. § 3-4-26(b)

<sup>16</sup> O.C.G.A. § 3-4-24.2(a)(2)

of guidance from the state, a legislative clean-up, or possibly even case law. Until that time, some possible ways of interpreting this provision in SB 85 include, but are not limited to:

1. Legislative Intent: Before the passage of SB 85 neither state law nor state rules and regulations restricted distillers from hosting tours of their facilities and providing samples of their products at any day or time. As a result, before passage of SB 85, distillers were free to provide tastings of their products on Sundays without having to meet the food requirements applicable to retail consumption dealers, found in O.C.G.A. §3-3-7(j)(1). One should probably consider the legislative intent of enacting SB 85 in making a determination of how to interpret the Sunday sales provision in SB 85.

The legislation was pushed by the distillers and brewers to allow them further abilities to make sales of their own products. The legislative intent of this provision was to allow for Sunday sales for consumption off premises (i.e. package stores) at the same times Sunday sales for consumption off premises is allowed to package stores in the city. Likewise, the legislative intent was to allow Sunday sales for consumption on premises at the same times Sunday sales of consumption on premises is allowed in the city. The consumption on premises analysis gets complicated, however, by the aforementioned state law requiring retail consumption dealers to meet certain food sales requirements in order to sell distilled spirits on Sundays. It is likely that the legislative intent of SB 85 was not meant to apply food sales requirements to distillers. The language of this provision does not contain any reference to a food sales requirement and it can be interpreted that this omission is intentional. By this analysis, distillers would be able to sell distilled spirits for consumption on premises on Sundays without having to meet food sales requirements, but still subject to the same Sunday hours as other retail consumption dealers located within the city.

2. Strict Construction: Another way of analyzing SB 85 is through a strict construction of the statutory language. It should be noted, however, that a strict constructionist reading of this provision is definitely contrary to the legislative intent of SB 85. The statutory language of SB 85 provides that distillers may sell distilled spirits “on all days and times that sales of distilled spirits by retailers and retail consumption dealers are lawful within the...municipality...” A strict reading of this provision would mean that a distiller could not sell distilled spirits at any time or on any day outside of the times and days that both retailers (package stores) **AND** retail consumption dealers (bars and restaurants) are allowed to sell distilled spirits in the city. In cities where retail sales are allowed but in which retail consumption dealers cannot lawfully sell distilled spirits for consumption on the premises a strict constructionist reading would then also prevent a distiller from selling distilled spirits by the package because both criteria have not been met.

Similarly, even if a city allowed retailers and retail consumption dealers to sell distilled spirits, a strict reading of this statutory language would limit sales for on premises consumption by distillers to the lowest common denominator. In this example, a strict constructionist reading would require such sales to be limited to only the hours by which package stores **AND** bars and restaurants can sell distilled spirits. A strict constructionist reading is clearly not the legislative intent of SB 85, but it is a reasonable reading of the actual language of the statute.

While the legislative intent of SB 85 was to broaden the abilities of distillers, there are legitimately multiple manners in which the provision governing days and times of sales can be interpreted. The most logical interpretation is to apply the days and times of sales of retailers (i.e. package stores) to distillers when they are selling distilled spirits by the package. Similarly, it would also be logical to apply the days and times of sales of retail consumption dealers (i.e. bars and restaurants) to distillers when they are selling distilled spirits for consumption on-premises. The tough question that may be up for interpretation when it comes to distillers is probably related around Sunday sales for consumption on-premises.

### ***Taxes Applicable to Distillers***

Distillers serving or selling distilled spirits directly to the public must remit all taxes to the proper tax collecting authority, which includes city excise taxes that must be remitted directly to the city.<sup>17</sup> Local governments have the ability to impose a local excise tax on the sale of distilled spirits by the package at either the wholesale or retail level, which tax cannot exceed 22 cents per liter of distilled spirits.<sup>18</sup> It is up to the local government to impose the rate of taxation up to that 22 cents per liter, the manner of its imposition, how payment will be conducted, collection, and all other procedures related to that local excise tax on sales of distilled spirits by the package.<sup>19</sup>

### ***Distance Requirements***

State law very clearly states that no “person knowingly and intentionally may sell or offer to sell” distilled spirits, wine, or malt beverages within certain distances of churches, schools, and other specific locations.<sup>20</sup> Person is defined as meaning “any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.”<sup>21</sup> This definition very clearly would cover distillers, meaning state law on distance requirements would apply to distillers.

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<sup>17</sup> O.C.G.A. § 3-4-24.2(d)

<sup>18</sup> O.C.G.A. § 3-4-80(a)

<sup>19</sup> O.C.G.A. § 3-4-80(b)

<sup>20</sup> O.C.G.A. § 3-3-21

<sup>21</sup> O.C.G.A. § 3-1-2(17)

These state distance requirements mostly apply to package sales only and specifically prohibit sales of distilled spirits by the package within 100 yards of any church building or alcoholic treatment center owner and operated by the state or a local government or within 200 yards of any school building, educational building, school grounds or college campus. Distance requirements of on-premises consumption are subject to regulation by the local government as to distances from churches, schools, and colleges.<sup>22</sup> State law controls distances for on-premises consumption near housing authority property by prohibiting such sales within 100 yards of any such property.<sup>23</sup> Effectively, this means that the distance requirements for distilled spirits are mostly reliant on state law for package sales and reliant on local law for on-premises consumption.

### **Zoning**

Nothing in the new law alters the zoning abilities or procedures of local governments in regards to distillers. Distillers, under the new law, are still considered manufacturers, which would likely mean most cities would zone them in an industrial area. However, cities may need to reevaluate their zoning of distillers in light of the abilities of distillers to now sell their products by the package and for on-premises consumption. Such additional abilities by the distillers may warrant a reclassification of zoning by the city to ensure that the distiller can achieve a successful direct-to-consumer sales business. A city may be able to achieve a goal of allowing the distillers to prosper while protecting the public health, safety, and welfare of the citizens by creating commercial zoning districts which allow for distillers which have a certain sized production facility or generate a certain amount of volume of product can reside. It is also important to note that cities may have the option of issuing a zoning variance for distillers that may exceed local requirements of production or size.

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<sup>22</sup> O.C.G.A. § 3-3-21(b)(3)

<sup>23</sup> O.C.G.A. § 3-3-21(e)

## **SECTION TWO - BREWERIES**

SB 85 provides an exception to Georgia's three-tiered system for the distribution and sale of malt beverages. In addition to manufacturing malt beverages, brewers can now sell up to 3,000 barrels of malt beverages per year directly to consumers, provided:

- the malt beverages are produced at the brewer's facility, AND
- consumers purchase the malt beverages while on the brewer's premises.

The 3,000 barrels include sales of malt beverages directly to consumers for consumption both on and off the brewer's premises. Thus, a brewery can sell 3,000 barrels total of malt beverages per year when the brewery is acting as a retailer.<sup>24</sup>

Under SB 85, breweries will continue to operate solely as manufacturers from a licensing standpoint in Georgia's three-tiered system for the distribution and sale of malt beverages. Although the state has chosen to treat breweries as manufacturers and not retailers, minimum distance requirements still apply on the location of businesses that engage in sales of alcohol from churches, school buildings, alcoholic treatment centers, and housing authority property. The distance requirements imposed by state law are set forth in O.C.G.A. § 3-3-21.

Under SB 85, breweries may now act in three distinct capacities:

1. Manufacturer
2. Retailer (Consumption Off-Premises)
3. Retailer (Consumption On-Premises)

### ***Important and Relevant Definitions***

"Bar" means any premises at which a retailer licensed to sell alcoholic beverages derives 75 percent or more total annual gross revenue from the sale of alcoholic beverages for consumption on the premises.<sup>25</sup>

"Barrel" means 31 gallons.<sup>26</sup>

"Brewer" means a manufacturer of malt beverages.<sup>27</sup>

"Case" means a box or receptacle containing not more than 288 ounces of malt beverages on the average.<sup>28</sup>

"Malt beverage" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any

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<sup>24</sup> O.C.G.A. § 3-5-24.1(a)

<sup>25</sup> O.C.G.A. § 3-1-2(2.1)

<sup>26</sup> O.C.G.A. § 3-5-1(1)

<sup>27</sup> O.C.G.A. § 3-5-1(2)

<sup>28</sup> O.C.G.A. § 3-5-1(3)

combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.<sup>29</sup>

"Package" means a bottle, can, keg, barrel, or other original consumer container.<sup>30</sup>

"Retail consumption dealer" means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.<sup>31</sup>

"Retailer" or "retail dealer" means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term shall have the same meaning as the term "retail package liquor store."<sup>32</sup>

"Wholesaler" or "wholesale dealer" means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.<sup>33</sup>

### ***When a Brewer acts as a Manufacturer***

SB 85 does not alter the traditional role of brewers as manufacturers in Georgia's three-tiered system for the distribution and sale of malt beverages. Brewers can continue to produce malt beverages for sale to wholesalers, and wholesalers can continue to sell the malt beverages to retail establishments and other wholesale dealers.

### ***When a Brewer acts as a Retailer (Consumption Off-Premises)***

SB 85 allows breweries to sell malt beverages directly to consumers (who are on the brewer's premises) for consumption off the brewer's property.

When a brewer sells malt beverages directly to consumers for consumption off the brewer's property, the brewer is acting as a retail dealer. Brewers are allowed to sell packages of distilled spirits through their state manufacturer license and local manufacturer license and are not required to obtain a local retailer license. Additionally, because brewers will be acting as retailers without the ability of the local government to require a local retailer license, it is possible that municipalities may be able to instead charge a regulatory fee upon brewers if the city "customarily performs investigation or inspection of such businesses...as protection of the public health, safety, or welfare."<sup>34</sup> If a city chooses to charge a regulatory fee it cannot be for revenue purposes and most likely should be related to the state's requirement that the brewer abide by the local days and times of sale.<sup>35</sup>

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<sup>29</sup> O.C.G.A. § 3-1-2(13)

<sup>30</sup> O.C.G.A. § 3-1-2(16)

<sup>31</sup> O.C.G.A. § 3-1-2(18)

<sup>32</sup> O.C.G.A. § 3-1-2(19)

<sup>33</sup> O.C.G.A. § 3-1-2(23)

<sup>34</sup> O.C.G.A. § 48-13-9

<sup>35</sup> Id and O.C.G.A. § 48-13-9(c)(22)

A brewer may sell a maximum of 288 ounces (or one case) of malt beverages per consumer per day for consumption off premises.<sup>36</sup>

### ***When a Brewer acts as a Retailer (Consumption On-Premises)***

SB 85 also allows breweries to sell malt beverages directly to consumers for consumption on the brewer's property.

When a brewer sells malt beverages by the drink to consumers for consumption on the brewer's property, the brewer is acting as a bar. Brewers are allowed to sell malt beverages by the drink for consumption on the premises through their state license and are not required to obtain a local pouring license.

### ***Times and Days of Sales***

While SB 85 contains language establishing that brewers may sell malt beverages for consumption on the premises and a capped amount per customer for consumption off the premises on all days and times that sales of malt beverages by retailers are allowed in the municipality, including Sundays, the statutory language can be interpreted in a few different manners in regards to how to apply the new law. It is important to note that unlike with distillers, the term "retailers" covers both off-premises consumption and on-premises consumption when it comes to brewers of malt beverages. Although the provisions relating to brewers is clearer than the similar provisions related to distillers, there is the possibility of multiple interpretations of the statutory language when it comes to times and days of sales by brewers. Some possible ways of interpreting this provision in SB 85 include, but are not limited to:

1. Legislative Intent: Before the passage of SB 85 neither state law nor state rules and regulations restricted brewers from hosting tours of their facilities and providing samples of their products. As a result, before passage of SB 85, brewers were free to provide tastings of their products on Sundays without having to meet the food requirements applicable to retailers, found in O.C.G.A. §3-3-7(j)(1). One should probably consider the legislative intent of enacting SB 85 in making a determination of how to interpret the Sunday sales provision in SB 85.

The legislation was pushed by the distillers and brewers to allow them further abilities to make sales of their own products. The legislative intent of this provision was to allow for Sunday sales for consumption off-premises (i.e. package stores) at the same times Sunday sales for consumption off-premises is allowed to package stores in the city. Likewise, the legislative intent was to allow Sunday sales for consumption on-premises at the same times Sunday sales of consumption on-premises is allowed in the city. The

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<sup>36</sup> O.C.G.A. § 3-5-24.1(a)(2)

consumption on premises analysis gets complicated, however, by the aforementioned state law requiring retailers to meet certain food sales requirements in order to sell malt beverages on Sundays. It is likely that the legislative intent of SB 85 was not meant to apply food sales requirements to brewers. The language of this provision does not contain any reference to a food sales requirement and it can be interpreted that this omission is intentional. By the legislative intent analysis, brewers would be able to sell malt beverages for consumption on-premises on Sundays without having to meet food sales requirements, but still subject to the same Sunday hours as other retailers of malt beverages located within the city.

2. Strict Construction: Unlike the similar language governing times and days of sales for distillers, the statutory language for brewers does not contain the strict construction problems of referring to two different definitions. Instead, brewers are allowed to sell malt beverages “on all days and at all times that sales of malt beverages by retailers are lawful within the...municipality...” This is intended to mean that when a brewer is selling by the package, they are subject to those applicable time limitations, and when they are selling by the drink, they are subject to those applicable time limitations. However, through a strict constructionist reading, one could interpret this to mean that any sales by a brewer are allowed in the jurisdiction so long as it is at a time and day that any sales are allowed on-premises or off-premises.

Like with the distillers, the tough question that may be up for interpretation when it comes to brewers is probably related around Sunday sales for consumption on-premises. While the intent of the law was probably not to restrict brewers, reasonable minds can differ as to how Sunday sales for consumption on-premises laws apply to brewers and until further clarity is provided, reasonable arguments can be made either way concerning such. The most complicated question revolves around whether the food requirement for consumption on premises applies to brewers or does not apply to brewers. While the intent was most likely not to apply such requirement to brewers selling for consumption on premises, the law is silent as to direction for municipalities. The statutory language in SB 85 very clearly states that sales by brewers at days and times allowed locally includes Sundays. The implication by specifically mentioning Sundays in the legislation is that Sunday sales was of vital importance to the brewers.<sup>37</sup>

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<sup>37</sup> One could also look at this provision specifically mentioning Sundays as being a later enacted law, effectively trumping the food requirement in previously enacted law, at least as it relates to brewers. Of course, such a reading would require the city to view the inclusion of specifically mentioning Sunday as an affirmative statement meant to supersede the food requirement statute as it applies to brewers. See GeorgiaCarry.org v. Code Revision Commission, 299 Ga. 896 (2016).

## ***Taxes Applicable to Brewers***

Brewers serving or selling malt beverages directly to the public must remit all local excise taxes to the municipality in which it is located.<sup>38</sup> Before the passage of SB 85 these excise taxes were to be paid by the wholesale dealer.<sup>39</sup> It is important to remember, however, that with the passage of SB 85 brewers are now able to act in three different capacities, as a manufacturer, or as a retailer consumption on-premises, or consumption off-premises. When a brewer is acting as a manufacturer, the old law, requiring the wholesale dealer to pay the excise tax will apply. When a brewer is acting as a retailer, whether as consumption on-premises or consumption off-premises, however, the new law will come into play. Under this new law, brewers will be responsible for remitting to the municipality excise taxes for malt beverages served or sold by the brewer directly to the public.<sup>40</sup> The rate of this excise tax has not changed and will still be at a rate of 5 cents per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.<sup>41</sup>

## ***Distance Requirements***

State law very clearly states that no “person knowingly and intentionally may sell or offer to sell” distilled spirits, wine, or malt beverages within certain distances of churches, schools, and other specific locations.<sup>42</sup> Person is defined as meaning “any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.”<sup>43</sup> This definition very clearly would cover brewers, meaning state law on distance requirements would apply to brewers.

These state distance requirements mostly apply to package sales only and specifically prohibit sales of malt beverages by the package within 100 yards of any church building, alcoholic treatment center owner and operated by the state or a local government, any school building, school grounds or any college campus. Distance requirements of on-premises consumption are subject to regulation by the local government as to distances from churches, schools, and colleges.<sup>44</sup> State law controls distances for on-premises consumption near housing authority property by prohibiting such sales within 100 yards of any such property.<sup>45</sup> Effectively, this means that the distance requirements for malt beverages are mostly reliant on state law for package sales and reliant on local law for on-premises consumption.

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<sup>38</sup> O.C.G.A. § 3-5-24.1(c)

<sup>39</sup> O.C.G.A. § 3-5-81

<sup>40</sup> O.C.G.A. § 3-5-81(a) (effective September 1, 2017).

<sup>41</sup> O.C.G.A. § 3-5-80(2)

<sup>42</sup> O.C.G.A. §3-3-21

<sup>43</sup> O.C.G.A. §3-1-2(17)

<sup>44</sup> O.C.G.A. §3-3-21(b)(3)

<sup>45</sup> O.C.G.A. §3-3-21(e)

## **Zoning**

Nothing in the new law alters the zoning abilities or procedures of local governments in regards to brewers. Brewers, under the new law, are still considered manufacturers, which would likely mean most cities would zone them in an industrial area. However, cities may need to reevaluate their zoning of brewers in light of the abilities of brewers to now sell their products by the package and for on-premises consumption. Such additional abilities by the brewers may warrant a reclassification of zoning by the city to ensure that the brewer can achieve a successful direct-to-consumer sales business. A city may be able to achieve a goal of allowing the brewers to prosper while protecting the public health, safety, and welfare of the citizens by creating commercial zoning districts which allow for brewers which have a certain sized production facility or generate a certain amount of volume of product can reside. It is also important to note that cities may have the option of issuing a zoning variance for brewers that may exceed local requirements of production or size.

### **SECTION THREE – BREWPUBS**

Brewpubs are locations where malt beverages are manufactured on licensed premises and sold only on such premises in draft form. Brewpub owners must receive a state license, must comply with local ordinances, and must pay both local license fees and excise taxes.

SB 85 permits municipalities, by resolution or ordinance, to authorize holders of a brewpub license to sell wine or malt beverages by the package for consumption off the premises, including malt beverages other than those it manufactures on its premises.<sup>46</sup> Brewpubs are allowed to sell packages of wine and malt beverages through their existing brewpub license and are not required to obtain a retail dealer's license.

The amount of malt beverages a brewpub may manufacture remains unchanged. Brewpubs are authorized to manufacture on their premises up to 10,000 barrels of malt beverages in a calendar year solely for retail sale.<sup>47</sup> Brewpubs are also authorized to sell up to 5,000 barrels annually of malt beverages manufactured on their premises to licensed wholesale dealers.<sup>48</sup>

#### ***Important and Relevant Definitions***

"Barrel" means 31 gallons.<sup>49</sup>

"Brewpub" means any eating establishment in which malt beverages are manufactured, subject to the barrel production limitation prescribed in Code Section 3-5-36. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; provided, however, that when determining the total annual gross food and beverage sales, barrels of malt beverages sold to licensed wholesale dealers, or to the public for consumption off the premises, shall not be used.

"Malt beverage" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.<sup>50</sup>

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<sup>46</sup> O.C.G.A. § 3-5-36(4)

<sup>47</sup> O.C.G.A. §§ 3-5-36(2)(A)

<sup>48</sup> O.C.G.A. § 3-5-36(2)(D)

<sup>49</sup> O.C.G.A. § 3-5-1(1)

<sup>50</sup> O.C.G.A. § 3-1-2(13)