

The House Committee on Regulated Industries offers the following substitute to HB 879:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated,
2 relating to provisions regarding the regulation of alcoholic beverages generally, so as to
3 provide for the legislative intent of the General Assembly to exercise strict regulatory control
4 over the three-tier system; to permit certain retailers to make deliveries of alcoholic
5 beverages in unbroken packages pursuant to specific terms and conditions; to provide for
6 definitions; to allow certain retailers to market, receive, and process orders for alcoholic
7 beverage products using electronic means owned, operated, or maintained by third parties;
8 to provide for the relationship between such retailers and third parties; to provide certain
9 requirements for individuals making deliveries on behalf of a packaged goods retailer; to
10 provide for warrantless searches and seizures by certain agents and officers of the
11 Department of Revenue; to provide for training on sales and delivery of alcoholic beverages;
12 to provide for the commissioner of revenue to promulgate certain rules and regulations; to
13 provide for penalties; to provide for related matters; to repeal conflicting laws; and for other
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Article 1 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated, relating to
18 provisions regarding the regulation of alcoholic beverages generally, is amended by adding
19 two new Code sections to read as follows:

20 "3-3-1.1.

21 (a) This title has been enacted pursuant to the authority granted to the state under the
22 Twenty-first Amendment to the United States Constitution, the powers reserved to the state
23 under the Tenth Amendment to the United States Constitution, and the inherent powers of
24 the state under the Constitution of the State of Georgia of 1983. It is the intent of the
25 General Assembly that this title do all of the following:

- 26 (1) Further regulate and control alcoholic beverage transactions in this state under the
 27 control and supervision of the commissioner;
 28 (2) Promote and assure the public's interest in fair and efficient distribution and quality
 29 control of alcoholic beverages in this state;
 30 (3) Promote orderly marketing of alcoholic beverages;
 31 (4) Prevent unfair business practices, discrimination, and undue control of one segment
 32 of the alcoholic beverage industry by any other segment;
 33 (5) Foster vigorous and healthy competition in the alcoholic beverage industry;
 34 (6) Preserve and promote a robust, stable system of distribution of alcoholic beverages
 35 to the public;
 36 (7) Provide for an orderly system of public revenues by facilitating the collection and
 37 accountability of this state and local excise taxes;
 38 (8) Facilitate the collection of state and local revenue;
 39 (9) Promote the health, safety, and welfare of residents of this state by, among other
 40 purposes, ensuring that the commissioner shall be able to inspect and seize any alcoholic
 41 beverage shipped into, distributed, and sold throughout this state and ensuring that any
 42 such alcoholic beverage:
 43 (A) Has been registered for sale in this state with the commissioner;
 44 (B) Is not subject to a government mandated or supplier initiated recall;
 45 (C) Is not counterfeit;
 46 (D) Is labeled in conformance with applicable laws, rules, and regulations;
 47 (E) Can be tested by the commissioner or an agent assigned by the commissioner; and
 48 (F) Is not prohibited by this state; and
 49 (10) Promote and maintain a sound, stable, and viable three-tier system of distribution
 50 of alcoholic beverages to the public.
 51 (b) If any provision of this title or its application to any person or circumstance is
 52 determined by a court or other authority of competent jurisdiction to be invalid or
 53 unconstitutional, such provision shall be stricken and the remaining provisions shall be
 54 construed in accordance with the intent of the General Assembly to further limit rather than
 55 expand commerce in alcoholic beverages, and with respect to alcoholic beverages, the
 56 remaining provisions shall be construed to enhance strict regulatory control over the
 57 taxation, manufacture, distribution, and sale of alcoholic beverages through the three-tier
 58 regulatory system and the licensing laws imposed by this title."
 59 "3-3-10.
 60 (a) For purposes of this Code section, the term:

- 61 (1) 'Air carrier' means a person that undertakes by any means, directly or indirectly, to
62 provide air transportation.
- 63 (2) 'Carrier' means any person, including without limitation any motor carrier, freight
64 forwarder, or air carrier, whose business is to transport goods or people while acting in
65 the capacity as common, private, or contract transporter of a product or service using its
66 facilities or those of other carriers.
- 67 (3) 'Electronic means' means internet enabled technology and digital media, including,
68 but not limited to, websites and consumer applications accessible through computers,
69 smartphones, or other electronic devices.
- 70 (4) 'Employee' means an individual who is:
- 71 (A) A full-time or part-time employee or independent contractor of a packaged goods
72 retailer; and
- 73 (B) Authorized to act as an agent of such packaged goods retailer.
- 74 (5) 'Freight forwarder' means a person holding itself out to the general public to provide
75 transportation of property for compensation and in the ordinary course of its business:
- 76 (A) Assembles and consolidates, or provides for the assembly and consolidation of,
77 shipments and performs or provides for break bulk and distribution operations of the
78 shipments;
- 79 (B) Assumes responsibility for such transportation from the place of receipt to the
80 place of destination; and
- 81 (C) Uses for any part of such transportation another freight forwarder, an air carrier,
82 a motor carrier, or any other carrier.
- 83 (6) 'Motor carrier' means a person that provides motor vehicle transportation for
84 compensation.
- 85 (7) 'Packaged goods retailer' means a person licensed under this title as a retailer to sell
86 alcoholic beverages in unbroken packages for consumption off the premises that is not:
- 87 (A) Licensed as a retail package liquor store;
- 88 (B) A manufacturer or any other person licensed to manufacture alcoholic beverages;
- 89 (C) A carrier;
- 90 (D) A shipper; or
- 91 (E) A person that takes delivery of alcoholic beverages directly from a:
- 92 (i) Retailer; or
- 93 (ii) Manufacturer or any other person licensed to manufacture alcoholic beverages.
- 94 (8) 'Proper identification' shall have the same meaning as provided in Code
95 Section 3-3-23.
- 96 (9) 'Third party' means any person that:
- 97 (A) Is registered to do business in this state;

98 (B) Has a contractual relationship with a packaged goods retailer; and

99 (C) Is authorized to act as an agent of such packaged goods retailer.

100 Such term shall include such person's employees and independent contractors. Such term
101 shall not include a carrier or a shipper.

102 (b) Notwithstanding any other provision of law, and except where prohibited by local
103 ordinance or resolution, a packaged goods retailer may deliver alcoholic beverages in
104 unbroken packages lawfully sold to and purchased by an individual for personal use and
105 not for resale to an address designated by such individual, subject to the following terms
106 and conditions:

107 (1) The individual making the purchase shall, prior to ordering and purchasing alcoholic
108 beverages for delivery, establish an account maintained by the packaged goods retailer
109 that shall be available for inspection by the department;

110 (2) The packaged goods retailer or employee shall process all payments made by the
111 individual who is transacting the purchase with the packaged goods retailer;

112 (3) The packaged goods retailer, employee, or third party shall assemble, package, and
113 fulfill each order at the licensed premises of the packaged goods retailer from inventory
114 located at such licensed premises and shall not pull from the inventory of another retailer
115 or licensed premises. Once any alcoholic beverage that is part of an order leaves the
116 licensed premises of the packaged goods retailer, such alcoholic beverage shall remain
117 in the possession of the person, either the packaged goods retailer, the employee, or the
118 third party, that is to make the delivery and shall not be transferred to any other person
119 until the time of delivery;

120 (4) Delivery shall be made by the packaged goods retailer, employee, or third party who:

121 (A) Is at least 21 years of age;

122 (B) Has a valid Georgia driver's license;

123 (C) Has undergone within the last 12 months a background check that includes a local
124 and national criminal history and driving records and:

125 (i) Has not had more than three moving violations in the prior three-year period;

126 (ii) Has not had a major traffic violation, as such term is defined in Code Section
127 40-5-142, in the prior three-year period;

128 (iii) Has not been convicted within the past seven years of driving under the influence
129 of drugs or alcohol;

130 (iv) Has not been convicted at any time of fraud, a sexual offense, the use of a motor
131 vehicle to commit a felony, a crime involving property damage, a crime involving
132 theft, a crime involving an act of violence, or a crime involving an act of terror; and

133 (v) Does not have a match on the National Sex Offender Registry data base;

- 134 (D) Has undergone training approved by the department on sales and delivery of
135 alcoholic beverages in this state;
- 136 (E) Shall not possess or handle as part of or during the delivery forms of compensation
137 that are used to purchase or transact the sale of alcoholic beverages; and
- 138 (F) Does not receive compensation based upon whether an attempted delivery results
139 in a completed transaction;
- 140 (5) Delivery shall be made by the packaged goods retailer, employee, or third party to
141 an individual who is at least 21 years of age and presents proper identification verifying
142 the age of such individual;
- 143 (6) At the time of delivery, the packaged goods retailer, employee, or third party shall
144 verify the identity and age of the individual accepting delivery by validating the proper
145 identification of the individual accepting delivery and obtaining his or her signature on
146 a written or electronic acknowledgment of receipt of the order and certification of legal
147 age to purchase alcoholic beverages. The packaged goods retailer, employee, or third
148 party shall scan or otherwise verify the proper identification of the individual accepting
149 delivery and shall retain a record of such individual's name and date of birth that shall be
150 available for inspection upon request for a minimum of three years;
- 151 (7) The packaged goods retailer, employee, or third party conducting the delivery shall
152 refuse to make the delivery if:
- 153 (A) No individual is at the address to accept delivery; or
- 154 (B) The individual attempting to accept the delivery:
- 155 (i) Is less than 21 years of age;
- 156 (ii) Fails to produce proper identification verifying his or her age;
- 157 (iii) Fails to provide a signature that matches such proper identification; or
- 158 (iv) Appears intoxicated;
- 159 (8) All deliveries shall be inspected at the time of delivery by the individual accepting
160 such delivery. The transaction shall be deemed complete upon acceptance of delivery of
161 the alcoholic beverages, and all sales shall be final;
- 162 (9) The delivery address shall be located within the local licensing jurisdiction of the
163 packaged goods retailer;
- 164 (10) The delivery shall take place only during the lawful times when alcoholic beverages
165 can be sold by the packaged goods retailer for consumption off the premises;
- 166 (11) The delivery shall be made only within the same calendar day on which the
167 alcoholic beverages leave the licensed premises of the packaged goods retailer for
168 delivery; and
- 169 (12) No delivery shall knowingly be made to any address or to any property that is part
170 of;

- 171 (A) Any public or private elementary or secondary educational school, including
 172 without limitation any dormitory, housing, or common space located on the campus of
 173 any elementary or secondary educational school;
- 174 (B) Any prison, reformatory, and other correctional facilities;
- 175 (C) Any addiction or substance abuse facilities;
- 176 (D) Any locker, mailbox, package shipping location, or similar service or storage
 177 facility business; or
- 178 (E) Any retailer.
- 179 (c) A packaged goods retailer may use electronic means to market, receive, and process
 180 orders for alcoholic beverages it is licensed to sell placed by individuals who are at least
 181 21 years of age, provided that any such orders shall be delivered in accordance with
 182 subsection (b) of this Code section.
- 183 (d) A packaged goods retailer may market, receive, and process orders for alcoholic
 184 beverages it is licensed to sell placed by individuals who are at least 21 years of age using
 185 electronic means owned, operated, or maintained by a third party, provided that any such
 186 orders shall be delivered in accordance with subsection (b) of this Code section and:
- 187 (1) The packaged goods retailer maintains control and responsibility over the sales
 188 transaction and the transfer of the physical possession of alcoholic beverages to the
 189 employee or third party conducting the delivery;
- 190 (2) The packaged goods retailer shall retain sole discretion to determine whether to
 191 accept and complete an order or to reject an order;
- 192 (3) The purchase transaction takes place between the individual placing the order and the
 193 packaged goods retailer and the packaged goods retailer appears as the merchant of
 194 record at the time of purchase and at the time of receipt of the delivery;
- 195 (4) Any credit or debit card information provided by the individual placing the order to
 196 a third party for the purpose of transacting the purchase with the packaged goods retailer
 197 is automatically directed to the packaged goods retailer;
- 198 (5) The packaged goods retailer that accepts the order receives the payment that is made
 199 by the individual who is transacting the purchase with such packaged goods retailer; and
- 200 (6) The delivery of alcoholic beverages to the individual who placed the order is made
 201 by the packaged goods retailer, employee, or third party in compliance with the
 202 requirements of subsection (b) of this Code section.
- 203 (e) The department shall develop a curriculum for or list of required elements of the sales
 204 and delivery training required under subparagraph (b)(4)(D) of this Code section and shall
 205 determine the providers approved to conduct such training. A packaged goods retailer or
 206 third party may submit to the department a proposed program for such required training,

207 upon receipt of which the department shall have 15 days to approve, deny, or indicate what
208 modifications are necessary to such program.

209 (f) Persons appointed by the commissioner as special agents or enforcement officers of the
210 department shall, in addition to the powers and duties provided for in Code Section 3-2-30,
211 have the power to inspect, without a warrant, in a lawful manner any premises of the
212 packaged goods retailer or any vehicle being used by the packaged goods retailer,
213 employee, or third party to make a delivery under this Code section for the purpose of:

214 (1) Determining if any of the provisions of this Code section or any rule or regulation
215 promulgated under its authority is being violated; or

216 (2) Securing evidence as may be needed for an administrative proceedings action, as
217 provided in this Code section or any other provisions of this title.

218 (g) The commissioner shall be authorized to promulgate and enforce such rules and
219 regulations as it may deem necessary to carry out or make effective the provisions of this
220 Code section, including, but not limited to, rules and regulations governing the training of
221 individuals making deliveries.

222 (h)(1) In addition to the commissioner's power to suspend, revoke, or cancel licenses,
223 permits, or registrations issued pursuant to this title, upon a violation of any provision of
224 this Code section or any rule or regulation promulgated thereunder, the commissioner
225 shall have the power to impose a fine not to exceed \$500.00 for each violation and may
226 suspend for up to 30 days for each violation the authorization provided by this Code
227 section for the packaged goods retailer to deliver alcoholic beverages or to use an
228 employee or third party to deliver alcoholic beverages. Any violation committed by an
229 employee or a third party shall be attributed to and deemed to be an act taken by a
230 packaged goods retailer for purposes of this Code section. A packaged goods retailer,
231 employee, and third party may each be fined for the same violation. Nothing in this
232 paragraph shall be construed to allow the commissioner to suspend or terminate the
233 authorization of a packaged goods retailer to sell alcoholic beverages on the licensed
234 premises as a result of a violation of this Code section by a third party.

235 (2) Any local governing authority of a municipality or county that issues a license to a
236 packaged goods retailer and allows for delivery of alcoholic beverages by a packaged
237 goods retailer, an employee, or a third party may impose penalties upon a packaged goods
238 retailer, provided that such penalties do not exceed the amount of the fine or the number
239 of delivery suspension days provided for in this paragraph. Nothing in this paragraph
240 shall be construed to allow any local governing authority of a municipality or county to
241 suspend or terminate the authorization of a packaged goods retailer to sell alcoholic
242 beverages on the licensed premises as a result of a violation of this Code section.

243 (3) The penalties provided for in this Code section shall be in addition to any criminal
244 penalties that may otherwise be provided by law."

245 **SECTION 2.**

246 All laws and parts of laws in conflict with this Act are repealed.