

House Bill 738

By: Representative Martin of the 49th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 3 of the Official Code of Georgia Annotated, relating to malt
2 beverages, so as to change certain aspects of the distribution of such alcoholic beverages; to
3 provide for definitions; to provide a statutory process for the discontinuance of agreements
4 between small brewers and wholesalers; to provide for arbitration; to authorize brewers to
5 self-distribute a certain quantity of malt beverages; to prohibit brewers from extending credit
6 to wholesalers; to provide for related matters; to provide an effective date; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Chapter 5 of Title 3 of the Official Code of Georgia Annotated, relating to malt beverages,
11 is amended by adding two new Code sections to read as follows:

12 "3-5-31.1.

13 (a) For purposes of this Code section, the term:

14 (1) 'Controlled group' shall have the same meaning as provided in 26 U.S.C. Section
15 5051, as it existed on January 1, 2019.

16 (2) 'Discontinued' means termination, cancellation, nonrenewal, or any other method that
17 ends an agreement.

18 (3) 'Small brewer' means a brewer whose sales of products to such brewer's wholesaler
19 do not exceed 15 percent of the wholesaler's total sales in the prior calendar year.

20 (4) 'Total sales' means sales by all manufacturers of alcoholic beverages to a wholesaler
21 and sales by such wholesaler to all retailers and includes all sales that are part of the same
22 controlled group.

23 (b) A small brewer may discontinue an agreement by providing the wholesaler with at
24 least 30 days' written notice of such discontinuance. Such written notice shall identify any
25 successor wholesalers that will begin servicing the affected territory upon such
26 discontinuance by the small brewer.

27 (c) Upon any discontinuance provided for under subsection (b) of this Code section, the
28 successor wholesaler shall compensate the discontinued wholesaler in an amount equal to
29 the fair market value of the small brewer's distribution rights granted to the discontinued
30 wholesaler in the territory previously served by such discontinued wholesaler.

31 (d) A discontinuance sought under subsection (b) of this Code section shall:

32 (1) Take effect on the date specified in the small brewer's written notice, which shall not
33 be less than 30 days from the date such notice is sent to the wholesaler; and

34 (2) Become effective regardless of whether all successor wholesalers have compensated
35 the discontinued wholesaler as provided in subsection (c) of this Code section.

36 (e) If any successor wholesaler and the discontinued wholesaler are unable within 30 days
37 following the small brewer's notice of discontinuance to agree on the fair market value
38 compensation due to the discontinued wholesaler as provided in subsection (c) of this Code
39 section, the discontinued wholesaler or any successor wholesaler may request that the
40 amount of such compensation be determined by a final binding arbitration conducted in
41 accordance with the arbitration process established in subsection (f) of this Code section.

42 (f) Arbitrations as to compensation due to a discontinued wholesaler shall be conducted
43 before a single impartial arbitrator selected by the parties or, if the parties cannot agree on
44 an arbitrator within 30 days of the discontinued wholesaler or any successor requesting
45 arbitration, then by an arbitrator selected by a process established by the commissioner as
46 provided for in rules and regulations. The arbitration proceeding shall be subject to the
47 following conditions and procedures:

48 (1) The arbitration proceeding shall conclude not later than 90 days after the date
49 arbitration was requested, unless the parties agree to extend such time by mutual
50 agreement or the selected arbitrator extends the time for good cause shown;

51 (2) The costs of the arbitrator shall be equally divided between the parties engaged in the
52 arbitration; provided, however, that the arbitrator may award the prevailing party in such
53 dispute the costs of the arbitrator and reasonable attorney's fees for good cause shown;

54 (3) The arbitrator shall render a written decision not later than 30 days after the
55 conclusion of the arbitration proceeding, unless the parties agree to extend the time by
56 mutual agreement or the arbitrator extends the time for good cause shown;

57 (4) The arbitrator's decision shall be final and binding and may be enforced by
58 commencing a civil action in any court of competent jurisdiction;

59 (5) Any party duly notified of an arbitration involving its rights that fails to participate
60 in an arbitration proceeding held pursuant to this Code section shall be deemed to have
61 waived all rights it would have had in such arbitration proceeding and shall be considered
62 to have consented to the final and binding determination of the arbitrator; and

63 (6) Any arbitration held pursuant to this Code section shall be in lieu of all other
64 remedies or procedures afforded to the parties.

65 3-5-31.2.

66 A brewer licensed pursuant to this title shall be authorized to:

67 (1) Sell up to 25,000 barrels per calendar year of its malt beverages at wholesale within
68 the state; and

69 (2) Sell, deliver, and ship its malt beverages to other licensed brewers and to acquire and
70 receive deliveries and shipments of such malt beverages made by other licensed brewers."

71 **SECTION 2.**

72 Said chapter is further amended by adding a new Code section to read as follows:

73 "3-5-38.

74 No brewer shall extend credit of any kind to a wholesaler. The delivery and payment for
75 malt beverages shall be a simultaneous transaction between a brewer and a wholesaler."

76 **SECTION 3.**

77 This Act shall become effective upon its approval by the Governor or upon its becoming law
78 without such approval.

79 **SECTION 4.**

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