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## SB 17 - Alcoholic Beverages


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## ALCOHOLIC BEVERAGES

***Alcoholic Beverages: Amend Title 3 of the Official Code of Georgia Annotated, Relating to Alcoholic Beverages, so as to Provide that Governing Authorities of Counties and Municipalities May Authorize Sales of Alcoholic Beverages for Consumption on the Premises During Certain Times on Sundays Subject to the Passage of a Referendum; to Provide Procedures; to Change the Time on Sundays During which Farm Wineries May Sell Certain Wine for Consumption on the Premises; to Provide for Related Matters; to Provide an Effective Date; to Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 3-3-7 (amended), 3-6-21.2 (amended)
BILL NUMBER:	SB 17
ACT NUMBER:	461
GEORGIA LAWS:	2018 Ga. Laws 896
SUMMARY:	Georgia law previously allowed counties and municipalities to permit the sale of alcoholic beverages on Sundays from 12:30 P.M. until 11:30 P.M. This Act, deemed “the Brunch Bill,” authorizes the counties and municipalities that have affirmatively voted by referendum to sell alcoholic beverages on Sundays to sell them earlier, at 11:00 A.M., if approved by a second referendum vote. This change applies to restaurants that make at least 50% of their revenue from the sale of food and hotels, and Georgia wineries.
EFFECTIVE DATE:	July 1, 2018

*History*

Throughout history, Americans have had an inability to purchase a variety of products due to Sunday closing ordinances.<sup>1</sup> Called “blue laws,” these laws are designed to “enforce religious standards through a ban on Sunday activities.”<sup>2</sup> They originated as religious measures “designed to promote peace on the Lord’s day” and to encourage church attendance by those whose Sabbath is on Sunday.<sup>3</sup> Sunday closing statutes were challenged in *McGowan v. Maryland* on the basis that “their real purpose was to facilitate observance of religious services” in violation of the Establishment Clause of the First Amendment.<sup>4</sup> Although the Supreme Court acknowledged that the statutes’ initial purpose was to “keep the Sabbath holy,” it ultimately held that their present purpose—providing a day off for “rest, repose, recreation, and tranquility”—was valid.<sup>5</sup> The Court emphasized that the statutes’ provisions for a day off could be enjoyed by anyone, regardless of religious denomination or belief.<sup>6</sup>

Georgia’s ban on the Sunday sale of alcohol, codified at Code section 3-3-20, was passed in 1937.<sup>7</sup> However, sixty-five years later in 2002, the Georgia legislature passed Code section 3-3-7, giving local governments the ability to exempt “certain businesses and venues from the ban, including ‘eating establishments.’”<sup>8</sup> The statute faced constitutional scrutiny, specifically an equal protection challenge in *State v. Heretic, Inc.*<sup>9</sup> In *Heretic*, the plaintiff argued that the exceptions for restaurants denied bar owners equal protection

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1. Patricia Diann Long, *Does the Wall Still Stand: Separation of Church and State in the United States*, 37 BAYLOR L. REV. 755, 760 (1985) (“Many Americans have had the experience of being unable to purchase a desired product on a Sunday afternoon.”).

2. Andrew Mullen & Brian Thomas, *Alcoholic Beverages SB 10*, 28 GA. ST. U.L. REV. 255, 256 (2011).

3. Susane B. Berger, *The Less We Emphasize the Christian Religion, the Further We Fall into the Abyss of Poor Character and Chaos*, 22 T. MARSHALL L. REV. 233, 233 (1997).

4. Long, *supra* note 1, at 760.

5. *McGowan v. Maryland*, 366 U.S. 420, 450 (1961). The statutes were challenged on equal protection, vagueness, and freedom of religion grounds. *Id.*

6. *Id.*

7. O.C.G.A. § 3-3-20 (Supp. 2018) (originally enacted as 1937 Ga. Laws 148, §§ 6–7).

8. Mullen & Thomas, *supra* note 2, at 256 (quoting 2002 Ga. Laws 1473, § 1; O.C.G.A. § 3-3-7(b)(2) (Supp. 2018)).

9. *State v. Heretic, Inc.*, 277 Ga. 275, 275, 588 S.E.2d 224, 225 (2003).

because bars did not qualify as eating establishments.<sup>10</sup> The Supreme Court of Georgia upheld the statute, finding a rational basis for exempting eating establishments because “doing so would attract families and others to go out for meals on Sunday,” thus contributing to the legislature’s goal in enacting the original ban.<sup>11</sup> The Court further found that the legislature could exempt eating establishments and not bars because the “health and safety risks posed by bars are more significant than those posed by restaurants.”<sup>12</sup>

Code section 3-3-7 was amended in 2011 to allow local governments, by way of a referendum, to permit package sales on Sunday as well.<sup>13</sup> Despite carving out exceptions for package sales, “eating establishments,” overnight lodging facilities, and even “farm wineries,”<sup>14</sup> the Georgia legislature remained steadfast to only permit sales on Sundays beginning at 12:30 P.M.<sup>15</sup> In 2015, however, the Georgia House of Representatives attempted to amend Code section 3-3-7 to permit sales as early as 10:30 A.M. with House Bill (HB) 535.<sup>16</sup> The bill ultimately passed the House but was stopped by the Senate Rules Committee.<sup>17</sup> Two years later, in 2017, the Georgia legislature again tried to extend Sunday alcohol sales with the Georgia Senate’s introduction of Senate Bill (SB) 17.<sup>18</sup> Senator Renee Unterman (R-45th) introduced the bill “to put private businesses on a level playing field with the state-owned Georgia World Congress Center,” which could serve alcohol at its facilities before 12:30 P.M. on Sunday mornings.<sup>19</sup> Due to HB 535’s shortcomings and subsequent defeat, SB 17 featured several changes

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10. *Id.* at 275, 588 S.E.2d at 225.

11. *Id.* at 276, 588 S.E.2d at 226.

12. *Id.* at 276, 588 S.E.2d at 226.

13. Mullen & Thomas, *supra* note 2, at 261.

14. O.C.G.A. § 3-6-21.2 (2018).

15. *See, e.g.*, O.C.G.A. § 3-3-7(j)(1) (Supp. 2018) (“[T]he governing authority of the county or municipality may . . . authorize the sale of alcoholic beverages for consumption on the premises on Sundays from 12:30 P.M. until 12:00 Midnight.”).

16. *See* HB 535, as introduced, 2015 Ga. Gen. Assemb.

17. Beth McKibben, ‘Mimosa Mandate’ is Law: Georgia Governor Signs Sunday Brunch Bill, EATER ATLANTA (May 8, 2018, 1:13 PM), <https://atlanta.eater.com/2018/5/8/17331478/georgia-governor-signs-sunday-brunch-bill> [<https://perma.cc/W3FM-MJ3J>].

18. *See* SB 17, as introduced, 2017 Ga. Gen. Assemb.

19. Maya T. Prabhu, Revised ‘Brunch Bill,’ Without Sales at Georgia Stores, Back on Track, ATLANTA J. CONST. (Feb. 7, 2018, 3:24 PM), <https://www.myajc.com/news/state—regional-govt—politics/revised-brunch-bill-without-sales-georgia-stores-back-track/s7BEX7novRs0pJPzhWx7tI/> [<https://perma.cc/E82S-SYKU>].

and concessions in hopes of getting passed.<sup>20</sup> Of note were the changes to the start time—11:00 A.M. instead of 10:30 A.M.—and the inclusion of a second referendum.<sup>21</sup> The bill’s drafters also removed its original inclusion of early sales at stores, specifically grocery and liquor stores.<sup>22</sup> While critics feared the bill would “disturb the ‘fragile compromise’ between legislative leaders and the faith community,”<sup>23</sup> supporters countered that the faith community is modernizing.<sup>24</sup> Senator Unterman observed that “[a] lot of people go to church on Saturday now; they don’t even go to church on Sunday anymore, so the old laws are not applicable.”<sup>25</sup> Governor Nathan Deal (R) ultimately signed SB 17 into law, giving cities and counties throughout Georgia the ability to allow the sale of alcohol as early as 11:00 A.M. through a local referendum.<sup>26</sup>

### *Bill Tracking of SB 17*

#### *Consideration and Passage by the Senate*

Senator Renee Unterman (R-45th) sponsored SB 17 in the Senate.<sup>27</sup> The Senate read the bill for the first time on January 23, 2018, and Lieutenant Governor Casey Cagle (R) committed the bill to the Senate Committee on Regulated Industries and Utilities.<sup>28</sup> On January 31, 2018, the Senate Committee amended the bill in part and favorably reported the bill by Committee substitute.<sup>29</sup>

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20. *Id.*

21. Video Recording of House Regulated Industries Committee Meeting at 15 min., 14 sec. (Mar. 6, 2018) (remarks by Sen. Renee Unterman (R-45th)), <https://livestream.com/accounts/19771738/events/7993504/videos/171153609> [<https://perma.cc/MBC3-HVDR>] [hereinafter House Regulated Industries Committee Video].

22. Prabhu, *supra* note 19.

23. Nate Harris, *Brunch Bill Breakdown: ‘Mimosa Mandate’ Looks to Extend Sunday Alcohol Sales*, RED & BLACK (Jan. 16, 2017), [https://www.redandblack.com/athensnews/brunch-bill-breakdown-mimosa-mandate-looks-to-extend-sunday-alcohol/article\\_2176091e-dba0-11e6-828b-3f13c7ddf171.html](https://www.redandblack.com/athensnews/brunch-bill-breakdown-mimosa-mandate-looks-to-extend-sunday-alcohol/article_2176091e-dba0-11e6-828b-3f13c7ddf171.html) [<https://perma.cc/8FUY-5QXJ>].

24. *Id.*

25. *Id.*

26. McKibben, *supra* note 17.

27. Georgia General Assembly, SB 17, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/17> [<https://perma.cc/L2UH-XCRM>] [hereinafter SB 17 Bill Tracking].

28. State of Georgia Final Composite Status Sheet, SB 17, March 29, 2018.

29. SB 17 Bill Tracking, *supra* note 27.

The Committee substitute added a significant amount of text to the bill.<sup>30</sup> Six major amendments occurred in this substitute: (1) a change in proposed time for sale of alcoholic beverages; (2) a limitation on the establishments considered “on-premises” retailers; (3) an addition of a referendum by the county or municipality to approve earlier on-premises sales; (4) an authorization for counties or municipalities to allow package sales at the earlier time with a referendum; (5) a change in the time that farm wineries may serve alcoholic beverages on Sunday; and (6) a requirement that the county or municipality already have allowed Sunday sales of alcoholic beverages.<sup>31</sup>

First, the Committee changed the time a county or municipality may authorize the on-premises sales of alcoholic beverages on Sundays.<sup>32</sup> As introduced, the bill allowed counties and municipalities to authorize sales of alcoholic beverages on-premises as early as 10:30 A.M.<sup>33</sup> The bill as introduced included wineries in this allowance.<sup>34</sup> The Committee substitute changed the time for on-premises sales of alcoholic beverages to 11:00 A.M. if authorized by the county or municipality.<sup>35</sup>

Second, the Committee limited the establishments that could be considered on-premises sellers of alcoholic beverages.<sup>36</sup> The Committee added lines 55 through 60 to explain that on-premises sales included:

any licensed establishment which derives at least [fifty] percent of its total annual gross sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least [fifty]

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30. *Compare* SB 17, as introduced, 2018 Ga. Gen. Assemb., with SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

31. *Id.*

32. *Id.*

33. SB 17, as introduced, 2017 Ga. Gen. Assemb.

34. *Id.*

35. *Compare* SB 17, as introduced, 2017 Ga. Gen. Assemb., with SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

36. *Compare* SB 17, as introduced, 2017 Ga. Gen. Assemb., with SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

percent of its total annual gross income from the rental of rooms for overnight lodging.<sup>37</sup>

These establishments could sell alcoholic beverages as early as 11:00 A.M., conditioned on the time's approval in a referendum by the county or municipality in which the establishment was located.<sup>38</sup>

Third, the Committee added a requirement that the “governing authority desiring to permit and regulate Sunday sales pursuant to this subsection” may only allow such sales at the earlier time of 11:00 A.M. after a referendum election.<sup>39</sup> The Committee substitute supplied the county or municipality that desires to hold an election with the language for its ballot.<sup>40</sup> The Committee substitute permitted the county or municipality to authorize Sunday sales as early as 11:00 A.M. if the election results in more than one half of the voters approving of the earlier time.<sup>41</sup>

Fourth, the Committee substitute added package sales of malt beverages, wine, and distilled spirits to the allowed transactions of alcoholic beverages at 11:00 A.M. on Sundays.<sup>42</sup> Package stores located in counties or municipalities that had previously approved Sunday sales could sell alcohol as early as 11:00 A.M. if the governing authority approved the earlier sales by means of a referendum election.<sup>43</sup> The Committee substitute similarly provided the language that a county or municipality must use in its referendum election ballot.<sup>44</sup>

Fifth, the Committee added lines 300 through 304 to permit a county or municipality in which a farm winery operated to authorize the sale of alcoholic beverages on Sundays as early as 11:00 A.M.<sup>45</sup> Unlike the on-premises sales, the Committee substitute did not require the county or municipality to hold an additional referendum

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37. *Id.*

38. *Id.*

39. SB 17 (LC 36 3511S), § 2, p. 3, ll. 64–66, 2018 Ga. Gen. Assemb.

40. *Id.* § 2, p. 3, ll. 74–78.

41. *Id.* § 1, p. 3, ll. 79–83.

42. Compare SB 17, as introduced, 2017 Ga. Gen. Assemb., with SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

43. SB 17 (LC 36 3511S), § 1, pp. 4–9, ll. 136–287, 2018 Ga. Gen. Assemb.

44. *Id.*

45. Compare SB 17, as introduced, 2017 Ga. Gen. Assemb., with SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

election to approve the time.<sup>46</sup> The sales of the farm winery must be from the winery's tasting room, winery facility, or closed packages from the winery sold for off-premises consumption.<sup>47</sup>

Finally, the Committee substitute added a general requirement that any county or municipality must have authorized the sale of alcoholic beverages on Sundays pursuant to a referendum in order to hold an additional referendum election concerning sales at 11:00 A.M.<sup>48</sup> Additionally, a county or municipality with a farm winery must have previously approved Sunday sales for the governing authority to allow sales at 11:00 A.M. pursuant to SB 17.<sup>49</sup> In essence, if a county or municipality has not yet approved on-premises Sunday sales and desires to authorize on-premises sales at 11:00 A.M., two referendum elections must take place—one to approve Sunday sales generally and one to approve selling alcoholic beverages at 11:00 A.M.<sup>50</sup> After adding these six amendments, the Committee favorably reported the bill by substitute on January 31, 2018.<sup>51</sup>

The bill was recommitted to the Committee on Regulated Industries and Utilities on February 5, 2018.<sup>52</sup> On February 7, 2018, the Committee amended the bill in part and favorably reported the bill by substitute.<sup>53</sup> The Committee substitute removed lines 92 through 287 of the previous Committee substitute.<sup>54</sup> This amendment sought to remove the ability of counties or municipalities to authorize package sales of malt beverages, wine, and distilled spirits at 11:00 A.M. on Sundays.<sup>55</sup> The Committee substitute limited the sale of

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46. SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

47. SB 17 (LC 36 3511S), § 2, p. 9, ll. 294–96, 2018 Ga. Gen. Assemb.

48. *See generally* SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb.

49. SB 17 (LC 36 3511S), § 2, p. 9, l. 292–94, 2018 Ga. Gen. Assemb.

50. *See* House Regulated Industries Committee Video, *supra* note 21, at 19 min., 20 sec. (remarks by Rep. Chuck Martin (R-49th) & Rep. Howard Maxwell (R-45th)).

51. SB 17 Bill Tracking, *supra* note 27.

52. *Id.*

53. *Id.*

54. *Compare* SB 17 (LC 36 3511S), 2018 Ga. Gen. Assemb., *with* SB 17 (LC 36 3519S), 2018 Ga. Gen. Assemb.

55. *See* Video Recording of Senate Regulated Industries and Utilities Committee Meeting at 42 sec. (Feb. 6, 2018) (remarks by Sen. Frank Ginn (R-47th)), <https://livestream.com/accounts/25225476/events/7946812/videos/169870470> [<https://perma.cc/4K7K-RCN8>] [hereinafter Senate Regulated Industries and Utilities II Video].



alcoholic beverages to on-premises sales by restaurants or hotels.<sup>56</sup> The Committee agreed to pass SB 17 by Committee substitute.<sup>57</sup>

The Senate read the bill for the third time on February 13, 2018.<sup>58</sup> The Senate then passed the Committee substitute of SB 17 on February 13, 2018, by a vote of 38 to 18.<sup>59</sup>

### *Consideration and Passage by the House*

Representative Megan Hanson (R-80th) sponsored SB 17 in the House.<sup>60</sup> SB 17 was assigned to the House Committee on Regulated Industries.<sup>61</sup> The Committee read the bill for the first time on February 14, 2018.<sup>62</sup>

The Committee did not make any amendments to the bill; the representatives used the Committee meeting to clarify the Senate's amendments to the bill.<sup>63</sup> Representative Howard Maxwell (R-17th) questioned Senator Unterman on the additional referendum added to Section 2. Senator Unterman explained to Representative Maxwell that first a county must approve the sale of alcohol on Sundays in an independent referendum. After a county approved Sunday sales, it could hold a referendum on whether the Sunday sales could begin at 11:00 A.M.

The House passed the bill on March 12, 2018, by a vote of 97 to 64.<sup>64</sup> The bill was passed in the House without any amendments from the Senate's transmission.<sup>65</sup> The Senate sent the bill to Governor Nathan Deal (R) on April 5, 2018.<sup>66</sup> The Governor signed the bill into law on May 8, 2018.<sup>67</sup> However, due to the referendum requirement added into the bill, on July 1, 2018, the bill's effective date, SB 17 will merely allow a county or municipality to hold a vote

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56. *Id.*

57. See Senate Regulated Industries and Utilities II Video, *supra* note 55, at 2 min., 54 sec. (remarks by Sen. Frank Ginn (R-47th)).

58. SB 17 Bill Tracking, *supra* note 27.

59. Georgia Senate Voting Record, SB 17, #443 (Feb. 13, 2018).

60. SB 17 Bill Tracking, *supra* note 27.

61. *Id.*

62. *Id.*

63. *Id.*

64. Georgia House of Representatives Voting Record, SB 17, #692 (Mar. 12, 2018).

65. State of Georgia Final Composite Status Sheet, SB 17, March 29, 2018.

66. *Id.*

67. *Id.*

to authorize earlier sales of alcoholic beverages on Sundays.<sup>68</sup> Until a county holds a referendum that results in a majority of voters agreeing to the earlier time for alcohol sales, the bill does not change the time of alcohol sales.<sup>69</sup> Thus, its effect on July 1, 2018, only permits the referendums to take place in the counties or municipalities.<sup>70</sup>

### *The Act*

The Act amends the following portions of the Official Code of Georgia Annotated: Article 1 of Chapter 3 of Title 3, relating to the local authorization and regulation of sales of alcoholic beverages on Sunday, and Article 2 of Chapter 6 of Title 3, relating to Sunday sales on farm wineries.<sup>71</sup> The overall purpose of the Act is to authorize counties and municipalities to allow the sale of alcoholic beverages for consumption on the premises as early as 11:00 A.M. on Sundays and to allow farm wineries to sell wine for consumption on the premises as early as 11:00 A.M. on Sundays, subject to a referendum.<sup>72</sup>

### *Section 1*

Section 1 of the Act revises subsection (j) of Code section 3-3-7, which provides that counties and municipalities may, through a resolution or ordinance approved in a referendum, authorize the sale of alcoholic beverages for consumption on the premises only as early as 12:30 P.M. on Sundays.<sup>73</sup> The sales must be through an establishment that derives at least 50% of its total annual gross sales from the sale of food or overnight lodging.<sup>74</sup>

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68. O.C.G.A. § 3-3-7 (Supp. 2018).

69. *Id.*

70. *Id.*

71. 2018 Ga. Laws 896, §§ 1–2, at 896–99.

72. *Id.*

73. 2018 Ga. Laws 896, § 1, at 896–98.

74. *Id.*

*Time Change*

The time restriction on the sale of alcohol on Sundays originated from a compromise between the faith-based community and Georgia legislators.<sup>75</sup> Traditionally, church services did not end until 12:30 P.M. on Sundays.<sup>76</sup> Therefore, legislators intended to prohibit the sale of alcoholic beverages on Sundays until the services ended to respect the faith-based community's time for worship.<sup>77</sup> However, Senator Renee Unterman (R-45th), the sponsor of the Act, determined that many religious establishments within her constituency held services on days other than Sunday or during times after 12:30 P.M. on Sundays.<sup>78</sup> Thus, the time restriction placed on Sunday alcohol sales no longer protected the faith-based community's time for worship.<sup>79</sup> In Senator Unterman's opinion, the time restriction prohibited private establishments from advancing with the State's tourism needs.<sup>80</sup>

The Act changes the time for on-premises sales of alcoholic beverages from 12:30 P.M. to 11:00 A.M. on Sundays.<sup>81</sup> The time change only applies to establishments that derive at least 50% of their total annual gross sales from the sale of food or overnight lodging.<sup>82</sup> Senator Unterman encouraged the time change to create parity between state-operated establishments and private establishments.<sup>83</sup> Prior to the Act's passage, privately owned establishments could not

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75. See Kristina Torres, 'Mimosa Mandate' Would Allow Sunday Morning Cocktails in Ga. Restaurants, ATLANTA J. CONST. (Jan. 12, 2017), [https://www.ajc.com/news/state—regional-govt—politics/mimosa-mandate-would-allow-sunday-morning-cocktails-restaurants/cSYBJNvo1gUCGE7EKUxq9N/?icmp=np\\_inform\\_variation-test](https://www.ajc.com/news/state—regional-govt—politics/mimosa-mandate-would-allow-sunday-morning-cocktails-restaurants/cSYBJNvo1gUCGE7EKUxq9N/?icmp=np_inform_variation-test) [https://perma.cc/89G3-E58Y].

76. See *Seven Trends in Worship Service Times*, THOMAS RAINER (May 25, 2015), <https://thomrainer.com/2015/05/seven-trends-in-worship-service-times/> [https://perma.cc/W4AU-AKXY].

77. See Video Recording of Senate Regulated Industries and Utilities Committee Meeting at 31 min., 34 sec. (Jan. 31, 2018) (remarks by Sen. Bill Cowsert (R-46th)), <https://livestream.com/accounts/25225476/events/7946812/videos/169527602> [https://perma.cc/87SM-H5CC] [hereinafter Senate Regulated Industries and Utilities I Video].

78. See Telephone Interview with Sen. Renee Unterman (R-45th) at 8 min., 36 sec. (May 25, 2018) (on file with Georgia State University Law Review) [hereinafter Unterman Interview].

79. *Id.* at 16 min., 10 sec.

80. *Id.*

81. 2018 Ga. Laws 896, § 1, at 896–98.

82. *Id.*

83. See Senate Regulated Industries and Utilities I Video, *supra* note 77, at 16 min., 32 sec. (remarks by Sen. Renee Unterman (R-45th)).

sell alcoholic beverages until 12:30 P.M. on Sundays.<sup>84</sup> However, state-owned businesses, such as the World Congress Center and Mercedes-Benz Stadium, could sell alcoholic beverages as early as 10:30 A.M. on Sundays.<sup>85</sup> As introduced, the Act fought this discrepancy by allowing the sale of alcoholic beverages for consumption on the premises as early as 10:30 A.M.<sup>86</sup> Although 10:30 A.M. would have created parity between state-operated and privately-operated businesses, legislators in opposition to the Act continued to urge a heavier restriction on Sunday sales out of respect for the faith-based community.<sup>87</sup> Senator Unterman compromised with the adversaries of the Act and modified the Act to amend the time for Sunday sales to 11:00 A.M.<sup>88</sup>

### *On-premises Limit*

The Act maintains the remaining original language of subsection (j), including the limitation on the type of establishments that can sell alcoholic beverages at 12:30 P.M.<sup>89</sup> Under the Act's amendment subsection (j), only establishments that derive at least 50% of their annual gross sales from serving food or providing overnight lodging may sell alcoholic beverages for consumption on the premises at 11:00 A.M.<sup>90</sup> Senator Unterman and other supporters of the Act urged the legislature to allow package sales of alcohol by stores.<sup>91</sup>

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84. O.C.G.A. § 3-3-7.

85. See O.C.G.A. § 10-9-4(e) (2017) (stating that the World Congress Center has the authority to determine the time it can sell alcoholic beverages for consumption on the premises); O.C.G.A. § 3-8-3(b) (2000) (stating that any coliseum, or arena operated and created by the State or County, may dictate the hours of day that alcoholic beverages are sold for consumption on the premises); see also Claire Simms, *'Mimosa Mandate' Would Expand Sunday Morning Alcohol Sales*, FOX 5 ATLANTA (Jan. 17, 2017, 9:45 PM), <http://www.fox5atlanta.com/news/mimosa-mandate-would-expand-sunday-morning-alcohol-sales> [<https://perma.cc/J56A-DPQU>].

86. See SB 17, as introduced, 2017 Ga. Gen. Assemb.

87. See Senate Regulated Industries and Utilities I Video, *supra* note 77, at 31 min., 34 sec. (remarks by Sen. Bill Cowsert (R-46th)).

88. See Unterman Interview, *supra* note 78, at 8 min., 36 sec.

89. 2018 Ga. Laws 896, § 1, at 896-98.

90. *Id.*

91. See Senate Regulated Industries and Utilities I Video, *supra* note 77, at 29 min., 1 sec. (Jan. 31, 2018) (remarks by Kathy Kuzava) (support from the President of the Georgia Food Industry Association); see also Electronic Mail Interview with Rachel Bell, Director of Marketing & Communications, Georgia Restaurants Association (on file with Georgia State University Law Review) (May 14, 2018) [hereinafter Bell Interview].

The supporters argued that the increasing use of Internet delivery services threatened brick and mortar stores and required the stores to compete directly with restaurants.<sup>92</sup> The stores could more fairly compete if they were also allowed to sell alcohol at the earlier time of 11:00 A.M.<sup>93</sup> However, adversaries of the Act wanted to limit the sales to only sales for consumption on the premises of the establishment to further protect the morals of the faith-based community.<sup>94</sup>

### *Additional Referendum*

In addition to changing the time for the sale of alcoholic beverages for consumption on the premises, the Act added subsection (j.1) to Code section 3-3-7.<sup>95</sup> Subsection (j.1) requires that the county or municipality approve an ordinance or resolution that allows Sunday sales of alcoholic beverages for consumption on the premises through a referendum.<sup>96</sup> This referendum must be held after the referendum required in subsection (j), which requires the county or municipality to hold a referendum allowing sales of alcoholic beverages on Sundays.<sup>97</sup> In other words, a county or municipality that has not yet passed an ordinance or resolution to allow the sale of alcohol on Sundays must hold two referendums to allow the sale of alcoholic beverages for consumption on the premises—(1) to allow Sunday sales in general and (2) to allow Sunday sales at 11:00 A.M.<sup>98</sup>

When originally introduced, the Act did not include the additional referendum.<sup>99</sup> However, adversaries to the Act wanted to give counties or municipalities local control to choose the time at which establishments could sell alcohol on Sundays.<sup>100</sup> The supporters of the Act compromised and added the additional referendum as a

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92. See Senate Regulated Industries and Utilities I Video, *supra* note 77, at 30 min., 27 sec. (remarks by Kathy Kuzava).

93. *Id.*

94. See *id.* at 31 min., 34 sec. (remarks by Sen. Bill Cowsert (R-46th)).

95. 2018 Ga. Laws 896, § 1, at 896–98.

96. *Id.*

97. O.C.G.A. § 3-3-7 (j.1) (Supp. 2018).

98. See House Regulated Industries Committee Video, *supra* note 21, at 19 min., 20 sec. (remarks by Rep. Chuck Martin (R-49th) & Rep. Howard Maxwell (R-45th)).

99. See SB 17, as introduced, 2017 Ga. Gen. Assemb.

100. See House Regulated Industries Committee Video, *supra* note 21.

protection to those counties or municipalities that did not want to allow sales at 11:00 A.M. but wanted to restrict the time for sales to 12:30 P.M. on Sundays.<sup>101</sup> In essence, adding the referendum requirement provides local leaders with more control because they can retain the 12:30 P.M. time for Sunday sales by refusing to hold an additional referendum.<sup>102</sup>

### *Section 2*

Section 2 of the Act revises Code section 3-6-21.2, which allows farm wineries to sell alcohol on Sundays in counties or municipalities that have authorized the sale of alcoholic beverages for consumption on the premises.<sup>103</sup> The Act maintains the original language of Code section 3-6-21.2 and simply changes the time for Sunday sales of alcohol from 12:30 P.M. to 11:00 A.M.<sup>104</sup> The county or municipality containing a farm winery is not required to hold an additional referendum to change the time for on-premises sales of alcoholic beverages at the farm winery.<sup>105</sup> The Act specifically includes farm wineries but omits breweries because Georgia's intricate distribution laws would complicate the application of the Act to breweries.<sup>106</sup>

### *Analysis*

With the passage of this Act, local governments may now authorize Sunday sales of alcohol if approved by a majority of voters in a referendum.<sup>107</sup> Communities across the state have between thirty and sixty days from May 8, 2018—the date Governor Nathan Deal (R) signed SB 17 into law—to call for the referendum.<sup>108</sup> The Atlanta City Council “introduced two ordinances calling for a referendum to be voted on by the public and for it to be placed on the ballot in

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101. See Unterman Interview, *supra* note 78, at 8 min., 36 sec.

102. See House Regulated Industries Committee Video, *supra* note 21.

103. 2018 Ga. Laws 896, § 2, at 898–99.

104. *Id.*

105. O.C.G.A. § 3-6-21.2 (Supp. 2018).

106. See Unterman Interview, *supra* note 78, at 7 min., 6 sec.

107. Beth McKibben, *Atlantans Likely to Vote on Booze at Sunday Brunch in November*, EATER ATLANTA (June 25, 2018, 10:20 AM), <https://atlanta.eater.com/2018/6/25/17500604/brunch-bill-referendum-atlanta-city-council> [<https://perma.cc/UWH9-VGPG>].

108. *Id.*

November 2018.”<sup>109</sup> A number of other localities may include a bill referendum on their November election ballots, including Sandy Springs, Cobb County, and Dunwoody.<sup>110</sup> However, despite the undoubted interest in the impending referendums this November, SB 17 could face constitutional and public policy criticisms.

### *Constitutional Considerations*

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits states from denying “any person within its jurisdiction the equal protection of the laws.”<sup>111</sup> Similarly, Article 1, Section 1, Paragraph 2 of the Georgia Constitution mandates that “[n]o person shall be denied the equal protection of the laws.”<sup>112</sup> The Supreme Court of Georgia treats equal protection challenges under the State and Federal Constitutions as one claim “because the protection provided in the Equal Protection Clause of the United States Constitution is coextensive with that provided in [the Georgia Constitution].”<sup>113</sup> Thus, the Supreme Court of Georgia will treat an equal protection challenge under either constitution the same.<sup>114</sup>

Georgia courts have held that the level of scrutiny owed to an equal protection challenge “depends on the nature of the distinction drawn by the legislation at issue.”<sup>115</sup> If the challenge implicates neither a fundamental right nor a suspect class, “the most lenient level of judicial review—’rational basis’—applies.”<sup>116</sup> The rational

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109. *Id.*

110. *See, e.g.*, Evelyn Andrews, *Sandy Springs to Consider Adding ‘Brunch Bill’ Referendum to Ballot*, REPORTER NEWSPAPERS (July 16, 2018), <https://www.reporternewspapers.net/2018/07/16/sandy-springs-to-consider-adding-brunch-bill-referendum-to-ballot/> [https://perma.cc/5XDX-27VN]; Dyana Bagby, *‘Brunch Bill’ Referendum to be on Dunwoody’s November Ballot*, REPORTER NEWSPAPERS (May 28, 2018), <https://www.reporternewspapers.net/2018/05/28/brunch-bill-referendum-to-be-on-dunwoody-s-november-ballot/> [https://perma.cc/A6BN-H3EB]; *Cobb Brunch Bill Referendum Approved for November Ballot*, GA. REST. ASSOC. (July 11, 2018), <https://www.garestaurants.org/press/cobb-brunch-bill-referendum-approved-for-november-ballot> [https://perma.cc/94AL-M8HS].

111. U.S. CONST. amend. XIV, § 1.

112. GA. CONST. Art. 1, § 1, ¶ II.

113. *Harper v. State*, 292 Ga. 557, 560, 738 S.E.2d 584, 587 (2013).

114. *Id.* at 560, 738 S.E.2d at 587.

115. *Id.* at 560, 738 S.E.2d at 587.

116. *Id.* at 560, 738 S.E.2d at 587.

basis review is comprised of a two-prong evaluation.<sup>117</sup> First, the claimant “must establish that he is similarly situated to members of the class who are treated differently from him.”<sup>118</sup> Second, the claimant must also establish “that there is no rational basis for such different treatment.”<sup>119</sup> Unfortunately for claimants suing on equal protection grounds, the legislation is “presumptively valid,” leaving the claimant with the burden of proving both prongs.<sup>120</sup>

In 2003, a bar owner challenged Code section 3-3-20 on equal protection grounds, arguing that the statutory scheme “denie[d] [the bar] the equal protection of the laws because bars may not sell alcohol on Sundays,” but businesses defined as “eating establishments” could.<sup>121</sup> The Supreme Court of Georgia applied the rational basis test “[b]ecause bar owners are not members of a suspect class and because the right to sell alcoholic beverages is not a fundamental right.”<sup>122</sup> The Court ultimately found a rational basis to except restaurants but not bars, noting that excepting restaurants “would attract families and others to go out for meals on Sunday, thereby contributing to the legislative goal of enhancing the recreational atmosphere of that day.”<sup>123</sup> Moreover, the legislature could have also concluded “that the health and safety risks posed by bars are more significant than those posed by restaurants.”<sup>124</sup>

However, restaurants are not the only entities excepted in SB 17. In addition to eating establishments, the new law provides exceptions for both hotels and farm wineries.<sup>125</sup> While there are a sufficient number of differences between restaurants and bars to provide a rational basis for treating their Sunday alcohol sales differently, it is less clear whether there are sufficient differences between breweries and wineries. By excepting farm wineries and not breweries, brewers could argue that SB 17 violates the Equal Protection Clause. Although brewery owners could try to argue that a court should apply

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117. *Id.* at 560, 738 S.E.2d at 587.

118. *Id.* at 560, 738 S.E.2d at 587.

119. *Harper*, 292 Ga. At 560, 738 S.E.2d at 587.

120. *Id.* at 560, 738 S.E.2d at 587.

121. *State v. Heretic Inc.*, 277 Ga. 275, 275, 588 S.E.2d 224, 225 (2003).

122. *Id.* at 275, 588 S.E.2d at 225.

123. *Id.* at 275, 588 S.E.2d at 225.

124. *Id.* at 275, 588 S.E.2d at 225.

125. O.C.G.A. §§ 3-3-7(j)(1), 3-6-21.2.



strict scrutiny to its equal protection claim as either: (1) the right to sell alcohol is a fundamental right; or (2) brewery owners are members of a suspect class, this argument would likely fail. The Supreme Court of Georgia has already made clear that the right to sell alcohol is not a fundamental right and that bar owners are not members of a suspect class.<sup>126</sup> Brewers, like bar owners, primarily sell alcohol and likely would not be considered so distinguishable as to justify protecting one but not the other. Despite the application of a rational basis review, brewers could distinguish their case from *Heretic* and argue that excepting wineries does not entice families to go out for meals or “enhance the recreational atmosphere” of Sundays any more than excepting breweries would.<sup>127</sup> Moreover, the different safety and health concerns between restaurants and bars would likely not vary between breweries and wineries. Both primarily serve alcohol and cater to patrons over the age of twenty-one as opposed to families and children.

The State, however, need only show that “the classifications in the statute . . . bear a rational relationship to a legitimate end of government not prohibited by the Constitution” to survive an equal protection challenge.<sup>128</sup> When asked about the difference in treatment between breweries and wineries, bill sponsor Senator Renee Unterman (R-45th), focused on the effort it would take to overhaul brewery laws in Georgia.<sup>129</sup> While brewers could argue that mere complexity does not suffice as a rational basis for treating wineries and breweries differently, the State of Georgia could assert that the rational basis test is a lenient one and the convolutedness of brewery laws is sufficient to permit different treatment. The State may also point out differences in safety; wineries are often located in more rural areas—possibly requiring patrons to secure overnight lodging—while breweries are often located in urban locations amidst more possibilities to drink and drive. Whether either of these justifications would survive a rational basis review is yet to be seen. However, the low bar detailed in *Heretic, Inc.* seems to indicate that it would not

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126. See *Heretic, Inc.*, 277 Ga. at 275, 588 S.E.2d at 225.

127. *Id.* at 275, 588 S.E.2d at 225.

128. *Ellis v. State*, 300 Ga. 371, 379, 794 S.E.2d 601, 608 (2016).

129. Unterman Interview, *supra* note 78, at 11 min., 34 sec.

take much for the State to provide some basis for its decision and withstand an equal protection challenge.

*Public Policy Concerns*

Legislators opposed to the bill argued that Sunday alcohol sales will increase instances of drinking and driving.<sup>130</sup> Mike Griffin, a pastor who lobbies for the Georgia Baptist Mission Board, argued that with increased availability comes increased sales.<sup>131</sup> Griffin stated that with increased sales comes increased consumption, and with increased consumption comes an increase in “whatever the problems are associated with alcohol.”<sup>132</sup> Put simply, critics of the bill believed expanding alcohol sales would cause the number of “drunken driving deaths and crashes [to] skyrocket.”<sup>133</sup>

These same fears were pervasive through the Georgia legislature’s attempt to pass SB 10 in 2011.<sup>134</sup> Then-Governor Sonny Perdue (R) and the Senate relied on a New Mexico study that claimed there was a 29% increase in traffic accidents on Sundays when it changed its liquor laws.<sup>135</sup> Despite these concerns, SB 10 ultimately passed, allowing Sunday sales in Georgia. In 2011, the year the bill passed, there were “13,006 crashes involving impaired drivers . . . with 2,193—or 19[%]—happening on Sundays.”<sup>136</sup> In 2016 however, there were “15,351 impaired crashes, with 2,704—or 17[%]—occurring on Sundays.”<sup>137</sup> Thus, the data indicates that these fears were baseless. Senator Unterman further argued that even if traffic accidents increased with alcohol consumption on Sundays, these accidents could happen just as easily at noon as they could at one, two, or three o’clock in the afternoon.<sup>138</sup> For those municipalities that

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130. Maya Prabhu, *With New Alcohol Bill Set to Become Ga. Law, Old Prophecies Prove Iffy*, ATLANTA J. CONST. (Mar. 23, 2018, 8:00 AM), <https://politics.myajc.com/news/state—regional-govt—politics/with-new-alcohol-bill-set-become-law-old-prophecies-prove-iffy/GmdJb0olppOMRds12xaCgP/> [<https://perma.cc/QPW7-97VX>].

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Prabhu, *supra* note 130.

137. *Id.*

138. Unterman Interview, *supra* note 78, at 14 min., 10 sec.

have already voted to permit alcohol sales on Sunday, the time at which alcohol may be served will likely have very little impact on the frequency of traffic incidents.

In sum, the Sunday sales debate involves a cocktail of putative positive and negative consequences. Despite the Act's passage, the debate continues as local governments and local voters must decide whether to allow for earlier alcohol sales on Sundays in their localities. Should local voters vote yes in referendums, Georgians will be able to enjoy their favorite breakfast cocktails as early as 11:00 A.M. and swap out water for wine at an earlier time.

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