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## ALCOHOL Regulation of Municipal Sales of Alcoholic Beverages

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## ALCOHOL

### *Alcoholic Beverages: Regulation of Municipal Sales of Alcoholic Beverages*

CODE SECTIONS:	O.C.G.A. §§ 3-4-51 (new), 3-4-93 (new), 3-4-160 (new)
BILL NUMBER:	HB 1579
ACT NUMBER:	1548
SUMMARY:	The Act controls county-wide referenda held after April 7, 1986, regarding the sale, distribution, and manufacture of alcohol. Municipalities within these counties may approve or prohibit any or all of the same by local ordinance. The Act does not affect regulation of the manufacture, sale, and distribution of alcohol under Article 3 and sale of liquor by the drink in Article 5 within counties which had approved all or part of the same by January 1, 1985.
EFFECTIVE DATE:	April 7, 1986

#### *History*

The authorization of liquor sales by a majority of the voters within a county was first enacted in 1938.<sup>1</sup> However, these statutes did not directly address the question of whether a municipality, located within the boundaries of a county that had approved the sale, distribution, or manufacture of alcohol, could authorize the same by municipal referendum.

In 1965, the Georgia Supreme Court construed this statute. It ruled that if a majority of the voters approved liquor sales in a county-wide referendum, a municipality could not refuse to pass implementing ordinances, such as procedures for issuing liquor licenses.<sup>2</sup>

In 1969, the Legislature amended the Code to allow both counties and municipalities the authority to approve or deny the sale of alcoholic beverages through referenda.<sup>3</sup> The procedures for authorizing the manufacture, sale, or distribution of distilled spirits are found in Article 3 of the Code, O.C.G.A. §§ 3-4-40—3-4-49. Article 5, O.C.G.A. §§ 3-4-90—3-4-92 controlled the “sale of distilled spirits by the drink for consumption on

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1. 1938 Ga. Laws 103, 105.

2. *Stephens v. Moran*, 221 Ga. 4, 142 S.E.2d 845 (1965).

3. 1969 Ga. Laws 1140; 1972 Ga. Laws 207, 208; 1973 Ga. Laws 610, 612.

the premises" ("liquor by the drink").

Recently the Georgia Supreme Court interpreted the statute controlling liquor by the drink, O.C.G.A. § 3-4-92, in *Price v. City of Snellville*.<sup>4</sup> Price, a local restaurateur, located in the City of Snellville, Gwinnett County, sought a writ of mandamus absolute against the City and its officials to compel the adoption of ordinances permitting the sale of liquor by the drink.<sup>5</sup> A majority of the Gwinnett County voters approved liquor by the drink in a 1982 referendum.<sup>6</sup> The court held that the Legislature's intent under the amended statutes was to provide that local municipalities located within counties that have approved liquor sales, may independently approve the sale of liquor within their borders.<sup>7</sup>

### *HB 1579*

The Act adds a new article to the Code entitled "Sales by the Drink in Certain Municipalities; Withdrawal" which includes a new Code section, O.C.G.A. § 3-4-160. Municipalities within counties which approve the sale, distribution, or manufacture of alcohol after April 7, 1986, can approve or prohibit such activities by passage of ordinances. Municipalities within counties that approved the sale, distribution, or manufacture of liquor prior to January 1, 1985, are required to hold a separate referendum on the same subject.

The Georgia Municipal Association drafted and supported HB 1579 because it would avoid costly referenda which duplicate county-wide referenda.<sup>8</sup> The Act also would avoid delay in implementing the local sale, distribution, or manufacture of alcohol after the county referendum because local referenda were held after the county referenda.

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4. 253 Ga. 166, 317 S.E.2d 834 (1984).

5. *Id.* at 166, 317 S.E.2d at 835.

6. *Id.*

7. *Id.* at 168, 317 S.E.2d at 836.

8. Telephone interview with Walter E. Somner, Lead Counsel, Georgia Municipal Ass'n (May 5, 1986).