

GEORGIA FRANCHISE LAW and REGULATIONS

TITLE 3. ALCOHOLIC BEVERAGES

CHAPTER 4. DISTILLED SPIRITS

ARTICLE 6. DESIGNATION OF SALES TERRITORIES AND WHOLESALERS FOR OUT-OF-STATE BRANDS

O.C.G.A. § **3-4-152** (2012)

§ **3-4-152**. Submission of labels; designation of sales territories and exclusive wholesale distributors; approval by commissioner

(a) Every manufacturer or shipper shipping distilled spirits for the first time into the state shall:

(1) Submit to the commissioner one label for each brand of distilled spirits to be shipped for the first time by the manufacturer or shipper into this state;

(2) Designate in the application for registration the sales territories for each of its brands sold in this state; and

(3) Name one licensed wholesaler in each territory who shall be the exclusive distributor of the brand within the territory.

(b) Designations of wholesalers and wholesalers' territories as provided in this Code section shall be initially approved by the commissioner and shall not be changed or initially disapproved except for cause. The commissioner shall determine cause after a hearing under regulations promulgated by the commissioner for such purposes.

HISTORY: Code 1981, § 3-6-152, enacted by Ga. L. 1984, p. 375, § 1; Code 1981, § **3-4-152**, as redesignated by Ga. L. 1985, p. 149, § 3.

60-2-5-.08 Designation of Sales Territories.

(1) Every Manufacturer, Shipper, Importer, or Broker shall:

(a) Submit with his application for license, one U.S. Alcohol and Tobacco Tax and Trade Beverage approved Brand Label for each Brand of Alcoholic Beverage to be shipped for the first time into, or within, Georgia, not to exceed ten (10) Brand Labels;

(b) Designate in the application for registration, sales territories for each of its Brands or Brand Labels sold in Georgia;

(c) Name one licensed Wholesaler in each territory who, shall be the exclusive distributor of such Brand or Brand Label within that territory;

(d) Such designations of Wholesalers or Wholesalers' territories shall be initially approved by the Commissioner and shall not be changed nor initially disapproved except for cause, and the Commissioner shall determine cause after a hearing pursuant to these Regulations.

(2) Every Manufacturer, Shipper, Importer, or Broker desiring to register additional Brands or Brand Labels subsequent to the initial registration of Brands or Brand Labels must:

(a) Submit such request to the Commissioner thirty (30) days in advance; and as to Distilled Spirits,

1. The applicant shall pay a registration fee in the sum of one hundred dollars (\$100.00) for no more than ten (10) Brand Labels of Distilled Spirits.

2. If a producer presents Brand Labels for registration after the initial registration, the registration fee for each additional Brand Label of Distilled Spirits shall be ten dollars (\$10.00) per Brand Label.

3. A fee of ten dollars (\$10.00) for all Brand Labels registered by the producer must be paid annually every year following the year of initial application.

4. No producer shall present for registration at any one time more than ten (10) brands of Distilled Spirits.

5. Any proposed change or transfer that will place more than 25% of the case volume of all Distilled Spirits sold in Georgia under one Wholesaler or controlled group is presumed to be an attempt to create a monopoly and lessen competition.

(3) No applicant will be approved which will tend to create a monopoly or lessen competition with respect to any type of Alcoholic Beverages or with respect to case volume generally.

Authority O.C.G.A. Secs. 3-2-2, 3-5-31, 3-6-21.2, 48-2-12. **History.** Original Rule entitled "Cause for Suspension or Revocation of License; Games of Chance" adopted. F. and eff. June 30, 1965. **Repealed:** New Rule of same title adopted. F. Apr. 4, 1973; eff. Apr. 24, 1973. **Repealed:** F. Mar. 23, 1977; eff. Apr. 12, 1977. **Amended:** New Rule entitled "Farm Wineries" adopted. F. Sept. 19, 1983; eff. Oct. 9, 1983.

560-2-5-.10 Changing Brand or Territory Designations.

(1) Any Manufacturer, Shipper, or Broker desiring to change Wholesalers with respect to any Brand or to change the territory of a designated Wholesaler, shall file with the Commissioner, a Notice of Intention containing such of the following information as is applicable:

(a) Name of each Brand involved;

(b) Case volume in Georgia for each Brand for the current year and the two previous years;

(c) Name of the Wholesaler currently distributing each such Brand;

(d) Name of the proposed new Wholesaler, and proposed scope of his sales territory, if less than or different from that of the currently designated Wholesaler;

(e) Case volume of all Brands of the proposed new Wholesaler for the current year and the two preceding years;

(f) Name of all persons, firms or corporations having any financial interest in the proposed new wholesale business;

(g) Whether or not any person, firm or corporation named in section (f) above has any financial interest in any other business engaged in the sale of Alcoholic Beverages and the extent and nature of such interest together with the name and location thereof; and

(h) A detailed explanation of the specific business reasons for the request to change Wholesalers or to change the territory of a designated Wholesaler.

(2) Business reasons which may be considered by the Commissioner in determining cause for authorizing a change of Wholesalers or to change the territory of a designated Wholesaler include:

(a) A Wholesaler's bankruptcy or serious financial instability, including its failure consistently to pay its debts as they fall due or its failure to meet or maintain any objective standards of capitalization expressly agreed to between the Wholesaler and the Manufacturer, Importer, producer, or Broker, provided such standards are determined by the Commissioner to be reasonable;

(b) A Wholesaler's repeated violation of any provision of federal or state law or regulation whether or not such violation resulted in official action;

(c) A Wholesaler's failure to maintain sales volume of the Brand reasonably consistent with sales volumes of other Wholesalers of that Brand, or a Wholesaler's failure to otherwise promote the product effectively; and

(d) Any other factors relevant to such proposed change and which will aid the Commissioner in determining cause.

(3) At the same time that the original Notice of Intention is filed with the Commissioner, a copy shall be served by the Manufacturer, Importer, producer, or Broker, upon each Wholesaler who may be affected by the proposed changes and a certificate of such service shall accompany the original Notice of Intention filed with the Commissioner.

(4) Within thirty (30) days after the Notice of Intention is filed, any person, including the Commissioner, may interpose written objections thereto. Such written objections, containing reasons therefore, shall be filed in the office of the Commissioner and copies thereof shall be served by the objecting party upon the party proposing the change and upon all Wholesalers who may be affected by the proposed change.

(a) Upon the request of any party or upon his own motion, the Commissioner shall hold a hearing, after providing due notice to all parties concerned, for the purpose of determining the truth of any matters of fact alleged by any party and determining whether the proposed changes are based upon sufficient cause and are otherwise consistent with the policies set out in Regulation 560-2-5-.09;

(b) No proposed change will be approved:

1. Which will tend to create a monopoly or lessen competition with respect to any type of Alcoholic Beverage or with respect to sales volume generally; or

2. Which is based upon the failure or refusal of a Wholesaler to comply with any demand or request of a Manufacturer, Importer, producer, or Broker which would result in a violation of any provision of federal or state law or regulation.

(c) During the thirty (30) day period, and until the proposed changes have been finally approved by the Commissioner, the party proposing the change shall continue to supply the designated Wholesaler, upon commercially reasonable terms, such reasonable quantities of the Brand involved as the Wholesaler may require.

(5) If no objection is filed to the Notice of Intention as provided in paragraph (3) above, the proposed changes shall stand automatically approved by the Commissioner at the expiration of such thirty (30) day period.

(6) Any Manufacturer, Shipper, Importer, or Broker who obtains or acquires in any manner, the right to sell, ship, or distribute any Brand or Brand Label shall for the purpose of these regulations stand in the place of, and be subject to, all of the rights, privileges, duties and obligations of its predecessor or its predecessors from whom such

Brands or Brand Labels were obtained or acquired.

(7) When a Brand is voluntarily released by a Georgia Wholesaler from distribution in Georgia, the Wholesaler must provide a letter of release to the Manufacturer, Shipper, Importer, or Broker on company letterhead, and a copy of the letter must be forwarded by the Wholesaler to the Department within thirty (30) days of the date of the letter.

(a) The date of the letter of release will be considered the date upon which the Brand was withdrawn from distribution;

(b) Letters of release received after the thirty (30) day requirement will not be considered valid, and a new letter must be provided pursuant to the requirements in this Section;

(c) Any inventory of the released Brand may no longer be distributed by the Wholesaler as of the date of the letter of release.

(8) When a Brand is voluntarily withdrawn from distribution in Georgia, the Manufacturer, Shipper, Importer, or Broker must provide a letter of withdrawal to the Wholesaler on company letterhead, and a copy of the letter must be forwarded by the Manufacturer, Shipper, Importer, or Broker, to the Department within thirty (30) days of the date of the letter.

(a) The date of the letter of withdrawal will be considered the date upon which the Brand is withdrawn from distribution;

(b) Letters of withdrawal received after the thirty (30) day requirement will not be considered valid, and a new letter must be provided pursuant to the requirements in this Section;

(c) Any inventory of the withdrawn Brand may still be distributed after receipt of the letter of withdrawal by the Wholesaler.

Authority O.C.G.A. Secs. 3-2-2, 3-5-31, 3-6-21.2, 48-2-12. **History.** Original Rule entitled "Restriction to Retailers: Business Hours" was filed and effective on June 30, 1965. **Amended:** Filed August 18, 1965; effective September 6, 1965. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 29, 1972; effective July 19, 1972. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed April 4, 1973; effective April 24, 1973. (This amendment was not printed because a new Rule repealing said amendment was filed a day prior to the effective date of said amendment). **Amended:** Rule repealed and a new Rule of the same title adopted. Filed April 23, 1973; effective May 13, 1973. **Amended.** Rule repealed and a new Rule entitled "Restriction to Retailer Business Hours: Exception: Restrictions on Other Mercantile Establishments: Manner of Operation" adopted. Filed May 25, 1977; effective June 14, 1977. **Amended:** Rule repealed. Filed May 5, 1982; effective May 25, 1982. **Amended:** Rule entitled "Farm Winery as Wholesaler" adopted. Filed September 19, 1983; effective October 9, 1983. **Repealed:** New Rule entitled "Changing Brand or Territory Designations" adopted. F. Oct. 1, 2010; eff. Oct. 21, 2010.