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April 11, 2008

VIA COURIER AND U.S. MAIL

The Honorable Sonny Perdue
Governor, State of Georgia
State Capitol
Atlanta, Georgia 30334

Re: *House Bill 89*

Dear Governor Perdue:

I have been asked in my capacity as General Counsel for the Georgia Restaurant Association to provide a brief legal analysis of HB 89 as well as to discuss the potential impact this Bill is expected to have on the state's restaurant industry.

There are proximately 17,000 restaurants in the state of Georgia with total sales in excess of \$14 billion. Georgia's restaurant industry employs over 375,000 people and is the largest non-government employer in the state. Of course, most of these employers are independent restaurateurs and franchisees that constitute the backbone of the small business community of the state.

The restaurant industry is also one of the most highly regulated industries in the state in that restaurant operators have to strictly comply with Health & Food Code Regulations; Wage & Hour requirements; Fats, Oils & Grease laws; Smoking Bans; Alcohol and Dram Shop Act laws; Immigration laws; OSHA, ADA design restrictions, etc. However, restaurant operators squarely accept their responsibilities to the public and take great pride in fulfilling their legal obligations for the safety and well being of both their patrons and employees.

Although the industry is accustomed to bearing the load of regulatory requirements, Bill 89 has raised a great deal of distress and trepidation at a time when the industry has been hit with a perfect economic storm that is having a severe impact on the industry. The combination of increased minimum wage requirements, a severe labor shortage, higher gasoline and transportation fees and rapid inflation of food commodity items (i.e., dairy, beef, flour, and wheat products) have provided an immense challenge for the state's restaurant owners. To compound these challenges, HB 89 is placing additional costs, burdens, and legal exposure to liability on the industry.

The industry's primary concerns are as follows:

1) **Fear Factor:**

- a) Employees: A considerable number of restaurant employees have expressed a fear that guns in restaurants will affect their personal safety and well being. At a time when restaurant operators are having trouble recruiting and retaining personnel, they face the danger of losing employees who will seek jobs at all the other office environments and businesses where guns are not permitted in the workplace.
- b) Undermining the Public Confidence: At a time when the public is reacting to the economic downturn by eating out less in restaurants, a large segment of the public has expressed deep concern and anxiety about frequenting eating establishments where other patrons will be carrying guns.

2) **Unlimited Legal Exposure to Liability for Restaurants:** It is evident that state legislators did not give ample thought to the fact that restaurants simply cannot practically enforce HB 89's regulations. For example, how would a business operator or manager enforce the provision in HB 89 that prohibits any patron who is carrying a weapon from ordering and consuming an alcoholic beverage? Will servers need to question whether a patron is carrying a gun and request to see their gun permit in the same fashion that they card customers to avoid underage drinking? How can a server determine if a gun permit is valid or is counterfeit? How should a server be expected to handle an ensuing confrontation that arises when an unruly customer takes exception to being questioned about carrying a gun onto the premises? Or is this simply to be enforced through "the honor system?" You can be assured that enterprising plaintiff's attorneys will sue restaurant owners and their employees for the aftermath of tragic gunplay resulting from the fatal mix of alcohol and guns.

Restaurateurs are being put in the untenable position of policing a law that they cannot practically enforce while being held accountable for unlimited damages and civil liability for the type of tragic situations and loss of life that will inevitably occur.

3) **Public Confusion:** Although HB 89 does distinguish between a gun permit holder's ability to carry a gun into a restaurant as opposed to a bar, the public will never be able to discern the legal distinction established by the Legislature which defines restaurants (as opposed to bars) as establishments that serve alcohol and derive over 50% of their gross income from food as opposed to alcoholic beverages. To add to the confusion, there are a considerable number of eating establishments in the state that are something of a hybrid as they close their main kitchen facilities later in the evening and convert to sports type bars. The unintended consequence of adding guns to such bar locations is expected to have deadly consequences and place both the public and law enforcement at undue risk.

4) **Lack of Deterrence:** Should persons violate the provisions of HB 89 by ordering alcohol while possessing a firearm, they only risk being charged with a misdemeanor.

The law has been drafted in a manner that will not provide a meaningful deterrent for any permit holder from bringing a gun into a restaurant and consuming alcohol.

Given the consequences of such action, we do not understand why the drafters of the Bill did not give this more serious consideration.

- 5) **Constitutional Challenge:** As with any statute, we recognize the importance of drafting laws in a manner that would not be subject to a successful constitutional challenge. By virtue of the fact that the only businesses that the drafters arbitrarily chose to target are those in the restaurant industry, a question arises as to whether the statute could withstand a challenge that it violates the Fourteenth Amendment's Equal Protection Clause and Georgia's Equal Protection Clause (Ga. Const. art. 1, § 1, para. 2.). Laws that classify people or businesses and treat them differently must do so for a reason that is rationally related to a legitimate state interest. The fact that no other merchants or retailers are subject to the law certainly raises strong questions as to the constitutionality of the Bill.
- 6) **Dispelling Inaccurate Information:** There is an old expression that states that there are "lies, damn lies, and *statistics*." In the rush to get this bill passed, we understand that some lobbyists for the proponents of the legislation were prone to point out that this form of Bill had been passed by the majority of the states. As we are in the process of reviewing other state statutes, we have determined that in a number of cases it is like comparing apples with oranges. For instance wherein a number of states do permit gun permit holders to take guns onto premises such as restaurants, it is extremely difficult for ordinary citizens to receive gun permits in several of these states. It is interesting that even in a "frontier" state like Alaska where anyone can carry a gun, the law prohibits a citizen from taking a gun into a restaurant.
- 7) **Private Property Rights:** We applaud Georgia's government and your work in standing up for the rights of private property owners, as evidenced by the recent strengthening of requirements for exercising eminent domain. Vetoing this Bill would continue that tradition because HB 89 is in effect an unfunded government mandate on the restaurant industry. Rather than giving restaurants the freedom to choose to allow patrons to bring firearms onto the private property of a restaurant, HB 89 limits the property rights of restaurant owners by forcing them either to take steps to protect against an additional threat of violence and mixing of alcohol and firearms or to take onerous steps to preserve their right to prevent patrons from bring firearms onto the restaurants' private property.

In summary, we once again appreciate the opportunity to offer our analysis pertaining to the legal ramifications and consequences of the Bill. We fear that in the rush to prepare a Bill that could swiftly pass the House and Senate, not enough time and consideration has been given to the fact that there is no practical manner to enforce its provisions.

Although we recognize that the good intentions of the legislators were to provide patrons with an increased sense of security for citizens, the reality is that the Bill only increases the peril that an inebriated customer may create for innocent citizens and law enforcement officers in harms way. The responsibility for protecting the lives and well being of Georgia's citizens is that of law enforcement officers, and not armed citizens. While the Constitution of the United States protects the rights of citizens to own and bear arms, the Supreme Court has agreed that there are rational limits to where firearms can be carried. Although restaurants do not have the same privilege accorded to the Capitol of having security officers and metal detectors to ensure that firearms are prohibited from being brought into their building, it is only reasonable that legislators refrain from inviting guns into establishments where alcohol is consumed. It is well established that mixing guns and alcohol almost always leads to negative unintended consequences.

Thank you for your consideration of our fervent request that you veto HB 89 for the greater health, welfare and public safety of the people of the State of Georgia.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Charles Hoff', written over a horizontal line.

Charles Hoff

TAYLOR, BUSCH, SLIPAKOFF & DUMA

Counsel for the Georgia Restaurant Association