



Understanding How Tennessee Regulates Alcohol

Overview

- Agencies Involved (TTB, DOR, TABC)
- Alcoholic Beverages vs. beer
- Jurisdiction
- Certificate of Compliance
- Referendums
- City's holding licenses and receiving alcoholic beverage proceeds
- Bar and Restaurant issues
- Hours of sale and Sunday sales



Department of
Revenue



- Regulated Beverage Alcohol
 - Beer
 - Alcoholic Beverages
 - Wine
 - Spirits

Alcoholic Beverages vs. beer

- Low Gravity Beer – Malt Beverage at or below 8% ABW or 10.1% ABV
 - HB 971/SB 994 – If passes, it would change beer threshold to 18% ABV. This would greatly increase the beers sold in grocery stores and other beer establishments
- Alcoholic beverage – Spirits, wine and high gravity beer
- High Gravity Beer – Malt Beverage over 8% ABW or 10.1% ABV
- Wine – Wine is always wine, regardless of alcohol %. If not grape wine, then it's wine if it is called wine and specifies the suitable agricultural product it is made from
 - Cider – Normally considered beer unless it is labeled as “apple wine”, “wine made from apples” or similar language
 - Mead – Normally considered wine unless it's made with malt
 - Sake – Considered beer (or high gravity beer if over 10.1% ABV) since it is made from rice, which is a grain like barley.

Jurisdiction - Overview

- Beer Boards – Low Gravity Beer
- TABC – Alcoholic Beverages
- Beer References – TABC does not consider casual or general references to beer in code to supersede authority of beer board
 - 57-4-101(a): It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, **and beer** as defined in § 57-6-102, to be consumed on the premises ...
- Exceptions
 - Package Stores
 - Delivery Services
 - Sales to minors – TABC has concurrent jurisdiction with beer boards for sales to minor of beer; TABC must notify beer board of any suspension and vice versa



Jurisdiction – Package Stores

- 57-3-404(e)(2) – “a retail licensee holding a license issued under § 57-3-204 shall be permitted to sell at retail beer and other malt beverages, subject to the restriction in § 57-3-806(e). No permit or license other than the license issued pursuant to § 57-3-204 shall be required for the licensed retailer to engage in such sales of beer and other malt beverages and the issuer of that license has the authority to enforce any laws related to such sales.”
- Beer Permits – Cities cannot require beer permits. Package Stores sell beer under TABC license
- Regulatory vs. Criminal Jurisdiction
 - Cities retain criminal jurisdiction – minor compliance checks
- Allowed at Package Stores
 - Delivery
 - Drive Through Windows



Jurisdiction – Delivery Services

- 57-3-224 – “There is created a delivery service license to be **issued by the commission** to any delivery service that delivers ... sealed packages of alcoholic beverages **or beer** or both sold by any retailer licensed under this chapter, **or an off-premises retail permittee licensed under § 57-5-103 as part of such delivery service.**”
- TABC license needed. Supersedes local ordinances
- Only deliver within 50 miles of store where item bought
- Can't store or resell alcoholic beverages or beer, only deliver
- At least 50% of proceeds must be from delivery of food

Certificates of Compliance TCA 57-3-208

- Package Store Moratorium ended
- Local Ordinances may limit stores
- Certificate Requirements
 - Must be signed by Mayor or chair of legislative body
 - Package Store Certificates must state:
 - Persons in actual charge not convicted of a felony within 10 years
 - Can use Commercial National Criminal Database reports provided by applicant
 - Complies with all local restrictions as to the location of the business;
 - Complied with all local laws regulating the number of retail licenses
- Certificates of Compliance don't need to be renewed and remain valid unless there is a change in ownership or location
- Food Store Certificates of Compliance (57-3-806) must state no felonies and complies with zoning laws.



Referendum Overview

- Retail Package Stores
- Liquor by the Drink (LBD)
- Retail Food Stores (Wine in Grocery Stores)
- Manufacturing



Cities holding licenses and receiving alcoholic beverage proceeds

- AG OP 14-03
 - “Under state law, the City cannot sell alcoholic beverages ... to the public generally.”
 - Cannot obtain a TABC license to sell alcoholic beverages
 - Cannot have a city employee or municipal corporation obtain the license. Cannot authorize this by ordinance
 - “One cannot do indirectly what is prohibited directly.”
- Can a city have a lease provision where they obtain a percentage of the proceeds of the sale of alcoholic beverages? Generally no
- What about convention centers and hotels?
 - Statutes allow a separate company, such as a concessionaire, to be hired in these cases to operate such properties

Bar and Restaurant issues

- Bars, Zoning Letters, and Local Ordinances
 - Local Distance Requirements and other local ordinances do not apply to applicants for an LBD license
 - It's not uncommon for an establishment to not be able to have a beer permit due to local restrictions, but the same establishment is approved for an LBD license to sell alcoholic beverages
 - For limited service restaurants (bars that sell more alcoholic beverages than food), the ABC is required to confirm that the establishment is zoned for this, so the city can make zoning restrictions for such establishments
- ID'ing requirement – No state law that requires LBD's to ID patrons. Only law is to not sale to minor.

Bar and Restaurant issues

- Combined Premises (Food Halls)
- Extended Premises (Patios and sidewalk café's)



Recent law changes

- To-go alcoholic beverage sales have ended
- Retail Package Store Moratorium Expired July 1, 2021
- Referendum minimum population lowered



Taxes and Fees

- Municipal Inspection Fees (57-3-501, et. seq.)
- Privilege Tax on LBD's (57-4-301)



Privelege tax chart

License type	2003 fees (Local fees)	Current (ABC fees)
Rest. 75 – 125 seats	600	750
Rest. 126 – 175 seats	750	925
Rest. 176 – 225 seats	800	975
Rest. 226 – 275 seats	900	1100
Rest. 276 & more seats	1000	1200
Wine Only (WIO) 40 – 125	120	270
WIO 126 – 175 seats	150	300
WIO 176 – 225 seats	160	310
WIO 226 – 275 seats	180	330
WIO 276 & more seats	200	350
Caterers	500	625
Hotels	1000	Varies 1000 - 1500



ABC Hours of sale – Retail Stores

- Package Store Hours – 8am to 11pm Monday through Saturday
 - Sunday Hours – 10am to 11pm
 - Holidays – Must be closed Easter, Thanksgiving and Christmas
 - Can sell beer at these hours
- Food Stores – Can sell wine at same hours as above, but sale of beer is covered by beer statutes
- Liquor by the Drink (LBD) Hours (57-4-203(d)) – 8am to 3am following day
 - Sundays, sales start at 10am, unless the city has passed an ordinance opting out of TABC Rule 0100-01-.03 in accordance with TCA 57-4-203(d)(5) in which case the start time is noon.



Beer Hours (57-5-301 and 57-5-113)

- LBD hours apply to all beer establishments:
 - In a city that has passed a LBD referendum
 - In the unincorporated areas of a county, if (1) at least one city in the county has passed an LBD referendum and (2) the county has not passed a county-wide LBD referendum
 - In places covered by the TN River Resort District
 - However, such cities and counties may extend beer hours of sale beyond LBD hours, but cannot be more restrictive than the LBD hours
- Except as described above:
 - In unincorporated areas of Class A Counties the hours of sale are 6am to midnight, except no sales are allowed on Sundays
 - However, any county that passed a county-wide LBD referendum may set it's own beer hours
 - In Class B Counties, the hours can be set by such County
 - In cities that have not passed LBD referendums, the hours can be set by such City
- 57-5-113 – “Any establishment that is permitted to sell liquor or wine for on-premises consumption ... shall be allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine”
 - Private Clubs and other establishments authorized by special laws
 - Wine bars - Grocery stores may have a wine bar. Would this then allow such stores to sell beer at ABC hours throughout the entire store or just at the wine bar?
- AG opinions 83-402; 02-24; and 02-33 (non-exhaustive list)



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