

September 29, 2014

City of Woodbury
Mayor Harold J. Patrick
101 West Water Street
Woodbury, Tennessee 37190

VIA ELECTRONIC MAIL

Dear Mayor Patrick:

You have asked about Chapter 554, the new wine in grocery stores law, and how that relates to the ability of a “beer and tobacco” store to commence the sale of alcohol. You have further inquired about the items now allowed to be sold at stores with a state alcoholic beverage license. Accordingly the following is provided.

With respect to a “beer and tobacco” store, such establishments are eligible to receive an alcoholic beverage license from the State of Tennessee in the customary manner. This presumes, of course, that the city has an alcoholic beverage license available and that all distance separations and other local regulations can be satisfied at the current location of the “beer and tobacco” store. Such a store – upon receipt of a state liquor license – will be required to conform its business operations to include only those items permitted to be sold by statute upon receipt of the state license.

With respect to items that can be offered for sale in a liquor store, T.C.A. § 57-3-404(e) sets forth the items that can be sold effective July 1, 2014. In addition to the past items of wine, high-gravity beer, and other alcoholic beverages, a retail licensee is now permitted to sell items related to or incidental to the use, consumption, dispensing or storage of alcoholic beverages, together with merchandize and supplies related to special events or parties, including but not limited to:

- Newspapers, magazines, publications, videos and other media related to alcoholic beverages or food;
- Utensils and supplies such as corkscrews, strainers, pourers, flasks, wine refrigerators, glassware, and the like;
- Beer;
- Beer and wine-making kits and supplies;
- Lemons, limes, olives and other food items used in the preparation or garnishment;
- Peanuts, pretzels, cheese, appetizers, and other snack products;
- Beverage coolers, ice chests, ice;
- Party supplies and decorations, gift bags, and greeting cards;
- Article of clothing and accessories imprinted with advertising, logos, and messages related to alcoholic beverages;
- Cigarettes, cigars and lighters; and
- Lottery tickets.

Mayor Harold Patrick
September 29, 2014
Page 2

In addition, liquor stores are also permitted to provide cash checking services to persons over 21 years of age (T.C.A. § 57-3-404(e)(3)). A complete list of permitted items to be sold is contained in the attached Public Chapter 554 (see Section 10, page 7).

You will also be interested in knowing that upon issuance of a state license, no other local permit or license is required going forward. T.C.A. § 57-3-404(e)(2) provides that “no permit or license other than the license issued pursuant to T.C.A. § 57-3-204 shall be required.....” So the Tennessee ABC license is all that is needed by the “beer and tobacco” store owner in the future.

Please let me know if you have any questions or require any additional assistance on this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Melissa Ashburn



State of Tennessee

PUBLIC CHAPTER NO. 554

SENATE BILL NO. 837

By Ketron, Bowling, Henry

Substituted for: House Bill No. 610

By Lundberg, Casada, Shepard, Stewart, Durham, Sargent, Haynes; Madam Speaker Harwell; Eldridge

AN ACT to amend Tennessee Code Annotated, Title 2 and Title 57, relative to alcoholic beverages.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 3, is amended by adding the following as a new, appropriately designated section in a new part 8:

57-3-801.

(a)(1) This part shall be effective in any jurisdiction that authorizes the sale of wine in retail food stores in a referendum in the manner prescribed by § 57-3-106; provided, however, that a jurisdiction must have held and passed a referendum authorizing retail package stores or held and passed a referendum authorizing the sale of alcoholic beverages for consumption on the premises prior to holding a referendum authorized under this section.

(2) If the county election commission receives the necessary petition requesting the referendum not less than forty-five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(b) At any such election, the question submitted to the voters shall be in the following form:

For legal sale of wine at retail food stores in _____ (here insert name of political subdivision).

Against legal sale of wine at retail food stores in _____ (here insert name of political subdivision).

(c) A referendum described in this section may be held at any election prescribed in § 57-3-106(c)(1); provided, however, no such referendum may be held prior to the regular November election in 2014.

57-3-802.

For purposes of this part:

(1) "Retail food store" means an establishment that is open to the public that derives at least twenty percent (20%) of its sales taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a) and has retail floor space of at least one thousand two hundred square feet (1,200 sq. ft.); and

(2) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed eighteen percent (18%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine. "Wine" does

not mean alcohol derived from wine that has had substantial changes to the wine due to the addition of flavorings and additives.

57-3-803.

(a) Notwithstanding any other law to the contrary, an additional class of licenses allowing the sale of wine at retail food stores is created. These licenses shall be known as "retail food store wine licenses" and shall be issued by the alcoholic beverage commission; provided, that licenses shall only be issued to a retail food store located in a county or municipality that has authorized the sale of wine at retail food stores by local option election pursuant to § 57-3-801 and has full-time law enforcement through a police or sheriff's department. The commission shall begin issuing the retail food store wine licenses on July 1, 2016, and prior to that date no retail food store may sell wine; however, the commission shall accept applications from retail food stores in jurisdictions that have authorized the sale of wine at retail food stores and begin processing such applications prior to that date. The retail food store wine license shall permit the licensee to receive, store, possess and sell wine at retail for consumption off the premises at the licensed retail food store subject to the restrictions in this part 8.

(b)(1) Any person, partnership, limited liability company or corporation desiring to sell wine to patrons or customers within the premises of a retail food store, in sealed packages only, and not for consumption on the premises shall make application to the commission for a retail food store wine license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this part 8, issue such retailer's license. A retail food store may enter into a franchise or management agreement with a person or entity to make wine sales at the premises of the retail food store. If the premises with respect to which the license is sought is owned by a person, partnership, limited liability company or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

(2)(A) Any individual applicant applying for a retail food store wine license must be twenty-one (21) years of age or older and must not have been convicted of a felony subject to § 57-3-210(c).

(B) The commission may issue a retail food store wine license to a person, partnership, limited liability company or corporation that is registered to do business in the state of Tennessee regardless of the residence of the ownership of such entity. No holder of a retail food store wine license, nor any person or entity having any interest in such license greater than ten percent (10%) shall have any interest as partner or otherwise, either direct or indirect, in a business licensed to engage in the sale or distribution of alcoholic beverages, including wine and beer licensed under §§ 57-3-202, 57-3-203, 57-3-204, 57-3-207, 57-3-217 or part 6 of this chapter. Nothing shall prohibit the holder of a retail food store wine license from having more than one (1) retail food store wine license. Nothing in this subdivision shall be construed as prohibiting a retail food store which owns its own premises from either holding a retail food store wine license or from entering into a franchise or management agreement as provided in subdivision (b)(1).

(c) Any wine sold by the holder of a retail food store wine license shall not exceed an alcoholic content of eighteen percent (18%) by volume.

(d) Nothing in this part 8 is intended or shall be construed to modify the provisions of title 57 that provide for the separation and independence of the classes of licenses available to manufacturers, wholesalers or retailers of alcoholic beverages or beer in this state.

57-3-804.

Each applicant for a retail food store wine license shall pay to the commission a one-time, nonrefundable fee in the amount of four hundred dollars (\$400) when the application is submitted for review. A retail food store wine license under this section shall not be issued

until the applicant shall have paid to the commission the annual license fee of one thousand two hundred fifty dollars (\$1,250).

57-3-805.

The premises of a retail food store wine license may be located in a municipality or the unincorporated areas of a county; provided, that such county or municipality has approved sales of wine by retail food stores by local option election pursuant to § 57-3-801.

57-3-806.

(a) As a condition precedent to the issuance of a license under § 57-3-803, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county executive or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality. The issuance of a certificate shall not be conditioned on the residency of the applicant, including, but not limited to, requiring the applicant to live within the county or municipality, or additional conditions not required by this section.

(b) The certificate must state:

(1) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application; and

(2) That the applicant or applicants have secured a location for the business which complies with all zoning laws adopted by the local jurisdiction, as to the location of the business.

(c) Municipalities and counties are not authorized to limit the number of retail food store wine licenses issued within their jurisdictions.

(d)(1) In order to renew a retail food store wine license, the licensee must maintain a minimum of twenty percent (20%) of the licensee's sales taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a), such percentage to be calculated on an annual basis. The licensee shall keep sales and purchase records through accounting methods that are customary or reasonable in the retail food store business.

(2) A retail food store wine licensee who fails to comply with subdivision (d)(1) in achieving the minimum required sales or in failing to keep adequate records shall have one (1) year to come into compliance. During this one (1) year period, the licensee shall work with the commission in creating a plan that would bring the licensee into compliance with this subsection (d).

(3) Failure to comply after the one (1) year period shall result in the retail food store wine license being suspended or revoked by the commission.

(4) In order to determine compliance with subdivision (d)(1), each retail licensee shall submit sales information to the commission in such form as the commission deems appropriate at the time the licensee applies for a license or upon renewal of such license. Each licensee shall provide the licensee's sales tax registration number to the commission. The commission is authorized to verify sales information if the commission deems it necessary with the department of revenue.

(e) Before July 1, 2017, no retail food store wine license shall be issued to an applicant for a location that is within five hundred feet (500 ft.) of an establishment holding a license pursuant to § 57-3-204 unless the commission receives written permission from such licensee. The distance shall be measured from building to building using the outside wall of the confines of the retail food store to the outside wall of the confines of the establishment holding a license pursuant to § 57-3-204. If an establishment holding a license pursuant to § 57-3-204 does not give written permission as described in this subsection (e) then that establishment shall not sell

additional items as provided in § 57-3-404(e) until the retail food store is allowed to sell wine. If the distance is in dispute, then the commission shall measure and make a final determination of the distance for purposes of this subsection (e). This subsection (e) shall not be effective on or after July 1, 2017.

(f) No retail food store wine license shall be issued to a retail food store located within a shopping center or other development unless documentation is provided to the commission that the owner of such shopping center or development has imposed no restrictions on the sale of wine or other alcoholic products at the shopping center or development and that it does not impose any restrictions or limitations on the business practices related to the sale or distribution of alcoholic beverages upon any entity that is located within the same shopping center or other development as the proposed location of the retail food store wine license holder.

(g) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(h) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

(i) The requirement imposed by this section to submit a certificate shall not be applicable to any applicant if:

(1) The authority of the county or municipality charged with the responsibility to issue the certificate required herein shall have failed to grant or deny the certificate within sixty (60) days after written application for such certificate is filed; or

(2) The applicant submits a final order of a court holding that the denial of the required certificate was unreasonable, as established by subsection (g).

57-3-807.

Laws applicable to the issuance, renewal, suspension, and termination of retailer's licenses issued pursuant to part 2 of this chapter and the regulation of and operation by such license holders shall apply in the same manner to retail food store wine licenses and license holders unless this part 8 expressly states otherwise.

57-3-808.

(a) A retail food store wine license holder engaging in the business regulated under this part 8, or any employee thereof, shall not make or permit to be made any sales to minors. Prior to making a sale of wine for off-premise consumption, the adult consumer must present to the license holder or any employee of the license holder a valid, government-issued document, such as a driver's license or other form of identification deemed acceptable to the license holder that includes the photograph and birth date of the adult consumer attempting to make a wine purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the license holder. The license holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of wine for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the license holder or any employee of the license holder in a face-to-face transaction.

(b) A violation of subsection (a) is a Class A misdemeanor.

57-3-809.

No retail food store wine licensee shall sell any alcoholic beverages to any person who is visibly intoxicated, nor shall any retailer selling alcoholic beverages sell to any person accompanied by a person who is visibly intoxicated.

57-3-810.

(a) The restrictions in § 57-3-404(e) and (f), 57-3-210(g) and (h) and 57-3-204(b) shall not apply to retail food store wine licenses issued pursuant to this part 8.

(b) A retail food store licensed to sell wine under this part 8 shall not be limited to operating one (1) licensed retail food store business in this state; provided, however, that no retail food store wine licensee shall be permitted to combine its purchasing with any other retail food store wine licensee or retailer licensed under § 57-3-204.

57-3-811.

A retail food store licensed to sell wine under this part 8 shall only sell, or give away, wine during the same hours a licensed retailer sells or gives away wine pursuant to § 57-3-406(e) and (h).

57-3-812.

(a) A retail food store licensed to sell wine under this part 8 shall not store any wine off of the licensed premises.

(b) All deliveries of wine to a retail food store must be made by a licensed wholesaler through a common carrier, a contract carrier or on vehicles owned by the wholesaler. The deliveries shall only be made to the business address of the retail food store.

(c) All purchases of wine from a licensed wholesaler by a retail food store must be conducted by designated managers on premises at each retail food store location where delivery will be made. A retail food store may have more than one (1) designated manager per location.

(d) A wholesaler shall not take orders for wine from any retail food store employee other than a designated manager.

57-3-813.

No wholesaler shall sell any product to a retail food store wine licensee on credit and payment for all sales to such licensee by a wholesaler shall be effected upon delivery of the product.

57-3-814.

No holder of a retail food store wine license shall sell wine in connection with any business involved in the wholesale sale of wine or alcoholic beverages within the state of Tennessee.

57-3-815.

No wholesaler licensed under § 57-3-203 and no manufacturer, winery, nonresident seller's permit holder or any employee, agent, representative or salesperson employed by or representing any such wholesaler, manufacturer, winery or nonresident seller's permit holder shall provide any services to or for the benefit of a retail food store wine licensee including, but not limited to, services involving shelving, dressing, displaying, or setting inventory owned or purchased by the retail food store licensee. Nothing in this section shall prevent a wholesaler licensed under § 57-3-203 from unloading wine at a retail food store wine license location at the location's customary loading dock. A wholesaler may unload wine at a retail food store wine license location at any time that location is open to the public.

57-3-816.

(a) Any retail food store that is licensed to sell wine must have a permitted manager as prescribed in § 57-3-221 and that manager must work on the premises of the licensed retail food store. A retail food store may have more than one (1) manager per license.

(b) All employees of a retail food store that is licensed to sell wine and is involved in selling the wine must obtain certification pursuant to the responsible vendor training program for wine in § 57-3-818.

57-3-817.

(a) No retail food store shall conduct tastings of wine on the premises of the retail food store.

(b) A retail food store that has a license pursuant to this part 8 may also hold a license to sell alcoholic beverages for consumption on premises pursuant to title 57, chapter 4, provided that:

(1) The premises of the on-premise licensee shall be separate and distinct from the premises of the retail food store; and

(2) The business of the on-premise licensee shall be operated separately and distinctly from the operation of the business of the retail food store wine licensee.

57-3-818.

(a) The commission shall create a responsible vendor training program for retail food store wine licensees and retailers licensed pursuant to § 57-3-204 similar to the responsible vendor training program established in chapter 5, part 6 of this title.

(b) Except as provided in subsection (d), each retail food store wine licensee and retailer licensed in this state shall participate in the responsible vendor training program created under this section as a condition to having and maintaining such license.

(c) Each retail food store wine licensee and retailer shall pay an annual fee based on the number of certified clerks existing at the time the licensee applies to the commission for certification under the responsible vendor training program. The fee shall be as follows:

- (1) 0-15 certified clerks--\$150;
- (2) 16-30 certified clerks--\$200;
- (3) 31-45 certified clerks--\$250;
- (4) 46-60 certified clerks--\$300;
- (5) 61-100 certified clerks--\$350;
- (6) 101-150 certified clerks--\$400;
- (7) 151-200 certified clerks--\$450; and
- (8) \$50 for each additional 50 certified clerks over 200.

(d) The commission shall not require any licensee to participate or pay fees for both the responsible vendor training program created in this section and the program established in chapter 5, part 6 of this title. Participation in either program shall be deemed sufficient compliance.

(e) This section shall not apply to employees of a retailer licensed under § 57-3-204 until July 1, 2016. Any employee of a retailer who has a valid permit under § 57-3-204(c) on July 1, 2016, shall not be required to be certified pursuant to this section until that permit expires.

SECTION 2. Tennessee Code Annotated, Section 57-3-404(b), is amended by deleting the language "a licensed retailer," and by substituting instead "a licensed retailer or retail food store licensed to sell wine pursuant to part 8 of this chapter".

SECTION 3. Tennessee Code Annotated, Section 57-3-304(b), is amended by deleting the language "a licensed retailer," and by substituting instead "a licensed retailer or retail food store licensed to sell wine pursuant to part 8 of this chapter".

SECTION 4. Tennessee Code Annotated, Title 57, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

57-1-112.

As used in §§ 57-1-110, 57-3-406(b) and (g) and 57-3-204(d), "licensed retailer", "retailer" or "retail licensee" shall be construed to include and apply to retail food stores which have been issued a retail food store wine license.

SECTION 5. Tennessee Code Annotated, Section 57-3-201, is amended by adding the following as a new subdivision thereto:

(9) Wine at retail food store license;

SECTION 6. Tennessee Code Annotated, Section 57-3-101(a), is amended by adding the following as a new, appropriately designated subdivision thereto:

() "Retail food store wine license" means a license for the sale of wine at retail in a retail food store as defined in part 8;

SECTION 7. Tennessee Code Annotated, Section 57-3-501(a)(1), is amended by deleting the language "located within such municipality" substituting instead the language "or upon retail food store wine licensees located within such municipality".

SECTION 8. Tennessee Code Annotated, Section 57-3-406, is amended by deleting subsection (d) and substituting instead the following:

(d)(1) A retailer or any employee thereof shall not make or permit to be made any sales of alcoholic beverages or beer to minors. Prior to making a sale of alcoholic beverages for off-premise consumption, the adult consumer must present to the retailer or any employee of the retailer a valid, government-issued document, such as a driver's license or other form of identification deemed acceptable to the retailer that includes the photograph and birth date of the adult consumer attempting to make an alcoholic beverage purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the retailer. The retailer or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of alcoholic beverages for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the license holder or any employee of the license holder in a face-to-face transaction.

(2) A violation of subdivision (d)(1) is a Class A misdemeanor.

SECTION 9. Tennessee Code Annotated, Section 57-3-406, is amended by adding the following as a new subsection thereto:

(i) No retail food store shall keep, or permit to be kept, upon the licensed premises any wine in any unsealed bottles or other unsealed containers except such open bottles and containers of damaged and unmarketable product retained by the retail food store for purpose of return to a wholesaler. This subsection (i) shall not apply to the premises within a retail food store that has a license under title 57, chapter 4.

SECTION 10. Tennessee Code Annotated, Section 57-3-404, is amended by deleting subsection (e) and substituting instead the following:

(e)(1) No retail licensee shall operate its business involving the sale of wine, beer or other alcoholic beverages in connection with the wholesale distribution of wine, beer or other alcoholic beverage nor shall such licensee sell its wine, beer or other alcoholic beverage for purposes of resale.

(2) Notwithstanding subsection (a), beginning July 1, 2014, 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.

(3) A retail licensee shall be permitted to cash a check or other negotiable instrument for a fee when such service is made available to a person over twenty-one (21) years of age. No postdated check shall be cashed by a licensee under this section.

(4) Beginning July 1, 2014, a retail licensee shall also be permitted to sell at retail items related to or incidental to the use, consumption, dispensing or storage of alcoholic beverages, together with merchandise and supplies related to special events or parties, subject to the restriction in § 57-3-806(e). Such items may include but are not limited to:

(A) Newspapers, magazines, publications, videos and other media related to alcoholic beverages or food;

(B) Utensils and supplies related or incidental to the use, consumption, dispensing or storage of alcoholic beverages, including, without limitation, corkscrews, beverage strainers, pourers, flasks, jiggers, stirrers, wine racks, wine refrigerators, wine cellars, decanters, carafes, glassware, ice crushers, bottle openers, can openers, and devices to maximize oxidation in uncorked wine bottles and other items used in connection with the consumption, storage or dispensing of alcoholic beverages;

(C) Gift cards, packages and baskets that include alcoholic beverages and nonalcoholic items;

(D) Nonalcoholic beverages;

(E) Kegs and growlers, whether empty or filled with beer, wine or alcoholic beverages, on the licensed premises;

(F) Concentrates and ingredients used in the preparation of mixed alcoholic beverages;

(G) Beer and wine-making kits;

(H) Products and supplies related to beer and wine-making;

(I) Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;

(J) Peanuts, pretzels, chips, cheese, crackers, appetizers and other snack foods;

(K) Beverage coolers, ice chests and ice in any form;

(L) Party supplies, party decorations, gift bags, greeting cards and other items for parties and special events;

(M) Articles of clothing and accessories imprinted with advertising, logos, slogans, trademarks or messages related to alcoholic beverages;

(N) Combined packages containing multiple alcoholic beverages;

(O) Cigarettes, cigars and lighters and other smoking or tobacco related products; and

(P) Lottery tickets if the retailer's application is approved by the Tennessee education lottery corporation as provided in § 4-51-115(e).

(5) A retail licensee may sell nonalcoholic products to persons under twenty-one (21) years of age including gift cards.

SECTION 11. Tennessee Code Annotated, Title 57, Chapter 3, Part 2, is amended by adding the following as a new section thereto:

57-3-221.

(a) There is created a manager's permit to be issued by the commission to any individual who will be in actual control of the alcohol, wine or beer operations of a retailer licensed under § 57-3-204, winery involved in retail sales, or a retail food store wine licensee.

(b) An individual seeking a manager's permit shall make application for such permit by completing an application form in the manner prescribed by the commission. The individual must demonstrate that the individual meets the following requirements:

(1) Has not been convicted of any crime involving the sale or distribution of alcohol over the previous eight (8) years;

(2) Has not been convicted of any felony within the previous five (5) years;

(3) Is at least eighteen (18) years of age;

(4) Has not had an employee or server permit or any similar type permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any issuing authority within the previous three (3) years;

(5) Does not hold any ownership interest in any licensee or permittee licensed pursuant to § 57-3-203, nor shall the individual have had any ownership interest in any licensee licensed under title 57 which has had its license revoked by the issuing authority within the previous eight (8) years; and

(6) Has received training in alcohol awareness and the rules and regulations of the commission by an entity approved by the commission pursuant to § 57-3-705.

(c) The manager's permit shall be valid for a period of five (5) years. The commission may impose a fee for the processing and cost of issuance of the manager's permit and for renewal of such permit. The fee shall be adequate for the commission to undertake an appropriate verification of the information provided by the applicant. This fee, which shall not exceed two hundred dollars (\$200), shall be determined by the commission.

(d) Manager's permits shall be required for the appropriate individuals at retailers licensed under § 57-3-204, retail food store wine licensees and for wineries beginning July 1, 2016.

SECTION 12. Tennessee Code Annotated, Section 57-3-406, is amended by adding the following as a new subsection thereto:

(j)(1) Notwithstanding any provision of title 57 to the contrary, retailers licensed under § 57-3-204 are authorized, for a fee or without a fee, to provide, within the state, consulting services related to the products, merchandise and supplies which the retailer is authorized to sell under § 57-3-404(e) and alcoholic beverages, and supply, deliver and install products authorized to be sold by the retailer to locations outside of the licensed premises in connection with special events, parties, alcoholic beverage tastings, educational classes and the establishment of private collections or wine cellars.

(2) Any licensee making a delivery of alcohol, wine or beer is subject to §§ 57-3-406(c) and 57-3-406(d). A record of all deliveries shall be maintained in writing and must contain all information concerning the recipient, products delivered, the time of delivery and place of delivery.

SECTION 13. Tennessee Code Annotated, Title 57, Chapter 3, Part 2, is amended by adding the following as a new section thereto:

57-3-222.

(a) In order to renew a retail license, the licensee must maintain a minimum of sixty-five percent (65%) of the licensee's total sales from alcoholic beverages, including wine and beer, such percentage to be calculated on an annual basis. The licensee shall keep sales and purchase records through accounting methods that are customary or reasonable in the retail business.

(b) A retail licensee who fails to comply with subsection (a) in achieving the minimum required sales or in failing to keep adequate records shall have one (1) year to come into compliance. During this one (1) year period, the licensee shall work with the commission in creating a plan that would bring the licensee into compliance with this section.

(c) Failure to comply after the one (1) year period shall result in the retail license being suspended or revoked by the commission.

(d) In order to determine compliance with subsection (a), each retail licensee shall submit sales information to the commission in such form as the commission deems appropriate at the time the licensee applies for renewal. The commission is

authorized to verify sales information if the commission deems it necessary with the department of revenue.

SECTION 14. Tennessee Code Annotated, Section 57-3-404(g), is amended by designating the existing language as subdivision (1) and by adding the following language as new subdivisions thereto:

(2) The ten-day period begins from delivery and receipt by the retail licensee. The ten-day period cannot include any day that the wholesaler is not open to make deliveries, receive payment or receive mail.

(3) Any suspension of deliveries is a credit decision to be made by a wholesaler and a retail licensee.

(4) A wholesaler shall be permitted to communicate with another wholesaler about the account status of any retail licensee.

(5) Wholesalers shall advise the commission of any failure of a retailer to comply with this subsection (g).

(6) The commission shall be permitted to post the account status of a retail licensee with any wholesaler on its web site.

(7) This subsection (g) shall not apply to nonalcoholic products.

SECTION 15. Tennessee Code Annotated, Section 57-3-204(a), is amended by adding the language "including beer and malt beverages," after the language "alcoholic spirituous beverages" wherever it appears in that subsection.

SECTION 16. Tennessee Code Annotated, Title 57, Chapter 3, Part 2, is amended by adding the following as a new, appropriately designated section thereto:

57-3-223.

Notwithstanding any other provision in title 57 or any rule to the contrary, an individual or corporation may hold a retail license issued pursuant to § 57-3-204 and may also hold a license to sell alcoholic beverages for consumption on premises pursuant to title 57, chapter 4; provided, however, that each license must be operated as a separate and distinct business and shall not be at the same location.

SECTION 17. Tennessee Code Annotated, Section 57-3-404(f), is amended by deleting the language "shall have one (1) main entrance" and substituting instead the language "may have two (2) main entrances".

SECTION 18. Tennessee Code Annotated, Section 57-3-406(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) No retailer shall sell any alcoholic beverages or beer to any person who is visibly intoxicated, nor shall any retailer selling alcoholic beverages or beer sell to any person accompanied by a person who is visibly intoxicated.

SECTION 19. Tennessee Code Annotated, Section 57-3-404, is amended by adding the following as a new subsection:

(i) No wholesaler may provide a discount or other reduction in price to a retailer or retail food store wine licensee by virtue of the sales made to any other licensee. Any discount or pricing made available to a retailer or retail food store wine licensee shall be made available on the same terms and conditions to other retailers and food store wine licensees within the same jurisdiction. Any quantity discounts provided by wholesalers to any retailer licensed under § 57-3-803 cannot be cumulative in nature, but can be based only upon products delivered contemporaneously. No retail food store wine licensee may receive any remuneration, by whatever name, at a corporate office located inside or outside the state of Tennessee that affects the profitability of wine or beer sales in the state of Tennessee, that is not made available to all retail licensees or other retail food stores licensed to sell wine or beer in the state of Tennessee.

SECTION 20. Tennessee Code Annotated, Section 57-3-103(a)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1) Nothing in this chapter shall affect chapter 2 of this title.

SECTION 21. Tennessee Code Annotated, Section 57-3-203(b), is amended by designating the existing language as subdivision (b)(1) and adding the following language as subdivision (b)(2):

(2) Notwithstanding any law to the contrary, it shall be lawful for any qualified applicant, including a corporation meeting the requirements of subsection (f), to receive and operate under both an alcoholic beverage wholesaler's license issued pursuant to this part, and a beer wholesaler's license issued pursuant to § 57-5-102, upon satisfying all federal, state and local registration and permitting requirements applicable to both operations. Nothing in this title 57 is intended or shall be construed to prohibit a wholesaler licensed under this part or under title 57, chapter 5 from holding more than one (1) license or permit for the wholesale of alcoholic beverages or beer in this state.

SECTION 22. Tennessee Code Annotated, Section 57-3-203(d), is amended by designating the existing language as subdivision (d)(1) and adding the following as subdivision (d)(2):

(2) Where a wholesaler licensed under this part also maintains a beer wholesale operation as provided in § 57-3-203(b)(2), it shall be lawful for anyone holding a permit pursuant to this subsection (d) to carry out similar duties with respect to such beer wholesale operation, provided that the permit holder has also satisfied any legal requirements applicable to such function within a beer wholesale operation.

SECTION 23. Tennessee Code Annotated, Section 57-3-203(e), is amended by designating the existing language as subdivision (e)(1) and adding the following as subdivision (e)(2):

(2) Where a wholesaler licensed under this part also maintains a beer wholesale operation as provided in § 57-3-203(b)(2), it shall be lawful for anyone holding a permit pursuant to this subsection (e) to carry out similar duties with respect to such beer wholesale operation, provided that the permit holder has also satisfied any legal requirements applicable to such function within a beer wholesale operation.

SECTION 24. Tennessee Code Annotated, Section 57-3-203(i), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at wholesale shall be granted except in respect to premises situated within either a county having a population in excess of one hundred twenty thousand (120,000), according to the 2010 federal census or any subsequent federal census, or a county in which the voters of any municipality or other jurisdiction within that county have approved retail package sales or consumption of alcoholic beverages on premises by referendum as provided in this title.

SECTION 25. Tennessee Code Annotated, Section 57-3-403(a), is amended by adding the following as a new subdivision (3):

(3) An alcoholic beverages wholesale licensee who also carries on a beer wholesale operation as provided by § 57-3-203(b)(2) may lawfully transport alcoholic beverages and beer in the same vehicle, provided that all other legal requirements applicable to such transportation are satisfied.

SECTION 26. Tennessee Code Annotated, 57-3-404(d), is amended by deleting the last sentence of subdivision (2) and by adding the following as a new subdivision (3):

(3) A licensed alcoholic beverages wholesaler may lawfully engage in activities covered by title 57, chapter 5, as provided by § 57-3-203(b)(2), without regard to the amount of gross revenues produced by such operation. Such wholesaler may, at the wholesaler's discretion, use the same warehouse and other facilities, vehicles and employees in both operations, provided that all legal requirements applicable to such operations are satisfied with respect to each operation.

SECTION 27. Tennessee Code Annotated, Section 57-3-204(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b)(1) Each applicant for a retail license shall pay to the commission a one-time, non-refundable fee in the amount of three hundred dollars (\$300) when the application is submitted for review. A retailer's license under this section shall not be issued until the applicant shall have paid to the commission the annual license fee of eight hundred fifty dollars (\$850).

(2) No retail license under this section may be issued to any individual:

(A) Who has not been a bona fide resident of the state of Tennessee during the two (2) year period immediately preceding the date upon which application is made to the commission or, with respect to renewal of any license issued pursuant to this § 57-3-204, who has not at any time been a resident of the state of Tennessee for at least ten (10) consecutive years;

(B) Who has been convicted of a felony under the laws of the state of Tennessee, any other state or the United States;

(C) Who has had a license related to the manufacture, sale or distribution of any form of alcoholic beverages revoked for cause;

(D) Who is not twenty-one (21) years of age or older;

(E) Who has an interest, whether direct or indirect, in a manufacturer, distiller, rectifier, liquor wholesaler, winery, distributor, retail food store or farm winery selling alcoholic beverages that is licensed in the state of Tennessee, except that the spouse of an applicant for a retail license may own and hold a farm wine permit if the spouse does not hold a retailer's license issued under this section;

(F) Who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the commission;

(G) Who intends to carry on the business authorized by the license as the agent or on behalf of another;

(H) Who at the time of the time of application for renewal of any license issued under this section would not be eligible for the license upon a first application;

(I) Who is the holder of a valid existing license issued for the sale of wine in a retail food store under § 57-3-803, and amendments thereto;

(J) Who does not own the premises for which a license is sought, or does not, at the time of application, have a written and enforceable lease thereon;

(K) Whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subdivision (b)(2)(K) shall not apply in determining eligibility for a renewal license; and

(L) Whose spouse has been convicted of a felony or other crime that would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this section.

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to any corporation unless such corporation meets the following requirements:

(A) No retail license shall be issued to any corporation if any officer, director or stockholder owning any capital stock in the corporation, would be ineligible to receive a retailer's license for any reason specified in subdivision (b)(2) above, if application for such retail license had been made by the officer, director or stockholder in their individual capacity;

(B) All of its capital stock must be owned by individuals who are residents of the state of Tennessee and either have been residents of the state for the two (2) years immediately preceding the date application is made to the commission or, with respect to renewal of any license issued pursuant to this § 57-3-204, who has at any time been a resident of the state of Tennessee for at least ten (10) consecutive years;

(C) No person owning stock in such corporation shall have any interest as partner or otherwise, either direct or indirect, in any business licensed to

engage in the distribution of liquor, spirits, wine or high alcohol content beer in Tennessee; and

(D) No stock of any corporation licensed under this section shall be transferred to any person who is not a resident of the state of Tennessee and either has not been a resident of the state for at least two (2) years next preceding or who at any time has not been a resident of Tennessee for at least ten (10) consecutive years.

(4) It is the intent of the general assembly to distinguish between licenses authorized generally under title 57 and those specifically authorized under this Section 57-3-204. Because licenses granted under this section include the retail sale of liquor, spirits and high alcohol content beer which contain a higher alcohol content than those contained in wine or beer, as defined in Section 57-5-101(b), it is in the interest of the state of Tennessee to maintain a higher degree of oversight, control and accountability for individuals involved in the ownership, management and control of licensed retail premises. For these reasons, it is in the best interest of the health, safety and welfare of the state of Tennessee to require all licensees to be residents of the state of Tennessee as provided herein and the commission is authorized and instructed to prescribe such inspection, reporting and educational programs as it shall deem necessary or appropriate to insure that the laws, rules and regulations governing such licensees are observed.

SECTION 28. Tennessee Code Annotated, Section 57-3-406(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a)(1) Except for retailers licensed under § 57-3-204, no person, corporation or other entity shall, directly or indirectly, operate any licensed retail establishment selling alcoholic spirituous beverages, not including wine, for off-premises consumption in this state. "Indirectly" means any kind of interest in such a retail business by way of stock ownership, loan, partner's interest or otherwise. A landlord shall be deemed to have an indirect interest in such a retail business when the lease agreement is based upon a percentage of profits or any other factor based upon sales of alcoholic beverages by the tenant as distinguished from being simply an interest in land for a period of time at a definite rate.

(2) Except as provided in this subsection (a), nothing shall prohibit the holder of a retail license from having more than one (1) retail license.

(3) In any municipality or county in which the issuance of two (2) or more retail licenses have been authorized under § 57-3-208(c), no retail licensee shall hold more than fifty percent (50%) of the licenses authorized for issuance in such municipality or county.

(4) For five (5) years beginning January 1, 2014, no retail license shall be issued to any applicant for a new location that is within one thousand five hundred feet (1,500') of an existing operating establishment holding a license issued pursuant to § 57-3-204 as of the effective date of this bill (an "existing licensed premises") if the applicant for such new retail license already holds one (1) or more retail licenses issued under § 57-3-204, unless the commission receives the written consent from each retail licensee owning an existing licensed premises within one thousand five hundred feet (1,500') of such new location. Notwithstanding any provision of law to the contrary, the holder of one (1) or more retail licenses issued under § 57-3-204 may purchase the business or assets of an existing licensed premises and obtain a retail license to operate such existing licensed premises, as the same may be expanded or modified, from time to time. Nothing in this subdivision (a)(4) shall be deemed to prohibit a retailer licensed under § 57-3-204 from obtaining a new or replacement license in connection with the relocation of an existing licensed premises, as long as the new location is within the jurisdiction of the municipality or county issuing the certificate required under § 57-3-208 for such existing licensed premises.

SECTION 29. Tennessee Code Annotated, Section 57-3-404(h)(2), is amended by adding the following as a new subdivision thereto:

(F) A supplier may provide, through licensed wholesalers, products for tasting purposes by a retail licensee.

SECTION 30. Tennessee Code Annotated, Title 57, Chapter 3, is amended by adding the following sections as a new part thereto:

57-3-901.

This part shall be known and may be cited as the "Unfair Wine Sales Law."

57-3-902.

As used in this part, unless the context otherwise requires:

(1) "Basic cost of wine" means the invoice cost of wine to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives and/or concessions of any kind, whether such discounts, incentives or concessions are offered within or outside of the state of Tennessee, to which shall be added the full face value of any taxes, freight or delivery fees which may be required by any tax law of this state imposed upon wine supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by title 57, if not already included by the wholesaler in this price;

(2) "Commission" means the alcoholic beverage commission;

(3) "Cost of doing business by the retailer" is twenty percent (20%) of the basic cost of wine to the retailer;

(4) "Cost to the retailer" means the "basic cost of wine" to the retailer plus the "cost of doing business by the retailer";

(5) "Prices generally available in the marketplace" shall mean the price of wine based upon a purchase from a wholesaler on terms and conditions:

(A) Typically available to non-food store retailers in the trade area in which the retailer is located; and

(B) In accordance with the requirements set forth in §§ 57-3-811, 57-3-812 and 57-3-813;

(7) "Retailer" shall mean the holder of a retail food store wine license issued under § 57-3-803 or the holder of a retailer license under § 57-3-204;

(8) "Sell at retail," "sales at retail" or "retail sales" means and includes any transfer of title to tangible personal property for a valuable consideration made in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use; and

(9) "Wholesaler" has the same meaning as provided in § 57-3-101(a)(20).

57-3-903.

(a) It is a Class C misdemeanor for any retailer to advertise, offer to sell, or sell at retail, wine at less than cost to the retailer.

(b) The advertising, sale or offer to sell of wine by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of the "Unfair Wine Sales by Retail Food Stores Law", compiled in this part, and of intent to injure competitors or destroy substantially or lessen competition.

57-3-904.

Any individual who, as a director, officer, partner, member, or agent of any person violating the provisions of this part, assists or aids, directly or indirectly, in such violation, equally with the person for whom such individual acts, commits a Class C misdemeanor.

57-3-905.

Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of this part is declared to be an illegal and void contract and no recovery thereon shall be had.

57-3-906.

(a)(1) Any person or entity injured by any violation of this part, or any trade association which is representative of such a person or entity, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation.

(2) If, in such action, a violation of this part shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit.

(3) In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this part may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a).

57-3-907.

No retail food store as defined in § 57-3-802 shall sell, offer for sale or advertise the sale of:

(1) Two (2) or more items, at least one (1) of which items is wine, at a combined price; or

(2) Liquor, spirits or high alcohol content beer.

57-3-908.

(a) The commission shall administer and enforce the provisions of this part.

(b)(1) For an initial violation or noncompliance with any provision of this part by a retailer, a penalty shall be imposed not to exceed one thousand dollars (\$1,000);

(2) For any second violation or noncompliance with any provision of this part by any retailer who has previously been found in violation pursuant to subdivision (b)(1), a penalty shall be imposed not to exceed two thousand five hundred dollars (\$2,500); and

(3) For any subsequent violation or violations or noncompliance with any provision of this part, by any retailer who has previously been found in violation of pursuant to subdivision (b)(2), a penalty shall be imposed not to exceed five thousand dollars (\$5,000).

(c) Any retailer who is assessed a civil penalty pursuant to this section, and who continues to engage in the unauthorized sale, distribution or handling of wine in this state, either directly or through any agent or third party acting on behalf of such retailer, shall be charged with an additional violation of this part.

(d) Any retailer who is adversely affected by a decision of the commission may petition the commission for a hearing which will be held in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(e) In enforcing the provisions of this part, the commission shall consider the cost and effectiveness of administration and endeavor to administer this part in the most cost-efficient manner.

57-3-909.

The provisions of this part shall not apply to sales at retail made where wines are:

(1) Sold upon the complete final liquidation of a business;

- (2) Advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court;
- (3) Closeouts and case discounts; or
- (4) Such other occasional discounts as defined by the commission.

SECTION 31. Tennessee Code Annotated, Section 57-3-405, is amended by deleting subsection (b) in its entirety.

SECTION 32. Tennessee Code Annotated, Section 57-3-204(c), is amended by adding the following language at the end of the subsection:

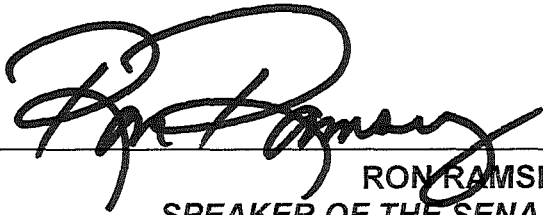
The provisions of this subsection (c) shall cease to be effective July 1, 2016, when employees of a retail licensee are required to be certified clerks pursuant to § 57-3-818.

SECTION 33. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 34. Section 1 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 30 of this act shall take effect July 1, 2016, the public welfare requiring it. All other sections of this act shall take effect July 1, 2014, the public welfare requiring it.

SENATE BILL NO. 837

PASSED: March 3, 2014



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of March 2014



BILL HASLAM, GOVERNOR