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Sequence Number: 08-13-17
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Effective Date: 11-15-17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	Clay Byrd, Executive Director
Address:	500 James Robertson Pkwy, 3 rd Floor, Nashville, TN
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0100-11	Rules for Sales of Wine at Retail Food Stores
Rule Number	Rule Title
0100-11-.02	Issuance of Initial Licenses
0100-11-.03	Conduct of Business

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

RULES OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-11 RULES FOR SALES OF WINE AT RETAIL FOOD STORES

Rule 0100-11-.02 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.02 Issuance of Initial Licenses.

A retail food store wine applicant may not sell wine to patrons or customers for off-premise consumption until it has been issued a retail food store wine license.

Authority: T.C.A. §§ 57-3-104(c)(4) and 57-3-803.

Rule 0100-11-.03 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.03 Conduct of Business.

(1) Advertising.

- (a) The provisions of rules 0100-03-.01, 0100-03-.02, 0100-03-.03, 0100-03-.04, 0100-03-.05, 0100-03-.06, 0100-03-.07, and 0100-03-.08 apply to retail food store wine licensees in the same manner as they apply to off premises retailers licensed pursuant to T.C.A. § 57-3-204.
- (b) The minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.
- (c) A retail food store wine licensee whose business is one of a chain of stores shall not advertise a price lower than the highest minimum price per bottle for all the chain's stores in the geographic area the advertisement may reach.
- (d) The advertised price per bottle shall not represent or assume a case discount unless the requirement of a case purchase is conspicuously stated in the advertisement.
- (e) A retail food store wine licensee's advertisement shall not use the words "exclusive" or "exclusively" in reference to wine.
- (f) A retail food store wine licensee's advertisement may use the phrase "select varieties" only when advertising a brand, but not a specific type of that brand. If the advertisement uses the phrase "select varieties," then each wine type from that brand shall be available at the advertised price. The phrase "select varieties" shall not be used if the advertisement identifies a particular brand and type.

(2) Wine that May Be Sold.

- (a) The commission will analyze particular products on a case-by-case basis to determine whether a product may be sold in a retail food store. In determining which products are included in the definition of "wine" at T.C.A. § 57-3-802(2), the following factors, among others, will be considered:

1. whether the product has had substantial changes due to the addition of flavorings and additives;
 2. whether the product had been sold in grocery, convenience, and similar stores before July 1, 2016;
 3. the specific nature of the product and the manufacturing process; and
 4. the manner in which the product is marketed and labeled.
- (b) The nature of the product and the manufacturing process are critical factors for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2).
- (c) The labeling, suffix, or prefix of the product as descriptive of a fruit or other suitable agricultural product, and as descriptive of a wine, is another critical factor for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2). "Suitable agricultural product" does not include grain, cereal, malt, or molasses.
- (d) Wine does not include any product that contains caffeine, mood enhancers, or other stimulants.
- (e) Wine does not include any product that is marketed to appear or bottled to appear as an imitation liquor or cocktail substitute, including any product that appears to contain vodka, whiskey, rum, gin, tequila, applejack, mescal, liqueur, or cordial.
- (f) Wine is not a product marketed or labeled as "cider," and nothing in this part shall affect the marketing of cider products distributed as beer by wholesalers permitted under § 57-5-103.
- (3) Responsibility for Penalties and Violations.
- (a) Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of the laws of Tennessee, the rules and regulations of the Commission, whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the licensee, and the licensee shall be proceeded against as though it were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the licensee's direction and with its knowledge.
- (b) In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to an order, or that a licensee did not personally participate in the unlawful, unauthorized, or prohibited action or actions. However, mitigating factors as permitted under the Responsible Wine Vendor program may be considered by the Commission.
- (c) In a disciplinary actions brought against a retail food store wine licensee, any suspension or revocation of a license shall suspend or revoke the ability of the retail food store to sell wine and accept deliveries of wine from wholesalers. A suspension or revocation of a license shall not affect the ability of the retail food store to remain open or to sell other items not regulated by the TABC, including food items, non-food items, and beer.
- (4) Pricing of Wine at Retail Food Stores.
- (a) Pursuant to T.C.A. § 57-3-903, the minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.

- (b) A wholesaler's invoice for wine sold to a retail food store wine licensee shall state the cost per bottle of each wine, including all taxes, fees, and charges passed on from the wholesaler to the retail food store wine licensee. These taxes, fees, and charges include, but are not limited to:
1. gallonage taxes;
 2. enforcement taxes;
 3. municipal inspection fees;
 4. transportation costs or surcharges;
 5. split case fees; and
 6. restocking charges.

(c) A retail food store wine licensee shall not apply discounts offered under customer discount cards to the price of wine.

(d) Exceptions to the Unfair Wine Sales Law.

A retail food store wine licensee may sell or advertise wine at a price that would otherwise be impermissible in the following circumstances:

1. during the final liquidation of a licensee's business;
2. under the direction of a court, such as a bankruptcy court;
3. when offering a closeout, which is a reduced price on a brand of wine that will no longer be sold by a particular retail food store; provided that:
 - (i) the retail food store wine licensee sold the brand offered at closeout for at least one hundred twenty (120) days before the beginning date of a closeout sale;
 - (ii) the closeout sale shall not last more than ninety (90) days; and
 - (iii) the retail food store wine licensee shall not sell the brand of wine sold at closeout for at least one (1) year after the closeout sale concludes.
4. when offering a discount on a case of wine, which may include various brands of wine chosen by the consumer and which must include at least:
 - (i) twelve (12) bottles containing seven hundred fifty (750) milliliters of wine;
 - (ii) six (6) bottles containing one and a half (1.5) liters of wine; or
 - (iii) four (4) boxes containing three (3) liters of wine.

(e) A retail food store wine licensee may not sell or advertise wine at a price below the cost paid by the retailer to purchase the wine from the wholesaler.

(5) If a retail food store fails to sell all wine offered during a closeout, it may only:

- (a) Donate the wine for use at a licensed special occasion event;
- (b) Destroy the wine; or
- (c) Store the wine for twelve months until the store can sell the product again.

- (6) All Licensees Must Keep Records Available Three Years. Each licensee shall keep, for at least three (3) years; all purchase orders, invoices and all other records of all purchases and sales of wine made by such licensee. All such orders, invoices, and all other books and records pertaining to the licensee's operation shall be open for inspection to any authorized representative of the Tennessee Alcoholic Beverage Commission or Department of Revenue and failure to make such available shall be deemed cause for revocation of its license. Such records may be maintained in electronic format, and will be deemed available and open for inspection if the Commission or the Department of Revenue can review such records at the licensed premises or, if such records are stored in a central office, can be supplied to the Commission or Department of Revenue within three (3) business days upon request.
- (7) Hours Licensee may Sell Wine. A Retail Food Store may sell wine only between the hours of 8:00 a.m. and 11:00 p.m. on Monday through Saturday. A Retail Food Store may not make any sale of wine on Sunday or on Christmas, Thanksgiving, Labor Day, New Year's Day, or the Fourth of July.
- (8) Mandatory Carding. Prior to making a sale of wine, a Retail Food Store certified clerk must inspect a valid unexpired government issued form of identification to ensure that the purchaser is over the age of 21. The inspection of the identification must take place in a face-to-face transaction. Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-808, and as such, a retail food store may not sell wine to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-808.
- (9) Sales to Intoxicated Customers. A retail food store shall not make a sale of wine to a customer who is visibly intoxicated or accompanied by a person who is visibly intoxicated.
- (10) Customer assistance. An employee of a retail food store may assist customers with loading wine in their vehicles as long as the vehicle is parked in the parking area of the licensee and such parking area is identified in the application of the retail food store. A retail food store permitted clerk must check the identification of any person purchasing wine as part of the sale prior to assistance being given to that customer by an employee with loading of wine to a vehicle.
- (11) Managers.
 - (a) Each retail food store wine licensee shall have at least one designated permitted manager, but may have two or more designated permitted managers. Only the retail food store wine licensee's designated permitted manager(s) may place orders for wine with wholesalers. A designated permitted manager may not be assigned to more than one retail food store wine licensee.
 - (b) A designated permitted manager of a retail food store may transfer his or her permit to another retail food store wine licensee by notifying the Commission in writing of the effective date of the transfer. All transfer notifications must be made prior to the designated permitted manager(s) involvement in the placement of wine orders at the new retail food store wine licensee's location.
- (12) Free Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a retail food store shall at all times be accorded agents, officers or representatives of the Commission.
- (13) Refusal of Cooperation. Any licensee, his agent, or employee who refuses to open or disclose records to, or furnish information to, or who furnishes false and/or misleading information to an agent, officer or representative of the Commission upon any matter relating to or arising out of the conduct of the retail food store premises shall subject the license to revocation or suspension.
- (14) Licensee Responsible For Law and Order on Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly and respectable manner in full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the

municipality and/or county where the licensed premises are located at all times. The renting or leasing of the licensed premises for an event to a nonlicensed entity, person or corporation is specifically deemed not to be a defense for a violation of this rule and does not diminish licensee's responsibility to comply with this rule.

- (15) Restriction as to Age of Licensee's Employees. Nothing herein shall prohibit a licensee from hiring a person under the age of 18 years, however employees under the age of 18 shall not be permitted to sell wine, beer, malt beverages or hard cider in any establishment licensed under the provisions of T.C.A. § 57-3-803.
- (16) Purchases. Only the designated permitted manager(s) of a retail food store wine licensee may place orders for wine with wholesalers. No discounts for wine may take into account orders for wine at other locations owned by the licensee.

Authority: T.C.A. §§ 57-3-104, 57-3-202, 57-3-207, 57-3-210, 57-3-404, 57-3-406, 57-3-412, 57-3-802, 57-3-803, 57-3-807, 57-3-808, 57-3-811, 57-3-812, 57-3-815, 57-3-903 and 57-3-909.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bryan Kaegi	✓				<i>[Signature]</i>
Richard Skiles	✓				<i>[Signature]</i>
John A. Jones	✓				<i>John A Jones</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alcoholic Beverage Commission (board/commission/ other authority) on 05/23/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/17/17

Rulemaking Hearing(s) Conducted on: (add more dates). 03/14/2017

Date: 5.23.17

Signature: *[Signature]*

Name of Officer: Clay Byrd

Title of Officer: Executive Director, TABC



Subscribed and sworn to before me on: May 23, 2017

Notary Public Signature: *[Signature]*

My commission expires on: 7-6-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
 Herbert H. Slatery III
 Attorney General and Reporter

8/9/2017
 Date

Department of State Use Only

Filed with the Department of State on: 08-17-17

Effective on: 11-15-17

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2017 AUG 17 PM 1:50
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

Responses to comments are attached to the end of the form.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(Insert statement here)

These rules will impact small businesses that are licensed as retail food stores, retail package stores, and wholesaler operations. An exact number of such small businesses affected is impossible to estimate at this time, but is expected to be substantial and significant. The rules clarify what type of wine may be sold in the Tennessee market after the passage of WIGS and the minimum price at which the wine may be sold. The rules also clarify when the 20% minimum markup does not apply to the sale of wine in these locations by defining several exceptions that are undefined in state law. The rules also establish prohibitions unique to the WIGs legislation on corporate advertising for retail food stores as a result of the unfair wine sales law. The rules require wholesalers to incorporate some administrative costs in ensuring that certain necessary information is included on all invoices, but such requirements are projected to have a minimal impact on small businesses and including such information on the invoices is already standard industry practice at the time of adoption of these rules. The impact of the rule is beneficial to both small businesses by increasing clarification and certainty on the impact of state law, especially with regards to specifying the acceptable exceptions to the 20% minimum markup requirement. The portion of the rule clarifying the type of wine that may be sold in food stores was taken in part from federal regulations dealing with the definition of wine, but otherwise, there are no state or federal counterparts for which this rule can be effectively compared to. The exemption of small businesses from this rule would be detrimental to the small businesses of this state and would be contrary to statute.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

These rules will not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules clarify several components of the "wine in grocery store legislation," including, but not limited to, the definition of wine, the calculation method for the 20% minimum markup, the definition of the closeout, and the definition of the case discount.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. Title 57, Chapter 3, Part 8 (i.e. sale of wine in retail food stores) and Part 9 (i.e. the unfair wine sales law).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules impact nearly every stakeholder in the alcoholic beverage industry: retailers, wholesalers, manufacturers. These rules will impact retail food stores and retail package stores and the items/products that a wholesaler may deliver to both retail types under the WIGs law. Moreover, these rule will clarify the price at which wine may be sold by both retail types under the unfair wine sales law.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Clay Byrd, Executive Director; Zack Blair, Assistant Director

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Clay Byrd, Executive Director

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Clay Byrd, Executive Director, 500 James Robertson Parkway, 3rd floor, Nashville, TN, 37243; Clay Byrd Clay.Byrd@tn.gov; 615-741-7620

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

A vast majority of the statutory provisions governing the WIGs legislation took effect on July 1, 2016. This effective date prompted an industry meeting/public forum for stakeholder comment on

July 7th 2016, in which industry members expressed concerns over ambiguities imbedded within the comprehensive framework of the new law. Through communication and collaboration, the TABC published guidance to settle the industry's concerns, and these rules represent the product of that collaboration and hard work.



MEMO

From: Clayton V. Byrd, Executive Director

Re: Responses to comments made at public rulemaking hearing

Date: June 7, 2017

On March 14, 2017, a rulemaking hearing was held in accordance with the law. In addition, written comments were accepted for a certain period following the hearing. The Tennessee Alcoholic Beverage Commission (TABC) received two comments relevant to the proposed amendments to Rule 0100-11. Below is a summary of the comments and the Tennessee TABC's responses to such comments:

WINE THAT MAY BE SOLD IN FOOD STORES – Rule 0100-11-.03(2) – A comment was made asking the TABC to revise the proposed rules such that products that are wine based imitation cocktails, spirits, or liquors could be sold as wine in licensed food stores. T.C.A. § 57-3-802 specifies that products that have been substantially changed due to the addition of flavorings and additives cannot be sold as wine in a retail food store. It is the legal opinion of the TABC that such products that are marketed or bottled to appear as imitation cocktails, spirits, or liquors have been substantially changed and thus cannot be sold as wine at retail food stores. In response to a separate comment, the TABC further clarified the definition of wine to be sold in food stores to conform with the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations related to suitable agricultural products.

Sincerely,

Clayton V. Byrd
Executive Director
Tennessee Alcoholic Beverage Commission

RULES OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-11 RULES FOR SALES OF WINE AT RETAIL FOOD STORES

Rule 0100-11-.02 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.02 Issuance of Initial Licenses.

A retail food store wine applicant may not sell wine to patrons or customers for off-premise consumption, in sealed packages only, and not for consumption on the premises until it has been issued a retail food store wine license. Retail food store wine licenses shall not be issued prior to July 1, 2016.

Authority: T.C.A. §§ 57-3-104(c)(4) and 57-3-803.

Rule 0100-11-.03 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.03 Conduct of Business.

(1) Advertising.

(a) The provisions of rules, ~~0100-03-01~~, 0100-03-02, 0100-03-03, 0100-03-04, 0100-03-05, 0100-03-06, 0100-03-07, and 0100-03-08 apply to retail food store wine licensees in the same manner as they apply to off premises retailers licensed pursuant to T.C.A. § 57-3-204.

(b) The minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.

(c) A retail food store wine licensee whose business is one of a chain of stores shall not advertise a price lower than the highest minimum price per bottle for all the chain's stores in the geographic area the advertisement may reach.

(d) The advertised price per bottle shall not represent or assume a case discount unless the requirement of a case purchase is conspicuously stated in the advertisement.

(e) A retail food store wine licensee's advertisement shall not use the words "exclusive" or "exclusively" in reference to wine.

(f) A retail food store wine licensee's advertisement may use the phrase "select varieties" only when advertising a brand, but not a specific type of that brand. If the advertisement uses the phrase "select varieties," then each wine type from that brand shall be available at the advertised price. The phrase "select varieties" shall not be used if the advertisement identifies a particular brand and type.

(2) Wine that May Be Sold.

(a) The commission will analyze particular products on a case-by-case basis to determine whether a product may be sold in a retail food store. In determining which products are included in the definition of "wine" at T.C.A. § 57-3-802(2), the following factors, among others, will be considered:

1. whether the product has had substantial changes due to the addition of flavorings and additives;
 2. whether the product had been sold in grocery, convenience, and similar stores before July 1, 2016;
 3. the specific nature of the product and the manufacturing process; and
 4. the manner in which the product is marketed and labeled.
- (b) The nature of the product and the manufacturing process are critical factors for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2).
- (c) The labeling, suffix, or prefix of the product as descriptive of a fruit or other suitable agricultural product, and as descriptive of a wine, is another critical factor for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2). "Suitable agricultural product" does not include grain, cereal, malt, or molasses.
- (d) Wine does not include any product that contains caffeine, mood enhancers, or other stimulants.
- (e) Wine does not include any product that is marketed to appear or bottled to appear as an imitation liquor or cocktail substitute, including any product that appears to contain vodka, whiskey, rum, gin, tequila, applejack, mescal, liqueur, or cordial.
- (f) Wine is not a product marketed or labeled as "cider," and nothing in this part shall affect the marketing of cider products distributed as beer by wholesalers permitted under § 57-5-103.

(2)(3) Responsibility for Penalties and Violations.

- (a) Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of the laws of Tennessee, the rules and regulations of the Commission, whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the licensee, and the licensee shall be proceeded against as though it were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the licensee's direction and with its knowledge.
- (b) In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to an order, or that a licensee did not personally participate in the unlawful, unauthorized, or prohibited action or actions. However, mitigating factors as permitted under the Responsible Wine Vendor program may be considered by the Commission.
- (c) In a disciplinary actions brought against a retail food store wine licensee, any suspension or revocation of a license shall suspend or revoke the ability of the retail food store to sell wine and accept deliveries of wine from wholesalers. A suspension or revocation of a license shall not affect the ability of the retail food

store to remain open or to sell other items not regulated by the TABC, including food items, non-food items, and beer.

(4) Pricing of Wine at Retail Food Stores.

(a) Pursuant to T.C.A. § 57-3-903, the minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.

(b) A wholesaler's invoice for wine sold to a retail food store wine licensee shall state the cost per bottle of each wine, including all taxes, fees, and charges passed on from the wholesaler to the retail food store wine licensee. These taxes, fees, and charges include, but are not limited to:

1. gallonage taxes;
2. enforcement taxes;
3. municipal inspection fees;
4. transportation costs or surcharges;
5. split case fees; and
6. restocking charges.

(c) A retail food store wine licensee shall not apply discounts offered under customer discount cards to the price of wine.

(d) Exceptions to the Unfair Wine Sales Law.

A retail food store wine licensee may sell or advertise wine at a price that would otherwise be impermissible in the following circumstances:

1. during the final liquidation of a licensee's business;
2. under the direction of a court, such as a bankruptcy court;
3. when offering a closeout, which is a reduced price on a brand of wine that will no longer be sold by a particular retail food store; provided that:
 - (i) the retail food store wine licensee sold the brand offered at closeout for at least one hundred twenty (120) days before the beginning date of a closeout sale;
 - (ii) the closeout sale shall not last more than ninety (90) days; and
 - (iii) the retail food store wine licensee shall not sell the brand of wine sold at closeout for at least one (1) year after the closeout sale concludes.
4. when offering a discount on a case of wine, which may include various brands of wine chosen by the consumer and which must include at least:

- (i) twelve (12) bottles containing seven hundred fifty (750) milliliters of wine;
 - (ii) six (6) bottles containing one and a half (1.5) liters of wine; or
 - (iii) four (4) boxes containing three (3) liters of wine.
- (e) A retail food store wine licensee may not sell or advertise wine at a price below the cost paid by the retailer to purchase the wine from the wholesaler.
- ~~(3)(5)~~ Delivery of Wine. A wholesaler may deliver wine to a retail food store wine licensee at any time the retail food store location is open to the public and shall deliver only to the business address of the retail food store licensee at its customary loading dock. If a retail food store fails to sell all wine offered during a closeout, it may only:
 - (a) Donate the wine for use at a licensed special occasion event;
 - (b) Destroy the wine; or
 - (c) Store the wine for twelve months until the store can sell the product again.
- ~~(4)(6)~~ All Licensees Must Keep Records Available Three Years. Each licensee shall keep, for at least three (3) years; all purchase orders, invoices and all other records of all purchases and sales of wine made by such licensee. All such orders, invoices, and all other books and records pertaining to the licensee's operation shall be open for inspection to any authorized representative of the Tennessee Alcoholic Beverage Commission or Department of Revenue and failure to make such available shall be deemed cause for revocation of its license. Such records may be maintained in electronic format, and will be deemed available and open for inspection if the Commission or the Department of Revenue can review such records at the licensed premises or, if such records are stored in a central office, can be supplied to the Commission or Department of Revenue within three (3) business days upon request.
- ~~(5)(7)~~ Hours Licensee may Sell Wine. A Retail Food Store may sell wine only between the hours of 8:00 a.m. and 11:00 p.m. on Monday through Saturday. A Retail Food Store may not make any sale of wine on Sunday or on Christmas, Thanksgiving, Labor Day, New Year's Day, or the Fourth of July.
- ~~(6)(8)~~ Mandatory Carding. Prior to making a sale of wine, a Retail Food Store certified clerk must inspect a valid unexpired government issued form of identification to ensure that the purchaser is over the age of 21. The inspection of the identification must take place in a face-to-face transaction. Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-808, and as such, a retail food store may not sell wine to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-808.
- ~~(7)(9)~~ Sales to Intoxicated Customers. A retail food store shall not make a sale of wine to a customer who is visibly intoxicated or accompanied by a person who is visibly intoxicated.
- ~~(8)(10)~~ Customer assistance. An employee of a retail food store may assist customers with loading wine in their vehicles as long as the vehicle is parked in the parking area of the licensee and such parking area is identified in the application of the retail food store. A retail food store permitted clerk must check the identification of any person purchasing wine as part of the sale prior to assistance being given to that customer by an employee with loading of wine to a vehicle.

~~(9)~~(11) Managers.

- (a) Each retail food store wine licensee shall have at least one designated permitted manager, but may have two or more designated permitted managers. Only the retail food store wine licensee's designated permitted manager(s) may place orders for wine with wholesalers. A designated permitted manager may not be assigned to more than one retail food store wine licensee.
- (b) A designated permitted manager of a retail food store may transfer his or her permit to another retail food store wine licensee by notifying the Commission in writing of the effective date of the transfer. All transfer notifications must be made prior to the designated permitted manager(s) involvement in the placement of wine orders at the new retail food store wine licensee's location.

~~(10)~~(12) Free Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a retail food store shall at all times be accorded agents, officers or representatives of the Commission.

~~(11)~~(13) Refusal of Cooperation. Any licensee, his agent, or employee who refuses to open or disclose records to, or furnish information to, or who furnishes false and/or misleading information to an agent, officer or representative of the Commission upon any matter relating to or arising out of the conduct of the retail food store premises shall subject the license to revocation or suspension.

~~(12)~~(14) Licensee Responsible For Law and Order on Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly and respectable manner in full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the municipality and/or county where the licensed premises are located at all times. The renting or leasing of the licensed premises for an event to a nonlicensed entity, person or corporation is specifically deemed not to be a defense for a violation of this rule and does not diminish licensee's responsibility to comply with this rule.

~~(13)~~(15) Restriction as to Age of Licensee's Employees. Nothing herein shall prohibit a licensee from hiring a person under the age of 18 years, however employees under the age of 18 shall not be permitted to sell wine, beer, malt beverages or hard cider in any establishment licensed under the provisions of T.C.A. § 57-3-803.

~~(14)~~(16) Purchases. Only the designated permitted manager(s) of a retail food store wine licensee may place orders for wine with wholesalers. No discounts for wine may take into account orders for wine at other locations owned by the licensee.

Authority: T.C.A. §§ ~~57-1-209~~, ~~57-3-104(e)(4)~~, ~~and (9)~~, ~~57-3-202~~, ~~57-3-207~~, ~~57-3-210~~, ~~57-3-404(i)~~, ~~57-3-406~~, ~~57-3-412~~, ~~57-3-802~~, ~~57-3-803~~, ~~57-3-806~~, ~~57-3-807~~, ~~57-3-808~~, ~~57-3-811~~, ~~57-3-812~~, ~~and 57-3-815~~, ~~57-3-903~~ and ~~57-3-909~~.