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Sequence
 Number: 10-12-15
 Notice ID(s): 2393
 File Date: 10-14-15

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	E. Keith Bell
Address:	Davy Crockett Tower 500 James Robertson Parkway, 3 rd Floor Nashville, TN 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Ginna Winfree
Address:	Davy Crockett Tower 500 James Robertson Parkway, 3 rd Floor Nashville, TN 37243
Phone:	615-741-7628
Email:	Ginna.Winfree@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, 500 James Robertson Parkway, 3 rd Floor	
Address 2:		
City:	Nashville	
Zip:	37243	
Hearing Date :	12/09/2015	
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

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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. If needed, copy and paste additional tables to accommodate more than one chapter. 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-.01	Licenses and Permits
0100-11-.02	Issuance of Initial License
0100-11-.03	Conduct of Business
0100-11-.04	Renewal
0100-11-.05	Responsible Vendor Training Program
0100-11-.06	Operation of Liquor by the Drink Establishments within Retail Food Stores
0100-11-.07	Conduct of Industry Members with Retail Food Stores

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rules 0100 are amended by adding the following language as a new chapter 0100-11:

**RULES
OF
ALCOHOLIC BEVERAGE COMMISSION**

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

0100-11-.01	Licenses and Permits
0100-11-.02	Issuance of Initial License
0100-11-.03	Conduct of Business
0100-11-.04	Renewal
0100-11-.05	Responsible Vendor Training Program
0100-11-.06	Operation of Liquor by the Drink Establishments within Retail Food Stores
0100-11-.07	Conduct of Industry Members with Retail Food Stores

0100-11-.01 Licenses and Permits.

- (1) Procedure for Off-Premise Retail Food Store Wine License Application. An application for a retail food store wine license shall be made on forms provided for such purpose by the Commission. In addition to completing and filing such forms, data, written statements, affidavits, evidence or other documents deemed a part of the application, an applicant shall provide the Commission with the following information:
 - (a) Applications shall be submitted to the TABC Headquarters offices in Nashville, Tennessee or on-line at the TABC website. In addition to the application and other forms provided by the Commission, the following data, written statements, affidavits, evidence or other documents must be submitted in support of an application for a retail food store wine license:
 1. Completed application;
 2. Completed questionnaires from all individuals having at least a ten percent (10%) ownership interest in the business and from all corporate officers of a corporate applicant;
 3. Proof of possession of the licensed premises, i.e., lease agreements, assignments, subleases, and/or deed to property;
 4. Affidavit regarding amount of sales taxable sales of the applicant and copies of applicant's sales tax returns filed with the Tennessee Department of Revenue for the previous two business years;
 5. Affidavit regarding amount of retail floor space of the applicant;
 6. If not included in the lease, a site-plan designating the premises and the parking areas.

7. Certificate of Good Moral Character, Zoning and Approved Sales of Wine by local option election, as required by T.C.A. §§ 57-3-801, 57-3-805 & 57-3-806, issued within one hundred eighty (180) days of the applicant's application and 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, signed by the mayor (or highest executive officer) or a majority of the commission, city council, or legislative body of the municipality.
 8. Inspection by the Tennessee Alcoholic Beverage Commission;
 9. Acknowledgment of the rules and regulations;
 10. Proof that applicant entity, if a corporation, LLC, LP, etc., is registered with the Tennessee Secretary of State's office, and the submission by said applicant entity of a Certificate of Existence/Good Standing issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new or renewed license. If applicant entity was formed in another state or foreign jurisdiction, applicant must submit a Certificate of Authorization issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license.
 11. Corporate charter/Articles of Organization;
 12. List of Officers/Owners/Members/Partners. Any owner of less than ten percent (10%) of the applicant need not be individually identified;
 13. Sales & Use Tax Certificate of Registration;
 14. Application fee;
 15. Completed declarations of citizenship to be submitted by owner(s), officer(s), and/or principal(s) of the applicant and others as required by P.C. 1061 (2012);
 16. Designation by the applicant of a TABC permitted manager or managers who will be in actual control of the retail wine sale operations upon the applicant's premises; and
 17. Any other information that the Tennessee Alcoholic Beverage Commission may request pursuant to the provisions of Tenn. Code Ann. §57-3-801, et.seq.
- (b) In addition, any of the following documents which exist must also be submitted:
1. Management agreements;
 2. Bill of sale.
- (c) If, after March 1, 2016, a county or municipality wherein the applicant intends to conduct business fails to grant or deny the certificate required by T.C.A. § 57-3-806 within sixty (60) days of receipt of the written application for a certificate, the certificate is deemed to be granted.

- (2) If a lease agreement, assignment, sublease or other documentation executed by the applicant for a Retail Food Store Wine license and the owner or landlord of the proposed location, sought to be licensed, contains provisions that would limit or restrict the sale or distribution of wine or other alcoholic products within the same shopping center or other development whereupon the applicant seeks to license its premises, the applicant and the

owner or landlord of the proposed location, shopping center or other development, must submit documentation acceptable to the Commission waiving any such restrictions to any and all tenants within the same shopping center or other development. An applicant is not required to obtain and submit the leases of other tenants of the shopping center or other development. However, lease or deed restrictions or covenants imposed by an owner or landlord limiting or restricting the sale or distribution of wine or other alcoholic products by other tenants within the same shopping center or development will serve to prohibit the issuance to the applicant of a retail food store wine license at the proposed location.

- (3) An applicant for a retail food store wine license shall identify all retail liquor stores within 500 feet measured from the closest outside wall of the confines of the retail food store to the closest outside wall of the retail liquor store. An applicant may submit waivers of the permission required pursuant to TCA §57-3-806(e) from the retail liquor stores located within 500 feet of the applicant's retail food store, signed by the owners of such retail liquor stores, and such waivers shall be deemed to be written permission from the retail liquor store for the issuance of the retail food store wine license to the applicant.
 - (a) Upon receipt of an application for a retail food store wine license application, and in the absence of the submission of a signed waiver from the owner of a retail liquor store located within 500 feet of the applicant's retail food store, the Commission shall notify the retail liquor store, by email if the retail liquor store has provided an email address or by telephone if not provided, of the applicant requesting said waiver.
 - (b) The retail liquor store shall have 30 days to respond to the communication from the Commission by either granting permission for the issuance of a retail food store license or denying the issuance of a retail food store license.
 - (c) If the retail liquor store does not respond within 30 days, such non-response shall be considered a denial of permission.
 - (d) If a retail liquor store denies permission for the issuance of retail food store wine license, it shall immediately cease selling all items identified in T.C.A § 57-3-404(e). A retail liquor store may not resume selling the items identified in T.C.A § 57-3-404(e) until permission is granted to the retail food store wine applicant and the Commission is notified in writing of this grant of permission or July 1, 2017, whichever occurs first.
 - (e) The grant of permission to a retail food store shall survive any and all subsequent purchases of a retail liquor store by a new owner and once a written grant of permission has been given to a retail food store it may not be rescinded.
- (4) Restriction on License after Revocation.
 - (a) If a retail food store wine license is revoked by the Commission, for a period of one (1) year following revocation, no subsequent license shall be issued to the spouse, child or children, daughter-in-law, son-in-law or other person having any interest in the business of the licensee whose license was revoked. Additionally, for a period of one (1) year following revocation, no license shall be issued at the same location or in close proximity (within five miles) of the same location. The Commission may, in its discretion, waive the prohibition regarding locations.
 - (b) For a period of one (1) year following revocation, the Commission shall not grant or renew a license to the same person, firm or corporation.
- (5) Must Surrender License If Business Discontinued. Whenever any licensee discontinues business for any reason, it shall immediately notify the Commission in writing and surrender its license.

- (6) Time Requirement to Commence Business. Approval of the issuance of a retail food store wine license by the Commission shall automatically expire ninety (90) calendar days after such approval if the licensee has not opened for business, unless a written request is received and granted for an extension.
- (7) Business Name Change. At least seven (7) calendar days prior to any change in its business name or "d/b/a", a licensee shall submit the proposed change in writing to the Commission for approval. Upon approval and within a reasonable time, the Commission will amend the licensee's electronic record to reflect the licensee's new business or "d/b/a" name.
- (8) Display of License. Any person, partnership, corporation, or other legal entity holding a retail food store wine license shall prominently display and post, and keep displayed and posted, in a conspicuous place in the licensed premises, the license so issued.

Authority: T.C.A. §§ 57-1-209, 57-3-104(c)(4), 57-3-803, and 57-3-806. **Administrative History:** Original rule filed

0100-11-.02 Issuance of Initial Licenses.

A retail food store wine applicant may not sell wine to patrons or customers, 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. **Administrative History:** Original rule filed

0100-11-.03 Conduct of Business.

- (1) Advertising. The provisions of rules, 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.
- (2) 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.

- (3) **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.
- (4) **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) **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) **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) **Sales to Intoxicated Customers.** A retail food store may not make a sale of wine to a customer who is visibly intoxicated or accompanied by a person who is visibly intoxicated.
- (8) **Customer assistance.** An employee of a retail food store may assist customers with loading of food items and wine to 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 prior to assisting that customer with loading of wine to a vehicle.
- (9) **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) **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) 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) 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 non-licensed 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) 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) Purchases. Only the designated permitted manger(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(c)(4) and (9), 57-3-404(i), 57-3-412, 57-3-803, 57-3-806, 57-3-808, 57-3-811, 57-3-812, and 57-3-815, **Administrative History:** Original rule filed

0100-11-.04 Renewal

- (1) In addition to submitting a completed renewal application and the renewal fee, each retail food store wine licensee is required to submit an annual statement detailing its annual total sales revenue and its annual sales taxable sales revenue from the retail sale of food and food ingredients for human consumption. The report of such sales shall not include tax paid as part of the calculations of revenue.
- (2) A retail food store wine licensee shall keep sales and purchase records for a minimum of three years in a manner usual and customary in the industry. Such records may be maintained in electronic format.
- (3) In the event that the retail food store has failed to meet the requirement that 20% of its sales are from sales taxable sales of food and food ingredients for human consumption, the Commission shall notify the licensee that it has one year to come into compliance with the requirement. The licensee shall submit a plan to the Commission detailing its plan on compliance.
- (4) The failure of the retail food store to meet the requirement that 20% of its sales are from sales taxable sales of food and food ingredients for human consumption after the one (1) year period shall result in the Commission's revocation of its license to sell wine. In the event of a revocation and for a period of one (1) year following revocation, the Commission a subsequent license shall not be issued to the spouse, child or children, daughter-in-law, son-in-law or other person having any interest in the business of the licensee whose license was revoked. Additionally, for a period of one (1) year following revocation, no license shall be issued at the same location or in close proximity (within five miles) of the same location, and the Commission shall not renew a license to the same person, firm or corporation.

Authority: T.C.A. §§ 57-3-104(c)(4) and 57-3-806(d). **Administrative History:** Original rule filed;

0100-11-.05 Responsible Vendor Training Program.

Each retail food store wine licensee shall participate in the Responsible Wine Vendor Program, pursuant to T.C.A. §57-3-818 and be certified pursuant to TABC Rules 0100-12. There shall not be a requirement for a licensee to participate in both the Responsible Wine Vendor Program and the responsible vendor training program established in chapter 5, part 6 of title 57.

Authority: T.C.A. §57-3-104(c)(4) and 57-3-818. **Administrative History:** Original rule filed

0100-11-.06 Operation of Liquor By The Drink Establishments Within Retail Food Stores

- (1) A retail food store wine licensee may also hold a license for on-premises consumption within the location as a retail food store wine licensee. However, the premises of the on-premises consumption license must be physically separated from the retail food store wine licensee's premises. Physical separation may be accomplished by walls, fencing or other means, approved by the Commission, used to indicate that the two areas have been designated to operate separately.
- (2) A retail food store wine licensee's must operate an area with an on-premises license as a separate entity from the retail food store. A retail food store may sublease its premises to a different person or entity for purpose of operating an establishment licensed pursuant to T.C.A. 57-4-101, et seq.
- (3) The comingling of the inventory of alcoholic beverages by any person holding a license under T.C.A. §57-3-801 and T.C.A. § 57-4-101 or by any different persons holding licenses pursuant to T.C.A. §57-3-801 and T.C.A. § 57-4-101, is cause for suspension or revocation of any and all licenses that is involved in such activity.

Authority: T.C.A. §§ 57-3-104(c)(4), 57-3-817. **Administrative History:** Original rule filed

0100-11-.07 Conduct of Industry Members with Retail Food Stores

- (1) The provisions of Rule 0100-06 shall apply to retail food stores, except as otherwise provided:
 - (a) An industry member may not provide stocking, rotating, or pricing services on the premises of a retail food store;
 - (b) An industry member may provide product displays, signs, point of sale advertising materials, equipment, supplies, and other items authorized by Rule 0100-06-.03, provided:
 1. Such items are provided solely to a permitted manager; and
 2. The industry member may not set up any such display, sign, or item, or perform any service or action whatsoever regarding such item, other than the provision of such item to the permitted manager;
 3. An industry member or TABC permitted representative may provide routine business entertainment pursuant to Rule 0100-06-.03(5) and (6) and educational seminars pursuant to Rule 0100-06-.03(11) to be conducted only upon the industry member's non-bonded TABC licensed premises, provided that such routine business entertainment and educational seminars may only be provided to permitted managers and the licensee, if the licensee is an individual, and to no other employees or agents of the retail food store; and

4. Samples of wine may not be provided upon the retail food store's premises pursuant to Rule 0100-06-.03(11). Samples may only be provided to a permitted manager or licensee, if licensee is an individual, as part of an educational seminar as authorized in this rule and Rule 0100-06-.03(11).
- (c) An industry member may not provide or sell to a retail food store any combination package containing wine as otherwise authorized by Rule 0100-06-.03(10).
- (2) The provision of any product display, sign, point of sale advertising material, equipment, supply, or other item by a licensed wholesaler solely with regards to beer or other items that are not alcoholic beverages may be provided pursuant to all local ordinances and federal law.
 - (3) No TABC licensed industry member or any employee, agent, representative or salesperson employed by or representing any such TABC licensed industry member 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. This prohibition shall apply to its TABC licensed industry member regardless as to whether the service is being performed with relation to wine, alcoholic beverages or beer. This prohibition shall not apply to any wholesaler, manufacturer or importer of beer or non-alcoholic items that is not licensed by the Commission.

Authority: T.C.A. § 57-1-209, 57-3-104(c)(4) and (9), 57-3-815, and 57-3-907. **Administrative History:** Original rule filed

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: Oct 14, 2015

Signature: E. Keith Bell

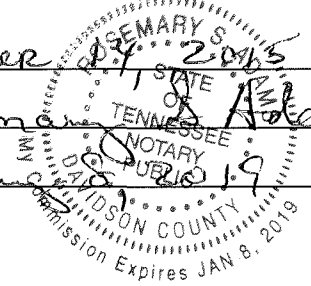
Name of Officer: E. Keith Bell

Title of Officer: Executive Director

Subscribed and sworn to before me on: October 14, 2015

Notary Public Signature: Rosemary S. Adams

My commission expires on: January 8, 2019



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Filed with the Department of State on: 10-14-15

Tre Hargett

Tre Hargett
Secretary of State

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