

Tennessee Liquor Observer

Full Court Press for Wine in Food Stores

The Tennessee House and Senate are considering a bill for the sale of wine at retail food stores. The proposed license is limited to wine and does not include other alcoholic beverages. Called a "wine at food store" license, the license requirements are quite different from the current retail license held by liquor stores. The bill does not currently propose any changes to the existing retail license requirements.

Sponsors of the bill have engaged a new lobbyist and hired two reputable public relations firms. The bill has received considerable attention in the Nashville media, and with the possible exception of Chattanooga, appears to have received broad coverage in other major media markets throughout Tennessee.

The new "wine at food store" license eliminates many of the restrictions imposed on retail stores. Some of the restrictions proposed to be removed from the food store license include:

- Tennessee residency requirement
- ownership limited to one store in the state
- prohibition from having been convicted of any crime involving alcoholic beverages
- requirement that the entrance be on the ground floor and open on a public street
- prohibition from operating as a wholesaler
- prohibition from operating other businesses within the state
- prohibition from selling commodities other than alcoholic beverages

The bill allows any "food store" located in a wet jurisdiction to obtain a license and sets an \$850 license fee, the same as retail stores. Since its introduction, the bill has been gutted of key provisions and does not appear to be passable in its present form. The media reports that various amendments have been proposed, but as of press time, the legislation has not been amended.

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State Cannot Require Delivery Companies to Card for Cigarettes

The U.S. Supreme Court recently invalidated a Maine state law that required FedEx, UPS and other delivery services to

verify the legal age of recipients before delivering cigarettes and other tobacco products. The decision could lead to invalidating age restriction requirements for the delivery of beer, wine and liquor, in states where delivery is allowed.

The impact of the case may also make it more difficult to pass new laws legalizing the direct shipment of alcohol. Carding the recipient is viewed by many as necessary for direct shipment. On the other hand, the decision could lead delivery services to challenge a state ban against shipment of alcohol.

In the Supreme Court case, *Rowe v. New Hampshire Motor Transportation Association*, a unanimous court held that federal law governing interstate carriers preempts a Maine state law. The court found that the state law imposed additional burdens and restrictions on how carriers conduct business. The February 20, 2008 opinion concerned a Maine law requiring common carriers to verify the legal age of a recipient before delivering tobacco products. The law was designed to prevent the delivery of tobacco to minors. The common carriers objected to the state carding and other requirements, asserting that requiring the carrier to card increased legal liability and the cost of operations.

The court rejected Maine's public safety and health arguments. Maine asserted that the law curbed access of minors to tobacco. The court held that the federal common carrier statute had no exception for public safety and health.

Update on the Smoking Ban

Reliable sources report that the Tennessee Restaurant Association is backing a bill to remove the 21-and-over exemption from the smoking ban. Under current law, venues that always restrict access to persons 21 years or older are exempt from the smoking ban. In the event the 21-and-over exemption is removed, smoking would still be permitted in designated areas such as open air patios, porches or decks, or areas enclosed by garage doors, tents or awnings, when all doors or vents are open.

During implementation of the smoking ban, the Metro Nashville Health Department identified an issue when garage doors were raised for smoking. Many venues with garage doors have kitchens that open into the dining room. Insects and other airborne health hazards can easily enter open air kitchens when the doors are raised. It appears that installing curtains or other air guards resolves this issue.

Other Pending Alcohol Legislation

In addition to the food store license, many bills are currently pending that could affect the sale of beer and alcoholic beverages.

The Tennessee General Assembly is in the process of reviewing legislation that would remove the sunset provision requiring an individual, regardless of age, to present photo identification before purchasing beer for off-premises consumption. The sunset provision was reportedly added to the measure in case of staunch public opposition to mandatory carding. Legislators are exploring the possibility of lifting the sunset provision, making the law permanent. The bill has passed the Senate and was recently awaiting review by the House State and Local Government Committee.

Several pending bills could affect the restaurant industry in Tennessee. One bill grants any municipality, regardless of population, the ability to conduct a referendum for liquor by the drink. Another pending bill would authorize larger cities to pass an ordinance allowing patrons to bring "companion dogs" into designated outdoor dining areas of restaurants that chose to allow dogs. Companion dog is a fancy way of saying pet canine. Current state law only allows seeing-eye dogs or hearing-ear dogs in restaurants.

Once again, a number of bills have been introduced to allow direct shipment of wine and other alcoholic beverages. One proposal provides for a license issued by the Alcoholic Beverage Commission, allowing in-state and out-of-state companies to ship wine directly to consumers, age 21 years or older, for personal use.

The Senate passed a bill on February 25, 2008 regarding the printed birth dates on Tennessee drivers' licenses. If the bill

passes the House, birth dates will be printed in large red numbers, effective July 1, 2009. The bill was reportedly introduced on behalf of elderly liquor store employees that have difficulty reading the small print on drivers' licenses.

Recent AG Alcohol Opinions Beer not confined to "the 19th hole"

The Attorney General recently issued an opinion that approves of municipalities issuing on-premises beer permits to golf courses. Instead of being limited to drinking in the clubhouse, patrons may consume beer anywhere on the golf course property. With the new opinion, if the local government has issued an on-premises permit to the golf course, the license can be applied to entire golf courses and consumption is permitted anywhere on the course. If the local government has issued an on-premises permit to the golf course clubhouse or restaurant, patrons may only be able to drink beer in the clubhouse or restaurant. Municipalities can continue to limit permits to enclosed spaces.

Wine and spirits on golf courses were not addressed in the opinion.

Liquor by the Drink in Dual-County Cities

Another recently-issued Attorney General opinion clarifies who may vote on and who is affected by application of liquor-by-the-drink regulations in cities that span two counties. The A.G. opined that under Tenn. Code Ann. § 57-4-103(a)(5), a petition for a liquor-by-the-drink referendum in a municipality that is located within two counties—one with a metropolitan form of government that has approved liquor-by-the-drink and one that has not—may be signed only by residents of the portion of the county that has not approved liquor-by-the-drink sales. As a result, the referendum result would not affect the sale of alcoholic beverages for on-premises consumption in the portion of the municipality located in the county that has a metropolitan form of government. This issue has arisen in Goodlettsville, which is located in both Sumner and Davidson counties; Davidson County has a consolidated government.

If the Sumner County side of Goodlettsville opts to hold a referendum to approve liquor-by-the-drink sales, only residents of the Sumner County side of Goodlettsville may vote on the matter. Because the Davidson County side of Goodlettsville has already approved sales of alcoholic beverages for on-premises consumption, they are exempt from the vote and the results, should the referendum fail.

While the idea of prohibiting liquor-by-the-drink sales on the Sumner County side of Goodlettsville has been suggested, many area residents believe concurrent regulations throughout the city, on both sides of the county line, would encourage growth and development. The referendum remains only a possibility. Before the issue can be set to ballot, a petition for a referendum to vote must be circulated.