

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(c)(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~~.