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Prohibited Acts

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Prohibited Acts

Reference Number: CTAS-364

In addition to possible suspension or revocation of the beer permit or the imposition of civil penalties, persons violating the laws, rules and regulations (including validly enacted resolutions of the county legislative body) governing beer and like beverages may be prosecuted criminally. The criminal provisions are set out in Tennessee Code Annotated, Title 57, Chapter 5, Part 3, and the penalties are set out in T.C.A. § 40-35-111.

Minors and the Beer Laws

Reference Number: CTAS-365

Several statutes dealing with the sale or possession of beer have special provisions dealing with the purchase or possession of beer by minors. When used in Title 57 of the *Tennessee Code Annotated* with respect to purchasing, consuming or possessing alcoholic beverages (including beer), "minor" means any person who has not attained 21 years of age. T.C.A. § 1-3-105(1). However, any person who is 18 years of age or older may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of that person's employment. T.C.A. § 1-3-113.

In summary, the statutes dealing with minors provide as follows:

1. It is unlawful for any person under the age of 21 to purchase, possess, transport or consume alcoholic beverages (including beer), except that persons who are 18 or over may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of their employment. T.C.A. §§ 1-3-113 and 57-5-301(e). A person under the age of 18 cannot process a sale or bag beer in the course of his or her employment. Attorney General Opinion U90-116 (8/15/90).
2. Anyone purchasing beer for off-premises consumption must present a valid, government-issued form of identification that contains a photo and the birth date of the consumer. Persons exempt under state law from the requirement of having a photo ID must present other identification acceptable to the permit holder. Beer cannot be sold to anyone who does not present the required identification showing that the person is an adult. However, a permit holder cannot be criminally prosecuted or civilly punished for any sale made to a person who is or reasonably appears to be over the age of 50 and failed to present the required identification. T.C.A. § 57-5-301(a)(1).
3. It is unlawful for any person engaged in the sale, manufacture or distribution of beer to make or permit to be made any sale to minors. T.C.A. § 57-5-301(a)(1). The first offense of selling beer to a minor is a Class A misdemeanor. T.C.A. § 57-5-301(a)(2). A second offense of selling beer to a minor is a Class E felony. Upon the second conviction, the permit of such person shall be automatically and permanently revoked regardless of any other penalty actually imposed. T.C.A. § 57-5-303(c). However, the permit cannot be revoked (but may be suspended for up to 10 days or a penalty up to \$1,500 may be imposed) if an operator or any person working for the operator sold beer to a minor over the age of 18 after the minor exhibited identification (false or otherwise) indicating the minor's age to be 21 or over, the minor reasonably appeared to be of that age, and the person making the sale did not know that the person was a minor. T.C.A. § 57-5-108(b). Note that the penalties for sale of beer to minors are different if an off-premises permit holder has been certified as a "Responsible Vendor" under T.C.A. § 57-5-606.
4. It is unlawful for any person under the age of 21 to purchase or attempt to purchase beer. T.C.A. § 57-5-301(d)(1). While a store owner or employee cannot hold a driver's license or other identification as evidence of a violation, a violator may be detained until proper authorities are called and arrive, provided that the offense was committed in the owner's or employee's presence and delivery of the offender to proper authorities occurs without unnecessary delay. Attorney General Opinion U88-59 (5/26/88).
5. It is unlawful for anyone to purchase beer or like beverages for anyone under the age of 21. T.C.A. § 57-5-301(d)(2).
6. It is unlawful for any person under the age of twenty-one (21) to exhibit false identification or to make false statements to the effect that he or she is 21 years of age for the purpose

of purchasing beer. T.C.A. § 57-5-301(d)(3).

7. It is unlawful for the management of any place where beer is sold to allow minors to loiter in such places. The burden of ascertaining the age of minor customers is on the owner or operator of the business. T.C.A. § 57-5-301(c).

The law does not establish a minimum age for applicants for beer permits. Attorney General Opinion 87-28 (2/23/87). However, T.C.A. § 1-3-114 provides that any person 18 years old or older must not be prohibited from entering into any profession or from performing any services on the basis of the person's minority. Therefore, an 18-year-old person could obtain a permit to sell beer, if the person is otherwise qualified. A county or city could not set a minimum age requirement for obtaining a permit to sell beer at greater than 18 years of age.

The Attorney General has opined that an individual under the age of 18 is not eligible to obtain a permit for the retail sale of alcoholic beverages, pursuant to T.C.A. § 57-3-210(h), if the person intends to engage in the physical manufacture, storage, sale, or distribution. However, T.C.A. § 57-3-210(h) does not apply to corporations and thus does not prohibit the carrying on of a retail liquor business by a corporation which has a minority or majority stockholder under the age of 18, so long as the stockholder is not engaged in any of the prohibited acts under that subsection. While that code section does not apply to the sale of beer, it could be inferred from the opinion that a Class B county or city could reasonably set a minimum age at 18 in order to obtain a beer permit, but if the applicant was a corporation with a stockholder under the age of 18, a permit could still be issued. Attorney General Opinion 87-28 (2/23/87) and Attorney General Opinion U86-101 (7/2/86).

Sting Operations Using Minors

Reference Number: CTAS-375

Law enforcement may conduct sting operations using minors in accordance with the requirements of T.C.A. § 39-15-413. Criminal prosecutions for unlawful sales of beer for off-premises consumption to underage persons as a result of a sting operation using a person under the age of 21 cannot be commenced unless the person or law enforcement officer supervising the person used in the sting operation obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. The law enforcement officer is required to notify the permit holder in writing within 10 days of the sting that the action occurred, giving the name of the permit holder and the employee involved, and whether the person was successful in making the purchase. T.C.A. § 39-15-413.

Employing Persons Convicted of Certain Crimes

Reference Number: CTAS-366

It is unlawful for the holder of a beer permit or any employee of a person engaged in the business of selling beer to be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or any crime involving moral turpitude, within the last 10 years. T.C.A. § 57-5-301(a). The 10-year period begins on the date of conviction and ends 10 years from that date. Attorney General Opinion U90-116 (8/15/90).

Sale of Untaxed Beer - Contraband

Reference Number: CTAS-367

No beer retailer may purchase beer from anyone other than duly licensed wholesalers (and certain Tennessee manufacturers, as set out in T.C.A. § 57-5-101) located in Tennessee. T.C.A. § 57-5-201. Any beer sold or offered for sale by or in the possession of a retailer, purchased from any person or firm other than a duly licensed Tennessee wholesaler or distributor, is declared to be contraband and is subject to confiscation. T.C.A. § 57-5-409. The beer board may revoke or suspend the permit of any retailer who is found to possess beer on which the state barrel-age tax and the city and county wholesale beer tax have not been paid. T.C.A. § 57-5-108(m).

Storage at Other Than Permit Address

Reference Number: CTAS-368

It is unlawful for any retailer to store beer purchased for a specific retail location at any place other than that specific retail location. T.C.A. § 57-5-416. No retailer may store any alcoholic beverages, wine, or beer at any location other than the licensed premises and the retailer shall not hold, store, or accept delivery of any products intended for another retailer. T.C.A. § 57-3-406(g).

Outdoor Signs

Reference Number: CTAS-369

No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The prohibition does not apply to any sign, advertisement or display erected or maintained by or at the request of a temporary beer permittee or to any sports arena, stadium or entertainment complex. T.C.A. § 57-5-304. This statute does not specifically prohibit the use of slogans, trademarks or symbols, so their use is not prohibited except where they may consist of a picture, diagram, or both. Attorney General Opinion U89-140 (12/7/89). According to the Tennessee Attorney General, this statute is susceptible to challenge under the First Amendment and it is unlikely to survive such a challenge. Op. Tenn. Att'y Gen. 15-04 (1/14/15).

Wholesaler/Retailer Relationship

Reference Number: CTAS-370

Retailers are prohibited from purchasing beer from anyone other than a wholesaler licensed and located in Tennessee, and wholesale distributors are prohibited from purchasing beer from anyone other than a manufacturer, importer, or other Tennessee wholesaler licensed in Tennessee. T.C.A. § 57-5-201(c). Brewers and wholesalers are prohibited from making any loan, furnishing any fixtures of any kind, or having any interest, direct or indirect, in the business of any retailer, or in the premises of any retailer. T.C.A. § 57-5-101(a). A limited exception to these rules exists for breweries which are located in counties having a population of 75,000 or more or in a premier resort city that has adopted liquor by the drink. T.C.A. § 57-5-101(c). See "Microbreweries and Brew Pubs" herein.

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