

Beer Laws

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County Technical Assistance Service
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Today's Training

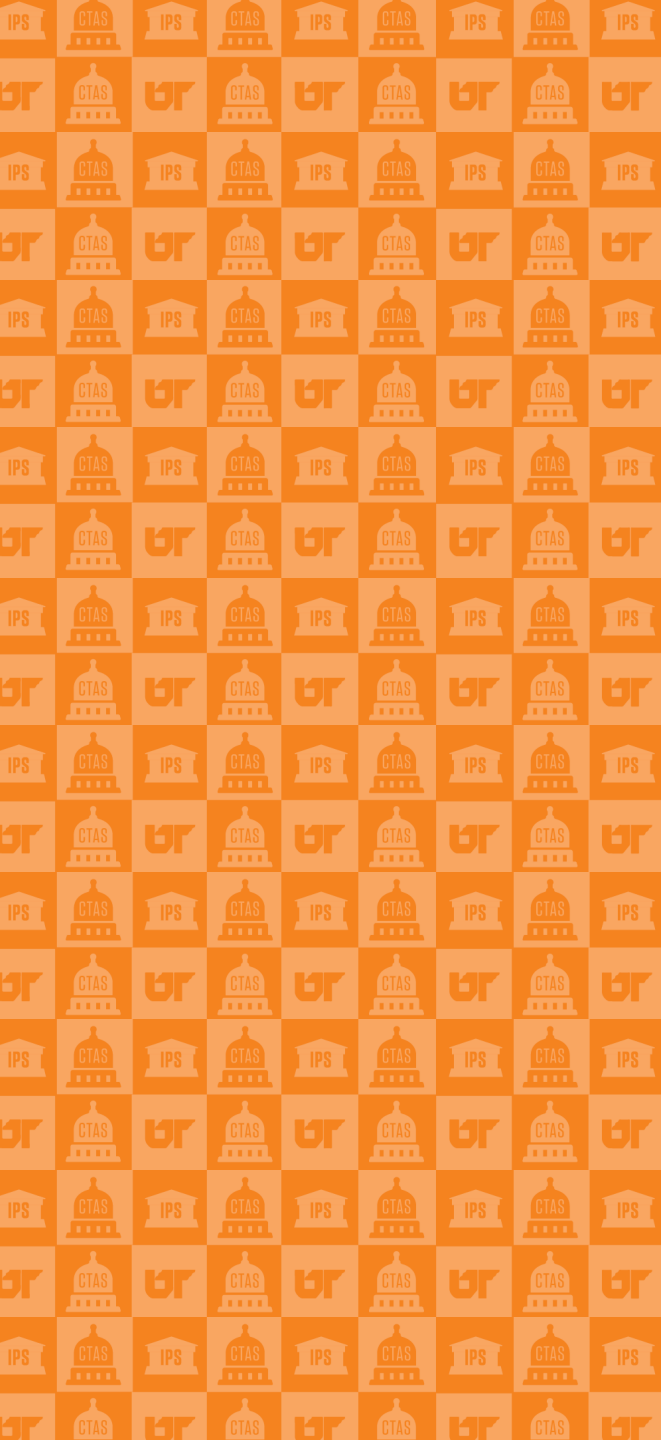
- Definition of Beer
- Beer Permits
- Annual Privilege Tax
- Distance Rules
- TN Responsible Vendor's Act
- Revocation, Suspension, and Civil Penalties



Definition of Beer

"Beer" is defined as "beer, ale or other malt beverages **having an alcoholic content of not more than eight percent (8%) by weight**, except wine as defined in T.C.A. § 57-3-101(a)(24); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol." T.C.A. § 57-5-101.





Beer Permit Process



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Beer Permit Process: County Clerk

- Clerk of Beer Board
- Accepts applications and fee
- Issues permits
- Collects annual privilege tax



Application Fee

\$250 Fee paid with application

Non-refundable regardless of approval or denial

T.C.A. § 57-5-104(a)



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Complete Application MUST Include

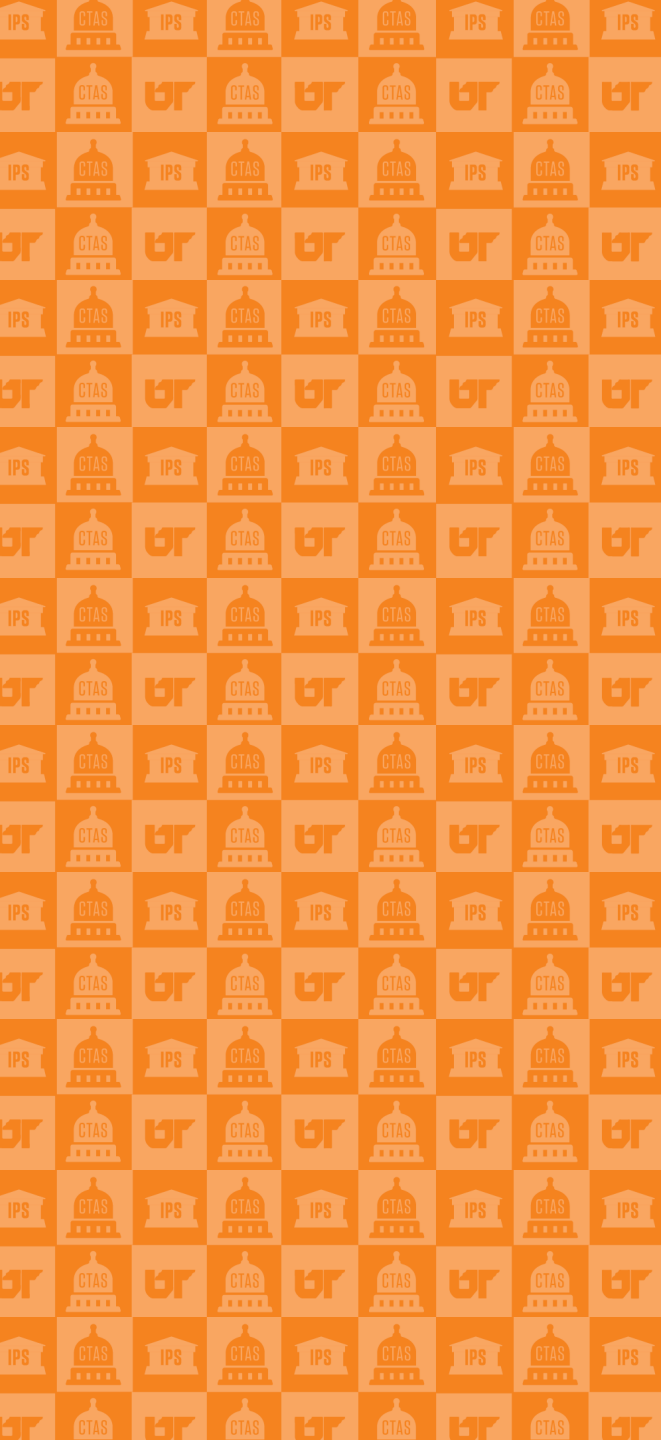
- Name of applicant
- Name of business
- Location of business
- Checkbox for on-premises or off-premises (or both)
- Listing of at least 5% interest
- Tax Notice info
- Statement
- Any other reasonable info requested by the beer board



Permit Approval

- Issued to the owner of a business or other entity responsible for the premises such as person, firm, corporation, joint-stock company, syndicate, association or a local government entity when the governing body has authorized such sales of beer
- Valid only for the business named in the permit
 - If business name changes, a new permit must be obtained
- Permit is non-transferable
- Must be registered with the TN Dept. of Revenue





Additional Approval Requirements



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- If a change in circumstances occurs which then affects the application responses, the applicant (and permit holder) must amend or supplement the application promptly.

- T.C.A. §57-5-105(c)(9)

- Any applicant who makes a false statement in the application shall forfeit the applicant's permit and shall not be eligible for a permit for 10 years.

- T.C.A. § 57-5-105(b)(1)



- Sale of beer will not cause traffic nor interfere with public gathering places or the health, safety and morals; and the business is not in violation of distance rules.
- T.C.A. § 57-5-105(b)(1)
- No sale will be made to minors.
- T.C.A. § 57-5-105(b)(2)
- No sales for on-premises consumption unless the application so states.
- T.C.A. § 57-5-105(b)(5)



- That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years.

T.C.A. § 57-5-105(b)(3)

- This also includes persons employed by the applicant.

T.C.A. § 57-5-105(b)(4)



Moral Turpitude refers to acts of baseness, vileness, or depravity in the private and social duties which a person owes to other persons or to society in general, contrary to accepted rules of right and duty. *Brooks v. State*, 187 Tenn. 67, 213 S.W.2d 7 (1948)

- Moral Turpitude? YES!

Vehicular homicide (AG Opinion 98-225 (12/1/98))

- Moral Turpitude? NO!

DUI and reckless driving (AG Opinions 95-37 (4/19/97) and 08-108 (5/14/08))

Sale of beer to a minor or person not presenting proper ID (AG Opinion 09-41 (3/25/09))

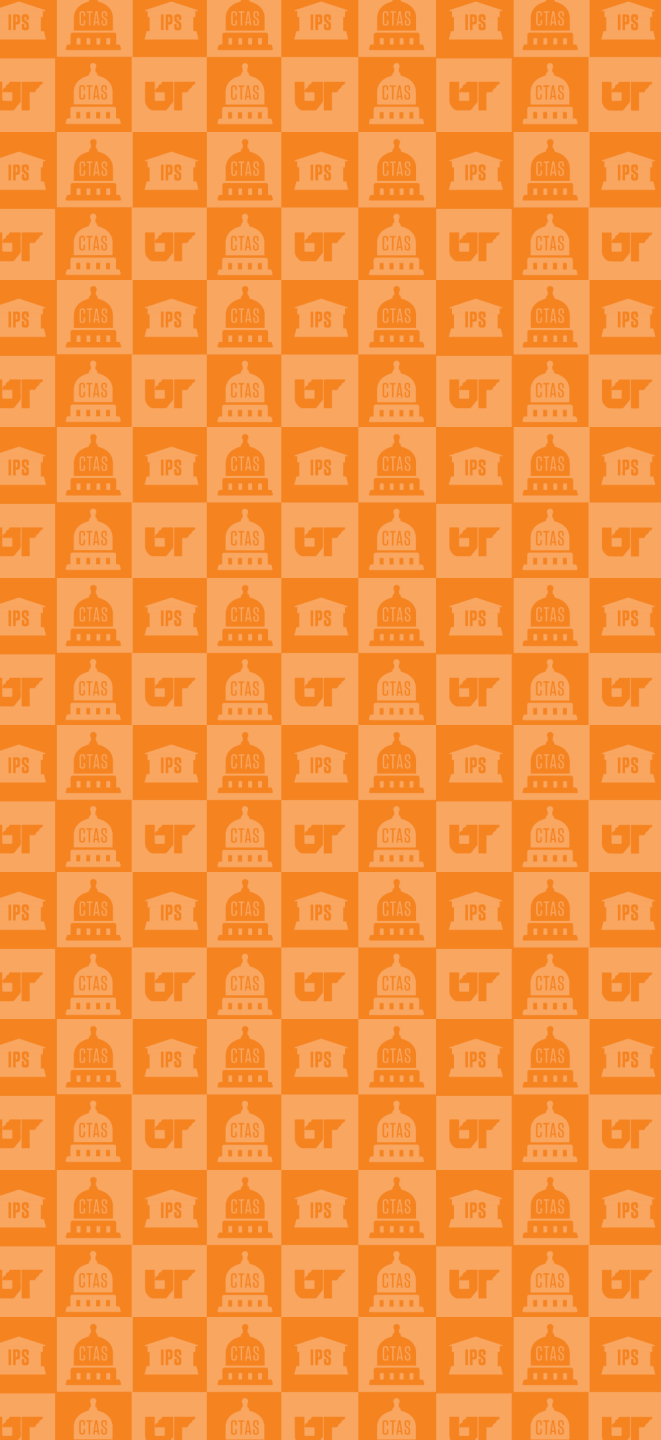


Optional Requirement

- Beer Board can require criminal background checks on applicants (with fingerprints)
- Cannot recover these fees from the applicant.

T.C.A. § 57-5-103





Beer Permit Denial



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Class A vs. Class B counties/cities

- Class A counties are required to grant any application which meets the statutory requirements set out in T.C.A. § 57-5-105.
- Class B counties and cities can impose additional restrictions under T.C.A. § 57-5-106.



Permit can be denied if:

- Interferes with public health, safety, and morals
- If the county/beer board show that traffic would cause more congestion and be more hazardous than prior to the issuance of the permit
- T.C.A. § 57-5-105(b)(1)



Permit can be denied if:

- Violation of distance rules which were adopted by resolution of CLB

(T.C.A. § § 57-5-105(b)(1) and 57-5-105(i))

- Note that before this can be denied for a 300' rule for proximity to a residential dwelling, the owner of said dwelling must object in person before the beer board

(T.C.A. § 57-5-105(i))

- If a permit is denied three times, the applicant may not reapply for a permit for the same premises until one year from the date of the third refusal and only if the circumstances have substantially changed.

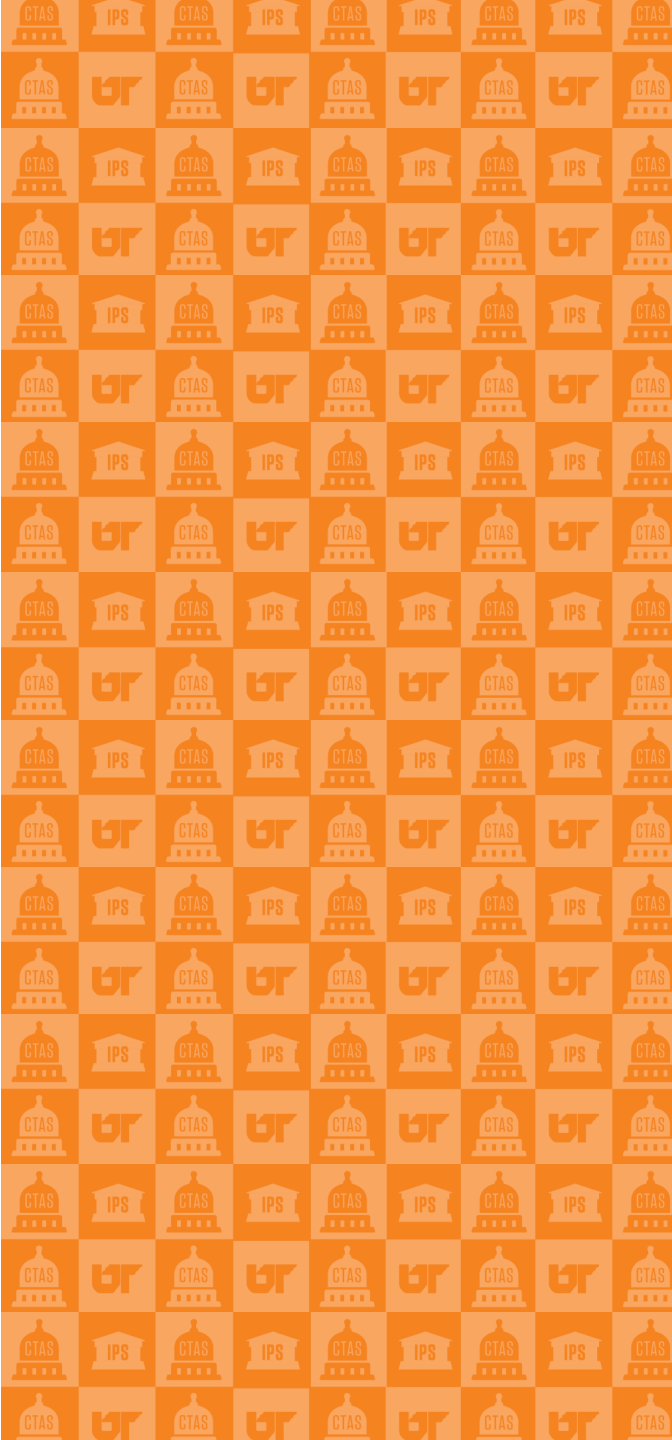
(T.C.A. § 57-5-105(h))



Annual Privilege Tax



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Imposed on the business of selling, distributing, storing, or manufacturing beer in Tennessee

\$100 per year due January 1st of every year

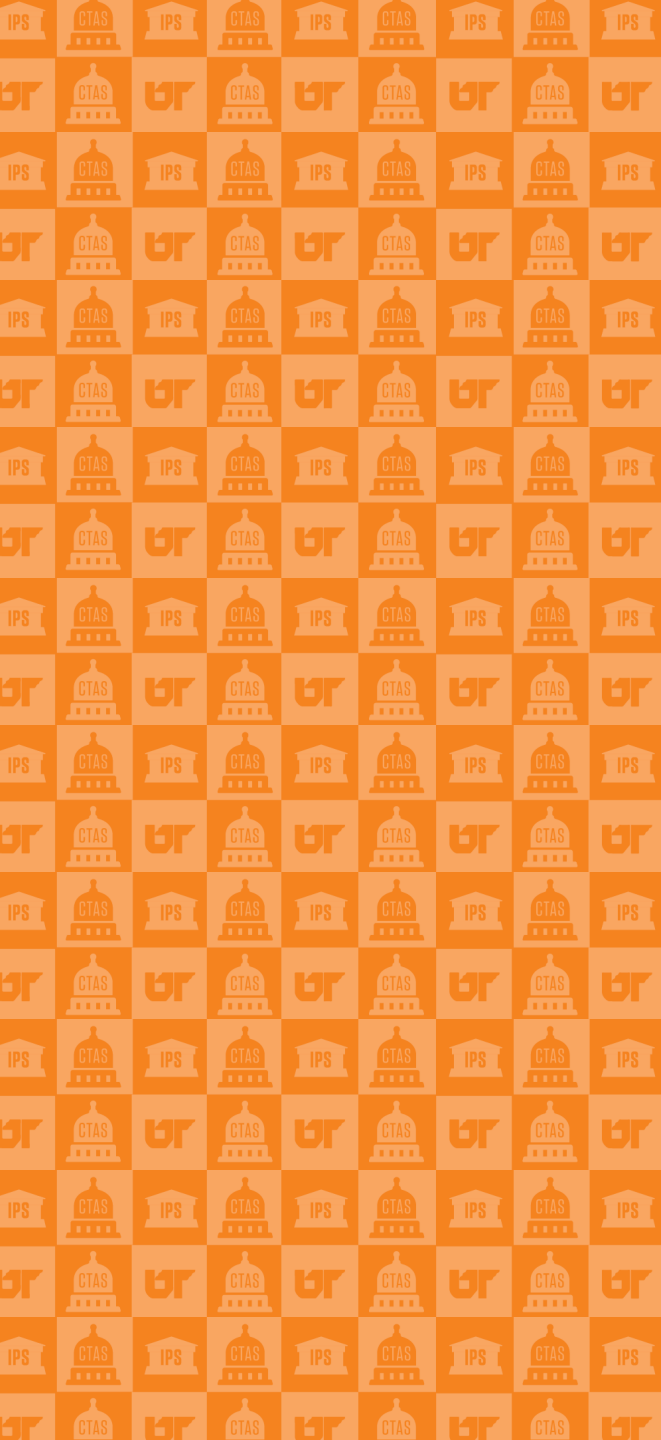
➤ New permits – prorate for each month or portion of a month remaining until the next payment date

T.C.A. § 57-5-104(b)(5)



- Due January 1
- Tax is prorated for new approvals
- Mail notices by December 1
- Delinquent after January 31 (or 30 days after notice was sent, whichever is later)
- Send certified delinquent notice – if not paid within 10 days, beer board can revoke beer permit





What Will Void a Permit



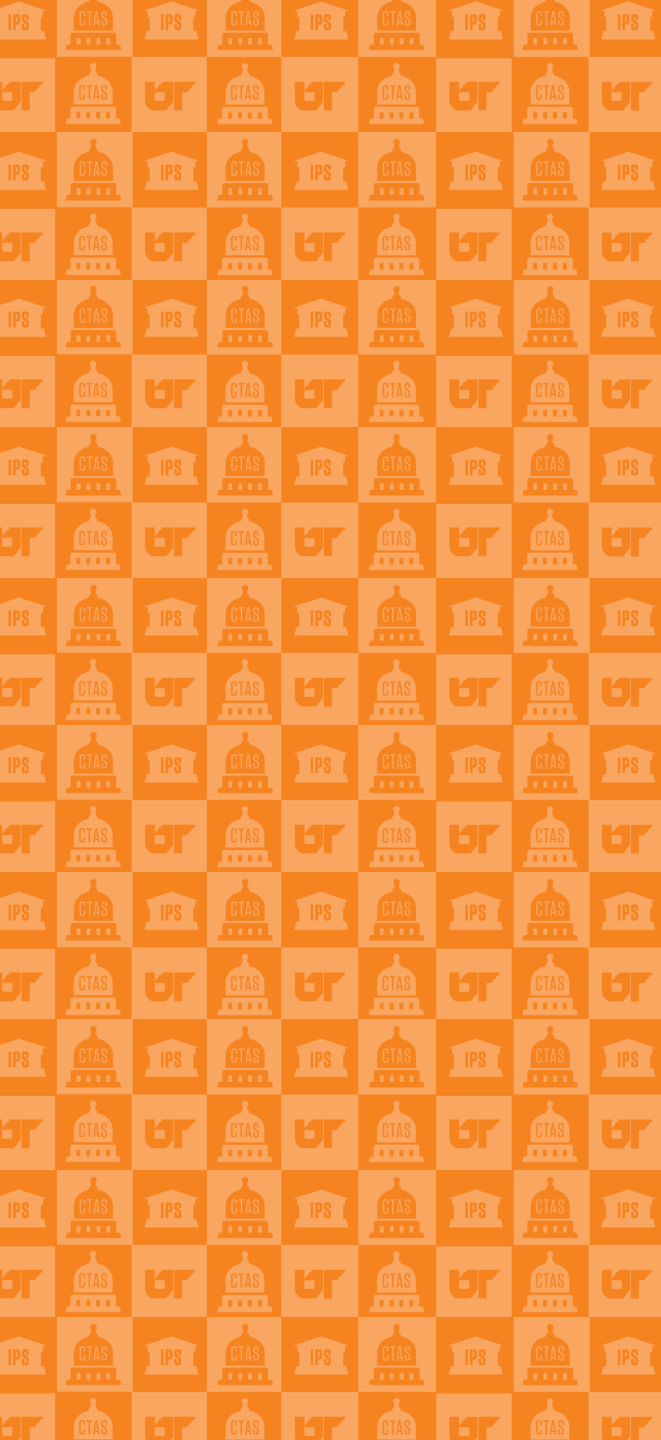
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Beer Permits have NO expiration date and are valid until suspended or revoked.

Causes for a beer permit to be Void:

- Termination of the business
- Change in ownership
- Relocation of ownership
- Change in the name of the business





Distance Rules



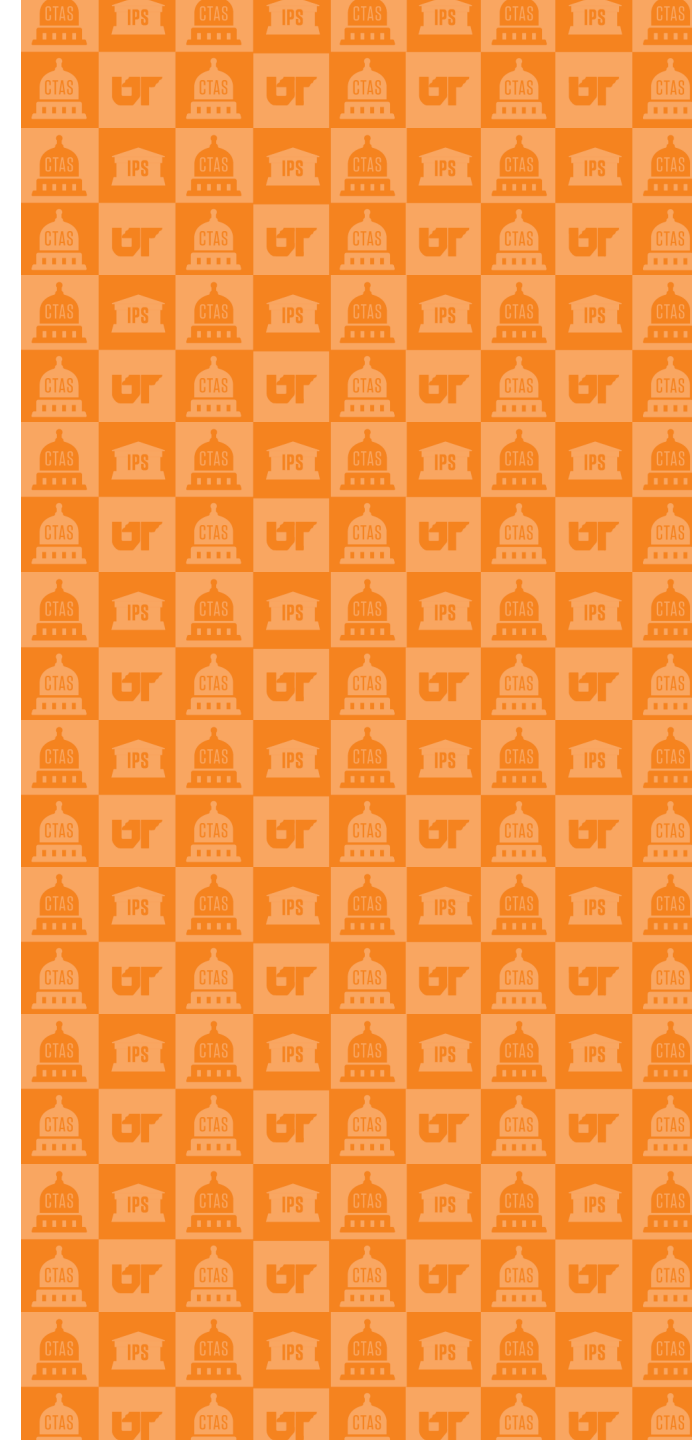
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➤ 2000' Rule

➤ 300' Rule

➤ Grandfather Provision

➤ Restoring Invalid Distance Rule



2000' Rule

CLB has authority to forbid the sale, storage, and manufacture of beer within 2,000 feet of schools, churches, and other places of public gathering. T.C.A. § 57-5-105(b)(1)

- Adoption is discretionary
- Must be enforced uniformly – discretionary application will render it invalid
- Establishes maximum distance but counties can impose distance rule less than 2,000 feet



300 Foot Rule

CLB may adopt a resolution to forbid the sale within 300 feet of a residential dwelling, measured from building to building.

- Required for denial: residential dwelling owner must appear before the beer board and object in person
- Does not apply to permits issued prior to CLB adoption of this rule
- Does not apply to applications for a change in the licensee or permittee at such locations



Grandfather Provision

- Once a distance rule is adopted, it cannot be used as ground to revoke a permit where a church, school, or other place of public gathering is built **AFTER** a beer permit is issued.
- Permit can't be suspended, revoked, or denied for distance rule if a valid permit was issued to any business on that same location. T.C.A. § 57-5-109
- Provision does not apply if a six-month gap exists in beer sales at this location.

Restoring an Invalid Distance Rule

When a beer permit is issued in violation of an established distance rule, the rule becomes invalid and can no longer be used as basis for denying future permits. To avoid, carefully enforce distance rules.

Options for restoration:

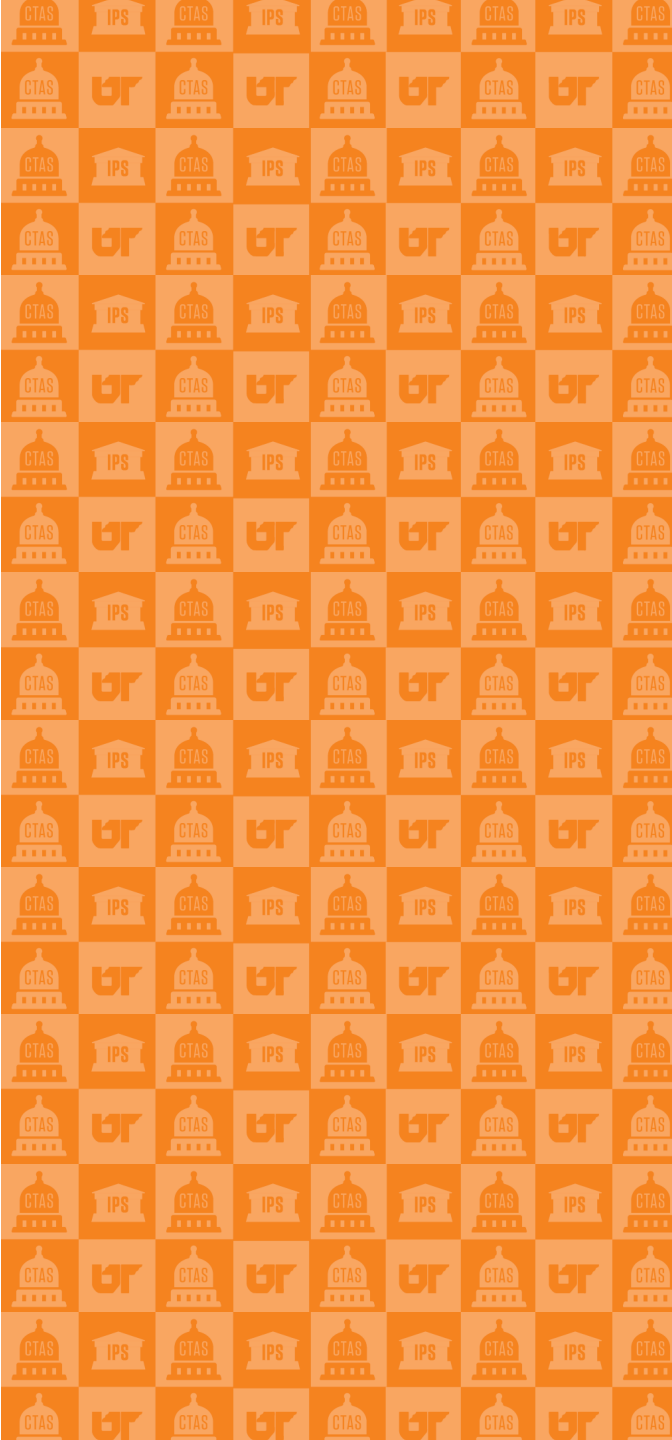
- Rescind the existing distance rule and establish a less restrictive rule
- Pass a new resolution reinstating the distance rule and any permit that was issued in violation of the distance rule must be eliminated by revocation or another method.



The Tennessee Responsible Vendor's Act



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TN Responsible Vendor's Act

- Administered by ABC
- Created for vendors who sell beer for off-premises consumption
- Help prevent the sale of beer to minors
- Purpose of the Act is to reduce intoxication and accidents, injuries, and deaths related to intoxication
- Voluntary
- Vendors who participate are entitled to reduced penalties

T.C.A. § 57-5-601 et seq.



Annual Fees for Responsible Vendors

- 0 - 15 certified clerks--\$ 25
- 16 - 49 certified clerks--\$ 75
- 50 - 100 certified clerks--\$150
- Over 100 certified clerks--\$250

T.C.A. § 57-5-609



Responsible Vendor Certification

Under T.C.A. § 57-5-606:

1. Clerks must complete training program.
2. Clerks must wear name badge at all times.
3. Instruction must be approved by the ABC and must include an explanation of laws related to off-premises consumption of beer.
4. Clerks must attend at least one annual meeting.
5. Vendor must maintain training and employment records.



Responsible Vendor Signage

Responsible vendors are required to post signs on their premises informing customers of their policy against selling beer to underage persons. These signs must be at least 8½" x 11" and must contain the following language: “STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.” T.C.A. § 57-5-301(a)(1).



Responsible Vendor and Beer Boards

- Beer Board must report sale of beer to minors to ABC within 15 days of finding the sale occurred
- Clerk's certification becomes invalid for one year
- Beer Board cannot suspend or revoke permit based on the sale of beer to a minor as long as the vendor and clerk were in compliance with the Act
- ABC will revoke vendor's certification if there are two or more violations in a 12-month period
- Penalties for violations are lower for responsible vendors



Responsible Vendor and Beer Boards

- Vendors not in compliance are subject to suspension and revocation, or alternatively a civil penalty not to exceed \$2,500 for each sale to a minor.
- Beer board is required to file an annual report to the ABC by February 1 each year. Report must include:
 - Number of permits issued;
 - Violations and whether vendor participated in the Responsible Vendors program;
 - Type of violations; and
 - Specific penalty imposed.



Revocation, Suspension, and Civil Penalties



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Revocation, Suspension, and Civil Penalties



Suspension, revocation, or civil penalties may be made for:

- A violation of any of the beer laws set out in Title 57, Chapter 5 or when it satisfactorily appears that the licensed premises are maintained and operated in a manner which is detrimental to public health, safety or morals. T.C.A. § 57-5-108(c).

Revocation, Suspension, and Civil Penalties

- A beer board may offer a civil penalty as an alternative to revocation or suspension:
 - \$2,500 for each offense involving a minor
 - \$1,000 for any other offense
 - \$1,500 for minor over 18 who produced ID and appeared to be of age. Alternatively, may suspend permit for 10 days.
 - If the permit holder and clerk are responsible vendors, may only impose a civil penalty of \$1,000
 - A permit holder has seven (7) days to pay the penalty



Other Rules – Revocation and Suspension

- May revoke or suspend a permit where a retailer has untaxed beer
- May revoke or suspend for failure to pay privilege tax
- If revoked, new beer permit cannot be issued to the same permit holder for one year
- Permanent revocation can only be imposed when a permit holder has at least two violations within a 12-month period
- Revocation and suspension must be based on facts



Hearings and Due Process

Before a beer permit can be revoked, a permit holder is entitled to:

1. Notice
2. An opportunity to be heard

Attorney General Opinion 94-064
(4/28/94).



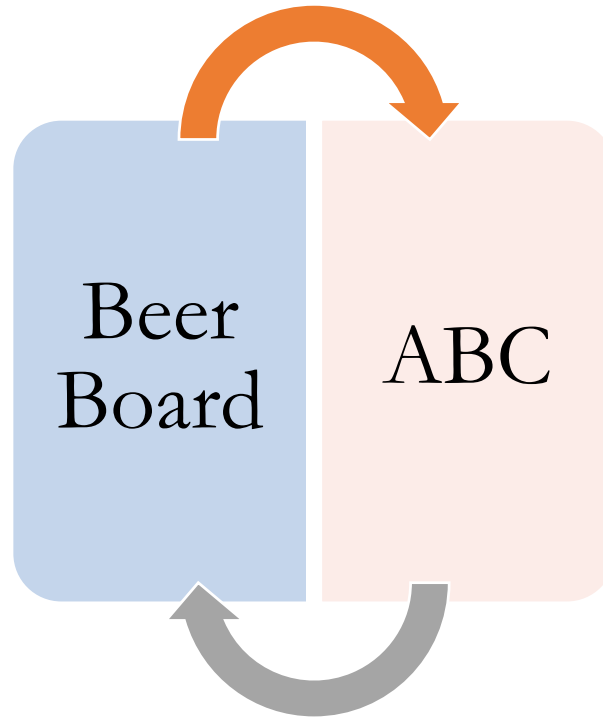
Reciprocal Notice Requirement

- Under T.C.A. § 57-1-214, if the local beer board revokes or suspends a beer permit at an establishment with a liquor license, the beer board must notify the ABC (and the ABC must notify the beer board if they revoke or suspend a liquor license).



Reciprocal Notice Requirement

If local beer board revokes or suspends a beer permit at an establishment with a liquor license, beer board must notify ABC



ABC must notify the beer board if they revoke or suspend a liquor license



THAT'S ALL!