

CHAPTER NO. 864

SENATE BILL NO. 3316

By Haynes, Ketron, Burks, Curtis S. Person, Jr., Bowers

Substituted for: House Bill No. 3210

By Moore, Sherry Jones, Marrero, Cobb, Eldridge, Rowe, Mike Turner, Strader, Maggart, Pruitt, Shaw, Hackworth, Langster, Harry Brooks, Fraley, DuBois, Mumpower

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15, Part 4 and Title 57, Chapter 5, relative to sale of beer for off-the-premises consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 5, is amended by adding Sections 2 through 10 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Responsible Vendor Act of 2006".

SECTION 3. It is the intent of the legislature through the provisions of this part:

(1) To eliminate the sale of beer for off-the-premises consumption to, and consumption of beer by, underage persons;

(2) To reduce intoxication and to reduce accidents, injuries, and deaths in the state which are related to intoxication;

(3) To encourage vendors to be prudent in their selling practices of beer and to restrict or reduce the sanctions that may be imposed in administrative proceedings by local beer boards against those vendors who voluntarily comply with responsible practices in accordance with this part; and

(4) To uniformly apply all provisions in this part statewide including training, certification and the imposition of penalties or other sanctions for violations of this part and that no variations from the provisions on training, certification or penalties is permissible.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Beer" has the same meaning as such word is defined in § 57-5-101(b);

(2) "Beer Board" means any entity issuing beer permits for off-premise consumption pursuant to § 57-5-101, et al.;

(3) "Certified Clerk" means a clerk who has successfully satisfied the training requirements contained in this part, and who has received certification from a Responsible Vendor Training Program;

(4) "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premise consumption;

(5) "Commission" means the Alcoholic Beverage Commission;

(6) "Responsible Vendor" means a vendor that has received certification from the commission pursuant to this part;

(7) "Responsible Vendor Training Program" means a training program related to the responsible sale of beer for off-premise consumption which has met all the statutory and regulatory requirements set forth herein and in commission rules and regulations; and

(8) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premise consumption.

SECTION 5. The commission shall have the authority to approve all responsible vendor training programs. The commission shall establish requirements and guidelines for responsible vendor training programs and vendor and clerk certifications. The commission shall establish and keep a master list of certified clerks and clerks not eligible for certification.

SECTION 6.

(a) A vendor who seeks certification as a responsible vendor must provide to the commission, pursuant to procedures adopted by the commission, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with such requirements, the commission shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year. Responsible vendors may have their own training programs certified, or send their employees to any training program certified by the commission.

(b) The commission shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The commission is hereby authorized to monitor and enforce compliance with this part. The commission may impose fines on responsible vendors whose training programs fail to satisfy or maintain the requirements of this part or commission rules. The commission may further impose fines on vendors who hold themselves out as being a "responsible vendor" when in fact they do not hold that status. The commission may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the commission.

SECTION 7.

In order to qualify for responsible vendor status, the vendor shall comply with the following requirements:

(1) (A) Require each and every clerk to successfully complete a responsible vendor training program within sixty-one (61) days of commencing employment whether the employment is for the first time, after re-hiring, or for a different responsible vendor. Responsible vendors must, prior to employing a clerk, verify with the commission that the clerk is eligible for certification;

(B) Each clerk must successfully complete the responsible vendor training program and after doing so, receive a certificate of completion from the program trainer in a format that is in accordance with rules promulgated by the commission. A clerk shall not be authorized to sell beer for off-premise consumption unless such clerk has successfully completed the responsible vendor training program and has received a certificate of completion or is within sixty-one (61) days of the date of hire. The original certificate of completion shall be maintained by the responsible vendor employing the clerk. The responsible vendor must provide the commission with the name(s) and other identifying information as required by the commission of certified clerks within twenty-one (21) days of the date of training; and

(C) Each clerk shall be issued a name badge by responsible vendor employer. The name badge must have the clerk's first and last name clearly visible. Clerks shall wear this name badge at all times during which they are on duty;

(2) Provide instruction for its employees approved by the commission which shall include the following:

(A) Laws regarding the sale of beer for off-premise consumption;

(B) Methods of recognizing and dealing with underage customers; and

(C) Procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers;

(3) Require all certified clerks to attend at least one annual meeting, at which the responsible vendor will disseminate updated information prescribed by the commission and the responsible vendors policies and procedures related thereto. In order for the clerk's certification to remain valid, the clerk must attend an annual meeting each year following his original certification and the responsible vendor must keep records thereof. Responsible vendors shall notify the commission if a certified clerk does not attend an annual meeting as required by this section. The commission may, at any time, require responsible vendors to disseminate to certified clerks information from the commission that is related to changes in state law or commission rules; and

(4) Maintain employment and all responsible vendor training records of all clerks.

SECTION 8.

If a beer board determines that a sale to a minor occurred by an off-premise beer permit holder, then the certification of the clerk making the sale shall be invalid and the clerk may not re-apply for a new certificate for a period of one year from the date of the beer board's determination. Beer boards shall report the names of such clerks to the commission within fifteen (15) days of finding that a sale to a minor occurred. The

commission will notify the responsible vendor of their certified clerks that have lost their certification within fifteen (15) days of notification by the beer board.

SECTION 9.

(a) A permit under this part may not be suspended or revoked by a beer board based on a clerk's illegal sale of beer to a minor person who is not of lawful drinking age if the clerk is properly certified and has attended annual meetings since the original certification or is within sixty-one (61) days of the date of hire at the time of such violation.

(b) Notwithstanding the provisions of subsection (a), the commission shall revoke the certification of a vendor certified as a responsible vendor if the vendor had knowledge of the violation or should have known about such violation, or participated in or committed such violation. If the commission revokes a vendor's certification under this section, such vendor shall be penalized for the violation by the beer board as if such vendor was not certified as a responsible vendor.

(c) Notwithstanding the provisions of subsection (a) or any other provision of law, the commission shall revoke the vendor's status as a certified responsible vendor if such vendor has two (2) violations within a twelve (12) month time period. Such revocation shall be for a period of three (3) years.

SECTION 10.

(a) Each entity submitting and receiving approval for a responsible vendor training program shall pay an annual non-refundable fee of thirty-five dollars (\$35.00). In addition, each responsible vendor shall pay an annual fee that is based on the number of certified clerks existing at the time a responsible vendor applies to the commission for certification. The fees shall be as follows:

0-15 certified clerks - \$25

16-49 certified clerks - \$75

50-100 certified clerks - \$150

Over 100 certified clerks - \$250

(b) Such fees shall be deposited by the commission in a special agency account to be known as the "responsible vendor certification fund", hereinafter referred to in this part as the "fund".

(c) Any fund balance remaining unexpended at the end of a fiscal year in the fund shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the commission.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

SECTION 11. Tennessee Code Annotated, Section 57-5-108(a), is amended by deleting such subsection in its entirety and substituting instead the following language:

(a)

(1) (A) A city, Class A county, or Class B county, or any committee, board, or commission created by such governmental bodies, shall not, pursuant to Section 9 of this act, revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor if the permit or license holder and the clerk making the sale have complied with the requirements of Section 7 of this act as a responsible vendor under this part, but may impose on such responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.

(B) The prohibition of subdivision(a)(1)(A) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under this part or to a participating vendor if the vendor or clerk making a sale to a minor fails to comply with the requirements of Section 7 of this act. With respect to such permit or license holder, such committee, board, or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed twenty-five hundred dollars (\$2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense.

(C) Permanent revocation of beer permits may only be applied when the permit holder has at least two (2) violations within a twelve (12) month time period.

Revocation of beer permits applies only to that permit holder (and/or agents thereof) at that location. Revocation of beer permits will not stay with the property if the property changes hands, nor may a city, Class A county or Class B county, or any committee, board or commission created by such governmental bodies, apply penalties, suspensions or revocations to other beer permits held by the permittee at other locations.

Revocation of a beer permit at one location should not be the sole disqualifying factor when considering the issuance of beer permits at other locations.

If, at any location that has been affected by permanent beer permit revocation, the property changes hands and no longer belongs to the permit

holder (and/or agents thereof), the new property owner may apply to the beer board for release of revocation.

(D) If a civil penalty is offered as an alternative to revocation or suspension, where allowed under this subsection, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to subsection (d).

(2) A city or county may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subdivision (a)(1), by a permit or license holder charged with a violation of this chapter, which payment shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city or county may impose.

SECTION 12. Tennessee Code Annotated, Section 57-5-301(a)(1), is amended by adding the following language after the first sentence:

Prior to making a sale of beer for off-premise consumption, the adult consumer must present to the permit holder or any employee thereof a valid, government-issued document, such as driver's license, or other form of identification deemed acceptable to the permit holder, which includes the photograph and birth date of the adult consumer attempting to make such purchase of beer. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-the-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee thereof. Responsible vendors must post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. Such signs shall be not less than 8-1/2" x 11" and contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER

The provisions of this section will sunset on July 1, 2008.

SECTION 13. Tennessee Code Annotated, Section 39-15-413, is amended by adding the following language as a new subsection as follows:

(d) (1) No prosecution for the violation of any statute prohibiting the sale of beer for off-premises consumption to a person under twenty-one (21) years of age, shall be commenced if such prosecution is based upon the use of a person under twenty-one (21) years of age as authorized by this section unless such person or the law enforcement officer supervising such person 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. All stings must be conducted in accordance to state law in order to be valid. In addition, within ten (10) days of the date such action occurred, the law enforcement officer shall notify the permit holder in writing either by mail or hand delivery indicating:

(A) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-the-premises consumption;

(B) The date and location of the action;

(C) The name of the permit holder and the employee from whom the beer was purchased or attempted to be purchased; and

(D) Whether the person was successful in making the purchase.

SECTION 14. For the purpose of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2007, the public welfare requiring it.

Passed: May 17, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2006


PHIL BREDESEN, GOVERNOR