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Summary and Recommendations: Alcohol Regulations and Taxes: Balancing the Interests of Businesses, State and Local Governments, and Public Health and Safety

Tennessee’s laws regulating and taxing the sale of alcoholic beverages—including beer, wine, and liquor—are a patchwork quilt stitched together over decades. The individual regulations and taxes—the quilt squares in this metaphor—don’t always seem to fit: they include a mixture of state and local oversight, taxes targeting some types of alcohol but not others, tax revenue earmarked for K-12 education, and regulations that could potentially raise prices that restaurants and other retailers pay for beer. Collectively, however, they tell the story of the state’s journey from Prohibition to the present.

Balance is one of the enduring themes in this story. Changes to the state’s alcohol regulations and taxes affect businesses’ profitability, state and local revenue, and—given the harmful effects of overconsumption—public health and safety. In response to these and other concerns, Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis, in the 112th General Assembly, requested the Commission study liquor-by-the-drink and similar taxes for on-premise consumption of alcohol; licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry; staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and other barriers to entry for such restaurants that may be minimized or mitigated, as identified by the Commission in conducting the study. The bill was taken off notice in the House of Representatives but passed in the Senate.

The General Assembly has already acted on one of the industry’s concerns, passing Public Chapter 355, Acts of 2023, which reduced restrictions in state law that keep some people from obtaining a server permit from the Tennessee Alcoholic Beverage Commission (TABC) because of previous convictions. The act reduced the number of years post-conviction during which the TABC would initially deny the permit, but applicants can still appeal permit denials as outlined in state law. Still, restaurant owners say that restrictions on server permitting prevent them from hiring otherwise qualified individuals as servers, and some in the industry argue for eliminating server permitting entirely. But TABC staff point out that server permits help to penalize servers that sell alcohol to minors because the TABC can suspend or revoke the permit of the server—the TABC suspended 22 server permits in fiscal year 2022-23 but did not revoke any. Balancing tradeoffs like those between the interests of local businesses and public safety remains a key component of any change to the state’s alcohol laws.

Based on interviews with stakeholders and a review of alcohol laws in Tennessee and other states, the Commission focused on whether policy changes are warranted in three specific areas:

- Liquor-by-the-drink taxes
- Licensing for restaurants that serve liquor, wine, and high-alcohol beer
- Tennessee's post-and-hold law for beer wholesalers

The Commission makes no recommendation for changes to the state's liquor-by-the-drink tax but does make recommendations for streamlining the liquor licensing process and for modifying or eliminating the state's post-and-hold requirements.

Tennessee's liquor-by-the-drink tax is the highest in the nation; lowering it could benefit restaurants but could also raise public health concerns and reduce funds used by local governments and K-12 education.

Tennessee's 15% liquor-by-the-drink tax applies to retail sales of spirits, wine, and high-alcohol beer for consumption on the premises. This is in addition to the state and local option sales taxes, which also apply to these sales. Although all 43 states with a state sales tax apply it or an equivalent to liquor-by-the-drink sales, Tennessee is one of only 10 that has an additional liquor-by-the-drink tax. And Tennessee's 15% liquor-by-the-drink tax rate is the highest of these 10 states, which have an average rate of about 10%. Restaurant owners say that Tennessee's liquor-by-the-drink tax rate decreases their sales because customers respond to the tax by consuming less alcohol. Research does support this claim and indicates that Tennessee's 15% liquor-by-the-drink tax decreases sales by approximately 7.5%.

But changing Tennessee's liquor-by-the-drink tax rate comes with tradeoffs for public health. Increasing the rate could improve public health and safety whereas a decrease could increase alcohol-related harms. According to the Centers for Disease Control (CDC), excessive drinking cost Tennessee \$4.7 billion in 2010, or \$738 per person, and each year in Tennessee, about 3,500 people die for alcohol-related reasons. According to the Tennessee Department of Health, each year about 65,000 people visit an emergency room for alcohol-related reasons. A review of 72 publications by the Task Force on Community Preventive Services found that they "provide consistent evidence that higher alcohol prices and alcohol taxes are associated with reductions in both excessive alcohol consumption and related, subsequent harms."

A decrease in the liquor-by-the-drink tax rate could also reduce state and local revenue, including revenue earmarked for K-12 education. Under state law, half of the liquor-by-the-drink tax is retained by the state and earmarked for K-12 education. The other half is distributed to local governments based on location (situs), with 50% of that earmarked for K-12 education and 50% available for unrestricted use.

Eliminating the liquor-by-the-drink tax in favor of applying only the sales tax, as is the case in most states, could decrease state and local revenue combined by nearly \$200 million per year (\$100 million each)—the tax brought in \$187 million in fiscal year 2021-22 and has been rising steadily. But it could likely increase liquor-by-the-drink sales in restaurants by the aforementioned 7.5%—an approximately \$94 million increase in sales revenue for these businesses. The increase in sales revenue would increase state and local sales tax revenue by approximately \$7 million and \$2 million respectively, partially offsetting the decrease in liquor-by-the-drink tax revenue. The estimated increase in alcohol sales resulting from eliminating the liquor-by-the-drink tax, however, could also increase health problems—an estimated 52 additional deaths statewide per year and nearly 1,000 additional emergency room visits. See table 1.

If instead the state were to decrease the liquor-by-the-drink tax rate from 15% to 10%—roughly equal to the average of other states with a liquor-by-the-drink tax—state and local revenue from the liquor-by-the-drink tax could decrease by an estimated \$59 million combined annually (\$30 million each). Restaurant sales revenue, conversely, could increase an estimated \$31 million, and state and local sales tax revenue by an estimated \$2.2 million and \$780,000, respectively. Health problems could still increase but not by as much as eliminating the tax entirely. A decrease from 15% to 14% would have even smaller effects. Because of data limitations, Commission staff were unable to estimate the effects of exempting wine from the LBD tax on revenue, health, and safety. See table 1.

Table 1. Estimated Annual Effects of Decreasing in Liquor-by-the-drink (LBD) Tax Rate

	Eliminate 15% LBD Tax	15% to 10%	15% to 14%
Change in LBD Sales Revenue	\$ 93,584,281	\$ 31,194,760	\$ 6,238,952
Change in LBD Tax Revenue	\$ (187,168,561)	\$ (59,270,044)	\$ (11,854,009)
Change State Sales Tax Revenue	\$ 6,550,900	\$ 2,183,633	\$ 436,727
Change Local Sales Tax Revenue at 2.5%	\$ 2,339,607	\$ 779,869	\$ 155,974
Change in Alcohol-Related Emergency Department Visits	974	325	65
Change in Alcohol-Related Deaths	52	17	3

Sources: Tennessee Department of Revenue for Fiscal Year 2021-22 LBD tax revenue of \$187,168,561; Commission staff calculations are based on \$1,247,790,407 LBD sales revenue (\$187,168,561 divided by 15%), LBD sales price elasticity of -0.5 (Nelson 2013), 64,903 alcohol related-emergency department visits in 2020 (Tennessee Department of Health), average alcohol-attributable deaths from 2015 to 2019 of 3,493 per year (Centers for Disease Control), and 20% percent of alcohol sales are on-premise sales (International Wine & Spirit Research).

The state continues to streamline the licensing and permitting process for sellers of liquor, wine, and high-alcohol beer by the drink.

The TABC licenses businesses that sell liquor, wine, and high-alcohol beer by the drink, and 4,388 restaurants had liquor licenses in June 2022. Restaurant owners who want to apply for a liquor license provide several documents that are needed for their application, for example, health inspection reports and certificates of occupancy and use.

The TABC improved the liquor licensing process when, in 2018, they implemented an online portal for liquor license applications. According to the TABC, the online portal has eliminated paperwork and reduced processing time by approximately four weeks, turning what was a six-week process into a two-week process.

Still, restaurateurs say that further improvements are possible. For example, restaurants must have a certificate of occupancy and use from the city or county in which they are located before they can open for business, and generally, restaurant owners want to open as soon as possible after receiving the certificate. But an occupancy and use certificate is also necessary for receiving a liquor license from the TABC. Any delay between when a restaurant receives its permanent permit and when the TABC processes its liquor license

application can either delay the restaurant's opening or result in it not being able to sell liquor when it opens. In either case, the restaurateur loses money.

The TABC, however, already has a workaround for this issue: it accepts temporary occupancy and use certificates for liquor license applications. Currently, the TABC's application forms don't clarify this for applicants, and anecdotally, some restaurant owners are unaware of the TABC's policy of accepting temporary certificates. Restaurant owners say it would help if the TABC were to clarify on its application forms that temporary occupancy and use permits are accepted in lieu of permanent occupancy and use permits.

Increasing automation of the application process can also make applying for a liquor license easier. The TABC, for example, already automatically receives several supporting documents for liquor license applicants from the Tennessee Department of Revenue. According to staff with the Tennessee Department of Finance and Administration's Office of Strategic Technology Services (STS)—which serves as the state's central information technology service bureau for state departments including the TABC—additional automation could be carried out at no cost to the TABC using existing funding from the American Rescue Plan Act. STS staff said that health inspection verification from the Tennessee Department of Health, which the TABC requires applicants to provide, may also be a good candidate for automation. But according to STS staff, other possibilities—for example having local governments automatically report business registrations to the TABC on behalf of applicants—would be a lower priority because they would involve local government computer systems.

Given that the TABC requires businesses to obtain several documents from federal, state, and local agencies to apply for their liquor license, clarifying on the application which documents are accepted could reduce the cost and time for businesses to apply. Moreover, automating parts of the liquor licensing applications could further speed up the process for applicants. For these reasons, **the Commission recommends both that the Tennessee Alcohol Beverage Commission inform applicants it accepts temporary occupancy and use permits for liquor license applications and that Strategic Technology Solutions continue to investigate automating parts of the liquor licensing application process.**

Tennessee's post-and-hold law for beer may no longer be needed.

Under Tennessee's post-and-hold law, wholesalers are required to report their prices to the Tennessee Department of Revenue, which makes these posted prices available to the public, including rival wholesalers, upon request. Wholesalers may not reduce the prices

for 360 days following a price increase and any price decrease must remain in effect for at least 360 days. A representative of beer wholesalers said that Tennessee's post-and-hold law prevents discounting and likely curtails consumption. Under other Tennessee laws, restaurants and other retailers are, with limited exceptions, prohibited from bypassing wholesalers. And, together with the post-and-hold law, this means the prices that restaurants and other retailers pay for beer are potentially higher than they would otherwise be if wholesalers did not have access to their competitors' pricing.

The post-and-hold law was enacted in 1969 to help reduce tax avoidance, but the law no longer serves this purpose. When the law was enacted, the state's wholesale beer tax was calculated as a percentage of sales price, and wholesalers were accused of temporarily decreasing prices to reduce the amount of tax owed. Post-and-hold's supporters argued it would help eliminate this practice and stabilize tax collections. But the 17% tax was changed to a volume-based tax in 2013 (\$35.60 per barrel), meaning that prices are no longer used to calculate the amount of wholesale beer tax owed. As a result, post-and-hold's stated purpose no longer exists.

Research indicates that repealing Tennessee's post-and-hold law wouldn't increase alcohol-related harm because, unlike liquor-by-the-drink taxes, post-and-hold laws don't necessarily affect the overall amount of alcohol that individuals consume. Instead, because post-and-hold laws tend to increase prices more for higher quality products than they do for lower quality products, they tend to cause consumers to switch to lower quality products. Post-and-hold laws, therefore, aren't particularly effective at incentivizing drinkers to moderate their consumption of alcohol, and at 360 days, Tennessee's hold period is longer than in other states (Georgia and Idaho have the second longest hold period at 180 days).

Because modifying or even eliminating Tennessee's post-and-hold law is unlikely to lead to a spike in alcohol consumption and related harms and because the law no longer serves its stated purpose related to tax avoidance, **the Commission recommends that the General Assembly either repeal the post-and-hold requirement in state law or, alternatively, reduce the hold period from 360 days to 180 days or less to align Tennessee with other states that have post-and-hold requirements.**

Analysis: Alcohol Regulations and Taxes: Balancing the Interests of Businesses, State and Local Governments, and Public Health and Safety

Balancing alcohol regulation in Tennessee with the interests of the hospitality industry poses a complex challenge, requiring careful consideration of public health concerns and potential avenues for change. Tennessee's regulations and taxes on alcohol sales are intricate and multifaceted and include a mixture of state and local oversight, taxes that target specific types of alcohol but not others, and tax revenue earmarked for elementary and secondary education (K-12) education. Although changes to the state's alcohol regulations and taxes may affect businesses' profitability, their primary objective is to achieve a balance between the needs of businesses, state and local revenue generation, and public health and safety.

Responding to concerns from the restaurant industry that several aspects of the current regulatory and tax structure are out of balance, Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis, in the 112th General Assembly, which was taken off notice in the House of Representatives but passed in the Senate, requested the Commission study

- liquor-by-the-drink and similar taxes for on-premise consumption of alcoholic beverages and beer;
- licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry;
- staffing challenges with respect to server permits, wages, and applicable training necessary to operate the restaurants; and
- other barriers to entry for restaurants that may be minimized or mitigated, as identified by the Commission in conducting the study (see appendix A).

Additionally, during discussions with stakeholders, they expressed concerns that some of the regulations on beer wholesalers no longer serve their initial purpose and could be eliminated or modified.

Tennessee's liquor-by-the-drink tax is the highest of the ten states that levy one.

Tennessee has a 15% liquor-by-the-drink (LBD) tax that applies to retail sales of spirits, wine, and high-alcohol beer — beer with more than 8% alcohol content by weight — for on-

premise consumption.¹ Of the 10 states with an LBD tax, Tennessee’s 15% LBD tax is the highest, and the average of these states is about 10%.² Eight of the 10 states, including Tennessee, also apply sales tax to LBD sales, and two states do not.³ See table 2 and appendix B.

Table 2. States with Liquor-by-the-drink Taxes

States that apply Sales Tax to LBD Sales	LBD Tax Rate	Sales Tax Rate	States that do not apply Sales Tax to LBD Sales	LBD Tax Rate
Tennessee	15.00%	7.00%	Kansas	10.00%
Arkansas	14.00%	6.50%	North Dakota	7.00%
Washington	13.70%	6.50%		
Oklahoma	13.50%	4.50%		
Vermont	10.00%	6.00%		
Texas	8.25%	6.70%		
Maine	8.00%	5.50%		
South Carolina	5.00%	6.00%		

Source: Federation of Tax Administrators 2022a; Federation of Tax Administrators 2022b; and Commission staff review of states’ laws. See appendix B.

The 10 states with a LBD tax vary in which types of alcohol they apply it to. Four states apply their LBD tax to spirits, wine, and beer.⁴ Three states, including Tennessee, exempt low alcohol beer.⁵ For Tennessee, low alcohol beer is defined as less than 8% alcohol by weight.⁶ Arkansas exempts some wine and all beer, while Maine and Washington

¹ Tennessee Code Annotated, Section 57-4-301(c)(1). In addition to sales and liquor-by-the-drink taxes, restaurants are also subject to taxes that other businesses are commonly required to pay, including property, business, and franchise and excise taxes, if applicable. See appendix C.

² Commission staff analysis based on Federation of Tax Administrators 2022a and Federation of Tax Administrators 2022b.

³ Federation of Tax Administrators 2022a; and Federation of Tax Administrators 2022b.

⁴ North Dakota, Oklahoma, South Carolina, and Texas.

⁵ Kansas, Tennessee, and Vermont.

⁶ Tennessee Code Annotated, Section 57-5-101(b).

exempt all wine and beer.⁷ For the remaining 40 states, 33 apply their sales tax to LBD sales but have no additional LBD tax, Kansas and North Dakota have an LBD tax, but do not apply their sales tax to LBD sales, and five states do not have a state sales tax or an additional LBD tax.⁸ See table 3 and appendix B.

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⁷ Arkansas Code Annotated, Section 3-9-213; Maine Revised Statutes, Section 36-1811(D)(2); and Washington Revised Code Annotated, Section 82.08.150.

⁸ Federation of Tax Administrators 2022a; and Federation of Tax Administrators 2022b.

Table 3. Liquor-by-the-drink and Sales Tax by State

		State Has a Liquor-by-the-drink Tax	
		Yes	No
State Sales Tax Applies to Liquor-by-the-drink Sales	Yes	<p>8 States</p> <p>Arkansas, Maine, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Washington</p>	<p>33 States</p> <p>Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, West Virginia, Wisconsin, Wyoming</p>
	No	<p>2 States</p> <p>Kansas, North Dakota</p>	<p>2 States</p> <p>Massachusetts, Minnesota</p>
No State Sales Tax			<p>5 States</p> <p>Alaska, Delaware, Montana, New Hampshire, Oregon</p>

Source: Federation of Tax Administrators 2022a and Federation of Tax Administrators 2022b.

Restaurant owners say that they sell less liquor-by-the-drink because of Tennessee’s high LBD tax rate because customers respond to the tax by purchasing less alcohol.⁹ For example, customers may substitute purchases of alcohol from restaurants with purchases from retail stores where the LBD tax does not apply.¹⁰ Research supports restaurant owners’ claims, indicating that Tennessee’s 15% LBD tax decreases restaurant alcohol sales by approximately 7.5%.¹¹

Changes to Tennessee’s liquor-by-the-drink tax rate affect state and local revenue and public health.

Tennessee’s liquor-by-the-drink tax rate comes with various tradeoffs for state and local revenue and public health. Under state law, half of the overall LBD tax is retained by the state and earmarked for K-12 education.¹² The other half is distributed to local governments based on location (situs), with 50% of it earmarked for K-12 education and 50% available for unrestricted use.¹³ The share of LBD tax revenue distributed to local governments is highly concentrated, with just a few cities and counties receiving a majority of the funds. Nearly half of the tax revenue that is reapportioned to local governments was distributed to Nashville-Davidson in fiscal year 2021-22.¹⁴ Most of the remaining amount was distributed to Memphis, Knoxville, Chattanooga, and Franklin.¹⁵ See figure 1.

⁹ Email from Senator Richard Briggs, August 11, 2022.

¹⁰ Email from Senator Richard Briggs, August 11, 2022; and Tennessee Code Annotated, Section 57-4-101 et seq.

¹¹ Wagenaar, Salois, and Komro 2009; and Nelson 2013.

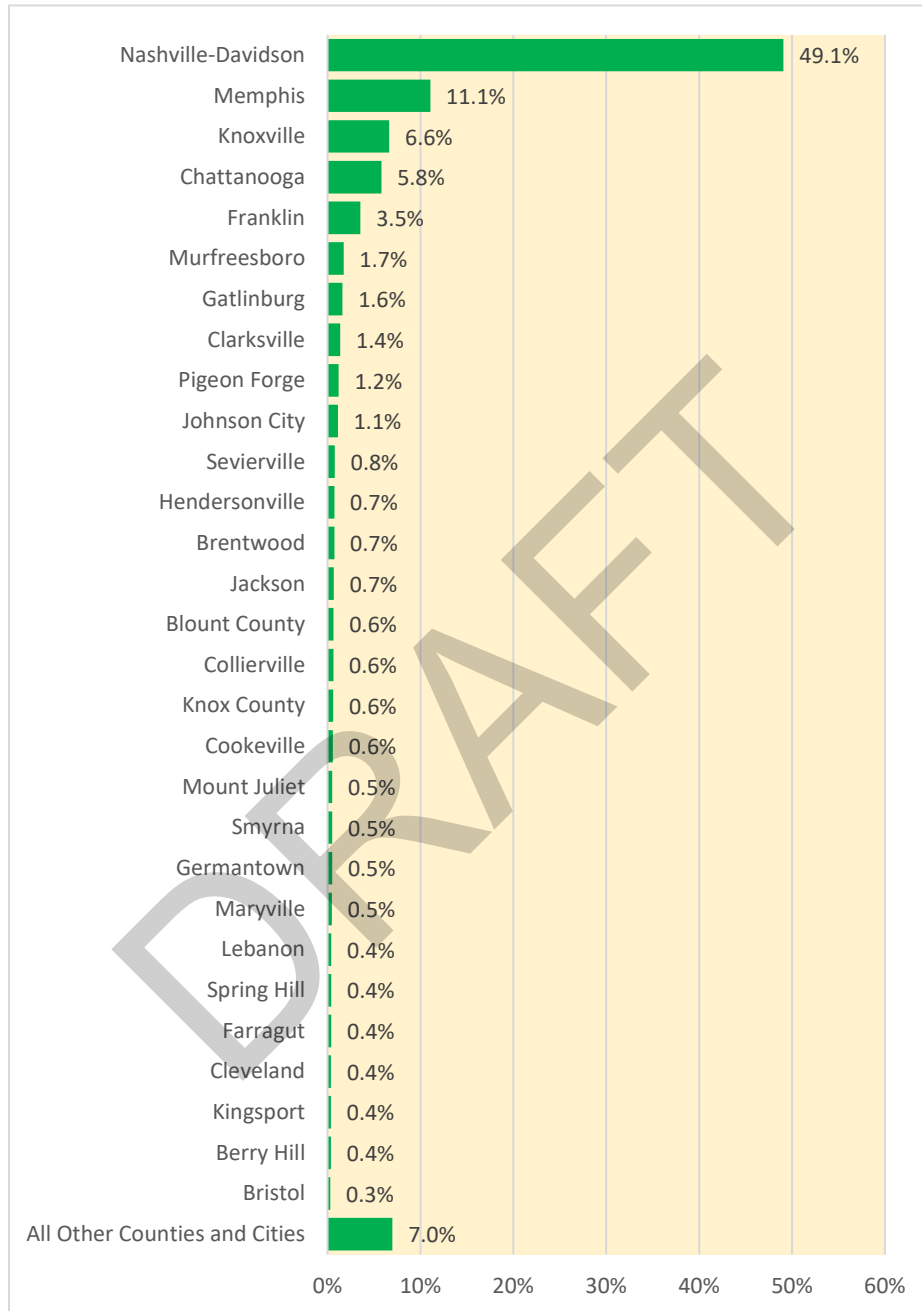
¹² Tennessee Code Annotated, Section 57-4-306(a).

¹³ Tennessee Code Annotated, Section 57-4-306(b); David Connor, executive director, Tennessee County Services Association, TACIR Commission meeting, June 29, 2023; and Tennessee Advisory Commission on Intergovernmental Relations 2020.

¹⁴ Tennessee Code Annotated, Section 57-4-306; Tennessee Comptroller of the Treasury 2022a; and Tennessee Comptroller of the Treasury 2022b.

¹⁵ Ibid.

Figure 1. Percent of Total Liquor-by-the-drink Tax Revenue Distributed to Local Governments in Tennessee Fiscal Year 2021-22



Source: Tennessee Comptroller of the Treasury 2022a; and Tennessee Comptroller of the Treasury 2022b.

An increase in the LBD tax could improve public health and safety whereas a decrease in the LBD tax rate could increase alcohol-related harms. According to the Centers for Disease Control (CDC), in 2010 excessive drinking cost Tennessee \$4.7 billion or \$738 per person in workplace productivity, health care expenses, criminal justice expenses, motor vehicle crash costs, and property damage.¹⁶ Each year in Tennessee, excessive drinking is responsible for more than 3,000 deaths.¹⁷ According to the Tennessee Department of Health, from 2016 to 2020 approximately 65,000 people per year were discharged from an emergency room after visiting because of alcohol-related disorders, abuse, or dependency.¹⁸ The CDC's Task Force on Community Preventive Services reviewed 72 publications and concluded that they "provide consistent evidence that higher alcohol prices and alcohol taxes are associated with reductions in both excessive alcohol consumption and related, subsequent harms."¹⁹ Later research found that "increasing the price of alcohol through alcohol excise taxes is an effective means of reducing excessive drinking, and is considered the most important public health intervention to reduce alcohol-related harms."²⁰ Another analysis found that "a large literature establishes that beverage alcohol prices and taxes are related inversely to drinking. Effects are large compared to other prevention policies and programs. Public policies that raise prices of alcohol are an effective means to reduce drinking."²¹

A decrease in the LBD tax rate would likely reduce state and local revenue from the tax, most of which is earmarked for K-12 education. Decreasing the LBD tax would likely increase LBD sales in restaurants by the aforementioned 7.5%—an approximate \$93.6 million increase in sales revenue for these businesses. The increase in sales revenue would partially offset the decrease in LBD tax revenue, with an estimated \$6.6 million in state and \$2.3 million increase in local sales tax revenue, though the LBD and sales taxes are distributed differently. The estimated increase in alcohol sales resulting from eliminating the liquor-by-the-drink tax, however, could also increase health problems—an estimated 52 additional deaths statewide per year and nearly 1,000 additional emergency room visits. See table 1.

¹⁶ Sacks et al. 2015.

¹⁷ Centers for Disease Control and Prevention 2022.

¹⁸ Kakoti 2022.

¹⁹ Elder et al. 2010.

²⁰ Daley et al. 2012.

²¹ Wagenaar, Salois, and Komro 2009.

If instead the state were to decrease the liquor-by-the-drink tax rate from 15% to 10%—roughly equal to the average of other states with a liquor-by-the-drink tax—state and local revenue from the liquor-by-the-drink tax could decrease by an estimated \$59.3 million combined annually (\$29.6 million each). Restaurant sales revenue, conversely, could increase an estimated \$31.2 million, and state and local sales tax revenue by an estimated \$2.2 million and \$779,869, respectively. Health problems could still increase but not by as much as eliminating the tax entirely. A decrease from 15% to 14% would have even smaller effects. Eliminating the tax in favor of only applying the sales tax, as is the case in most states, would decrease state and local revenue combined by nearly \$200 million per year (\$100 million each). Because of data limitations, Commission staff were unable to estimate the effect of exempting wine from the LBD tax on revenue, health, and safety. See table 1.

Table 1 (reposted). Estimated Annual Effects of Decreasing the Liquor-by-the-drink (LBD) Tax Rate

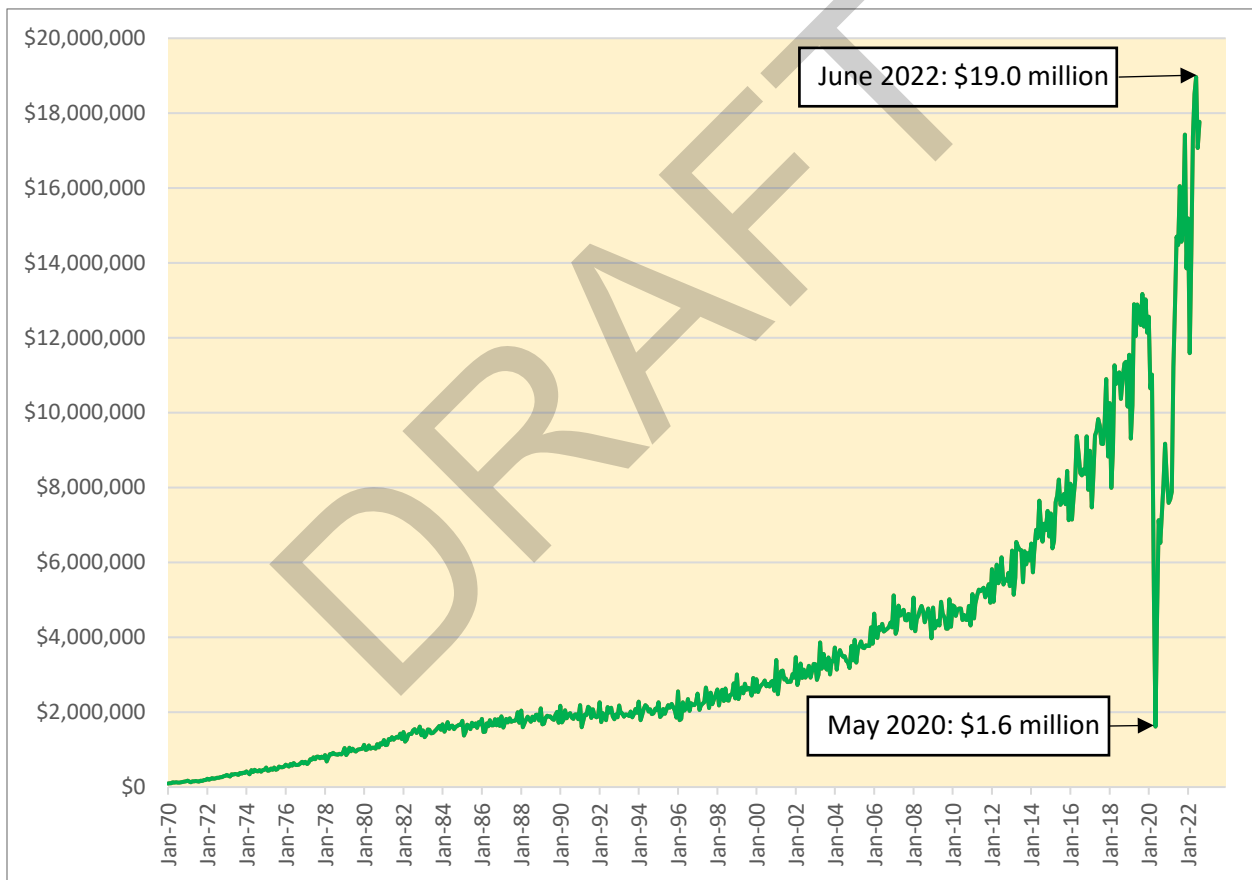
	Eliminate 15% LBD Tax	15% to 10%	15% to 14%
Increase in LBD Sales Revenue	\$ 93,584,281	\$ 31,194,760	\$ 6,238,952
Decrease in LBD Tax Revenue	\$ (187,168,561)	\$ (59,270,044)	\$ (11,854,009)
Increase in State Sales Tax Revenue	\$ 6,550,900	\$ 2,183,633	\$ 436,727
Decrease in Local Sales Tax Revenue at 2.5%	\$ 2,339,607	\$ 779,869	\$ 155,974
Increase in Alcohol-Related Emergency Department Visits	974	325	65
Increase in Alcohol-Related Deaths	52	17	3

Sources: Tennessee Department of Revenue “Liquor-By-The-Drink Revenue Collection by Counties Per Fiscal Year” for Fiscal Year 2021-22; LBD tax revenue of \$187,168,561; Commission staff calculations are based \$1,247,790,407 LBD sales revenue (\$187,168,561 divided by 15%); LBD sales price elasticity of -0.5 (Nelson 2013), 64,903 alcohol related-emergency department visits in 2020 (Kakoti 2022), average alcohol-attributable deaths from 2015 to 2019 of 3,493 per year (Centers for Disease Control and Prevention 2022), and 20% percent of alcohol sales are on-premise sales (International Wine & Spirit Research “US Channel Split Will Likely Be Permanently Impacted by Covid-19”).

Liquor-by-the-Drink tax revenue and alcohol consumption continue to increase in Tennessee while regulations have relaxed.

From fiscal year 2020-21 to fiscal year 2021-22, LBD tax revenue increased from \$108.5 million to \$187.2 million as LBD sales recovered from the COVID-19 pandemic.²² LBD sales peaked in February 2020 as the COVID-19 pandemic began, falling shortly after in May 2020, but have since rebounded far beyond pre-pandemic levels. From the pandemic’s lowest point in May 2020 to June 2022, monthly LBD revenue increased from \$1.6 million to \$19.0 million.²³ See figure 2.

**Figure 2. Monthly Liquor-by-the-Drink Tax Revenue in Tennessee
January 1970 to July 2022**



²² Tennessee Department of Revenue “Liquor-By-The-Drink Revenue Collection by Counties Per Fiscal Year.”

²³ Email from Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, October 12, 2022.

Source: Email from Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, October 12, 2022.

Allowing carry-out alcohol sales may have contributed to the rebound. During the COVID-19 pandemic, 34 states, including Tennessee, relaxed their alcohol regulations to allow bars and restaurants to sell carry-out alcoholic beverages.²⁴ In March 2020, Governor Lee issued Executive Order No. 17 to, “mitigate the spread of COVID-19 by . . . allowing restaurants to sell for take-out or delivery alcoholic beverages or beer.” Although the LBD tax was not initially applied to these sales, Public Chapter 451, Acts of 2021, applied the tax to carry-out alcoholic beverage sales and set July 1, 2023, as the date when carry-out sales were no longer allowed. Of the 34 states that allowed these sales, 22 states, not including Tennessee, have made these laws permanent.²⁵ Senate Bill 438 by Senator Niceley, House Bill 624 by Representative Jernigan (2023), would have authorized carry-out sales after July 1, 2023, but the bill did not pass.

In 2021, Tennesseans’ per capita (population aged 21 or older, the legal drinking age) alcohol consumption was the highest since at least 1970.²⁶ More recently, per capita alcohol consumption has been trending upward, from 2.07 to 2.71 gallons per year from 2009 to 2021.²⁷ As of 2021, Tennessee’s per capita alcohol consumption (2.71 gallons) remains less than that of the United States (2.82 gallons), but the gap has narrowed. See figure 3.

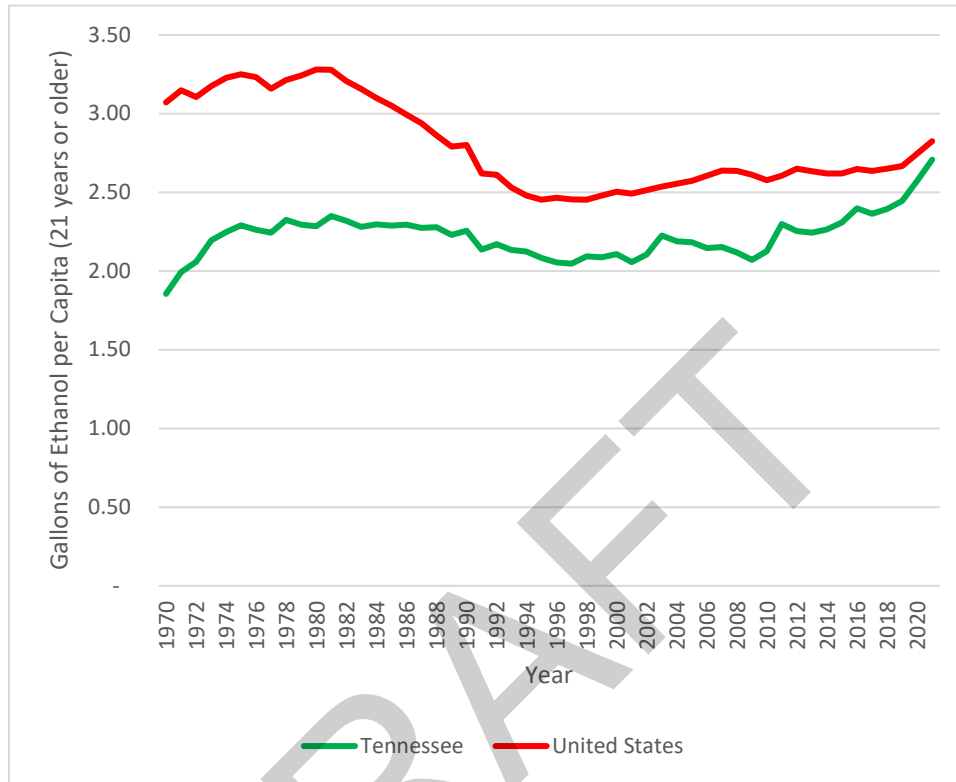
²⁴ Ward 2022.

²⁵ Chacko 2023.

²⁶ ‘Per capita alcohol consumption’ is calculated as apparent per capita consumption which is estimated based on the reported volumes of alcoholic beverages released to the market for sale. See Slater and Alpert 2023.

²⁷ Slater and Alpert 2023.

Figure 3. United States and Tennessee Gallons of Ethanol (i.e., Drinking Alcohol) Consumption per Capita (21 years or older) by Year 1970 to 2021



Source: Slater and Alpert 2023.

The rise in per capita alcohol consumption among those 21 and over may have resulted from relaxed regulations in Tennessee and across the country.²⁸ Since 2009, per capita wine and spirits consumption in Tennessee increased by 68% and 84%, respectively, while per capita beer consumption decreased by 5%.²⁹ Public Chapter 348, Acts of 2009, allowed the shipment of wine directly from wineries to consumers, and from 2009 to 2011 per capita wine consumption increased by 18%.³⁰ Public Chapter 1133, Acts of 2010,

²⁸ Tourism and in-migration may have also contributed. Interview with Cassandra Tourre, director of public policy, National Alcohol Beverage Control Association, November 14, 2022; interview with Pamela Erickson, president/CEO, Public Action Management; December 7, 2022; interview with Ryan Haynes, executive director, Tennessee Wine and Spirits Association, January 17, 2023; and interview with Greg Adkins, president and CEO, Beverage Association of Tennessee, January 19, 2023.

²⁹ Slater and Alpert 2023.

³⁰ Ibid.

authorized the sale of wine and liquor in bars with food sales that are less than 50% of total sales. Previously, alcohol sales could not exceed 50% of total sales. Per capita spirits sales increased by 70% from 2010 to 2021.³¹ After the General Assembly enacted Public Chapter 554, Acts of 2014, to allow grocery stores to sell wine in counties or cities that authorize it by referendum, per capita wine consumption increased by 22% from 2015 to 2016 and an additional 7% from 2016 to 2021.³² See appendix D for a list of cities that have authorized wine sales in grocery stores. Although increases in alcohol consumption are generally related to increases in alcohol-related harms, research suggests that allowing wine in grocery stores does not lead to more traffic fatalities.³³

Some stakeholders have suggested removing wine from the LBD tax because its alcohol content is lower than for spirits.³⁴ At 13%, wine's average alcohol content by volume is less than for spirits (41%), but higher than for beer (5%).³⁵ Beer with less than 8% alcohol content by weight (10.1% by volume) is not subject to LBD tax.³⁶ In 2014, the General Assembly increased the percentage from 5% (6.3% by volume) to help craft brewers whose beer tends to have greater alcohol content.³⁷ See figure 4.

³¹ Slater and Alpert 2023.

³² Commission staff analysis based on Slater and Alpert 2023.

³³ Wihbey 2013.

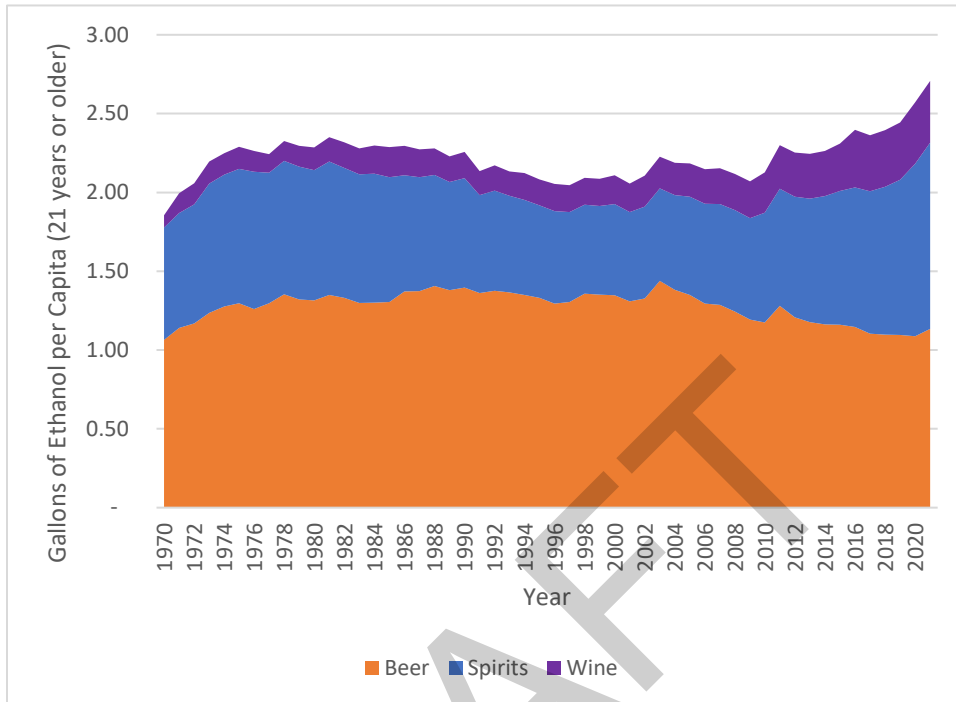
³⁴ Email from Senator Richard Briggs, August 11, 2022. As mentioned previously, Arkansas exempts some wine and all beer, while Maine and Washington exempt all wine.

³⁵ Slater and Alpert 2023.

³⁶ Tennessee Code Annotated, Sections 57-4-102(1) and 57-5-101.

³⁷ Public Chapter 861, Acts of 2014; interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022; and Hardnett 2017.

Figure 4. Tennessee Gallons of Ethanol (i.e., Drinking Alcohol) Consumption per Capita (21 years or older) by Year 1970 to 2021



Source: Slater and Alpert 2023.

The Tennessee Alcoholic Beverage Commission continues to streamline the licensing and permitting process for sellers of liquor, wine, and high-alcohol beer by the drink.

To sell liquor, wine, and high-alcohol beer by the drink in Tennessee, businesses are required to obtain a license from the TABC under state law, and 4,388 business locations had liquor licenses, as of June 2022.³⁸ Restaurant owners who want to apply for a liquor

³⁸ Tennessee Code Annotated, Sections 57-4-102(1), 57-4-201, 57-5-101(b); and Tennessee Department of Revenue 2022a.

license must pay an application fee of \$300,³⁹ post a bond with the Department of Revenue,⁴⁰ and provide several documents for their application (see appendix E).⁴¹

The TABC improved the liquor licensing process when, in 2018, they launched their Regulatory Licensing and Permitting System (RLPS) which allows applicants to apply for a liquor license online.⁴² According to TABC staff, the online portal has eliminated paperwork and reduced processing time by approximately four weeks, turning what was a six-week process into a two-week process.⁴³ Previously, applicants had to take applications, in duplicate, to one of the TABC's four offices.⁴⁴ Still, restaurant owners say that additional improvements in the application process are possible, for example, clarifying the requirement for a certificate of occupancy and use and further automating the application process.

Restaurant owners want the TABC to clarify the certificate of occupancy and use requirement in the application process.

Restaurants must have a certificate of occupancy and use from the city or county in which they are located before they can open for business,⁴⁵ and an occupancy and use certificate

³⁹ Tennessee Code Annotated, Sections 57-4-201(b)(1), 57-4-301(b)(1); and interview with Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, October 13, 2022.

⁴⁰ Tennessee Department of Revenue 2022b. For restaurants (other than wine-only establishments) the initial security is \$10,000.

⁴¹ Tennessee Alcoholic Beverage Commission "Required Documents for the TABC Regulatory Licensing and Permitting System"; Rules of Tennessee Alcoholic Beverage Commission, Chapter 100-01, Rules for The Sale of Liquor by The Drink, Section 3; and Tennessee Code Annotated, Section 57-4-201.

⁴² Tennessee Alcoholic Beverage Commission. "Regulatory Licensing and Permitting System (RLPS)."

⁴³ Email with Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, May 2, 2023.

⁴⁴ Tennessee Alcoholic Beverage Commission, Chapter 100-01 Rules for The Sale of Liquor by The Drink, Section 3-22(a); and interview with Michael Miller, restaurant owner and president, Memphis Restaurant Association, Sandy Robertson, restaurant owner, Automatic Slim's, Brian Yoakum, shareholder, Evans Petree, P.C., Shawn Danko, restaurant owner and board of directors' chair, Hospitality Tennessee, and Alex Boggs, communications officer, Memphis Restaurant Association, March 21, 2023.

⁴⁵ City of Lebanon Tennessee "Business Tax Division."; and interview with Michael Miller, restaurant owner and president, Memphis Restaurant Association, Sandy Robertson, restaurant owner, Automatic Slim's, Brian Yoakum, shareholder, Evans Petree, P.C., Shawn Danko, restaurant owner and board of directors' chair, Hospitality Tennessee, and Alex Boggs, communications officer, Memphis Restaurant Association, March 21, 2023.

is also necessary for receiving a liquor license from the TABC.⁴⁶ Any delay between when a restaurant receives its permanent certificate of occupancy and use and when the TABC processes its liquor license application can either delay the restaurant's opening or result in it not being able to sell liquor when it opens.

The TABC already has a workaround for this issue: it accepts temporary occupancy and use certificates for liquor license applications.⁴⁷ Experienced restaurant owners interviewed by Commission staff knew about the TABC's policy of accepting temporary certificates, but, anecdotally, some restaurant owners are unaware.⁴⁸ Currently, the TABC's application forms don't clarify this for applicants.⁴⁹ The TABC's "Application Process for On-premise Consumption Licenses," lists "Current Certificate of Occupancy" as the required document.⁵⁰

Restaurant owners say it would help for the TABC to clarify on its application that temporary certificates of occupancy and use are accepted in lieu of permanent certificates of occupancy and use.⁵¹ Businesses are required to have their permanent certificate of occupancy and use before they open for business.⁵² A temporary certificate of occupancy and use allows applicants to submit their liquor license application in advance and obtain their license prior to opening.

⁴⁶ Rules of Tennessee Alcoholic Beverage Commission, Chapter 100-01 Rules for The Sale of Liquor by The Drink, Section 3-22(a).

⁴⁷ Email with Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, March 27, 2023; and interview with Rob Pinson, law partner, Adams and Reese LLP, May 2, 2023.

⁴⁸ Interview with Michael Miller, restaurant owner and president, Memphis Restaurant Association, Sandy Robertson, restaurant owner, Automatic Slim's, Brian Yoakum, shareholder, Evans Petree, P.C., Shawn Danko, restaurant owner and board of directors' chair, Hospitality Tennessee, and Alex Boggs, communications officer, Memphis Restaurant Association, March 21, 2023.

⁴⁹ Ibid.

⁵⁰ Rules of Tennessee Alcoholic Beverage Commission, Chapter 100-01 Rules for The Sale of Liquor by The Drink, Section 3-22(a).

⁵¹ Interview with Michael Miller, restaurant owner and president, Memphis Restaurant Association, Sandy Robertson, restaurant owner, Automatic Slim's, Brian Yoakum, shareholder, Evans Petree, P.C., Shawn Danko, restaurant owner and board of directors' chair, Hospitality Tennessee, and Alex Boggs, communications officer, Memphis Restaurant Association, March 21, 2023.

⁵² Ibid.

Further automation of the application process can simplify the process of obtaining a liquor license.

The TABC, for example, already automatically receives several supporting documents for liquor license applicants from the Tennessee Department of Revenue: the applicant's bond information and a document verifying that the company's taxes are in good standing. According to staff with the Tennessee Department of Finance and Administration's Office of Strategic Technology Services (STS),⁵³ additional automation could be implemented at no cost to the TABC using existing funding from the American Rescue Plan Act.⁵⁴ STS staff said that health inspection verification from the Tennessee Department of Health, which the TABC requires applicants to provide, would also be a good candidate for automation.⁵⁵ The TABC is currently in the development phase of automating the verification process of the health inspection forms through the Department of Health's website if the applicant does not upload the document themselves.⁵⁶ But according to STS staff, other possibilities—for example having local governments automatically report business registrations to the TABC on behalf of applicants—would be a lower priority because they would involve local government computer systems.⁵⁷

The TABC has made other improvements recently. In 2023, the TABC used the state's MyTN mobile application to launch a Regulatory License Search portal where users can look up businesses who hold alcohol licenses in their area.⁵⁸ TABC staff say that they are open to further improvements but do not want to increase their costs, which they would need to pass along to applicants in the form of application fees.⁵⁹

⁵³ Strategic Technology Services (STS) serves as the state's central information technology service bureau for state departments including the TABC.

⁵⁴ Email from Donna Odom, business domain director, Strategic Technology Solutions, May 1, 2023.

⁵⁵ Email from Donna Odom, business domain director, Strategic Technology Solutions, April 20, 2023.

⁵⁶ Email from Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, August 8, 2023.

⁵⁷ Email from Donna Odom, business domain director, Strategic Technology Solutions, April 20, 2023.

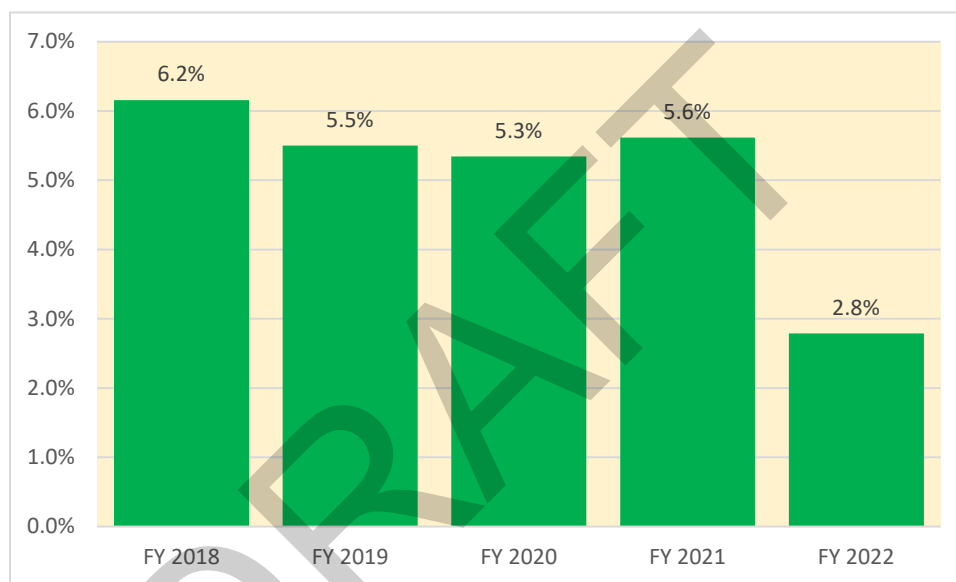
⁵⁸ Tennessee State Government "MyTN Services."

⁵⁹ Email from Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, April 10, 2023; and interview with Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, April 14, 2023.

The number of locations with a liquor-by-the-drink license continues to increase.

An increasing number of businesses have obtained licenses to serve liquor-by-the-drink, according to data from the Tennessee Department of Revenue. The number of locations that serve liquor-by-the-drink increased from 3,271 in July 2016 to 4,388 in June 2022; however, growth has slowed recently, decreasing from 6.2% to 2.8% from fiscal year 2017-18 to fiscal year 2021-22. See figure 5.

Figure 5. Annual Growth in the Number of Locations in Tennessee that Serve Liquor-by-the-Drink FY 2018 to FY 2022



Source: Tennessee Department of Revenue 2022; and email from Jeff Bjarke, research director, Tennessee Department of Revenue, October 28, 2022.

Some restaurant owners say that Tennessee's dual process for obtaining liquor licenses and beer permits and applying for beer permits across different jurisdictions is cumbersome.

How alcohol is licensed (permitted) varies across the US with states licensing and permitting alcohol sales at the state level, the local level, or both. The licensing authority for 27 states lies at the state level, 7 states at the local level, and 16 states, including Tennessee, have both state and local licensing.⁶⁰

⁶⁰ Maine Bureau of Alcoholic Beverages and Lottery Operations 2022; and Commission staff analysis of state statutes.

Restaurants in Tennessee wanting to offer their customers every kind of alcohol beverage must complete two processes, one at the state level and one at the local level. In addition to needing a state license to sell liquor, wine, or high alcohol beer (beer with an alcohol content of more than 8% by weight),⁶¹ a business wanting to sell beer with an alcohol content less than 8% by weight must obtain a permit from their local city or county beer board.⁶² As long as the applicant meets all the requirements, the beer board must issue the beer permit.⁶³

However, the requirements and the process—for example, what documents are required and whether applications are submitted online or on paper⁶⁴—varies across the more than 400 beer boards in the state.⁶⁵ For chain restaurants that want to open new locations across the state, they would have to apply for a beer permit with each local government where they operate. A lawyer who specializes in beer permitting said “beer boards are cumbersome for businesses to navigate because of the differences.”⁶⁶

Some restaurant owners say that having two separate regulators, the TABC and the local beer board, with two different processes and two different application timelines, complicates compliance and creates a barrier for entry.⁶⁷ “A restaurant can qualify for a liquor license from [the TABC] and be allowed to serve liquor, wine, [and] high-gravity beer, but then have to go through a long, drawn-out process to be able to serve Miller or Bud Lite.”⁶⁸ According to one Nashville restaurant owner, “In some cases, depending on location and due to regulations, the process of obtaining a liquor license from [the TABC] is much easier than the process of obtaining a beer permit from the Metro Beer Board. In a few cases, it's allowable to have a liquor license but impossible or near impossible to

⁶¹ Tennessee Code Annotated, Sections 57-4-101 and 57-4-102.

⁶² Tennessee Code Annotated, Sections 57-3-204 and 57-5-101(b).

⁶³ Interview with Laylah Smith, legal consultant, University of Tennessee County Technical Assistance Service, January 17, 2023; and Tennessee Code Annotated, Sections 57-5-105 and 57-5-106.

⁶⁴ City of Clarksville, “Beer Board Application”; and the Metropolitan Government of Nashville and Davidson County, “Beer Permit Application ePermits User Guide.”

⁶⁵ Interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022; and interview with David Conner, executive director, Tennessee County Services Association, January 3, 2023.

⁶⁶ Interview with William Cheek, law partner, Adams & Reese LLP, October 14th, 2022; and Cheek 2017.

⁶⁷ Interview with Michael Shemtov, owner of Butcher & Bee, and Jake Mogelson, owner of Red Headed Stranger, November 3, 2022.

⁶⁸ Elliot 2017.

obtain a beer permit. I have never encountered a resident, visitor, brewer, or industry peer in Nashville who thought this made sense.”⁶⁹

Anecdotal evidence shows that the number of beer permittees likely increased. For example, Nashville’s beer board issued less than 50 beer permits per year from 1993 to 2012. They’ve already issued more than 200 in 2023.

Local officials say that they value their beer boards.⁷⁰ They say that the process works well and want to keep local control.⁷¹ For example, in addition to issuing beer permits, local beer boards enforce the local beer ordinance,⁷² and when an ordinance is violated, the boards can also issue fines or suspend or revoke beer permits.⁷³

Two bills would have changed Tennessee’s dual licensing requirement but did not pass. In the 110th General Assembly, Senate Bill 742 by Senator Yarbrow and House Bill 351 by Representative Beck, would have automatically issued beer permits for Nashville businesses once a restaurant obtains a license from the TABC for spirit and wine sales,⁷⁴ and in the 113th General Assembly, Senate Bill 1327 by Senator Bailey and House Bill 594 by Representative Garrett would have consolidated beer and liquor licensing through the TABC for Nashville’s entertainment zone. In addition to regulating restaurants, state law regulates beer wholesalers in ways that affect restaurants.

Tennessee’s post-and-hold law is no longer needed.

Tennessee’s post-and-hold law requires wholesalers to maintain a wholesale price list for every case or package of beer sold and file the list with the Tennessee Department of

⁶⁹ Elliot 2017.

⁷⁰ Interview with Rollen “Buddy” Bradshaw, mayor, Loudon County, and Van Shaver, commissioner, Loudon County, on February 16th, 2023; interview with Rob Frost and Mark Byrd, finance department, City of Knoxville, February 22nd, 2023; and interview with Jeff Whidby, county clerk, Williamson County, February 28th, 2023.

⁷¹ Ibid.

⁷² Interview with Melissa Ashburn, legal consultant, Municipal Technical Advisory Service, October 24, 2022.

⁷³ Tennessee Code Annotated, Sections 57-5-105 and 57-5-106; and interview with Melissa Ashburn, legal consultant, Municipal Technical Advisory Service, October 24, 2022.

⁷⁴ Senate Bill 742 (2017).

Revenue as well as with each county or city where the wholesaler makes sales.⁷⁵ Wholesalers may not lower their prices for 360 days following a price increase, and any price decrease must remain in effect for at least 360 days.⁷⁶ This system requires that alcohol distributors disclose their proposed prices in advance, providing other distributors with knowledge of their future prices and subsequently maintaining these prices for a predetermined period.⁷⁷ The price lists are public record and are available to the public, including rival wholesalers, upon request.⁷⁸

Post-and-hold provisions often lead to anticompetitive effects for alcohol retailers and their customers.⁷⁹ Under other Tennessee laws, restaurants and other alcohol retailers are, with limited exceptions, prohibited from bypassing wholesalers.⁸⁰ And, together with the post-and-hold law, this means the prices that restaurants and other alcohol retailers pay for beer are potentially greater than they would otherwise be if wholesalers did not have access to their competitors' pricing.⁸¹

Tennessee's post-and-hold law no longer has a purpose regarding tax avoidance.

At the time the law was enacted in 1969, wholesalers were accused of temporarily decreasing prices while the tax was being calculated to reduce their tax liability.⁸² The state's wholesale beer tax was calculated as a percentage of sales price, 17% of the wholesale price.⁸³ Post-and-hold's supporters argued it would help eliminate the tax avoidance by wholesalers and stabilize tax collections.⁸⁴ The legislator sponsoring the original post and hold bill said,

⁷⁵ Tennessee Code Annotated, Section 57-6-104(a); Tennessee Department of Revenue 2022c; and interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022.

⁷⁶ Tennessee Code Annotated, Section 57-6-104(c).

⁷⁷ Maldonado 2021, p. 847.

⁷⁸ Tennessee Code Annotated, Section 57-6-104(d); and email with Courtney Swim, chief of staff, Tennessee Department of Revenue, May 3, 2023.

⁷⁹ Maldonado 2021.

⁸⁰ Tennessee Code Annotated, Section 57-6-104.

⁸¹ Maldonado 2021, p. 847.

⁸² Representative William L. (Bill) Scholes, Tennessee House of Representatives, April 15, 1969.

⁸³ Public Chapter 171, Acts of 1969.

⁸⁴ Representative William L. (Bill) Scholes, Tennessee House of Representatives, April 15, 1969.

When [beer wholesalers] reduce the wholesale price for three days, and the tax is computed on those three days and then put back up, then the cities and counties lose.⁸⁵

Tennessee has now changed the wholesale beer tax to a volume-based tax in 2013 (\$35.60 per barrel),⁸⁶ meaning that prices are no longer used to calculate the amount of wholesale beer tax owed. As a result, post-and-hold's initial purpose no longer exists.

A representative of beer wholesalers said that Tennessee's post-and-hold law prevents discounting and likely curtails consumption.⁸⁷ Although there is evidence that repealing post-and-hold laws can increase overall alcohol consumption in some cases,⁸⁸ research finds no evidence that post-and-hold laws reduce alcohol-related harms.⁸⁹ This may be because consumers can shift to less expensive products to maintain their desired level of alcohol consumption.⁹⁰ In Tennessee, consumers may also be shifting their consumption from beer to wine or spirits because Tennessee's post-and-hold law does not apply to wine or spirits.⁹¹ These shifts in consumption may explain why the evidence regarding the effect of post-and-hold on overall alcohol consumption is mixed, and why research indicates that post-and-hold laws do not reduce alcohol-related harms.⁹²

Some other state's post-and-hold laws have been successfully challenged in court.

Although Tennessee's post-and-hold law has never been challenged in court, other state's post-and-hold laws have been struck down in the Fourth and Ninth Circuit Courts but upheld in the Second.⁹³ States' power to enact and enforce post-and-hold laws have been challenged in federal court, sometimes successfully, despite states' otherwise broad

⁸⁵ Ibid.

⁸⁶ Public Chapter 189, Acts of 2013.

⁸⁷ Interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022.

⁸⁸ Cooper and Wright 2010; and Saffer and Gehrsitz 2015.

⁸⁹ Cooper and Wright 2010; and Cooper and Wright 2012.

⁹⁰ Conlon and Rao 2023.

⁹¹ Tennessee Code Annotated, Section 57-6-104.

⁹² Cooper and Wright 2010.

⁹³ The Second Circuit Court includes Connecticut, New York, and Vermont. The Fourth Circuit Court includes Maryland, North Carolina, South Carolina, Virginia, and West Virginia. The Ninth Circuit Court includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. Tennessee is included in the Sixth Circuit Court.

powers to regulate or even prohibit alcohol. Although the 21st Amendment gives states broad powers to regulate alcohol, neither the industry nor state regulation is fully exempt from the federal Sherman Act.

Although state powers are broad, they are not unlimited. States like Tennessee that allow private competition may become subject to a federal law known as the Sherman Act that was enacted in 1890 to prohibit restraints on trade and promote competition:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.⁹⁴

US Circuit Courts are split on whether the states' post-and-hold laws are pre-empted by the Sherman Act. The Fourth and Ninth Circuits held that post-and-hold laws constitute price fixing and are therefore preempted by the Sherman Act, striking down laws in Washington and Maryland.⁹⁵ In contrast, the Second Circuit applied the rule of reason and held that Connecticut's post-and-hold provisions do not unreasonably restrain trade.⁹⁶ The case was appealed to the US Supreme Court who decided not to hear it.⁹⁷

Most other states do not have a post-and-hold law for beer.

Tennessee is one of only 13 states that has a post-and-hold law for wholesale beer prices.⁹⁸ At 360 days,⁹⁹ Tennessee's hold period is longer than in other states.¹⁰⁰ Georgia and Idaho have a 180-day hold period,¹⁰¹ while Michigan and West Virginia have a 90-day hold period.¹⁰² Connecticut, Maine, Massachusetts, and New Jersey have a hold period of 30

⁹⁴ 15 United States Code, Section 1.

⁹⁵ Because *Miller v. Hedlund* concerned wine but not beer, Oregon's post-and-hold law for beer was not overturned.

⁹⁶ For more on applying the rule of reason to Sherman Act preemption, see, for example, *Addyston Pipe and Steel Co. v. United States* (1899).

⁹⁷ *Conn. Fine Wine & Spirits, LLC v. Seagull*, 932 F.3d 22 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2641 (2020).

⁹⁸ Slater and Alpert 2023.

⁹⁹ Tennessee Code Annotated, Section 57-6-104(c).

¹⁰⁰ Slater and Alpert 2023.

¹⁰¹ Georgia Compiled Rules and Regulations, Section 560-2-4-.07; and Idaho Code, Section 23-1029.

¹⁰² Michigan Compiled Law Service, Section 436.1609a; and West Virginia Code of State Rules, Section 176-1-6 6.3.h.

days, which is the most common duration.¹⁰³ Oregon and Vermont require a 14-day hold period, South Dakota has a 10-day hold period, and Indiana has a 7-day hold period.¹⁰⁴ California, Delaware, Florida, New Hampshire, and Washington require beer wholesalers to post wholesale beer prices but do not mandate holding them.¹⁰⁵ See map 1.

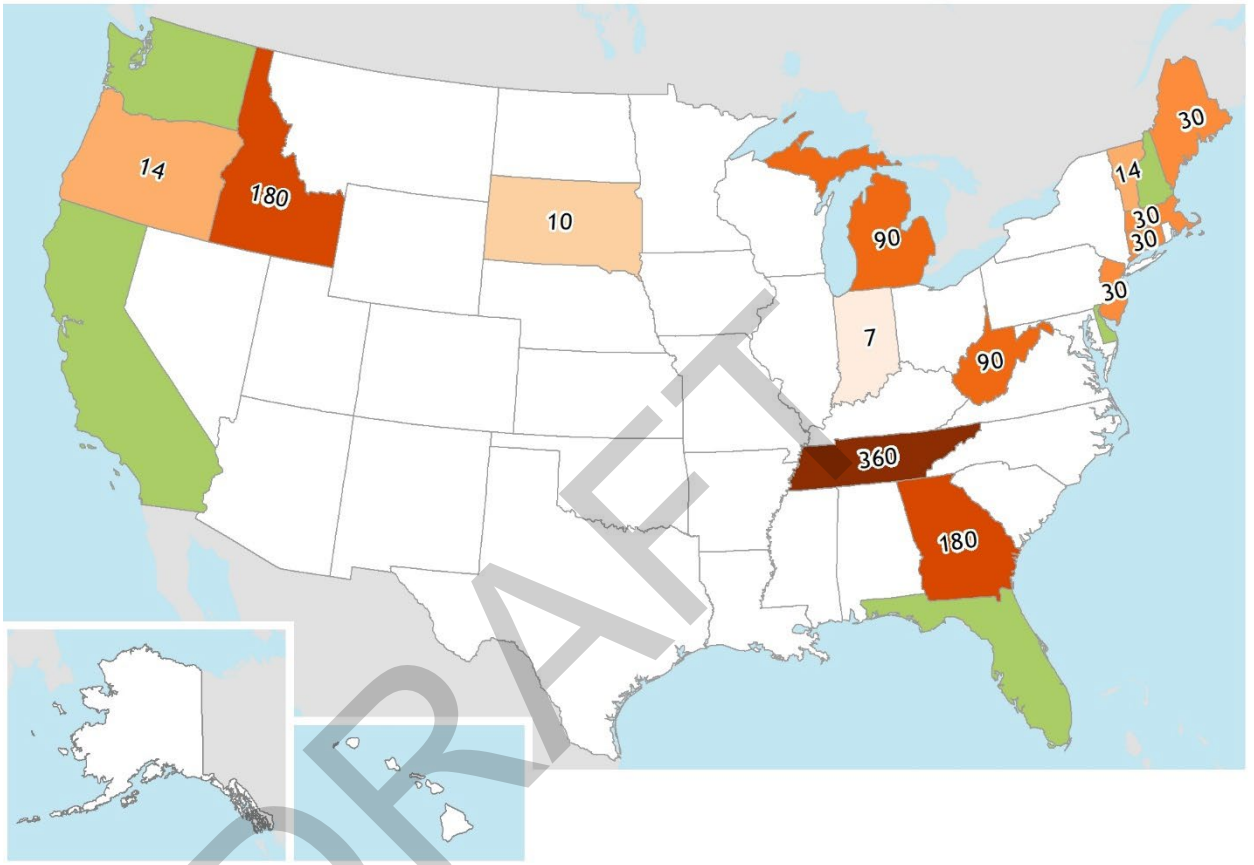
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¹⁰³ Connecticut General Statutes, Section 30-63(c); Maine Revised Statutes, Section 28-1408; Code of Massachusetts Regulations 204-6.03; and New Jersey Administrative Code, Section 13:2-24.6.

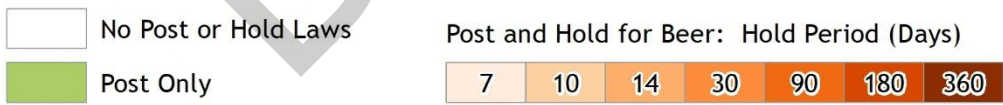
¹⁰⁴ Oregon Administrative Rules 845-010-0210; Code of Vermont Rules 26-020-001, Section 7; South Dakota Administrative Code, Sections 64:75:03:02, 64:75:03:03, and 64:75:03:04; and Indiana Administrative Code 905-1-31-2.

¹⁰⁵ California Business and Professions Code, Sections 25000, 25001, 25002, and 25003; Delaware Administrative Code, Section 4-904; Florida Statutes, Section 563.065 and Florida Administrative Code Annotated 61A-4.013; New Hampshire Revised Statutes Annotated, Section 179:33 III.; Washington Revised Code Annotated, Section 66.28.180.

Map 1. States' Post-and-hold Laws for Beer



States' Post and Hold Laws for Beer



Source: Commission staff review of states' laws.

Tennessee restaurants face labor shortages.

Many restaurants in Tennessee closed or operated at a lower capacity during the COVID-19 pandemic, and some of their employees who left did not return to the restaurant industry.¹⁰⁶ Since then, hiring enough workers has been difficult in the United States and Tennessee, particularly in the accommodations and food service industry, which has a historically high number of open positions. As of July 2022, the accommodations and food services industry had a 32% greater job openings rate than the rate for all industries combined.¹⁰⁷ Moreover, the restaurant industry is faced with high levels of staff turnover and increasing wage requirements.¹⁰⁸

Restaurants have difficulty retaining workers.

According to the Bureau of Labor Statistics, the accommodations and food services industry in the US has the highest rate of labor turnover compared to any other industry.¹⁰⁹ From 2012 to 2022, the rate of separations¹¹⁰ from the accommodations and food service industry was 75% above the average for all industries—6.5% versus 3.7%.¹¹¹ The latest data shows that in July 2022, the rate was slightly lower than the long-term average at 6.3%, while the rate for all industries was 3.8%.¹¹²

Food service wages are low but rising.

Restaurants seem to be responding to their labor needs by raising wages. Although food service wages are well below the median annual wage for all occupations, they have

¹⁰⁶ Interview with Dan Haskell, lobbyist, Gullett, Sanford, Robinson & Martion, Shanna Hubert, director of people, relations, and engagement, Dave & Buster's, Kate Piche, director of accreditation and compliance, National Restaurant Association, Chris Schrickler, senior director of learning and development, Dave & Buster's, and Sara Beth Urban, president and CEO, Hospitality Tennessee, November 11, 2022.

¹⁰⁷ US Bureau of Labor Statistics "Job Openings and Labor Turnover Survey."

¹⁰⁸ US Bureau of Labor Statistics "Job Opening and Labor Turnover Survey.;" and US Bureau of Labor Statistics, "Occupational Employment and Wage Statistics."

¹⁰⁹ US Bureau of Labor Statistics "Job Opening and Labor Turnover Survey."

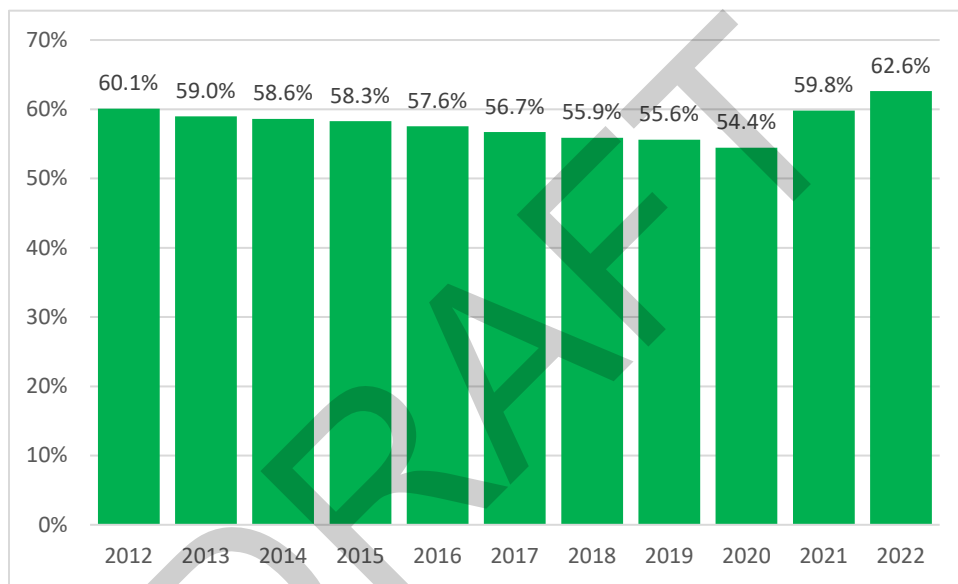
¹¹⁰ The rate of separations is calculated by dividing the number of separations by the sum of employment and separations.

¹¹¹ US Bureau of Labor Statistics "Job Opening and Labor Turnover Survey."

¹¹² Ibid.

recently increased, and stakeholders say that can make it difficult for a restaurant to operate profitably.¹¹³ In the past, the median wages for food preparation and serving-related occupations decreased as a percentage of overall median wages, 60.1% to 54.4% between 2012 to 2020. However, after the COVID-19 pandemic, this trend has reversed, and the percentage increased to 62.6% in 2022. From 2020 to 2022, median wages for food preparation and serving related occupations saw a 22.7% increase, compared to 6.7% for all occupations.¹¹⁴ See figure 6.

Figure 6. Median Annual Wage of Food Prep and Serving Related Occupations in Tennessee as a Percentage of All Occupations 2012 to 2022



Source: Commission staff calculations based on Bureau of Labor Statistics, “Occupational Employment and Wage Statistics.”

Tennessee’s E-Verify requirement may reduce the number of available workers.

E-Verify is an online system provided by the Department of Homeland Security and utilized by private businesses, including restaurants, to confirm the work eligibility of immigrants in the United States.¹¹⁵ In 2012, Tennessee mandated that businesses with 50

¹¹³ Interview with Brian Strutz, restaurant owner, A Dopo Pizza, October 5, 2022.

¹¹⁴ Commission staff calculations based on Bureau of Labor Statistics, “Occupational Employment and Wage Statistics.”

¹¹⁵ Public Chapter 436, Acts of 2011; and Tennessee Code Annotated, Sections 50-1-701 et seq. Governmental agencies including the TABC have their own version called SAVE, which uses the same

or more employees use E-Verify or provide appropriate documentation to verify an employee's right to work.¹¹⁶ Tennessee has since lowered the threshold to 35.¹¹⁷ Representatives of the National Federation of Independent Business (NFIB) oppose lowering the threshold further in Tennessee, saying that it would place a costly burden on smaller businesses and negatively affect consumers.¹¹⁸ They claim that the E-Verify system makes hiring a tedious process.¹¹⁹ Stakeholders say that E-Verify is especially harmful to the restaurant industry.¹²⁰

Research indicates that E-Verify laws discourage the employment of unauthorized workers.¹²¹ While no research shows their specific effect on restaurants, Tennessee's E-Verify law resulted in employment changes in landscaping and household services.¹²² An analysis of states with E-Verify laws, including Tennessee, showed that these laws curtailed unauthorized workers without increasing the number of domestic farmworkers, leading to a decrease in the overall agricultural workforce.¹²³

Only 22 states require businesses to use E-Verify,¹²⁴ and the requirements and limitations of E-Verify also vary across these states. For example, Michigan only requires their Department of Health and Human Services and contractors or subcontractors working with their Department of Transportation to confirm employment eligibility using E-Verify.¹²⁵ In contrast, Florida requires public employers, contractors or subcontractors

data as E-Verify to verify an individual's immigration status. See US Citizenship and Immigration Services 2020; and interview with Russell Thomas, executive director, Tennessee Alcoholic Beverage Commission, November 28, 2022.

¹¹⁶ Public Chapter 436, Acts of 2011.

¹¹⁷ Public Chapter 832, Acts of 2022; and Stovall and Ai Ling Prall 2022.

¹¹⁸ Email with Jim Brown, Tennessee state director, National Federation of Independent Business, January 18, 2023; and Murphy and Peck 2019.

¹¹⁹ Interview with Rob Mortensen, principal, Vogel Group, January 5, 2023; interview with Randy Rayburn, restaurant owner, Midtown Café, November 22, 2022; and interview with Representative Eddie Mannis, May 24, 2022.

¹²⁰ Email from Senator Richard Briggs, August 11, 2022.

¹²¹ Arvelo and Litan 2013.

¹²² Ibid.

¹²³ Lim and Paik 2021.

¹²⁴ Commission staff review of state laws. See appendix F.

¹²⁵ Michigan Act No. 200, Public Acts of 2012, Sections 291 and 381.

hired by public employers, private employers receiving economic incentives through the Department of Economic Opportunity, all agencies under the governor, and contractors and subcontractors that have entered into a contract for the provision of goods or services under the direction of the governor to comply with E-Verify requirements.¹²⁶ Meanwhile, California prohibits employers from using E-Verify to check the employment eligibility of existing employees or applicants.¹²⁷ See appendix F.

Tennessee’s laws make it more difficult for some people with criminal backgrounds to obtain a permit to serve alcohol.

Servers are required to obtain a permit from the TABC to serve liquor, wine, and high-alcohol beer. Those convicted of offenses including a range of felonies and alcohol- and drug-related crimes are ineligible for permits for a number of years post-conviction unless they successfully appeal their permit denial to an administrative law judge or hearing officer.¹²⁸ The General Assembly has already acted on the industry’s concern of wanting to hire more individuals with a criminal background,¹²⁹ passing Public Chapter 355, Acts of 2023, which reduced restrictions in state law that keep some people from obtaining a server permit from the TABC because of previous convictions. The act reduced the number of years, from eight to four, for those with felony convictions involving theft, fraud, deceit, or intoxication and those with convictions of crimes related to the sale of alcohol or illegal drugs or had an alcohol-related license revoked. Similarly, the act reduced the number of years, from five to four, for those who had a previous server permit revoked. The act also removed embezzlement and dishonesty as offenses that make applicants ineligible for server permits. Although the act generally loosened the requirements, it added crimes related to the use or threat of violence to a human being or any sex-related crime within the previous eight years.¹³⁰

¹²⁶ Commission staff review of states’ employment eligibility verification laws. See appendix F.

¹²⁷ Employment Acceleration Act of 2011, California Labor Code, Section 2814(a); and National Restaurant Association 2022. See appendix F.

¹²⁸ Tennessee Code Annotated, Section 57-3-704.

¹²⁹ Interview with Dan Haskell, lobbyist, Gullett, Sanford, Robinson & Martion, Shanna Hubert, director of people, relations, and engagement, Dave & Buster’s, Kate Piche, director of accreditation and compliance, National Restaurant Association, Chris Schricker, senior director of learning and development, Dave & Buster’s, and Sara Beth Urban, president and CEO, Hospitality Tennessee, November 11, 2022; and interview with Randy Rayburn, restaurant owner, Midtown Café, November 22, 2022.

¹³⁰ Public Chapter 355, Acts of 2023.

Applicants can still appeal permit denials as outlined in state law, but the act reduced the number of years post-conviction during which the TABC is required to deny the permit. Still, restaurant owners say that restrictions on server permitting prevent them from hiring otherwise qualified individuals as servers, and some in the industry argue for eliminating server permitting entirely.¹³¹ But TABC staff emphasizes that server permits help to enforce the state's alcohol laws.¹³² For example, the TABC suspended 22 server permits in fiscal year 2022-23 for serving alcohol to minors but did not revoke any.¹³³ From October 2019 through November 2022, the TABC denied 177 of the 378 permits that were reviewed because of criminal convictions¹³⁴ though it is unknown how many people were discouraged from applying for a server permit because of their criminal background. Still, the TABC denied a relatively small number of applicants out of the total 90,725 server permits issued during the same period,¹³⁵ so the effect on overall staffing would also be small.

Some stakeholders are concerned about the use of special legislation to permit liquor-by-the-drink sales and franchise laws.

Stakeholders raised several other concerns about Tennessee's regulatory framework for alcohol. These concerns include the use of special legislation to permit LBD sales at particular establishments and with the state's franchise laws, which regulate the relationship between wholesalers and manufacturers.

¹³¹ Interview with Dan Haskell, lobbyist, Gullett, Sanford, Robinson & Martion, Shanna Hubert, director of people, relations, and engagement, Dave & Buster's, Kate Piche, director of accreditation and compliance, National Restaurant Association, Chris Schrickler, senior director of learning and development, Dave & Buster's, and Sara Beth Urban, president and CEO, Hospitality Tennessee, November 11, 2022; and interview with Randy Rayburn, restaurant owner, Midtown Café, November 22, 2022.

¹³² Interview with Russell Thomas, executive director, Tennessee Alcoholic Beverage Commission, November 28, 2022.

¹³³ Interview with Russell Thomas, executive director, Tennessee Alcoholic Beverage Commission, November 28, 2022.; and Tennessee Alcoholic Beverage Commission "Required Documents for the TABC Regulatory Licensing and Permitting System."

¹³⁴ Email with Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, January 10, 2023.

¹³⁵ Tennessee Alcoholic Beverage Commission 2022; Tennessee Alcoholic Beverage Commission 2023; and email from Aaron Rummage, director of legislation, policy, and communication, Tennessee Alcoholic Beverage Commission, January 10, 2023.

Tennessee often authorizes liquor-by-the-drink sales through special legislation.

Tennessee is a dry state with many exceptions.¹³⁶ Cities and counties have the option to allow the sale of LBD through a referendum (see appendix D).¹³⁷ In addition, the General Assembly can pass special legislation that permits individual businesses to sell alcohol in areas where no referendum has passed.¹³⁸ For example, a yacht club located in the unincorporated part of Wilson County was granted permission to sell LBD despite no referendum being held to authorize the sales.¹³⁹ Hundreds of businesses have received authorization to sell LBD through this approach.¹⁴⁰ Stakeholders caution that special legislation can lead to monopoly service in certain communities.¹⁴¹

Another reason for special legislation is to allow LBD sales in ways not yet permitted by state law. For example, Nashville has already authorized LBD sales,¹⁴² but special legislation was passed to permit sales at a food hall with a shared eating area to avoid the need for each franchisee to obtain its own liquor license.¹⁴³ Servers are responsible for monitoring excessive drinking so that they do not overserve.¹⁴⁴ A concern with this arrangement is that servers won't be able to monitor excessive drinking in the common eating area.¹⁴⁵

¹³⁶ Interview with Rob Mortensen, principal, Vogel Group, January 5, 2023.

¹³⁷ Tennessee Code Annotated, Section 57-4-101 et seq.

¹³⁸ See, for example, Public Chapter 1050, Acts of 2022 (Senate Bill 1685 by Senator Briggs and House Bill 1689 by Representative Holsclaw) and Public Chapter 374, Acts of 2023 (Senate Bill 293 by Senator Briggs and House Bill 191 by Representative Holsclaw).

¹³⁹ Public Chapter 1050, Acts of 2022, Section 25; and interview with Curtis Harrington, attorney, Belcher Sykes Harrington, PLLC, November 28, 2022.

¹⁴⁰ Tennessee Code Annotated, Section 57-4-102(28).

¹⁴¹ Interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022; and interview with Matthew Scanlan, vice president, Office of Government and Community Affairs, Vanderbilt University Medical Center, January 30, 2023.

¹⁴² See appendix D.

¹⁴³ Public Chapter 330, Acts of 2021.

¹⁴⁴ Tennessee Code Annotated, Section 57-4-203(c)(1).

¹⁴⁵ Interview with Shauna Billingsley, attorney, City of Franklin, May 12, 2023.

Tennessee’s franchise laws make it difficult for alcohol manufacturers to terminate a distribution contract.

Tennessee has liquor and beer franchise laws designed to protect wholesalers from large out-of-state distillers and brewers who have more market power than Tennessee’s wholesalers, as most beer products are manufactured by just two companies.¹⁴⁶ These laws seek to protect wholesalers from coercion by manufacturers like withholding product shipments or terminating contracts with wholesalers after the wholesaler has invested heavily in the brand, for example, by spending money on marketing and growing the brand.¹⁴⁷

With limited exceptions, under Tennessee’s three-tier system, retailers may only purchase from a wholesaler who may only purchase from a manufacturer or importer, and only a retailer may sell directly to a consumer.¹⁴⁸ This effectively requires manufacturers to partner with a wholesaler, and franchise laws can create obstacles for manufacturers to end a partnership with an underperforming wholesaler. A manufacturer must renew a contract with a wholesaler unless the Commissioner of Revenue determines that there is good cause to terminate the contract and that the “manufacturer or importer has afforded the affected wholesaler a reasonable opportunity to cure any deficiency which in no event shall be less than thirty (30) days.”¹⁴⁹ From 2014 to 2023, four contracts have been terminated in this way.¹⁵⁰

According to craft brewers, taking legal action against a wholesaler that is not fulfilling their obligations is not practical.¹⁵¹ They say the time or money it would take for them to

¹⁴⁶ Andrews 2020; Burgdorf 2021; Sorini 2014; Tennessee Code Annotated, Sections 57-3-301(e)(4-5), and 57-5-501 et seq.; Tennessee Department of Revenue 2016; and US Treasury 2022.

¹⁴⁷ Sorini 2014; Burgdorf 2021; Tennessee Code Annotated, Sections 57-5-502 and 57-5-503(2); interview with Matthew Scanlan, vice president, Office of Government and Community Affairs, Vanderbilt University Medical Center, January 30, 2023; and interview with Carl Meier, owner, Black Abbey Brewery, and Sharon Cheek, executive director, Tennessee Craft Brewers Guild, April 26, 2023.

¹⁴⁸ Tennessee Department of Revenue “Brand Registration & Renewal, Gallonage Tax, and Wholesale Tax.”.

¹⁴⁹ Tennessee Code Annotated, Sections 57-3-301(e)(4-5) and 57-5-501 et seq.; and Tennessee Department of Revenue 2016.

¹⁵⁰ Email from Courtney Swim, chief of staff, Tennessee Department of Revenue, August 25, 2023.

¹⁵¹ Interview with Carl Meier, owner, Black Abbey Brewery, and Sharon Cheek, executive director, Tennessee Craft Brewers Guild, April 26, 2023.

be released from the contract are not worth it.¹⁵² As a result, craft brewers and manufacturers may feel trapped with an underperforming wholesaler.¹⁵³ To circumvent the law, some say one option for brewers is to leave the state for 12 months, then return and sign with a different wholesaler.¹⁵⁴ However, a beer wholesaler representative said that craft brewers are nevertheless protected because they can register themselves as wholesalers and distribute their own product.¹⁵⁵ Public Chapter 432, Acts of 2021, authorizes manufacturers that brew less than 25,000 barrels per year to distribute within the county they are located and outside the county under circumstances specified.¹⁵⁶

Some states, excluding Tennessee, have made certain exceptions to franchise laws to help small manufacturers terminate contracts with wholesalers.¹⁵⁷ For example, in Arkansas, a brewer that manufactures less than 30,000 barrels of beer per year is exempt from the franchise law, while in Washington, brewers that produce less than 200,000 barrels of malt liquor per year are excluded. Similarly, manufacturers in New York and Colorado may produce up to 300,000 gallons of malt beverages without being subject to franchise laws.¹⁵⁸ In North Carolina, brewers who sell less than 25,000 barrels per year and are authorized to distribute their own product are allowed to terminate a wholesaler with written notice within five days of payment for distribution rights without just cause.¹⁵⁹ In Nevada, suppliers that sell less than 2,000 barrels of malt per year are not required to adhere to good cause franchise requirements for terminations.¹⁶⁰ See map 2.

¹⁵² Ibid.

¹⁵³ Tablas Creek Blog 2013; interview of Robert Budoff, senior vice president of state government affairs, Distilled Spirits Council of the United States, and Hasan Bakir, director of economic studies, Distilled Spirits Council of the United States, January 25, 2023; and interview with Matthew Scanlan, vice president, Office of Government and Community Affairs, Vanderbilt University Medical Center, January 30, 2023.

¹⁵⁴ Interview with Carl Meier, owner, Black Abbey Brewery, and Sharon Cheek, executive director, Tennessee Craft Brewers Guild, April 26, 2023.

¹⁵⁵ Tennessee Code Annotated, Sections 57-5-101 and 57-6-102(11); Croxall 2021; and interview with Rich Foge, president, Tennessee Malt Beverage Association, December 27, 2022.

¹⁵⁶ Tennessee Code Annotated, Sections 57-5-101 and 57-5-201.

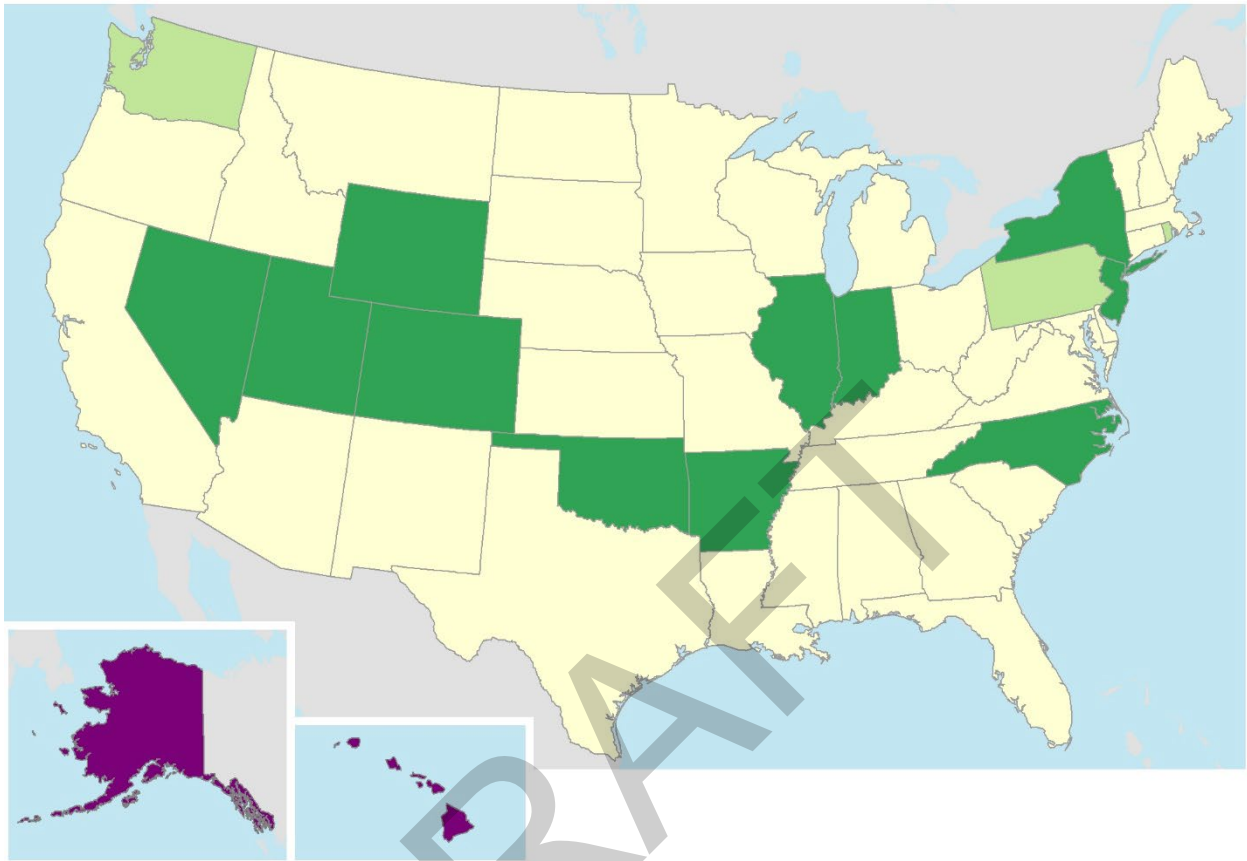
¹⁵⁷ Commission staff review of states' laws (see map 2).

¹⁵⁸ Colorado Revised Statutes, Section 44-3-411; and New York Alcohol Beverage Control Law, Section 55-c(4)(c)(i).

¹⁵⁹ North Carolina General Statutes, Section 18B-1305(a1).

¹⁶⁰ Nevada Revised Statutes, Section 597.160(2).

Map 2. States' Alcohol Franchise Laws and Exceptions



States' Alcohol Franchise Laws and Exceptions



Source: Commission staff review of states' laws.

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Jeff Metzger, Legal Consultant
University of Tennessee County
Technical Assistance Service

Michael Miller, President
Memphis Restaurant Association

Jake Mogelson, General Manager
Butcher & Bee

Rob Mortensen, Principal
The Vogel Group

Jeff Peach, Town Attorney
Town of Smyrna

Donna Odom, Business Domain
Director
Strategic Technology Solutions

Kate Piche, Director of Accreditation
and Compliance
National Restaurant Association

Rob Pinson, Lawyer
Adams and Reese LLP

Rhett Pratt, Government Relations
Tennessee Municipal League

Randy Rayburn, Restaurant Owner
Midtown Café

Sam Reed, Restaurant Owner/Lobbyist
Sinema Restaurant

Sandy Robertson, Restaurant Owner
Automatic Slim's and Cafe Olé.

Adra Rowland, County Clerk
Sevier County

Aaron Rummage, Director of
Legislation, Policy, and Communication
Tennessee Alcoholic Beverage
Commission

Matthew Scanlan, Vice President
Vanderbilt University Medical Center
Office of Government and Community
Affairs

Chris Schricker, Senior Director of
Learning and Development,
Dave & Buster's

Coty Shadowens, Paralegal
Gullett Sanford Robinson and Martin

Van Shaver, Commissioner
Loudon County

Michael Shemtov, Board Member
Independent Restaurant Coalition

Leslie Short, Assistant Financial Director
City of Murfreesboro

Ron Shultis, Director of Policy and
Research
Beacon Tennessee

Laylah Smith, Legal Consultant
University of Tennessee County
Technical Assistance Service

Brian Strutz, Restaurant Owner
A Dopo Pizza

Courtney Swim, Chief of Staff
Tennessee Department of Revenue

Russell Thomas, Executive Director
Tennessee Alcoholic Beverage
Commission

Cassandra Tourre, Director of Public
Policy
National Alcohol Beverage Control
Association

Sara Beth Urban, CEO and President
Hospitality Tennessee

Jeff Whidby, County Clerk
Williamson County

Holt Whitt, Assistant Commissioner of
Legislative Affairs
Tennessee Department of Health

Brian Yoakum, Shareholder
Evans Petree, P.C.

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Appendix A: Senate Bill 2262 (2022)

Senate State and Local Government 1

Amendment No. 1 to SB2262

Briggs
Signature of Sponsor

AMEND Senate Bill No. 2262*

House Bill No. 2419

by deleting all language after the enacting clause and substituting:

SECTION 1.

(a)

(1) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the laws in this state and other states relating to restaurants licensed or permitted, or both, under title 57, chapter 4 or 5.

(2) The study must include a review of:

(A) Liquor-by-the-drink and similar taxes and for on-premise consumption of alcoholic beverages and beer;

(B) Licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry;

(C) Staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and

(D) Other barriers to entry for such restaurants that may be minimized or mitigated, as identified by TACIR in conducting the study.

(3) The study must be conducted within TACIR's existing resources.

(b) All appropriate state departments and agencies shall provide assistance to TACIR.

(c) On or before January 1, 2024, TACIR shall reports its findings and recommendations to the governor, the speaker of the senate, and the speaker of the house of representatives. The report may be delivered electronically.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

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Appendix B: Summary of On-Premise and Sale Tax Rates by State

States	On Premise Rate	Sales Tax Rate	Sales Tax Applies?	Combined Rate	Rank	Citations for On-Premise (LBD) Taxes
Alabama		4.0%	Yes	4.0%	38	
Alaska		--	n.a.	0	44	
Arizona		5.6%	Yes	5.6%	28	
Arkansas	14%*	6.5%	Yes	20.5%	2	Arkansas Code Annotated, Section 3-9-213
California		7.25%	Yes	7.25%	10	
Colorado		2.9%	Yes	2.9%	43	
Connecticut		6.35%	Yes	6.35%	17	
Delaware		--	n.a.	0	44	
Florida		6.0%	Yes	6.0%	19	
Georgia		4.0%	Yes	4.0%	38	
Hawaii		4.0%	Yes	4.0%	38	
Idaho		6.0%	Yes	6.0%	19	
Illinois		6.25%	Yes	6.25%	18	
Indiana		7.0%	Yes	7.0%	11	
Iowa		6.0%	Yes	6.0%	19	
Kansas	10 %**	6.5%	No	10.0%	9	Kansas Statutes Annotated, Section 79-41a02
Kentucky		6.0%	Yes	6.0%	19	
Louisiana		4.45%	Yes	4.45%	35	
Maine	8% (liquor only)	5.5%	Yes	13.5%	7	Maine Revised Statutes, Section 36-1811(D)(2)
Maryland		6.0%	Yes	6%	19	
Massachusetts		6.25%	--	0	44	
Michigan		6.0%	Yes	6.0%	19	
Minnesota		6.88%	--	0	44	
Mississippi		7.0%	Yes	7.0%	11	
Missouri		4.23%	Yes	4.23%	37	
Montana		--	n.a.	0	44	

States	On Premise Rate	Sales Tax Rate	Sales Tax Applies?	Combined Rate	Rank	Citations for On-Premise (LBD) Taxes
Nebraska		5.5%	Yes	5.5%	29	
Nevada		6.85%	Yes	6.85%	15	
New Hampshire		--	n.a.	0	44	
New Jersey		6.63%	Yes	6.63%	16	
New Mexico		5.13%	Yes	5.13%	30	
New York		4.0%	Yes	4.0%	38	
North Carolina		4.75%	Yes	4.75%	33	
North Dakota	7%***	5.0%	No	7.0%	11	North Dakota Century Code, Section 57-39.6-02
Ohio		5.75%	Yes	5.75%	27	
Oklahoma	13.5%****	4.50%	Yes	18.0%	4	Oklahoma Statutes, Section 37A-5-105
Oregon		--	n.a.	0	44	
Pennsylvania		6.0%	Yes	6.0%	19	
Rhode Island		7.0%	Yes	7.0%	11	
South Carolina	5%	6.0%	Yes	11.0%	8	South Carolina Code Annotated, Section 12-33-245
South Dakota		4.5%	Yes	4.5%	34	
Tennessee	15%^	7.0%	Yes	22.0%	1	Tennessee Code Annotated, Section 57-4-301
Texas	8.25%	6.7%^^^	Yes	14.95%	6	Texas Administrative Code, Section 34-3.1002
Utah		4.85%	Yes	4.85%	32	

States	On Premise Rate	Sales Tax Rate	Sales Tax Applies?	Combined Rate	Rank	Citations for On-Premise (LBD) Taxes
Vermont	10%^^^	6.0%	Yes	16.0%	5	Vermont Statutes Annotated, Section 32-9241(c)
Virginia		4.3%	Yes	4.3%	36	
Washington	13.7%^^^^	6.5%	Yes	20.2%	3	Washington Revised Code, Section 82.08.150
West Virginia		6.0%	Yes	6.0%	19	
Wisconsin		5.0%	Yes	5.0%	31	
Wyoming		4.0%	Yes	4.0%	38	

Source: Federation of Tax Administrators 2022a and Federation of Tax Administrators 2022b.

Note: LBD Taxes apply to all on-premise alcohol sales unless otherwise noted.

*Arkansas' 14% mixed drink tax does not apply to beer or native wine. An additional 4% tax is levied on sales at private clubs.

**Kansas' 10% liquor drink tax applies to spirits, wine, beer and cereal malt beverage, defined as "any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage . . . but does not include any such liquor which is more than 3.2% alcohol by weight."

***North Dakota's 7% tax applies to all sales of beer, wine, mixed drinks and other alcoholic beverages are subject to North Dakota gross receipts tax whether these products are sold for consumption on or off the premises.

****Oklahoma's 13.5% tax applies to mixed beverages, wine, and beer.

^Tennessee's 15% tax applies to spirits, wine, and high alcohol content (>8%) beer.

^^Texas applies a 6.7% sales tax rates to LBD sales. See Texas Tax Code, Section 183.021.

^^^Vermont's 10% tax applies to "malt beverages, vinous beverages, spirits, or fortified wines." See Vermont Statutes Annotated, Section 32-9202(11).

^^^^Washington's 13.7% tax applies to spirits but not wine and beer. Sales tax applies to all alcohol sales.

Appendix C. Tennessee’s Taxes on Restaurants that Serve Alcohol

Restaurants that serve alcohol are subject to liquor-by-the-drink, sales, and business taxes. They may also be subject to franchise and excise taxes. To pay for food safety inspections, restaurants pay an annual fee from \$210 (food service establishments with 50 or less seats) to \$360 (food service establishments with 51 or greater seats).¹ Local health departments provide food inspection services to ensure cleanliness and prevent the spread of foodborne illnesses.

To serve liquor-by-the-drink, restaurants must pay a one-time application fee of \$300. Once the license is approved, restaurants are required to pay an annual privilege tax based on seating capacity, the percentage of total sales that are alcohol sales, or whether wine is the only alcohol sold depending on the type of establishment they are.

Restaurants pay an annual privilege tax according to the seating capacity:

- 276 seats or more—\$1,200
- 226 to 275 seats—\$1,100
- 176 to 225 seats—\$975
- 126 to 175 seats—\$925
- 75 to 125 seats—\$750
- 40 to 74 seats—\$650
- 39 or fewer seats—Alcohol sales are not permitted.²

Wine-only restaurants pay an annual tax that is less than for restaurants that serve beer or spirits according to the seating capacity:

- 276 seats or more—\$350
- 226 — 275 seats—\$330
- 176 to 225 seats—\$310

¹ Tennessee Code Annotated, Section 68-14-713.

² Tennessee Alcoholic Beverage Commission “Fees”; and Tennessee Code Annotated, Section 57-4-301(3)(R).

- 126 to 175 seats—\$300
- 40 to 125 seats—\$270
- 39 or fewer seats—Alcohol sales are not permitted.³

Limited-service restaurants⁴ (i.e., bars) pay an annual privilege tax according to the gross sales of prepared food:

- Less than 15% of gross sales—\$5,000
- At least 15% but less than 20% of gross sales—\$4,000
- At least 20% but less than 30% of gross sales—\$3,000
- At least 30% but up to 50% of gross sales—\$2,000⁵

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³ Tennessee Code Annotated, Section 57-4-301(3)(R).

⁴ Limited-service restaurants are defined restaurants where the sale of prepared food is fifty percent (50%) or less than the gross revenue from the sale of alcoholic beverages.; Tennessee Code Annotated, Section 57-4-102(23)(A)(iii).

⁵ Tennessee Code Annotated, Section 57-4-301(3)(W).

Appendix D: Tennessee Alcohol Referendum Summary by City

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Adamsville	No	No	No
Alamo	No	Yes	No
Alcoa	Yes	Yes	Yes
Algood	Yes	No	No
Ardmore	Yes	Yes	No
Arlington	Yes	Yes	Yes
Ashland City	Yes	Yes	Yes
Athens	Yes	Yes	Yes
Atoka	Yes	Yes	Yes
Baneberry	No	No	No
Bartlett	Yes	Yes	Yes
Baxter	Yes	Yes	Yes
Benton	Yes	Yes	No
Big Sandy	Covered by Countywide Ref.		
Blaine	Yes	No	Yes
Bluff City	No	Yes	No
Bolivar	Yes	Yes	Yes
Brentwood	Yes	Yes	Yes
Brighton	No	Yes	No
Bristol	Yes	Yes	Yes
Brownsville	Yes	Yes	Yes
Bruceston	Yes	Yes	No
Brydstown	Yes	Yes	No
Burns	Yes	Yes	Yes
Camden	Yes	Yes	Yes
Carthage	Yes	Yes	Yes
Caryville	Yes	Yes	No
Cedar Hill	No	Yes	No
Celina	No	Yes	No
Centerville	Yes	Yes	No
Chapel Hill	Yes	Yes	Yes
Charlotte	Yes	Yes	No
Chattanooga	Yes	Yes	Yes
Church Hill	Yes	No	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Clarksville	Yes	Yes	Yes
Cleveland	Yes	Yes	Yes
Clifton	No	Yes	No
Clinton	Yes	Yes	Yes
Collegedale	Yes	No	Yes
Collierville	Yes	Yes	Yes
Collinwood	No	No	No
Columbia	Yes	Yes	Yes
Cookeville	Yes	Yes	Yes
Coopertown	Yes	Yes	Yes
Cornersville	Yes	Yes	No
Covington	Yes	Yes	Yes
Cowan	Yes	Yes	No
Cross Plains	Yes	No	No
Crossville	Yes	Yes	Yes
Dandridge	Yes	No	Yes
Dayton	Yes	Yes	Yes
Decaturville	No	Yes	No
Decherd	Yes	Yes	Yes
Dickson	Yes	Yes	Yes
Dresden	No	No	No
Dunlap	Yes	Yes	Yes
Dyersburg	Yes	Yes	Yes
Eagleville	No	No	No
East Ridge	Yes	Yes	Yes
Elizabethton	Yes	Yes	Yes
Elkton	No	No	No
Erin	Yes	Yes	No
Erwin	Yes	Yes	Yes
Ethridge	No	Yes	No
Etowah	Yes	Yes	Yes
Eva	Covered by Countywide Ref.		
Fairview	Yes	Yes	Yes
Farragut	Yes	Yes	Yes
Fayetteville	Yes	Yes	Yes
Franklin	Yes	Yes	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Friendsville	Yes	Yes	No
Gainesboro	Yes	Yes	No
Gallatin	Yes	Yes	Yes
Gatlinburg	Yes	Yes	Yes
Germantown	Yes	Yes	Yes
Gleason	No	No	No
Goodlettsville	Yes	Yes	Yes
Gordonsville	Yes	Yes	No
Grand Junction	No	Yes	No
Greenbrier	Yes	Yes	No
Greeneville	Yes	Yes	Yes
Greenfield	No	No	No
Halls	No	Yes	No
Harriman	Yes	Yes	Yes
Hartsville	Yes	Yes	No
Henderson	No	Yes	No
Hendersonville	Yes	Yes	Yes
Henning	No	Yes	No
Hohenwald	Yes	Yes	Yes
Holladay	Covered by Countywide Ref.		
Humboldt	Yes	Yes	Yes
Huntingdon	Yes	Yes	No
Huntland	No	No	No
Huntsville	No	No	No
Jackson	Yes	Yes	Yes
Jamestown	No	Yes	No
Jasper	Yes	Yes	Yes
Jefferson City	Yes	Yes	Yes
Jellico	Yes	Yes	No
Johnson City	Yes	Yes	Yes
Jonesborough	Yes	Yes	Yes
Kimball	Yes	No	Yes
Kingsport	Yes	Yes	Yes
Kingston	Yes	Yes	Yes
Kingston Springs	Yes	Yes	Yes
Knoxville	Yes	Yes	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
La Vergne	Yes	Yes	Yes
Lafayette	Yes	Yes	No
LaFollette	Yes	No	Yes
Lake City	No	Yes	No
Lakeland	Yes	Yes	Yes
Lakesite	Yes	Yes	Yes
Lawrenceburg	Yes	Yes	Yes
Lebanon	Yes	Yes	Yes
Lenoir City	Yes	No	Yes
Lewisburg	Yes	Yes	Yes
Lexington	Yes	Yes	Yes
Linden	No	Yes	No
Livingston	Yes	Yes	Yes
Lobelville	No	Yes	No
Lookout Mountain	Yes	Yes	No
Loretto	No	Yes	Yes
Loudon	Yes	Yes	Yes
Lynchburg	No	No	No
Madisonville	Yes	Yes	Yes
Manchester	Yes	Yes	Yes
Martin	Yes	No	Yes
Maryville	Yes	Yes	Yes
Mason	Yes	Yes	No
Maynardville	Yes	No	Yes
McEwen	No	No	No
McKenzie	Yes	Yes	Yes
McMinnville	Yes	Yes	Yes
Medina	No	Yes	Yes
Memphis	Yes	Yes	Yes
Milan	Yes	Yes	Yes
Millersville	Yes	Yes	No
Millington	Yes	Yes	Yes
Minor Hill	Yes	Yes	No
Monteagle	Yes	Yes	Yes
Monterey	No	No	No
Morristown	Yes	Yes	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Mosheim	Yes	No	Yes
Mt. Carmel	Yes	No	No
Mt. Juliet	Yes	Yes	Yes
Mt. Pleasant	Yes	Yes	Yes
Munford	Yes	Yes	Yes
Murfreesboro	Yes	Yes	Yes
Nashville	Yes	Yes	Yes
New Johnsonville	Yes	Yes	No
New Market	No	Yes	No
New Tazewell	Yes	No	Yes
Newbern	Yes	Yes	No
Newport	Yes	Yes	Yes
Niota	Yes	No	No
Nolensville	Yes	Yes	No
Normandy	No	No	No
Norris	Yes	Yes	Yes
Oak Ridge	Yes	Yes	Yes
Oakland	Yes	Yes	Yes
Obion	No	No	No
Oliver Springs	Yes	Yes	Yes
Oneida	No	No	No
Orlinda	Yes	No	No
Paris	Yes	Yes	Yes
Pegram	No	No	No
Pigeon Forge	Yes	No	Yes
Pikeville	Yes	Yes	No
Piperton	Yes	No	No
Pittman Center	Yes	No	No
Pleasant View	Yes	Yes	Yes
Portland	Yes	Yes	Yes
Pulaski City	Yes	Yes	Yes
Red Bank	Yes	Yes	Yes
Red Boiling Springs	No	Yes	No
Ripley	Yes	Yes	Yes
Rockwood	Yes	Yes	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Rocky Top	Yes	Yes	No
Rogersville	Yes	Yes	Yes
Rossville	Yes	No	No
Savannah	Yes	Yes	Yes
Selmer	Yes	Yes	Yes
Sevierville	Yes	Yes	Yes
Sharon	No	No	No
Shelbyville	Yes	Yes	Yes
Sherwood	No	No	No
Signal Mountain	Yes	Yes	Yes
Smithville	Yes	Yes	Yes
Smyrna	Yes	Yes	Yes
Soddy Daisy	Yes	Yes	Yes
Somerville	Yes	Yes	No
South Carthage	No	Yes	No
South Fulton	Yes	No	No
South Pittsburg	Yes	Yes	No
Sparta	Yes	Yes	Yes
Spencer	Yes	Yes	No
Spring City	Yes	Yes	No
Spring Hill	Yes	Yes	Yes
Springfield	Yes	Yes	Yes
St. Joseph	Yes	No	No
Sweetwater	Yes	Yes	Yes
Tazewell	Yes	Yes	Yes
Thompson Station	Yes	Yes	Yes
Tiptonville	No	Yes	No
Townsend	Yes	No	No
Tracy City	Yes	Yes	No
Trenton	Yes	Yes	No
Troy	No	No	Yes
Tullahoma	Yes	Yes	Yes
Tusculum	Yes	Yes	Yes
Unicoi	Yes	Yes	Yes
Union City	Yes	No	Yes
Vonore	Yes	No	Yes

City	On Premise Allowed (Y/N)	Off Premise Allowed (Y/N)	Wine-in-Grocery-Stores Allowed (Y/N)
Walden	No	Yes	No
Watertown	Yes	Yes	Yes
Waverly	Yes	Yes	Yes
Waynesboro	No	No	No
Westmoreland	Yes	Yes	No
Whiteville	Yes	Yes	No
White Bluff	Yes	Yes	No
White House	Yes	Yes	Yes
White Pine	Yes	No	Yes
Winchester	Yes	Yes	Yes
Winfield	Yes	Yes	No
Woodbury	Yes	Yes	No

Source: Tennessee Alcoholic Beverage Commission “Tennessee Referendum Guide 2022.”

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Appendix E: Industry Required Documents for the TABC Regulatory Licensing and Permitting System



Required Documents for the TABC Regulatory Licensing and Permitting System

Acceptable forms of identification:

All applicants and all individual owners applying for or renewing a license or permit must enter contact information and upload proof of identification in RLPS. Acceptable proof of identification for U.S. citizens and non-citizens is outlined below:

For U.S. Citizens: If an applicant is a citizen of the United States, he or she must provide a social security number **and** a copy of one (1) government-issued identification.

For non-U.S. Citizens: If an applicant is a non-citizen, he or she must provide two (2) of the following forms of identification, including one (1) **U.S. Government-issued photo identification:**

- I-551 (Permanent Resident Card or "Green Card")
- I-766 (Employment Authorization Card)
- I-327 (Reentry Permit)
- I-571 (Refugee Travel Document)
- Machine Readable Immigrant Visa (with Temporary I-551 language)
- I-20 (Certificate of Eligibility for Nonimmigrant F91) student status-"student visa")
- DS-2019 (Certificate of Eligibility for Exchange Visitor (J-1) Status)
- I-94 (Arrival/Departure Record) Unexpired Foreign Passport

Liquor-by-the-Drink Restaurant

- Proof of possession of the premises (deed and lease)
- Certificate of occupancy
- Business plan with projected food sales percentage
- Printed menu
- Department of Revenue Price Schedule Report
- Alcohol Dealer Registration form issued by the Alcohol and Tobacco Tax and Trade Bureau
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- City/County Business License issued by local jurisdiction
- Certificate of Occupancy issued by local jurisdiction
- Government-issued ID, as required, for each owner with 5% or more interest or corporate officers of publicly traded companies (**please see acceptable forms of ID at the beginning of this document**)
- No liquor transfer letter if an existing licensee is being purchased by the applicant (**not needed for renewal**)

Liquor-by-the-Drink Limited Service Restaurant

- Proof of possession of the premises (deed and lease)
- Certificate of occupancy
- Business plan with projected food sales percentage
- Printed menu
- Department of Revenue Price Schedule Report
- Alcohol Dealer Registration form issued by the Alcohol and Tobacco Tax and Trade Bureau
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- City/County Business License issued by local jurisdiction
- Certificate of Occupancy issued by local jurisdiction
- Zoning letter from the local government
- Security plan and affidavit
- Government-issued ID, as required, for each owner with 5% or more interest or corporate officers of publicly traded companies **(please see acceptable forms of ID at the beginning of this document)**

Retail Package Store:

- Proof of possession of the premises (deed and lease)
- Certificate of Compliance from the municipality
- Newspaper Retail Liquor License Notice with publication affidavit from publishing newspaper **(only needed for new applicants and renewals with a new Certificate of Compliance)**
- Alcohol Dealer Registration form issued by the Alcohol and Tobacco Tax and Trade Bureau
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- City/County Business license issued by local jurisdiction
- Certificate of Occupancy issued by local jurisdiction
- Most recent Responsible Vendor Certification
- Government-issued ID, as required, for each owner regardless of percentage ownership **(please see acceptable forms of ID at the beginning of this document)**
- Retail personal financial statement for each owner **(not needed for renewal)**
- Credit check for each owner **(not needed for renewal)**
- Previous 2 years of tax returns for each owner **(not needed for renewal)**
- Previous 3 months of bank statements for each owner **(not needed for renewal)**

Wine in Retail Food Stores (WIGS):

- Proof of possession of the premises (deed and lease)
- Certificate of Compliance/ Good Moral Character issued by local jurisdiction (includes zoning and background)
- Site plan for premises
- Alcohol Dealer Registration form issued by the Alcohol and Tobacco Tax and Trade Bureau
- Certificate of Occupancy issued by local jurisdiction
- City/County Business License issued by local jurisdiction
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- Most recent Responsible Vendor Certification
- Government-issued ID, as required, for each owner with 10% or more interest or corporate officers of publicly traded companies **(please see acceptable forms of ID at the beginning of this document)**

Wholesaler:

- Proof of possession of the premises (deed and lease)
- Certificate of Occupancy issued by local jurisdiction
- City/County Business License issued by local jurisdiction
- Federal Basic Permit issued by the Alcohol and Tobacco Tax and Trade Bureau
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- Government-issued ID, as required, for each owner regardless of percentage ownership **(please see acceptable forms of ID at the beginning of this document)**
- Personal financial statement for each owner **(not needed for renewal)**
- Credit check for each owner **(not needed for renewal)**
- Previous 2 years of tax returns for each owner **(not needed for renewal)**
- Previous 3 months of bank statements for each owner **(not needed for renewal)**

Distillery:

- Proof of possession of the premises (deed and lease)
- Federal Basic Permit issued by the Alcohol and Tobacco Tax and Trade Bureau
- Certificate of Occupancy issued by local jurisdiction
- City/County Business License issued by local jurisdiction
- Zoning letter issued by local jurisdiction
- Government-issued ID, as required, for each owner regardless of percentage ownership **(please see acceptable forms of ID at the beginning of this document)**
- Personal financial statement for each owner **(Not needed for renewal)**
- Credit check for each owner **(Not needed for renewal)**
- Previous 2 years of tax returns **(Not needed for renewal)**
- Previous 3 months of bank statements **(Not needed for renewal)**

Winery:

- Proof of possession of the premises (deed and lease)
- Federal Basic Permit issued by the Alcohol and Tobacco Tax and Trade Bureau
- Approval from the Tennessee Department of Agriculture
- Certificate of Occupancy issued by local jurisdiction
- Sales and Use Tax Certificate issued by the Tennessee Department of Revenue
- Government-issued ID, as required, for each owner (**please see acceptable forms of ID at the beginning of this document**)
- Personal financial statement for each owner regardless of percentage ownership (**not needed for renewal**)
- Credit check for each owner (**not needed for renewal**)
- Previous 2 years of tax returns for each owner (**not needed for renewal**)
- Previous 3 months of bank statements for each owner (**not needed for renewal**)

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Appendix F: Summary of E-Verify Laws by State

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Alabama	Beason-Hammon Alabama Taxpayer and Citizen Protection Act; Alabama Code, Sections 31-13-1 through 35.	<ul style="list-style-type: none"> • All Alabama employers • All businesses awarded any contract, grant, or incentive by the state, a political subdivision thereof, or a state-funded entity • All subcontractors on a project paid for by the state, a political subdivision thereof, or a state-funded entity 	E-Verify is required for all covered employers (Alabama Code, Sections 31-13-15 and 31-13-25).
Alaska	No applicable state law.	No applicable state law.	No applicable state law.
Arizona	Arizona Revised Statutes, Sections 23-211 through 23-216 and 41-4401.	<ul style="list-style-type: none"> • Any individual or type of organization that transacts business in the state, has a license issued by an agency in the state, and employs one or more employees in the state • The state and any political subdivision thereof • Self-employed persons • Independent contractors • Government entity contractors and subcontractors (Arizona Revised Statutes, Sections 23-211(4), 23-216, and 41-4401) 	E-Verify is required for all covered employers (Arizona Revised Statutes, Sections 23-214(A), 23-214(B), and 41-4401(A). Arizona also participates in the Records and Information from DMVs for E-Verify (RIDE) program that provides an additional checkpoint in the E-Verify process.
Arkansas	No applicable state law.	No applicable state law.	No applicable state law.

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
California	No applicable state law. However, California's Employment Acceleration Act of 2011, restricts employers' use of E-Verify. See California Labor Code, Sections 2812 and 2814.	No applicable state law.	No applicable state law. California employers are not required to use E-Verify (California Labor Code, Section 2812). Further, they are prohibited from using E-Verify to check the employment authorization status of an existing employee or an applicant who has not been offered employment unless required by federal law or a federal agency memorandum of understanding (California Labor Code, Section 2814(a)). The Immigrant Worker Protection Act, 2017 California Assembly Bill 450, requires employers to give employees notice of any inspection of I-9 Employment Eligibility Verification forms by an immigration agency. Employers are also required to give affected employees notice that includes the results of such an inspection, including the obligations of the employer and the affected employee arising from the inspection (California Labor Code, Section 90.2).*
Colorado	Colorado Revised Statutes, Sections 8-2-122 through 124(2).	<ul style="list-style-type: none"> Any person transacting business in Colorado who employs another person and controls the payment of wages for such services (Colorado Revised Statutes, Section 8-2-124(1)(c)). 	As part of its quarterly electronic publication distributed to employers, the Department of Labor and Employment shall, at a minimum, notify every employer of the federal law against hiring or continuing to employ an unauthorized alien and of the availability of the optional electronic verification program to verify the work eligibility status of new employees (Colorado Revised Statutes, Section 8-2-124(2)(a)(I)). "Electronic verification program" or "E-verify program" means the electronic employment verification program that is authorized in United States Code, Section 8-1324a and jointly administered by the United States department of homeland security and the social security

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
			administration, or its successor program. Colorado Revised Statutes, Section 8-2-124(1)(b).
Connecticut	No applicable state law.	No applicable state law.	No applicable state law.
Delaware	No applicable state law.	No applicable state law.	No applicable state law.
Florida	Florida Statutes Annotated, Sections 228.031 and 448.095; and Florida Executive Order No. 11-116.	<ul style="list-style-type: none"> • Public employers • Contractors and subcontractors hired by public employers (Florida Statutes Annotated, Section 448.095(2)(a)). • Private employers receiving an economic development incentive through the Department of Economic Opportunity (Florida Statutes Annotated, Section 288.061(6)). • All agencies under the direction of Governor • Contractors and subcontractors that enter into contracts for the provision of goods and services with agencies that are under the direction of Governor (Florida Executive Order No. 11-116 Sections 1, 2 (May 27, 2011)). 	E-Verify is required for all covered employers. Additionally, all private employers must either use the E-Verify system or use the Form I-9 and maintain copies of the documents used to complete the I-9 for three years (Florida Statutes Annotated, Section 448.095(3)(b)). Florida also participates in the RIDE program that provides an additional checkpoint in the E-Verify process.
Georgia	Georgia Code Annotated, Sections 13-10-90, 13-10-91, and 36-60-6.	<ul style="list-style-type: none"> • All private employers with more than 10 employees • Every public employer, including, but not limited to, every municipality and county • Contractors and subcontractors hired by public employers (Georgia Code Annotated, Sections 13-10-91(a), 13-10-91(b)(2), 13-10-91(b)(3), and 36-60-6(a)). 	E-Verify is required for all covered employers (Georgia Code Annotated, Sections 13-10-91(a), 13-10-91(b)(2), 13-10-91(b)(3), 13-10-91(b)(4), and 36-60-6(a)).
Hawaii	No applicable state law.	No applicable state law.	No applicable state law.
Idaho	Idaho Executive Order No. 2009-10, Idaho Administrative Bulletin, Volume 09-7, page 14 (July 1, 2009).	<ul style="list-style-type: none"> • All state agencies • All contractors and subcontractors contracting with the state agencies (Idaho Executive Order No. 2009-10, Idaho Administrative Bulletin, Volume 09-7, page 14 (July 1, 2009) (see Sections 1, 3, 7)). 	All covered employers must verify the employment eligibility of new employees. Idaho Executive Order No. 2009-10, 09-7; Idaho Administrative Bulletin Volume 09-7, page 14 (July 1, 2009) (see Sections 1, 3); see also Idaho Division of Human Resources Application Webpage. They are

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
			encouraged to participate in E-Verify. Idaho also participates in the RIDE program that provides an additional checkpoint in the E-verify process.
Illinois	No applicable state law. However, the Right to Privacy Workplace Act (RPWA), Illinois Compiled Statutes Annotated, Sections 820-55/1 through 820-55/20, limits employers' use of employment verification systems in Illinois.	No applicable state law. However, the RPWA applies to all employers conducting business in the state of Illinois. Employment Eligibility Verification System.	No applicable state law. However, employers may voluntarily choose to enroll in any employment eligibility verification system, including the E-Verify program (Illinois Compiled Statutes Annotated, Section 820-55/12(a)). Additionally, the state urges employers to visit the state's website prior to enrollment in order to learn information on E-Verify accuracy, review and understand an employer's responsibilities when using E-Verify, and learn the financial burden and time required to use E-Verify (Illinois Compiled Statutes Annotated, Section 82-55/12(d)).
Indiana	Indiana Code Annotated, Sections 22-5-1.7-1 through 22-5-1.7-17.	<ul style="list-style-type: none"> • All state agencies • All political subdivisions • Contractors who enter into or are attempting to enter into a public contract for service with a state agency or political subdivision, or a contract for public works with a public agency • Subcontractors to the above contractors • Businesses receiving grants of more than \$1,000 from state agencies or political subdivisions (Indiana Code Annotated, Sections 4-13-1-1, 22-5-1.7-2, 22-5-1.7-5, 22-5-1.7-7, 22-5-1.7-10, 22-5-1.7-11(a), (b), 22-5-1.7-11.1(1), 22-5-1.7-15(2), and 36-1-2-13). 	E-Verify is required for all covered entities (Indiana Code Annotated, Sections 22-5-1.7-1, 22-5-1.7-11(a)(1), 22-5-1.7-11(b), 22-5-1.7-11.1(1), and 22-5-1.7-15(2)).
Iowa	No applicable state law.	No applicable state law.	No applicable state law. However, Iowa participates in the RIDE program that provides an additional checkpoint in the E-verify process.

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Kansas	No applicable state law.	No applicable state law.	No applicable state law.
Kentucky	No applicable state law.	No applicable state law.	No applicable state law.
Louisiana	Louisiana Revised Statutes Annotated, Sections 38:2211 and 38:2212.10.	<ul style="list-style-type: none"> • Any private employer involved in public works contracts concerning the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity• Subcontractors of private employers involved in covered public works contracts (Louisiana Revised Statutes Annotated, Sections 38:2212.10(C),38:2212.10(F), and 38:2211(A)(12)). 	Covered entities must submit an affidavit affirming registration with and continuing participation in the E-Verify program (Louisiana Revised Statutes Annotated, Section 38:2212.10(C)).
Maine	No applicable state law.	No applicable state law.	No applicable state law.
Maryland	No applicable state law.	No applicable state law.	No applicable state law. However, Maryland participates in the RIDE program that provides an additional checkpoint in the E-verify process.
Massachusetts	No applicable state law.	No applicable state law.	No applicable state law.
Michigan	Michigan Act No. 200, Public Acts of 2012, Sections 291 and 381.	<ul style="list-style-type: none"> • The Michigan Department of Health and Human Services (MDHHS) • Contractors and subcontractors with MDHHS paid from government funds • Contractors and subcontractors for construction, maintenance, or engineering services with the Michigan Department of Transportation (MDOT) (Michigan Act No. 200, Public Acts of 2012, Sections 291 and 381). 	The MDHHS must use E-Verify to confirm the employment eligibility of its new hires (Michigan Act No. 200, Public Acts of 2012, Sections 291 and 381). The MDHHS and the MDOT must also use E-Verify to confirm the employment eligibility the new hires of its covered contractors and subcontractors. The departments may verify this information directly or require their contractors and subcontractors to verify their new hires and submit a certification to the applicable department (Michigan Act No. 200, Public Acts of 2012, Sections 291 and 381).

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Minnesota	Minnesota Statutes Annotated, Section 16C.075.	<p>All vendors and subcontractors who perform services on behalf of the state and enter into a contract for services valued in excess of \$50,000 (Minnesota Statutes Annotated, Section 16C.075).</p> <p>This does not apply to contracts entered into by the State Board of Investment or the Office of Higher Education for contracts related to credit reporting services if the office certifies that those services cannot be reasonably obtained if the E-Verify program is implemented (Minnesota Statutes Annotated, Section 16C.075).</p>	E-Verify is required for all covered vendors and subcontractors (Minnesota Statutes Annotated, Section 16C.075).
Mississippi	Mississippi's Employment Protection Act, Mississippi Code Annotated, Section 71-11-1 and 71-11-3.	<ul style="list-style-type: none"> • All private employers • All contractors and subcontractors • All public employers, contractors, and subcontractors (Mississippi Code Annotated, Section 71-11-3(4)(b), (6), and (7)). 	E-Verify is required for all covered employers (Mississippi Code Annotated, Section 71-11-3(4)(b), (6), and (7)(d)). Mississippi also participates in the RIDE program that provides an additional checkpoint in the E-verify process.
Missouri	Missouri Revised Statutes, Sections 285.525 through 285.555.	<ul style="list-style-type: none"> • Any business entity awarded any contract or grant in excess of \$5,000 by the state or by any political subdivision • Any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state • All public employers (Missouri Revised Statutes, Sections 285.525(1)-(9) and 285.530(2)-(3)). 	E-Verify is required for all covered employers (Missouri Revised Statutes, Sections 285.525(6), 285.530(2), 285.530(3), and 285.530(4)).
Montana	No applicable state law.	No applicable state law.	No applicable state law.
Nebraska	Nebraska Revised Statutes Annotated, Section 4-114.	<ul style="list-style-type: none"> • All public employers • All contractors or subcontractors who are awarded a contract by a public employer for the physical performance of services within the state (Nebraska Revised Statutes Annotated, Sections 4-114(1)(b), (1)(c), and (2)). 	E-Verify or an equivalent federal program is required for all covered employers to determine the work eligibility status of newly hired employees physically performing services within the state (Nebraska Revised Statutes Annotated, Section 4-114(1)(a)-(2)). Additionally, Nebraska participates

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
			in the RIDE program that provides an additional checkpoint in the E-verify process.
Nevada	No applicable state law.	No applicable state law.	No applicable state law. However, Nevada's Department of Business and Industry must maintain a link on its website to the Social Security Administration where an employer may verify an employee's social security number (Nevada Revised Statutes Annotated, Section 232.521(1)).
New Hampshire	No applicable state law.	No applicable state law.	No applicable state law.
New Jersey	No applicable state law.	No applicable state law.	No applicable state law.
New Mexico	No applicable state law.	No applicable state law.	No applicable state law.
New York	No applicable state law.	No applicable state law.	No applicable state law.
North Carolina	North Carolina General Statutes, Sections 64-25 through 64-38; and North Carolina General Statutes, Sections 143-133.3 and 153A-99.1(a).	<ul style="list-style-type: none"> • Employers with 25 or more employees in North Carolina, excluding state agencies, counties, municipalities, or other governmental bodies • With limited exceptions for specific types of contracts, any contractor, including its subcontractors, that contracts with any board or governing body of the State, any institution of the State government, or any political subdivision of the state • Each county (North Carolina General Statutes, Sections 64-25(4), 64-26(a), 143-133.3(b), and 153A-99.1(a)). 	E-verify is required for all covered employers (North Carolina General Statutes, Sections 64-26(a), 143-133.3(b), and 153A-99.1(a)).
North Dakota	No applicable state law.	No applicable state law.	No applicable state law. However, North Dakota participates in the RIDE program that provides an additional checkpoint in the E-verify process.
Ohio	No applicable state law.	No applicable state law.	No applicable state law.
Oklahoma	Oklahoma Statutes, Sections 25-	<ul style="list-style-type: none"> • All public employers • Every contractor, including subcontractors, contract employees, staffing agencies, or 	Every covered employer must use E-Verify to verify the eligibility status of all new employees (Oklahoma

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
	1312 and 25-1313.	any contractors regardless of tier, entering into a contract with public employer for the physical performance of services within the state (Oklahoma Statutes, Sections 25-1312(2), 25-1312(3), 25-1313(A), and 25-1313(B)).	Statutes, Section 25-1313(A) and 25-1313(B)).
Oregon	No applicable state law.	No applicable state law.	No applicable state law.
Pennsylvania	Construction Industry Employee Verification Act, Pennsylvania Statutes Annotated, Section 43-168.1 et seq.; and Public Works Employment Verification Act, Pennsylvania Statutes Annotated, Sections 43-167.1 through 43-167.11.	<ul style="list-style-type: none"> • Any individual, entity, or organization in the construction industry that transacts business in the commonwealth and employs at least one employee in the commonwealth (Pennsylvania Statutes Annotated, Section 43-168.2). • All public works contractors for work costing at least \$25,000 • All subcontractors, meaning any person other than a natural person, regardless of tier including but not limited to a staffing agency that performs work for a public work contractor under a public works contract, but not including material suppliers for a project (Pennsylvania Statutes Annotated, Sections 43-167.2, 43-167.3, and 43-165-2(5)). 	<p>Construction industry employers must verify the work eligibility of employees they hire through E-Verify, and they must keep a record of the verification for the duration of an employee's employment or three years, whichever is longer (Pennsylvania Statutes Annotated, Section 43-168.3(b)).</p> <p>All covered employers must participate in and use E-Verify to verify employment eligibility of each new employee (Pennsylvania Statutes Annotated, Section 43-167.3(a)).</p> <p>The contractor or subcontractor must complete a verification form provided by the Department of General Services attesting to its compliance with the E-Verify requirements (Pennsylvania Statutes Annotated, Section 43-167.4(a) and (b)).</p> <p>The verification form required by the statute is maintained online (Pennsylvania Statutes Annotated, Section 43-167.4(c)).</p>
Rhode Island	No applicable state law.	No applicable state law.	No applicable state law.

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
South Carolina	The South Carolina Illegal Immigration Reform Act, South Carolina Code Annotated, Section 8-14-10 et seq.; and South Carolina Code Annotated, Section 41-8-10 et seq.	<ul style="list-style-type: none"> • All public employers • All private employers who are required by federal law to complete and maintain federal employment eligibility verification forms or documents • All contractors, including their subcontractors and sub-subcontractors, who enter into a services contract with a public employer for the physical performance of services within the state (South Carolina Code Annotated, Sections 8-14-20(A) and (B), and 41-8-20(B)). "Contractor" means any person having a contract with a public employer except a political subdivision, where the total value of the contract to be performed in a 12-month period exceeds \$25,000, or, if the public employer is a political subdivision, where the total value of the contract to be performed in a twelve-month period exceeds \$15,000 (South Carolina Code Annotated, Section 8-14-10(1)). A contractor, subcontractor, or sub-subcontractor may also be a private employer (South Carolina Code Annotated, Sections 8-14-10(1), 8-14-10(7), and 8-14-10(8)). 	E-Verify is required for all covered employers (South Carolina Code Annotated, Sections 8-14-20 and 41-8-20(B)).
South Dakota	No applicable state law.	No applicable state law.	No applicable state law.
Tennessee*	The Tennessee Lawful Employment Act, Tennessee Code Annotated, Section 50-1-701, et seq.	<ul style="list-style-type: none"> • All governmental entities • All private employers with at least six employees (Tennessee Code Annotated, Section 50-1-702(6), (8) (12), and (13)). 	All private employers with 50 or more employees must use E-verify (Tennessee Code Annotated, Section 50-1-703(b)). Private employers with 6 to 49 employees and governmental entities may verify new hires by either: using E-Verify and maintaining a copy of the E-Verify results or obtaining and maintaining an authorized identifying document for the employee.

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Texas	Texas Government Code, Sections 673.001 through 673.003.	<ul style="list-style-type: none"> • All state agencies • Institutions of higher education • Contractors and subcontractors of state agencies under the direction of the Governor (exas Government Code, Sections 673.001(2), 659.101, and 673.002; Texas Administrative Code, Section 40-843.3(a); Texas Executive Order No. RP-80; and 2016 Texas Attorney General LEXIS 14). 	<p>State agencies and institutions of higher education must register and participate in the E-verify program to verify the eligibility of all new employees (Texas Government Code Section 673.002; 40 Texas Administrative Code Section 843.3(a)).</p> <p>Additionally, contractors and subcontractors working for state agencies under the direction of the Governor must use E-Verify to verify their employees' eligibility (Texas Executive Order No. RP-80; and 2016 Texas Attorney General LEXIS 14).</p>
Utah	Private Employer Verification Act, Utah Code Annotated, Sections 13-47-101 through 204; and Utah Immigration Accountability and Enforcement Act (UIAEA), Utah Code Annotated, Sections 63G-12-301 and 63G-12-302.	<ul style="list-style-type: none"> • All private employers employing 150 or more employees (Utah Code Annotated, Section 13-47-201(1)). The E-Verify requirement does not apply to a private employer of a foreign national if the foreign national holds an H-2A or H-2B visa (Utah Code Annotated, Section 13-47-201(2)). • All private employers employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year. • All public employers • Any contractor, meaning a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier, that enters into a contract for the procurement of goods or services awarded through a request for proposals process with a public employer, including a sole source contract (Utah Code Annotated, Sections 63G-12-102(17), 63G-12-301(2), and 63G-12-302(1), 63G-12-302(2), 63G-12-302(3)(a), and 63G-12-302(5)(a)). 	<p>E-verify is required for all private employers covered under the Private Employer Verification Act (Utah Code Annotated Section 13-47-201(1)). E-verify is required for all public employers and contractors covered under the UIAEA (Utah Code Annotated, Sections 63G-12-302(2)(a) and 63G-12-302(3)(a)).</p>

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Vermont	No applicable state law.	No applicable state law.	No applicable state law.
Virginia	Virginia Code Annotated, Sections 2.2-4308.2 and 40.1-11.2.	<ul style="list-style-type: none"> • All state agencies with employees performing work within the state (Virginia Code Annotated, Section 40.1-11.2). • Any employer with more than an average of 50 employees for the previous 12 months entering in to a contract in excess of \$50,000 with any state agency to perform work or provide services pursuant to such public contract (Virginia Code Annotated, Section 2.2-4308.2(B)). E-verification requirements do not apply to state contracts that are primarily for the acquisition of goods or subcontractors (See Attorney General opinion 2011 Virginia Attorney General LEXIS 50, at *1).	E-Verify is required for all covered employers (Virginia Code Annotated, Sections 40.1-11.2, and 2.2-4308.2(B)).
Washington	No applicable state law.	No applicable state law.	No applicable state law.
West Virginia	West Virginia Code, Sections 15-2D-3 and 21-1B-3.	<ul style="list-style-type: none"> • All employers. 	While E-Verify is not required, employers in West Virginia are required to verify a prospective employee's legal status and authorization to work prior to employing or contracting with that individual (West Virginia Code, Section 21-1B-3(b) and (c)). Additionally, service providers whose employees are regularly employed on the grounds or in the buildings of the state Capitol Complex must require a new employee who will work on the grounds or in the buildings of the Capitol Complex to submit to an employment eligibility check through E-Verify (West Virginia Code, Section 15-2D-3(e)).
Wisconsin	No applicable state law.	No applicable state law.	No applicable state law. However, Wisconsin participates in the RIDE program that provides an additional checkpoint in the E-verify process.

State	Employment Eligibility Verification Law	Covered Employers	E-Verify or Alternative Type of Verification Required
Wyoming	No applicable state law.	No applicable state law.	No applicable state law. However, Wyoming participates in the RIDE program that provides an additional checkpoint in the E-verify process.

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