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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Alcoholic Beverage Commission
<b>Division:</b>	
<b>Contact Person/Disc Acquisition Contact:</b>	E. Keith Bell
<b>Address:</b>	Davy Crockett Tower; 500 James Robertson Parkway, 3rd Floor; Nashville,
<b>Zip:</b>	37243
<b>Phone:</b>	615.741.1602
<b>Email:</b>	Keith.Bell@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0100-03	Local Option Liquor Rules
Rule Number	Rule Title
0100-03-.13	Conduct of Business-Wholesaler and Retailer

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 0100-03-.13 Conduct of Business – Wholesaler and Retailer, is amended by adding the following language as a new paragraph (15):

- (15) Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-406(d), and as such, a retailer may not sell alcoholic beverages to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-406(d).

**Authority:** *T.C.A §§ 57-1-209; 57-3-104(c)(4); 57-3-406(d).* **Administrative History:**

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mary McDaniel	✓				<i>Mary McDaniel</i>
John Jones	✓				<i>John A Jones</i>
Bryan Kaegi	✓				<i>Bryan Kaegi</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Alcoholic Beverage Commission (board/commission/ other authority) on 11/17/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/02/2015

Rulemaking Hearing(s) Conducted on: (add more dates): 04/20/2015

Date: 11-17-15

Signature: *E. Keith Bell*

Name of Officer: E. Keith Bell

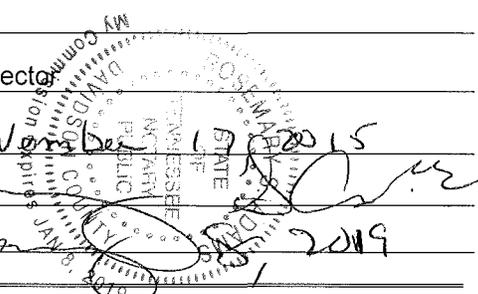
Title of Officer: TABC Executive Director

Subscribed and sworn to before me on: November 17, 2015

Notary Public Signature: *[Signature]*

My commission expires on: January 1, 2019

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All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Herbert H. Slatery III*  
 Herbert H. Slatery III  
 Attorney General and Reporter  
Dec. 1, 2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 12/18/15

Effective on: 3/17/16

*Tre Hargett*  
 Tre Hargett,  
 Secretary of State

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Copy of memo summarizing responses to comments is attached.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Exemptions from requirements of T.C.A. §4-5-401, et seq.: T.C.A. §4-5-404 states that §4-5-401, et seq. "shall not apply to rules that are adopted on an emergency basis under part 2 of this chapter, that are federally mandated, or that substantially codify existing state or federal law."

#### **Economic Impact Statement for Proposed Rule**

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

Any small business that is licensed as a retail package store. There are roughly 624 retail package stores currently licensed in the state.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no projected reporting or recordkeeping costs associated with this rule. Any potential increase in administrative costs is expected to be de minimus.

3. A statement of the probable effect on impacted small businesses and consumers:

The proposed rule would require consumers to provide, and small business retail package stores to only accept, unexpired government issued ID's prior to the purchase of alcoholic beverages or beer.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The proposed rule is necessary to clarify what a "valid" government issued ID is and provide guidance and clarity to small business and consumers regarding this issue and to reduce the use of fraudulent identification, and there are no less burdensome, intrusive, or costly alternative methods to accomplish this.

5. A comparison of the proposed rule with any federal or state counterparts:

This proposed rule is comparable to other similar requirements in this state requiring unexpired identifications, except in the case of voting in which case an expired identification has been deemed to be acceptable for purposes of voting, but it should be noted that voting is a constitutional right that enjoys certain constitutional protections that do not apply to the purchase of alcoholic beverages which is not a constitutional right.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

An exemption of small businesses would create a disparate and unfair impact on the other licensees of the commission and would negatively impact the duties and responsibilities of the commission.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule is not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule would require consumers to provide, and retail package stores to only accept, unexpired government issued ID's prior to the purchase of alcoholic beverages or beer.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 57-3-406(d) requires retail package stores to accept and review a valid, government-issued document that contains the customer's photograph and date of birth prior to making a sale of alcoholic beverages or beer to the customer. This rule clarifies what a "valid" government-issued document means.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons or entities that are licensed in this state as a retail package store. The commission had received proposed changes to the rule by the Tennessee Wine and Spirits Retailers Association and a memo summarizing the TABC's responses to said proposed changes and comments are attached to this filing.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There would be no fiscal impact.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The Alcoholic Beverage Commission.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The Alcoholic Beverage Commission.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

E. Keith Bell  
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500 James Robertson Parkway

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E. Keith Bell is the disc acquisition contact (contact information directly above)

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No such request received to date.



STATE OF TENNESSEE  
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**MEMO**

From: E. Keith Bell, Director *EKB*

Re: Responses to comments made at public rulemaking hearing

Date: August 5, 2015

On April 20, 2015, a rulemaking hearing was held in accordance with the law. At the hearing, comments were made regarding proposed amendment to Rule 0100-03-.13(15). These comments can be summarized as asking that the proposed rule be modified to: (1) cap any fine amount issued by the Tennessee Alcoholic Beverage Commission (TABC) for a violation of this rule to \$150 and (2) specify that retail package stores are not required to check the identification of patrons who reasonably appear over the age of 50.

Regarding the proposed cap on the fine amount of the violation, as the proposed rule is currently drafted Rule 0100-05-.04(5) would apply which specifies that, in lieu of suspension or revocation, a fine may be levied for a violation in the amount of between \$100 and \$750. This current cap is half of the amount statutorily authorized to be imposed by T.C.A. § 57-1-201. This limitation already places a sufficient cap on the amount that can be charged as fines for such violations.

Regarding the second proposal, at the hearing it was stated that this could not be done by rule as it would have been in direct conflict with T.C.A. § 57-3-406(d) as it read at that time. Since then, Chapter 428 of the Public Acts of 2015 has been passed that revised T.C.A. § 57-3-406(d) to specify that retail package stores are not required to check the identification of patrons who reasonably appear over the age of 50. As such, any modification of the proposed rule regarding this would now be moot.

## **RED LINE – RULE 0100-03-.13(15)**

AMENDMENTS TO CHAPTER 0100-03-.13 CONDUCT OF BUSINESS

'REDLINE' DEPICTION OF RULES AS AMENDED, PER TCA 4-5-226(i)

### **Rule 0100-03-.13 Conduct of Business – Wholesaler and Retailer**

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**Authority:** T.C.A §§ 57-1-209; 57-3-104(c)(4); 57-3-406(d). **Administrative History:**