

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally.

8-101. Prohibited generally. Except as authorized by applicable laws² and/or ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within the Town of Huntingdon. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (1978 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

²State law reference
Tennessee Code Annotated, title 39, chapter 17.

CHAPTER 2**BEER¹****SECTION**

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¹Municipal code references

Minors in beer places: title 11.

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

8-201. Selling, etc., of beer a privilege. It shall hereafter be lawful and is hereby declared to be a privilege to sell, store for resale, or distribute beer of alcoholic content of not more than five (5%) percent by weight, or other beverages of like alcoholic content, within the corporate limits of the Town of Huntingdon, Tennessee, subject to all the regulations, limitations, and restrictions provided.

There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1st, 1994, and each successive January 1st, to the Town Recorder of the Town of Huntingdon. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month remaining until the next tax payment date. A partial month shall be considered a full month for purposes of this tax payment. (Tennessee Code Annotated, § 57-5-104(b)(1))

If a permit holder does not pay the annual privilege tax by January 31st, or within thirty (30) days after written notice of the tax was mailed, whichever is later, then the town must notify the permit holder by certified mail, or by hand-delivery by an official of the town, that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail or hand-delivery, then the permit is void. (Tennessee Code Annotated, § 57-5-104(b)(3)) (1978 Code, § 2-201)

8-202. Beer board established. There is hereby created a board, which shall be known and designated as the beer board of Huntingdon; hereinafter referred to in this chapter as the "board." Such board shall be composed of all the members of the town council.

It shall be the duty of the board to regulate and supervise the issuance of permits to store more than one case, distribute, and sell beer and other beverages of an alcoholic content of not in excess of five (5%) percent by weight to the persons and in the manner provided herein.

It is hereby declared that the sale of beer in the town is a privilege, and such board is hereby empowered, with complete discretion, to issue, revoke, and suspend all licenses to sell beer in the town, and to perform such other duties and to have such other powers and authority as provided in this chapter. (1978 Code, § 2-202)

8-203. Appointment and compensation of beer inspectors. The beer board, acting for the town, may fix the compensation of inspectors for the purpose of enforcing this chapter and other laws, ordinances, and rules regulating the distribution, possession, storage, and sale of beer, or other beverages of like alcoholic content at wholesale or retail. Such inspector, if appointed, shall hold office by and in the discretion of the board. Members of

the police department are fully authorized to enforce all provisions of this chapter at the option of the board in lieu of inspectors as hereinabove provided. (1978 Code, § 2-203)

8-204. Permit required for engaging in beer business. No person shall engage in the selling, storing for resale, possessing more than one (1) case, or distributing beer of alcoholic content of not more than five (5%) percent by weight or other beverages of like alcoholic content within the corporate limits of the Town of Huntingdon, Tennessee, until he shall receive a permit to do so from the beer board of the Town of Huntingdon, Tennessee, which permit shall at all times be subject to all of the limitations and restrictions herein provided.

(1) Permits shall be issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndicate, or association and cannot be transferred to another owner. (Tennessee Code Annotated, § 57-5-103(a)(3)(A))

(2) A permit is only for a single location and is valid for all decks, patios, and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located. (Tennessee Code Annotated, § 57-5-103(a)(3)(B))

(3) Where an owner operates two or more restaurants or other businesses within the same building, the owner may, in his or her discretion, operate some or all of such businesses under the same permit. (Tennessee Code Annotated, § 57-5-103(a)(4))

(4) A permit is valid only for the business of the owner named in the permit. (Tennessee Code Annotated, § 57-5-103(a)(3)(C))

(5) A permit holder must return a permit to the town recorder within fifteen (15) days of termination of the business, change of ownership, relocation of the business or a change in the business name, provided, however, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. A change in ownership occurs for a corporate owner when at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. (Tennessee Code Annotated, § 57-5-103(a)(6))

(6) Before the beer board shall issue a license or permit under this chapter, it shall cause to be published in a newspaper of general circulation a notice in which the name of the applicant and the address of the location for such license or permit, whether the application is for the sale of beer or like alcoholic beverages is for on or off-premise consumption, or both, and the date and time of its meeting at which such application shall be considered. The notice shall be published not less than ten (10) days prior to such meeting, and such meeting shall be a public hearing for the purpose of hearing the statement of any person or his attorney on any application for a license or permit. (Tennessee Code Annotated, § 57-5-105(e)) (1978 Code, § 2-204)

8-205. Permit issued for consumption of beer on or off the premises. Permits issued for retail sale of beverages coming within the provisions of this chapter shall be for on-premise consumption or for off-premise consumption, or for both on and off premise consumption. (1978 Code, § 2-205)

8-206. Written application and application fee required for permits. Before any permit is issued by the beer board, the applicant or applicants, therefor shall file with the beer board a sworn application in writing on the form proscribed by said board and provided by the department of finance and administration. The application shall be submitted to the town recorder, as the recording secretary to the board. Each application so submitted shall be accompanied by a non-refundable application fee in the amount of two hundred fifty dollars (\$250.00), payable to the General Fund, Town of Huntingdon, which shall be used to offset the expense of investigation and processing of the application.

Upon receipt of a properly executed application for a beer permit, the beer board shall be called into session within thirty (30) days of the date of receipt of same. The called session shall be publicly advertised at least one (1) time in a local newspaper of general circulation. The public notice shall also contain a statement that a public hearing shall also be held in conjunction with the consideration of the application by the board. At least seven (7) days shall lapse between the publication of the notice of a called session and the meeting thereof, and the publication date shall count as the first day of the notification period.

Normally, the beer board will be called into special session following the regular meetings of the Huntingdon Town Council which meets at 7:00 P.M., on the 2nd and 4th Tuesdays of each month in the council room of the Huntingdon Municipal Building. This does not preclude the beer board being called into session at other times, dates and/or places.

The application, which shall be in the form of a sworn statement, shall contain the following information:

- (1) The name and address of the applicant.
- (2) A statement that the applicant is a citizen of the United States.
- (3) The location of the premises at which the business shall be conducted.
- (4) The owner or owners of such premises.
- (5) That no person will be employed in the sale, storage for resale, or distribution of such beverages except those who are citizens of the United States.
- (6) That the applicant shall not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant.
- (7) That no sale of such beverages will be made except in accordance with the permit granted.

(8) That the applicant will not knowingly sell, give away, or allow to be sold or given away on such premises legalized beer or other beverages of like alcoholic content on Sunday, or to minors at any time, or allow a minor to drink legalized beer or other beverages of alcoholic content on such premises.

(9) That neither the applicant nor any persons employed or to be employed by him in such distribution or sale of such beverage has ever been convicted of any violation of the law against prohibition, sale, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.

(10) That the applicant has not had a license for the sale of legalized beer or other beverages of like alcoholic content revoked.

(11) Whether the person applying will conduct the business in person, or whether he is acting as agent for any other person.

(12) That no brewer of beer or any other beverage of like alcoholic content has any interest, financial or otherwise, in the premises upon or in which the business to be licensed is carried on.

(13) That no brewer of beer or any other beverages of like alcoholic content has any interest, financial or otherwise, in the business which is licensed or requested to be licensed.

(14) That the applicant will not thereafter convey or grant to any brewer of beer or any other beverage of like alcoholic content any interest in either the business which is licensed to be carried on or in any other property at which such business may thereafter be carried on.

(15) That the applicant has, at the time of making such application, no indebtedness or other financial obligation to any brewer of beer or other beverage of like alcoholic content, and will not, during the period such license shall be in force, contract any financial obligation to any brewer of beer or other beverage of like alcoholic content other than for the purchase of such beer or other beverage of like alcoholic content.

This application shall be verified by the affidavit of the applicant, made before a notary public or the recorder, and if any false statement is made in any part of such application, the permit or license granted or issued to the applicant shall be revoked by the beer board. (1978 Code, § 2-206, as amended by Ord. #349, Aug. 1994)

8-207. Board may investigate charges and revoke permit; waiting period after revocation. All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by said board for the violation of any of the provisions of the state beer act or any of the provisions of this chapter.

The board created by this chapter is vested with full and complete power to investigate charges against any permit holder and order him to appear and show cause why his permit should not be suspended or revoked for the violation of the provisions of this chapter or the provisions of the state beer act.

Complaints filed against any permit holder for the purpose of suspending or revoking such permits shall be made in writing and filed with the board. When the board shall have reason to believe that any permit holder shall have violated any of the provisions of this chapter or any of the provisions of the state beer act, the board is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon permittee either by registered mail or by a member of the police department of the Town of Huntingdon. The notice shall be served upon the permittee at least ten (10) days before the date of the hearing. At the hearing the board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke said permit. The action of the board in all such hearings shall be final, subject only to review by the court as provided by law. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. (1978 Code, § 2-207)

8-208. Permit to be posted. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder. (1978 Code, § 2-208)

8-209. Permits and licenses not transferable. Permits and licenses issued under the provisions of this chapter are not transferable either as to location or to successor by purchase or otherwise of the business for which the permit was issued, and in either case, a new permit is required in the manner provided herein. (1978 Code, § 2-209)

8-210. Distributors may sell only to permit holders. No manufacturer or distributor of beer or other beverages of like alcoholic content shall sell to anyone except a licensed dealer holding a currently valid permit issued by the board. (1978 Code, § 2-210)

8-211. Sales, etc., to minors prohibited; non-citizens not to be employed; no person convicted of violating certain laws to be employed. No person engaging in the business regulated under this chapter shall make or permit to be made any sales or gifts to minors, or employ any person in the storage, sale, or distribution of any of such beverages except citizens of the United States. Neither the person engaging in such business nor any person employed by him shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture, and transportation of intoxicating liquor, or any crime involving moral turpitude within the last ten (10) years. (1978 Code, § 2-211)

8-212. Buying beer for minors prohibited. It is hereby declared to be a misdemeanor, punishable as any other misdemeanor, for any adult person to buy or procure beer or other alcoholic beverage for or on behalf of any minor, and to deliver the same to said minor or any other minor. (1978 Code, § 2-212)

8-213. Unlawful for minors to purchase beer. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age knowingly to misrepresent his age in order to obtain or purchase beer or remain in a location where minors are not allowed. (1978 Code, § 2-213, modified)

8-214. Business hours for beer establishments. Retail sales will be limited to the hours of 6:00 A.M. until 11:55 P.M. Mondays through Saturdays, with no sales taking place from 11:55 P.M. Saturday until 6:00 A.M. Monday. (1978 Code, § 2-214)

8-215. Sale of beer prohibited from location where sleeping quarter connected. Except as hereinafter provided, no beer or other beverages of like alcoholic content shall be sold on premises in direct connection with which sleeping quarters are provided. Within the meaning of this section, sleeping quarters shall be considered as being in direct connection with the premises upon which the sale is made when the sleeping quarters are in the same room, or when any interior passageway, door, hall, stairway, or other interior connection or a combination thereof is available and is used in going to or from the place where such sale is made to such sleeping quarters. (1978 Code, § 2-215)

8-216. Policemen and firemen may not be employed in beer business. It is hereby declared to be unlawful for any members of the police or fire departments of the Town of Huntingdon, or any other town employee, without a special permit from the board, to work at any place where beer is sold or dispensed under this chapter, or for any such town employee to have any interest, direct or indirect, in such business. (1978 Code, § 2-216)

8-217. Outdoor advertising of beer prohibited. It shall be unlawful for any person, firm, or corporation to place or maintain any outdoor advertisement of beer or any other alcoholic beverages upon any sign, billboard, post, building, or other place within the corporate limits of the Town of Huntingdon. (1978 Code, § 2-217)

8-218. Beer business to be open for inspection. The place of business and premises of the holder of any license for the distribution or sale of beverages regulated in this chapter shall be open to inspection and investigation by inspectors or police officers designated under § 8-203 hereof at any time such place is open for business, and any refusal by the holder of such license, or by

his agents, servants, or employees to permit any such officer to enter upon, inspect, and investigate any house, building, or room wherein business authorized for any permit issued by the board created in § 8-202 is conducted, within the hours that such house, building, or room is open for business shall be unlawful and a misdemeanor.

The conviction of such holder, or of any agent, servant, or employee of such holder of a violation of the provisions of this section shall also be a sufficient cause for the revocation of the permit and license of such holder. (1978 Code, § 2-218)

8-219. Applicant to agree to comply with laws. Every applicant for a beer permit and license must agree in his application to comply with all laws of the State of Tennessee, the United States, and all ordinances of the Town of Huntingdon regulating and handling of beer. (1978 Code, § 2-219)

8-220. Applicant to agree to suspension of license. All applications for a beer permit and license shall contain an agreement that the beer board may revoke or suspend the permit and license issued under the provisions of this chapter, and shall also contain the information required in § 8-206. (1978 Code, § 2-220)

8-221. Location of business regulated by zoning ordinance. No beer permit or license shall be issued for the conduct of business at any point or place in the corporate limits of the Town of Huntingdon unless such place is zoned for, or authorized to be used for, commercial or other purposes corresponding to the character of the business contemplated herein. (1978 Code, § 2-221)

8-222. Issuance and term of beer permit. Applications for beer permits shall be approved or disapproved by the beer board created in § 8-202 hereinabove, and, if approved, the town recorder shall issue a "beer permit" on the form as approved by the beer board and provided by the department of finance and administration. Said permits shall be issued for an indefinite period of time (Tennessee Code Annotated, § 57-5-106), subject only to suspension, revocation or cancellation by the beer board as herein provided.

Within ten (10) days after being issued a permit to sell beverages as regulated by this chapter, the permit holder shall file with the town recorder, and with the source from whom he or she buys beer, a copy of a valid certificate indicating that the purchases of beer are "for resale" (State Sales Tax Registration Certificate), and shall maintain at all times a copy of a valid certificate with the town recorder. (Tennessee Code Annotated, § 57-5-103(d)(1)) (1978 Code, § 2-222)

8-223. Separate beer permits and business license for each location. A separate beer permit and a town business license shall be obtained for each location at which any applicant is to distribute or sell legalized beer or other beverage of like alcoholic content; however, in those instances where the applicant has already obtained a current and valid business license from the town recorder for the location at which such beverages are to be sold, such as a market, a second business license for the sale or distribution of subject beverages shall not be required so long as said sales are in conjunction with the normal business activity licensed thereat. (1978 Code, § 2-223)

8-224. Power of recorder and board to subpoena, etc. The recorder and the beer board are hereby authorized to subpoena persons and records, and to administer oaths and hear testimony in the enforcement of this chapter. (1978 Code, § 2-224)

8-225. Sales on-premises or off-premises permitted.

(1) On-premises sales. Those individuals, groups, firms, etc., granted permits for the sale of beer and like alcoholic beverages as hereby regulated for on-premise consumption are hereby permitted to sell non-chilled or chilled (refrigerated, iced, or otherwise cooled) beer or like alcoholic beverages for on-premises consumption.

(2) Off-premises sales. Those individuals, groups, firms, etc., granted permits for the sale of beer and like alcoholic beverages as hereby regulated for off-premise consumption shall limit their sales of such beverages to containers of such beverages which are sealed, capped, or otherwise closed in a manner in which they are produced by the brewer or manufacturer, and which are to be removed from the premises prior to consumption. Nothing in this section shall be construed to prohibit the sale of chilled (refrigerated, iced, or otherwise cooled) beer or like alcoholic beverages for off-premises consumption.

(3) No permit shall be issued for the sale of beer or beverages of like alcoholic content for either on-premise or off-premise consumption as are herein regulated if:

(a) Said situs of such sales for ON-PREMISE CONSUMPTION is located with TWO THOUSAND (2,000) FEET of a school church or other public gathering place as measured in a straight line from the nearest point on the school, church or other public assembly building and the nearest public entry to the building, or portion of a multi-use building, wherein such sales shall take place, or, in the case of a public playground (including school playgrounds) or public park, from the nearest public entry to the building, or portion of a multi-user building, wherein such sales shall take place to the nearest point on the property line of such public playground or public park.

(b) Said situs of such sales for OFF-PREMISE CONSUMPTION is located within ONE THOUSAND (1,000) FEET of any school (public or

private), church or other public gathering place as measured in a straight line from the nearest point of the school, church or other public assembly building and the nearest public entry to the building, or portion of a multi-use building, wherein such sales shall take place or, in the case of a public playground (including school playgrounds) or public park, from the nearest public entry to the building, or portion of a multi-user building, wherein such sales shall take place to the nearest point on the property line of such public playground or public park.

(c) Exceptions. Holders of current permits issued by the Huntingdon Beer Board are exempt from the requirements of this amended section.

(d) The town shall not suspend, revoke or deny a permit to a business engaged in selling, distributing or manufacturing beer on the basis of the proximity of the business to a school, church, or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1st, 1993; however, this section shall not apply if beer is not sold, distributed or manufactured at that location during any continuous six-month period after January 1st, 1993. (Tennessee Code Annotated, § 57-5-108)

(4) No permit shall be granted to any place of business to sell such beverages as are herein regulated when such sales will cause congestion of traffic, or interfere with schools, churches, or other places of public gathering, or will otherwise interfere with public health, safety, and morals.

(5) No permit shall be granted to any place of business to sell such beverages as are herein regulated when such sale is within three hundred feet (300) of a residential dwelling, measured from building to building, provided the owner of the residential dwelling appears in person before the beer board and objects to the issuance of such a permit.

(6) Persons holding permits for on-premise or off-premise consumption at the time the provisions of this chapter were adopted are exempt from the provisions of § 8-225, sub-paragraphs (3), (4), and (5). (7) Notwithstanding any other provisions of this chapter, any permit issued pursuant to the authority contained therein may be revoked if the business location causes traffic congestion or interferes with schools, churches or other places of public gathering, or otherwise interferes with public health, safety and welfare. (1978 Code, § 2-225)

8-226. Penalty. In addition to other penalties provided in this chapter, any person violating its provisions shall be guilty of a misdemeanor, and may be tried in municipal court and cited to the beer board and may have his permit suspended or revoked. Upon conviction of a misdemeanor any violator shall be subject to a fine as provided for in the general penalty clause for this code. (1978 Code, § 2-226)

8-227. Civil penalty in lieu of suspension. The beer board may, at the time it imposes a revocation or suspension, offer, a permit holder the alternative of paying a civil penalty not to exceed \$1,500.00 for each offense of making or permitting to be made any sales to minors, or a civil penalty of not to exceed \$1,000 for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. (Tennessee Code Annotated, § 57-5-108(a)(2)) (1978 Code, § 2-227)

8-228. Nudity on premises where intoxicating liquors are offered for sale. (1) It shall be unlawful for any person maintaining, owning, or operating a commercial establishment where intoxicating liquors, as defined in chapter 1 of this title, are offered for sale or consumed on the premises:

(a) To suffer or permit any female person, while on the premises of said commercial establishment, to expose to the public view that area of the human breast at or below the areola thereof.

(b) To permit any female person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in subsection (1)(a).

(c) To suffer or permit any person, while on the premises of said commercial establishment to expose to public view his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, or to show the covered male genitals in a discernibly turgid state.

(d) To suffer or permit any person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft or cleavage.

(2) It shall be unlawful for any female person, while on the premises of a commercial establishment located within the Town of Huntingdon, at which intoxicating liquors are offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof, or to employ any device or covering which is intended to give the appearance or simulate such areas of the female breast as described herein.

(3) It shall be unlawful for any person, while on the premises of a commercial establishment located within the Town of Huntingdon, at which intoxicating liquors are offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage, or to show the covered male genitals in a discernibly turgid state.

(4) To allow any entertainment on licensed premises by any owner, licensee, agent of licensee, guest of licensee, employee, independent contractor of licensee, patron, or guest, which shall contain the performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law included but not limited to table dancing, lap dancing, couch dancing, or including the actual or simulated touching, caressing, or fondling of the breasts, buttocks, anus, or genitals, or the actual or simulated displaying of the pubic hair, anus, vulva, or genitals; or the nipples of a female.

(5) For the purpose of this section showing the human male or female genitals, pubic area, or buttock with less than a full opaque covering or showing of the female breast with less than a fully opaque covering of any part of the nipple shall constitute exposing same.

(6) Any person who shall violate any provision of this section shall be guilty of an offense against the Town of Huntingdon punishable as set forth in § 8-226 of the Huntingdon Municipal Code.

(7) If the owner, operator, licensee, lessor, lessee, manager, employee, or any other person participating in the operation of a commercial establishment located within the Town of Huntingdon at which intoxicating liquors are offered for sale for consumption on the premises shall be convicted of any of the offenses designated in § 8-228(1)(a), then the town recorder shall give licensee notice of a hearing before the beer board in accordance with § 8-207 of the Huntingdon Municipal Code of hearing. (As added by Ord. #421, Oct. 1999)