

# The Tennessee Journal

The weekly insiders newsletter on Tennessee government, politics, and business

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## Could ready-to-drink cocktails be headed to state grocery stores?

Popular hard seltzers White Claw and High Noon both contain about the same amount of alcohol. If you like the former, head on down to your local supermarket or convenience store to stock up. If you prefer the latter, you're going to have to go to the liquor store.

Under current rules, grocery stores can only sell wine and malt-based beverages — like White Claw — with less than 10% alcohol by volume. Cans of High Noon have 4.5% alcohol, which easily meets the threshold. But the drink is made from vodka, which puts it under the exclusive purview of package stores. Sen. Jon Lundberg (R-Bristol) and Rep. Pat Marsh (R-Shelbyville) introduced legislation this week to undo the distinction between malt or spirit-based drinks for the purposes of supermarket sales.

Proponents say the current definition of alcoholic drinks that can be sold outside of liquor stores as wine and “beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than” 10% by volume. In other words, the rationale goes, it already shouldn't matter what a hard seltzer or pre-mixed cocktail is made out of, so long as it's got the same amount of alcohol as beer.

But with the Ready-to-Drink (RTD) segment undergoing a boom in demand — especially among younger drinkers — liquor stores don't want to lose their exclusive right to sell some of the fastest-growing products. The beer and liquor wholesalers associations are backing the package stores' position. Lining up to call for the change are the Tennessee Grocers & Convenience Store Association, Tennessee Distillers Guild, Distilled Spirits Council of the United States, and Brown-Forman (which last year announced plans to introduce cobranded Jack Daniel's and Coca-Cola in cans containing 5% alcohol by volume).

**How we got here.** It took several years of legislative battles until lawmakers in 2014 passed a bill to authorize local governments to hold referendums about whether to allow wine sales in supermarkets. Grocery stores began selling wine in 2016. Here are the developments since then:

- Prior to the wine-in-supermarkets law, nobody was allowed to own more than one retail package store in Tennessee. The cap was lifted as part of the compromise, but quickly reimposed in 2016 as a two-store limit once

Maryland-based Total Wine & More let it be known it planned to open 10 of its large outlets across the state.

- A law was enacted in 2018 over the objections of liquor store owners to allow wine and liquor to be sold on Sundays. As part of a compromise, the legislature imposed a three-year ban on new package stores opening around the state. The moratorium expired in 2021.

- The U.S. Supreme Court in a 7-2 decision in 2019 found Tennessee's two-year residency requirement to own a liquor store “discriminates on its face against nonresidents” in violation of the Constitution's dormant Commerce Clause.

- In an effort to assist the bar and restaurant industry battered by the COVID-19 pandemic, lawmakers in 2021 passed legislation allowing booze to be sold with takeout food orders. Several efforts to amend the bill were overwhelmingly defeated, including bids to limit the law's duration to six months or to restrict take-out alcohol sales to the hours when liquor stores can operate.

- The legislature last year required retailers to impose the same 20% minimum markup on wine sold by the case as already imposed on single-bottle sales. Liquor stores argued the law keeps big-box stores from undercutting them.

**Next steps.** Both sides are comprised of deep-pocketed political contributors, which tends to get the attention of decisionmakers. For example, the Wine and Liquor Wholesalers have given \$114,500 to lawmakers since the November election, while the PAC of Butler Snow (which represents the Distilled Spirits Council) gave \$99,750, ranking them second and fourth among donors during the period.

Liquor store owners also tend to be influential constituents because of their (legally enforced) mom-and-pop nature. Doomsday predictions about the impact of extending the sale of wine to grocery and convenience stores haven't been borne out by the numbers. There were less than 600 retail package stores before the 2014 law passed. After the three-year moratorium ended in 2021, the number stood at 691. Today, Tennessee has 740 liquor stores — a 26% increase over a decade ago.

In 2017, the first year after grocery stores began selling wine, tax collections at liquor stores fell more than 8%. But

the downturn was erased by 2019. Alcohol sales exploded during the COVID-19 pandemic, with package store tax payments climbing by 20% in 2020. Growth has slowed since then, but still registered at 9% in 2021 and 6% in 2022. The state collected \$96 million in taxes from package stores last year, a 48% increase since supermarket wine sales began.

Regardless of the numbers, liquor store owners tend to find a friendly ear among social conservatives for their warnings about the camel's-nose-under-the-tent and arguments that liquor should be kept away from a general shopping clientele. They also make the case that grocery and convenience stores aren't as well equipped to prevent underage access to booze.

**Outlook.** Many lawmakers who were around for the original wine wars have since left the General Assembly, so there will be new cases to be made on both sides. Going into this session, confidence is high among both supporters of the change and the status quo. We're not yet willing to wager a six-pack of Jack-and-Cokes on who will win.

### Legislative roundup

## **Sexton says business community behind slashing Nashville council**

The Nashville Chamber of Commerce last year called on the legislature to give mayors the authority to take over elected school boards. The Nashville Metro Council was not amused, passing a resolution condemning the business group for its "efforts to subvert democracy and eliminate the people's voice" in electing their own school board members. The council later went a step further by slashing the Chamber's public funding by more than half. The bill seeking to authorize school board takeovers failed at the Capitol.

Fast forward a year, and Republican state lawmakers are looking to fast-track a bill to cut the size of the Metro Council in half, from 40 to 20 members. The measure is widely perceived as retribution for the decision by the liberal local legislative body to reject an agreement to host the Republican presidential convention in the city in 2024. But in an appearance before the Economic Club of Nashville this week, House Speaker Cameron Sexton (R-Crossville) said members of the local business community had also been strong advocates for the change to the body they described as "not efficient and not working well."

Sexton didn't identify any specific business leaders who had backed the restructuring of Nashville government. A Chamber spokesman said the group has not yet taken a position on the bill (which critics see as a tacit endorsement). Sexton insisted the push for reducing the Metro Nashville Council is not "just a General Assembly issue." But when pressed by reporters about whether the Republican National Convention snub played a bigger role, Sexton noted "they rejected it twice — not that we have any hard feelings."

The bill sponsored by House Majority Leader William Lamberth (R-Portland) and Senate Finance Chair Bo Watson (R-Chattanooga) could be one of the first major issues tackled by the legislature this session. While the proposal has sparked outrage among a small group of insiders, the general response has been muted. While many Democrats are generally uneasy about having rural Republicans in the

General Assembly tell them what to do, the actual idea of shrinking the sprawling body isn't offensive on its face. The bigger questions surround how exactly to go about doing it.

The original version of the bill creates a somewhat odd system under which current council members' terms would be extended for a year to allow new maps to be drawn. But several sitting members had been planning to cycle off the council this year and may not be willing to tack on another year. A series of retirements over the following year could lead to numerous special elections to fill the seats for a short period. Or they could be left vacant and make it more difficult for the current panel to conduct business.

Some feel there is ample time for Nashville's planning office to draw new districts and get the elections held on the current timetable in August. In other words, let's just get it over with. But legal questions remain about how many changes can be made without a charter amendment going before the voters. And it's also unknown what would happen if the electorate were to reject the changes.

Another concern is whether a 20-member council would have the same minority representation as the current body. If not, federal litigation might ensue. According to the 2020 Census, Nashville is 61% white, 27% black, and 11% Hispanic. The current Metro Council's minority caucus is comprised of 10 members.

The early indication is that Nashville Mayor John Cooper and current Metro Council members plan to fight the legislation rather than try to negotiate the best possible outcome given GOP lawmakers' apparent determination to go through with at least some version of the measure.

**Further cuts.** Senate Majority Leader Jack Johnson (R-Franklin) introduced a bill to repeal Nashville's authority to impose extra sales taxes in its tourist zone, use privilege tax funds to pay off convention center bonds, or charge a \$2 tax on vehicles hired at the airport.

**Roads plan.** Sexton in his speech voiced some of his strongest words of support yet for Gov. Bill Lee's proposal to tackle traffic congestion in the state. The governor and Transportation Commissioner Butch Eley "are right" to pursue public-private partnerships and work to reduce the average 15-year timetable for completing projects to as little as five or six. Sexton said the plan for tolled "choice lanes" would provide an option for guaranteed 55 mph travel and no 18-wheelers along some of the most crowded corridors. The speaker also called for the transportation plan to heavily emphasize the development of passenger rail service.

Sexton was pressed about whether raising registration fees on electric vehicles would be able to make up for lost gas tax revenues. He noted that Rep. David Hawk (R-Greeneville) is planning to resurrect a proposal to redirect a portion of the sales taxes collected off the purchase of new and used vehicles to the road fund. During the debate over a gas tax hike in 2017, Hawk called for instead dedicating a quartercent of the sales tax on vehicles to transportation, which at the time was worth an estimated \$291 million.

**Changing climate views?** Sexton also spoke to the Nashville Rotary Club this week, where he was asked why the issue of climate change is rarely discussed in the General Assembly. The speaker said his party prefers to focus on the

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- SK Food Group announced plans to build a \$205 million plant in Cleveland. The 525,000-square-foot facility is expected to create 840 jobs in Bradley County by 2030.
- The U.S. Fish and Wildlife Service announced rules to protect 104 miles of rivers in eastern Tennessee and southwestern Virginia as a critical habitat for the sickle darter, which was designated as an endangered species in November. The Center for Biological Diver-

- sity, which first filed a petition to protect the fish in 2010, expressed disappointment that the rules don't include the French Broad River watershed near Asheville, N.C., where the sickle darter once thrived.
- About 5.5% of Tennessee workers were union members in 2022. While far below the national rate of 10.1%, the state's membership in organized labor organizations jumped 39% compared with two years ago.

- Nashville International Airport on Tuesday opened its new Grand Lobby, a 200,000-square-foot space at the center of the terminal featuring multimedia digital art and 24 security screening lanes.
- The Masonic Lodge in Jonesborough is kicking off a yearlong celebration of its 200th anniversary. The lodge was founded in 1823, and its first grand master was Nashville attorney and future president Andrew Jackson.

economy, jobs, and taxes, but acknowledged “we don't talk about our environment enough.”

It's still a matter of internal debate and a “bigger conversation” among Republicans about how to best address the matter, Sexton said. Especially as climate issues and the environment can be top issues among younger people and those moving to Tennessee from other states.

**HIV prevention funds.** When the state's new Health Commissioner Ralph Alvarado appeared before the Senate Health and Welfare Committee this week, Chair Rusty Crowe (R-Johnson City) asked members to hold their questions about the Lee administration's decision to forgo federal funding for HIV/AIDS prevention until the state agency's budget hearing on March 15. Democratic Sen. Jeff Yarbro of Nashville said that was too long to wait for an explanation.

Alvarado, a physician who gave up his position as a state senator in Kentucky to join Lee's Cabinet this month, told the panel it was in the “best interest of Tennesseans to assume direct financial and managerial responsibility” for the services. The commissioner didn't respond to reporters' queries as he left the committee room while his spokesman shouted: “No questions!” Two months before the cuts became public, the administration unsuccessfully sought to remove Planned Parenthood from receiving program funds.

**Cooper seat.** Environmental activist Justin Pearson won the Democratic primary to succeed the late state Rep. Barbara Cooper (D-Memphis) in District 86. Pearson gained prominence during a successful effort to block the Byhalia Connection oil pipeline from being built under African-American neighborhoods in Shelby County in 2021.

Pearson, 28, won 52% of the vote in the 11-way primary. His closest rival was former longtime County Commissioner Julian Bolton, who got 12%. The Shelby County Commission on Wednesday voted 9-0 to name Pearson as the interim representatives until the March general. No Republicans or independents registered to run.

**Over before it began.** Freshman Rep. Bryan Richey (R-Maryville) withdrew his proposed constitutional amendment to set 16-year term limits for lawmakers, judges, constitutional officers, and governors. Rep. Scott Cepicky (R-Culleoka) withdrew his bill to allow counties to charge developers an “impact fee” of up to \$3 per square foot on each new home, up from the current maximum \$1 tax.

**Gambling under one roof.** Sen. Brent Taylor (R-Memphis) and Rep. Pat Marsh are sponsoring legislation to move the overview of fantasy sports from the Secre-

tary of State's office to the Sports Wagering Advisory Council. The latter was initially housed within the Tennessee Lottery but became a standalone board in 2021. It would be a reunion for the wagering panel's executive director, Mary Beth Thomas, who was previously the general counsel to Secretary of State Tre Hargett.

**Will it be Juneteenth after all?** Lamberth and Johnson (R-Franklin) are backing another administration bill to declare June 19 a state holiday. Juneteenth commemorates the day in 1865 when slaves in Galveston, Texas, learned President Abraham Lincoln's Emancipation Proclamation had freed them two years earlier. Lee last year proposed similar legislation, but fellow Republicans in the legislature decided to spend the estimated \$7.7 million expenditure on other priorities.

## Money matters

### Lawmakers reload on donations as new cycle, session get underway

In the days and hours before the gavels fell to mark the start of the legislative session — and the coinciding blackout on campaign contributions — lobbyists engaged in the annual tradition of roaming the halls of the Cordell Hull Building and flocking to last-minute receptions to distribute envelopes containing checks to key lawmakers. Technically, lobbyists are banned from making donations. But the political action committees they control can give freely.

The top recipients since the Nov. 8 election were the House Republican Caucus (\$147,800), Tennessee Democratic Party (\$143,800), Senate Speaker Randy McNally's PAC (\$114,850), and Senate Commerce Chair Paul Bailey (\$64,900). Here are the top donors during the period:

Political Action Committee	Amount
HCA Tristar Fund	\$168,930
Wine and Spirits Wholesalers	\$114,500
Tennessee Education Association	\$100,000
Butler Snow Good to Great	\$99,750
Great Public Schools	\$69,500
Homebuilders Association	\$67,500
Johnson Poss Kirby Government Relations	\$66,250
United Health Group	\$61,000
Amazon.com Services	\$55,500
Bivens & Associates	\$55,500

## Tennessee Notes & Quotes

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■ Five fired Memphis police officers were charged with murdering a black driver who died three days after being beaten. The victim was **Tyre Nichols**, a 29-year-old FedEx worker. Officials appealed for calm ahead of the Friday evening release of the video of the Jan. 7 confrontation.

■ “**Tyre’s** death is a painful reminder that we must do more to ensure that our criminal justice system lives up to the promise of fair and impartial justice, equal treatment, and dignity for all.” — *President Joe Biden in a statement.*

■ “Cruel, criminal abuse of power will not be tolerated in the state of Tennessee. These individuals do not represent the honorable men & women of law enforcement, & they must be brought to justice for this tragic loss of life.” — *Gov. Bill Lee in a Twitter post.*

■ “We are heartbroken for the **Nichols** family, and we stand with victims & their families. We are confident justice will be served, & due to legislation passed last year — they will serve 100% of their sentence.” — *State House Speaker Cameron Sexton (R-Crossville) in a tweet.*

■ Nashville District Attorney General **Glenn Funk** has recused himself from the drunken driving case against former state Rep. **Jeremy Durham** following the Franklin Republican’s late-night traffic wreck in the downtown tourist district in October. Funk’s office did not give a reason for the withdrawal in court documents other than that it “would be in the interests of justice.” Bradley County DA **Stephen Crump** has been named as special prosecutor.

■ Before he was a prosecutor, **Funk** represented **Durham** during a law enforcement probe into prescription drug fraud in 2014. The grand jury declined to indict the lawmaker. Durham would later be ousted from the General Assembly due to allegations of serial sexual misconduct.

■ Both of Tennessee’s major political parties have re-elected their leaders to new two-year terms. The state Democratic Party executive committee on Saturday unanimously voted to keep **Hendrell Remus** for a second term at the helm. Republican Party Chair **Scott Golden** got the nod for a fourth term last month.

■ **Maggi McLean Duncan**, the former longtime director of the Tennessee Association of Chiefs of Police, has been hired as T-Mobile’s executive for state government strategy in the Southeastern region

■ The Registry of Election Finance has tried for months to set guidelines for how much candidates and committees should be penalized based on how late they file their disclosures. The panel again put off voting on the matter as members disagreed about whether the standardized approach would affect their authority to adjust punishments on a case-by-case basis.

■ “We’re bureaucrating it. I don’t want us to be accused of being an entity that is a bunch of mindless government employees.” — *Republican Registry member Tom Lawless.*

■ “Too late.” — *Democratic member Hank Fincher.*

■ The Registry voted against issuing a civil penalty to Rep. **Joe Towns** (D-Memphis), who blamed computer trouble

for his latest failure to submit a campaign finance disclosure on time. The panel also gave a pass to Sen. **London Lamar** (D-Memphis), who said she was unaware she had to continue making reports for her old state House account after her interim appointment to the upper chamber. The Registry also unanimously agreed to restart a probe into whether conservative activist **Gary Humble** had coordinated with his Tennessee Stands nonprofit in his effort to unseat Sen. **Jack Johnson** of Franklin in the Republican primary in August. The Registry had initiated an audit in September, but Humble’s attorneys argued it shouldn’t begin until the election cycle’s final reports were submitted in January.

■ “I know there’s a whole body of people out there who live and breathe to watch the Registry and see what we do. And it’s **Dick**. That’s it.” — *Fincher referring to Dick Williams, the longtime chair of Common Cause Tennessee and a mainstay at the panel’s meetings.*

■ Former U.S. Sen. **Bob Corker** (R-Chattanooga) is heading an independent panel reviewing the Tennessee Valley Authority’s failure to deliver enough power to its 10 million customers during a cold wave last month. Amid record demand, TVA resorted to rolling blackouts for the first time in the public utility’s 89-year history.

■ As of the start of the year, Ford Motor Co. is no longer represented at the Tennessee statehouse by the **McMahan, Winstead & Richardson**. The automaker didn’t hire lobbyists in Nashville until Republican lawmakers began to grumble last year about its union-friendly approach to doing business. Ford hadn’t registered a new contract lobbyist as of this week. More legislation aimed at unionization efforts is expected this session.

■ “The delegation from Davidson County, I don’t agree on a lot with them. But I can tell you, **Bill Beck, Jason Powell, Darren Jernigan, Bob Freeman, and Harold Love**, they’re great people that we can work with.” — *House Speaker Cameron Sexton in remarks to the Economic Club of Nashville on Tuesday.*

■ The unmentioned Democratic representatives from Nashville are: **John Ray Clemmons, Vincent Dixie, Justin Jones, Caleb Hemmer, and Bo Mitchell.**

■ **Butch Spyridon**, the head of the Nashville Convention & Visitors Corp. for more than 30 years, is retiring on July 1. Spyridon, who previously worked in similar roles in Baton Rouge and Mobile, came to Nashville in 1991. He was a major proponent of luring the NFL’s Houston Oilers and landing an expansion NHL franchise. Spyridon recently called the drunken exploits of visitors flocking to Nashville’s downtown party district an “unintended consequence” of the city’s tourism boom.

■ The Federal Election Commission has registered the statement of candidacy of “Mrs. **Marsha Blackburn.**” Presumably so nobody mistakenly concludes Tennessee’s senior senator — who last year challenged Supreme Court nominee **Ketanji Brown Jackson** to “provide a definition of the word woman” — is anything but.