

# The Tennessee Journal

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## Has wine bill's time come at last, or is another spill in store?

Legislators are about to get another taste of the wine-in-grocery-stores bill, but competing interest groups are not yet clinking their glasses.

Last year's measure, which cleared Senate standing committees, is expected to be on the Senate floor Thursday. Senate leaders have indicated they will try to pass it whether or not a deal has been reached among the interested parties. They are not averse to resolving the issue in a House-Senate conference committee.

The legislation failed by a single vote in the House Local Government Committee last year but is back on the committee's calendar for Tuesday. A member who voted on the prevailing side could move for reconsideration.

But a negotiated agreement could also be poured into a broadly captioned bill set for action the same day in the House State Government Committee. Sponsored by Chairman Ryan Haynes (R-Knoxville), it opens up all of Title 57 on intoxicating liquors. Rep. John Lundberg (R-Bristol), sponsor of the other bill, and House Speaker Beth Harwell also are signed on.

Both speakers are determined to pass a bill. If it all falls apart, as has happened before, neither wants the wreck to occur in his, or her, house.

**Aging plan.** The wine proposal has been debated in the last four general assemblies. It gets a lot of media attention, and lawmakers frequently are asked about it by constituents. It is a popular consumer issue, polls consistently show, especially in suburban areas.

For years liquor interests fended it off with relative ease. Then, last year, Lt. Gov. Ron Ramsey, a strong proponent, predicted before the session began it would pass and went so far as to consider the issue when he made his committee appointments.

Proponents settled on a plan in which sales would be permitted only by referendum in locales that already have approved package liquor sales or liquor by the drink. This allowed some wavering lawmakers to position themselves as being for the right of people to vote.

Also, for the first time the opposition fractured. Beer wholesalers, who had stood with liquor retailers and wholesalers, reversed themselves and came out for the

plan — at least partly because grocers, their customers, didn't appreciate their taking the opposite side.

Harwell, determined to get the proposal moving last spring, sat in on a Local Government Subcommittee meeting, broke a tie, and was prepared to do the same in full committee. But the chairman, Rep. Matthew Hill (R-Jonesborough), switched from a yes in subcommittee to a no, which foiled the wine-in-groceries lobby and royally irritated the speaker.

Harwell and Ramsey have prodded opposing interest groups to strike a deal that all sides can live with. They and others are tired of the issue and don't want it to drag on through the session.

**Divide and conquer.** When the liquor retailers were asked to say what they wanted in return for grocery stores being allowed to sell wine, David McMahan, their lobbyist, provided a lengthy list.

The most controversial item was to limit the bill to traditional grocery stores and exclude the big box retailers like Walmart, Costco, and Target and also convenience markets, all of which have been part of the coalition to enact the legislation. It was suggested this could be accomplished through a provision requiring that unprepared food constitute a specified percentage of a store's business.

This would dramatically limit the potential competition facing liquor stores, since Walmart alone accounts for more than 40% of grocery sales in Tennessee. McMahan went public with the proposal, likely hoping to build support for it — or at least splinter the coalition.

Walmart, of course, resisted. The largest non-government employer in Tennessee, it has its own lobbyists and is a major player in the Tennessee Retail Association. In addition, the ploy caught the attention of the Tennessee Chamber of Commerce & Industry, which by mid-week had added Gif Thornton and Tausha Alexander to its lobbying team to work against it.

The chamber, which hasn't taken a position on the bill itself, now has 15 registered lobbyists, one of whom is McMahan, who represents the chamber on Common Core, not on wine in grocery stores.

Lobbying aside, the regular grocery stores were somewhat suspicious of the anti-Walmart proposal, questioning its constitutionality. At week's end, the big box stores were included in the operative concept of the legislation, though written versions of any plan were elusive.

While convenience markets are still in the Senate bill, their status is doubtful in the House.

Another request by the liquor retailers, that the bill not take effect for five years, was not well-received, but the effective date obviously is an issue.

The parties essentially have agreed that liquor stores will be allowed to sell beer, tobacco, and wine-related products such as corkscrews, cheese, and other foods.

**Beer.** The beer wholesalers, meanwhile, want to sell "high gravity" beer, that which contains more than 5% alcohol by weight, in grocery stores. Currently, such products are classified as alcoholic beverages under the liquor law and can be sold only in liquor stores. In most states, they are on supermarket shelves with other beer. Nationally, high-gravity brews are a fast-growing part of the beer business, and Tennessee craft brewers are trying to build grassroots support to change the law.

To brew a high-gravity beer, they must obtain a license from the Alcoholic Beverage Commission for \$1,000, then shell out another \$4,000 a year if they want to sell the product on premises.

Liquor retailers, already unhappy with the legislation, don't especially want to lose another exclusive product. But beer wholesalers and craft brewers argue that if wine with a 12-14% alcohol content can be sold in a grocery store, then beer with a 6-8% alcohol content belongs there too. If the high-gravity provision doesn't pass in the wine bill, they'll push separate legislation to change the definition of beer.

**High stakes.** It isn't hard to understand why liquor store owners are fighting the bill. Wine, especially in the suburbs, has become an ever larger portion of their sales. Availability in grocery stores probably would increase the total sales volume, at least some, but would also shift purchases from liquor stores to Kroger, Publix, Walmart, and other stores.

Liquor store proprietors point out they invested in their businesses based on a law that restricts liquor and wine sales. Advocates for wine in grocery stores argue it is unreasonable to take the position that wine and spirits laws can never be changed.

For liquor wholesalers, who will supply the wine no matter who sells it retail, it's a cost issue. They may sell more wine if food stores can stock the product, but they'll have far more outlets to service and will need more trucks and personnel.

**Deal near?** Parties continue to say they're close to a deal. Close, as the old saying goes, is usually good enough for horseshoes or hand grenades but not always for legislation. On the other hand, the parties are under substantial pressure to work it out.

Legislative leaders want liquor interests to sign off on a bill because while the speakers carry a lot of weight with committees, it is much harder to ensure passage on

the floor, especially in the 99-member House where there has always been a significant anti-alcohol faction. The anti-booze bloc often has found itself on the side of the liquor lobby — much like the oft-cited odd alliance of preachers and bootleggers in support of Prohibition.

For most citizens, who view the controversy as interesting if relatively trivial, the issue is one of convenience. But for the parties involved, the issue is money. Which is why an agreement has been so hard to come by.

## With judging of judges over, judges are back to . . . judging

The Judicial Performance Evaluation Commission's vote last Friday to recommend 22 appellate judges for retention ended a 2½-month battle, often public, over the fate of two judges initially targeted for replacement.

For Court of Appeals Judge Andy Bennett and Court of Criminal Appeals Judge Camille McMullen, both of whom were careful to display humility in their requests for reconsideration, the secret-ballot votes ended an ordeal, during which they were supported by Chief Justice Gary Wade and others in the legal community.

The commission tentatively voted in late October to recommend replacing Bennett, McMullen, and Court of Criminal Appeals Judge Jerry Smith. Smith, who had pleaded guilty last June in a Knoxville DUI case, decided after the commission's vote to retire once his term ends Aug. 31, so the panel will issue no report on him.

Justice Janice Holder was never evaluated because she announced her retirement plans last June, and four other appellate judges also made retirement decisions before the evaluation process began. Justice Bill Koch was evaluated and tentatively recommended for retention, but he announced last month he will become dean of the Nashville School of Law in July and not seek another term on the state's highest court.

That leaves 22 judges on whom the commission must issue public reports for voters to review before the Aug. 7 retention elections. By statute and Supreme Court rule, the reports are confidential prior to publication.

**Ramsey.** Not everyone was pleased with the outcome. Lt. Gov. Ron Ramsey, who appointed four of the nine commissioners, publicly applauded the commission last fall after it tentatively voted against three judges. He said the votes showed the commission was doing its job and he hoped it would stick to its decisions.

In the commission's original vote, the unfavorable outcome for Bennett generated the most surprise, controversy, and behind-the-scenes activity. He is widely known among political insiders because of his previous position as chief deputy state attorney general.

The shift for Bennett may have helped McMullen. Some commissioners were leery of calling for the removal of no one but the appellate system's only black woman. Bennett received a 7-2 favorable vote and McMullen a 6-3 vote. Court of Criminal Appeals Judge Norma McGee Ogle also was recommended 6-3.

Court of Criminal Appeals Judge Thomas Woodall received the most negative votes. He won his recom-

# Tennessee News Digest

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- The Senate Republican Caucus has picked Nashville attorney Tom Lawless, a former Davidson County Republican Party chairman, as its representative on the Registry of Election Finance. Lawless, who chairs the Governor's Commission on Judicial Nominations, replaces Darlene McNeece of Loudon County, who has served for nearly 14 years.
- Longtime Knoxville labor leader and Democratic activist Harold Wood, who

in 2003 served as interim president of the Tennessee AFL-CIO, died Monday at 74. He was a member of the Democratic State Executive Committee.

- New York-based Conduit Global announced Wednesday it will open a call center just outside Memphis, at I-40 and Whitten Road, and hire 300 people. It plans eventually to expand to 1,000.
- Gov. Bill Haslam said Thursday he has "major concerns" about legislation

by Sen. Stacey Campfield (R-Knoxville) and Rep. Tilman Goins (R-Morristown) to remove the authority of local governments to ban guns in local parks.

- Sen. Mike Bell (R-Riceville) and Rep. Courtney Rogers (R-Goodlettsville) have filed a bill to initiate popular elections for appellate judges starting in 2022. The bill would not take effect if the constitutional amendment on judicial selection is ratified in November.
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mentation 5-4. Court of Criminal Appeals Judge D. Kelly Thomas received a 7-2 vote. And both Justice Connie Clark and Court of Appeals Judge Charles Susano were approved 8-1. All other judges drew 9-0 votes.

**Back to normal.** Had judges received unfavorable recommendations and then chosen to run for another term anyway — which has never happened — their races would have been contested instead of up-or-down retention elections.

There had been speculation Senate Majority Leader Mark Norris (R-Collierville) might run for McMullen's West Tennessee seat on the Court of Criminal Appeals. To do so, he may have had to give up his leadership position, which would have generated a race for majority leader and other political excitement.

Alas, political gossip now must turn elsewhere.

**Kyle.** Among the restrictions on judicial candidates in the Canon of Ethics is a prohibition against acting as a leader in a political organization or making speeches on behalf of a political organization. This is now a consideration for Senate Minority Leader Jim Kyle (D-Memphis), a candidate in the August nonpartisan election for an open Shelby County Chancery Court judgeship. Kyle has asked the Administrative Office of the Courts for advice on whether he should continue to serve as minority leader and expects an answer next week.

## Political roundup

### 'Copeland Cap' gets an okay

After conducting a study of the so-called Copeland Cap, the provision in the state constitution that forces the legislature to make a statutory acknowledgment whenever state spending exceeds economic growth, the State Funding Board has decided no change in the requirement is needed.

Some lawmakers have grumbled in recent years that the cap sometimes unfairly makes the legislature look like it's freer with taxpayers' money than it actually is, since the measurement is year-to-year rather than cumulative and even appropriations that go into the Rainy Day Fund are counted against the cap.

Others have complained that the cap is ineffective, because it doesn't actually prohibit spending above the economic growth level — which by law is defined as growth in personal income — but merely requires the legislature to state in an act separate from the appropri-

ations bill that it is doing so. The legislature last year directed the funding board to study the issue.

The board, in a report Comptroller Justin Wilson delivered to the House Finance Committee this week, recommends no change in law. It suggests that the purpose of the cap — added to the constitution in 1978 at the initiative of David Copeland, who for years served as a Republican state representative from Chattanooga — is to create accountability and let the General Assembly know when "spending is growing faster than the economy that supports it."

The board did recommend that the administration report the status of the cap to the General Assembly at the same time the governor presents his recommended budget. Finance Commissioner Larry Martin, who took part in the study, has agreed to do this.

**Sniping at Cohen.** At the Shelby County Democratic Party's Kennedy Day dinner last Saturday, former state legislator and Memphis City Council member Carol Chumney insisted Democratic officeholders should back the party's candidates and referred specifically to her loss to Republican Amy Weirich in the 2012 district attorney's race in which U.S. Rep. Steve Cohen (D-Memphis) made no endorsement.

The remark has made a bit of a stir in Memphis social media, prompting the improbable accusation by Rep. G.A. Hardaway (D-Memphis) that Cohen, a liberal who has been elected repeatedly in the predominantly black city, is a "DINO" — Democrat in name only — who "targets and mocks our Democratic women and African Americans." Cohen endorsed Democrat Mike Kernell over Hardaway in the District 93 primary in 2012.

**Beavers foe.** Lebanon insurance agent Clark Boyd is stepping down as Wilson County Republican Party chairman to challenge Sen. Mae Beavers (R-Mt. Juliet) in the GOP primary.

**Mitchell foe.** Bellevue accountant Troy Brewer will seek the Republican nomination to oppose Rep. Bo Mitchell (D-Nashville) in House District 50, a battleground district.

**'Sad and tragic.'** Ryan Loskarn, who was fired as chief of staff to Sen. Lamar Alexander after being arrested last month on child pornography charges, was found dead in Maryland Thursday — an apparent suicide. Alexander termed it "for everyone involved . . . a sad and tragic story from beginning to end."

## Tennessee Notes & Quotes

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■ The Tennessee Chamber of Commerce & Industry has begun running radio ads in much of the state promoting the Common Core standards for K-12, which are now in their final year of implementation in Tennessee. The chamber and other business groups are opposing legislation aimed at sidetracking the standards. The Tennessee Association of Business Foundation, a non-profit arm of the chamber, has made ad purchases in the range of \$40,000 to \$65,000.

■ Lt. Gov. **Ron Ramsey** will be Sen. **Lamar Alexander's** guest for **President Obama's** State of the Union Address Tuesday and at a private dinner for senators in the U.S. Capitol prior to the speech.

■ **Ramsey** is accustomed to political attention, but this week he was featured in a different kind of story, aired by WJHL-Channel 11 in Johnson City and also shown in other markets. It was about his grandson **Briggs Goforth**, who last year at the age of eight months was diagnosed with cancer. He was treated at the Niswonger Children's Hospital in Johnson City, an affiliate of St. Jude Children's Research Hospital, and after three rounds of chemotherapy has been pronounced cancer free.

■ If you've seen the Tennessee Lottery's football promotion for Powerball tickets — featuring former NFL stars **Joe Namath**, **Warren Moon**, **Jerry Rice**, **Barry Sanders**, and **Terry Bradshaw** — you may have wondered how **Rebecca Hargrove** and her ad team lined up so many big names for a TV commercial. The answer is that Tennessee's is one of 18 state lotteries using the promotion. Powerball is played in 43 states, the District of Columbia, and the Virgin Islands.

■ "Many students that are in college don't vote for Republicans and have no reason to vote for Republicans." — Sen. **Jim Kyle** (D-Memphis), on why his bill to expand the photo ID voting law to include college IDs failed 2-7 Tuesday in the Republican-dominated Senate State and Local Government Committee.

■ Hmm. **Kyle's** assessment would seem to indicate not many Republicans go to college. Maybe the governor's Drive to 55 program will get more of them in school.

■ Ever notice that certain legislators always seem to be in the middle of controversies not necessarily related to legislation? The latest for Sen. **Stacey Campfield** (R-Knoxville) is that a young woman working in his reelection campaign forged his signature on \$900 in checks and stole money from his home. According to *The Knoxville News-Sentinel*, she signed a document admitting her guilt and also allowed the senator to videotape the confession. She is making restitution, the senator said, but because the checks put his campaign account out of balance, he filed a police report last week.

■ There's also a new flap involving Sen. **Jim Summerville** (R-Dickson). Monday night, at a banquet hosted by the Dickson County NAACP, Tennessee State University president **Glenda Glover** delivered a Mar-

tin Luther King Day speech in which she said **President Obama's** skin color is "the number one judging criteria" (sic) of a "cruel electorate." Summerville walked out, later describing the "racist" remarks as "drivel."

■ Let's hope not everyone adopts drivel as an acceptable cause for walkouts. A lot of legislative meetings could lose their audience.

■ "Why do we need education? Because we pursue justice. We're dealing with a selfish government and a cruel electorate, one that's not only yelling disrespect for our nation's president but has shown its downright disregard, disrespect, and absolute disdain for our president, and has made his skin color the number one judging criteria. God will never forgive America, and neither should we." — From **Glover's** speech.

■ Former representative **Phillip Johnson** of Pegram is back on Capitol Hill as a contract lobbyist. He has registered to represent Hart Freeland Roberts architects.

■ And former representative **Harry Tindell** of Knoxville has joined Commonwealth Group Partners, an Atlanta-based government relations firm, to lobby in Tennessee. The firm's founder, **Raymon White**, also will spend some time on Tennessee issues.

■ "It is unfortunate to see the commission relent to pressure and reverse their earlier decision. I had hoped that the commissioners would have the political will to focus on facts, not personalities. I am disappointed." — Lt. Gov. **Ron Ramsey**, after the Judicial Performance Evaluation Commission reversed itself and recommended appellate judges **Andy Bennett** and **Camille McMullen** for retention.

■ Last Friday, while Rep. **Sheila Butt** (R-Columbia) was in the Columbia post office for a few minutes, a state-issued iPad and her purse were stolen from her unlocked Ford Explorer. A Nashville TV reporter went to the scene this week and interviewed people about whether they lock their cars. They all said they do.

■ But give the poor woman a break. She was in Columbia, where she figures everyone is honest. The culprit must have been from out of town.

■ We don't know what the thief found in the purse, but because of a speech **Butt** made in 2011 we're sure there was no Aqua Net hairspray. She gave that up her senior year in high school to protect the ozone layer.

■ The Wacky Bill of the Week is SB 1801 by Sen. **Dolores Gresham** (R-Somerville). It provides that if a business, as allowed by law, prohibits handguns on its property — say, in a hair salon — and someone with a carry permit gets hurt on the property and could have prevented the injury if she'd been allowed to pack heat, then she can sue the business owner for banning guns.

■ We used to wonder why cowboys never had to check their six-shooters before drinking and gambling in the Long Branch Saloon, but maybe it was because if anyone had beaten them up while their holsters were empty, they could have sued Miss Kitty.