



From: Elisha Hodge, MTAS Legal Consultant  
Re: Application of “Fresh Start Act” to 9-Year-Old Beer Permit Case  
Date: September 22, 2022

**Request from municipality:**

I received your voicemail asking whether the “Fresh Start Act” codified at Tenn. Code Ann. § 62-76-104 to municipalities and if so, whether it applies to an applicant for a beer permit whose case was adjudicated 9 years ago.

**Response from MTAS:**

Tenn. Code Ann. § 62-76-104(b)(1) provides:

(b)(1) Subject to the exemptions in this section and unless prohibited by federal law, a licensing authority shall not deny an application for a license, certificate, or registration, or refuse to renew a license, certificate, or registration due to a prior criminal conviction that does not directly relate to the applicable occupation, profession, business, or trade.

However, “licensing authority” is defined as follows in Tenn. Code Ann. § 62-76-104(a):

any state department, board, commission, or agency that issues any license, certificate, or registration for an individual to engage in an occupation, profession, business, or trade in this state, including to those licensing authorities that have statutory authority to deny, suspend, or revoke a license for felonies or misdemeanors of moral turpitude.

Based upon the definition of “licensing authority”, the language in Tenn. Code Ann. § 62-76-104 is not applicable to applications for municipal beer permits issued by municipal beer boards.

Additionally, Tenn. Code Ann. § 57-5-301(a)(1), which includes a list of prohibited acts related to buying, selling, and consuming beer reads:

(a)(1) A permit holder engaging in the business regulated hereunder or any employee thereof shall not make or permit to be made any sales to minors or persons visibly intoxicated. Prior to making a sale of beer for off-premise consumption, the adult consumer must present to the permit holder, or any employee of the permit holder, a valid, government-issued document, such as a driver's license, or other form of identification deemed acceptable to the permit holder, that includes the photograph and birth date of the adult consumer attempting to make a beer purchase. Persons

exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee of the permit holder; however, it is an exception to any criminal punishment or adverse administrative action, including license suspension or revocation, as provided for a violation of this section if the sale was made to a person who is or reasonably appears to be over fifty (50) years of age and who failed to present an acceptable form of identification. Responsible vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven inches (8 ½ " x 11"), and contain the following language: STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER. Neither the person engaging in such business nor persons employed by that person 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.

To the extent the applicant for the beer permit was convicted of any “laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude within the last 10 years” from the date application is made, the city’s Beer Board is not authorized to issue the applicant a beer permit.

Please let me know if you want to discuss this matter or if you have other questions.

