



To: TABC Commissioners, Management, Staff and Other Concerned Parties  
From: Clayton Byrd, TABC Executive Director  
Date: July 9, 2018

**Subject: Applicants' Criminal History and the Fresh Start Act, 2018 Public Chapter No. 793**

This memo is the Tennessee Alcoholic Beverage Commission's (TABC) official interpretation of the laws that relate to the implementation of the Fresh Start Act, 2018 Public Chapter No. 793. The Fresh Start Act alters both the substance and procedure of the TABC's review of initial applications and renewal applications for the licenses and permits that the TABC regulates. This memo interprets which criminal convictions "directly relate to the applicable occupation[s], profession[s], business[es], or trade[s]" authorized by the licenses and permits that the TABC administers and, as a result, which criminal convictions may be the basis for denying a license or permit application. Fresh Start Act, 2018 Tenn. Pub. Ch. 793, § 2(b)(1). This memo also discusses the TABC's implementation of the procedure created under the Fresh Start Act to review applications for licenses and permits when an applicant has a criminal history. This interpretation "should be given controlling weight," and "until the Director's interpretation . . . is superseded by the Commission itself or by a court of competent jurisdiction, the Director may direct [TABC staff] to enforce the . . . statutes in accordance with his interpretation." Tenn. Att'y Gen. Op. 77-432.

#### I. Convictions that Directly Relate to TABC Licenses and Permits under the Fresh Start Act

Under the Fresh Start Act, a licensing authority such as the TABC "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." Fresh Start Act, 2018 Tenn. Pub. Ch. 793, § 2(b)(1). Additionally, the Fresh Start Act requires a licensing authority to consider six factors before denying an application or refusing to renew a license or permit due to a prior criminal conviction:

- (i) The nature and seriousness of the crime for which the individual was convicted;
- (ii) The length of time since the commission of the crime;
- (iii) The relationship between the nature of the crime and the purposes of regulating the occupation, profession, business, or trade for which the license, certificate, or registration is sought;
- (iv) The relationship between the crime and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation, profession, business, or trade;
- (v) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against the relationship of crime to occupation, profession, business, or trade; and
- (vi) Any applicable federal laws regarding an individual's participation in the occupation, profession, business, or trade.



*Id.* § 2(b)(4)(A). Some criminal convictions create a “rebuttable presumption that the conviction relates to the fitness of the applicant”:

- 1) Class A, B, or C felonies not defined under title 39, chapter 17, part 4 (which pertains to controlled substances);
- 2) felony offenses for which the offender must register under the Tennessee Animal Abuser Registration Act of title 40, chapter 39, part 1; and
- 3) felony offenses for which the offender must register under the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 of title 40, chapter 39, part 2 or 3.

*Id.* § 2(b)(4)(B).

Accordingly, the Fresh Start Act supplants the various provisions of Title 57 that previously governed which convictions disqualify an applicant from receiving a license or permit. *See, e.g.*, Tenn. Code Ann. § 57-3-203(f), (g) (describing convictions that disqualify an applicant from receiving a wholesaler license); *Id.* § 57-3-204(b)(2) (retail package store license); *Id.* § 57-3-207(d) (winery license); *Id.* § 57-3-210(c) (wholesaler and retailer licenses); *Id.* § 57-3-210(d) (all licenses under chapter 3 of title 57); *Id.* § 57-3-221(b) (manager permit); *Id.* § 57-3-703(a) (wholesale employee and representative permits); *Id.* § 57-3-704(a)(3) (server permit); *Id.* § 57-4-201(b)(2) (liquor-by-the-drink license). Nevertheless, these provisions of Title 57 continue to provide guidance as to which criminal convictions directly relate to the occupations that the TABC regulates. Relying on these statutes, the TABC interprets the following criminal convictions to directly relate to the fitness of applicants for all TABC licenses and permits to practice the applicable occupation, profession, business, or trade:

- 1) convictions related to selling, dispensing, possessing, transporting, storing, manufacturing, or otherwise handling alcoholic beverages or beer;
- 2) convictions related to the revenue laws governing alcoholic beverages or beer or any other tax-related offense;
- 3) convictions related to selling, dispensing, or manufacturing Schedule I or II controlled substances or controlled substance analogues; and
- 4) felony convictions involving theft, dishonesty, deceit, or intoxication.

Of these convictions, the TABC will only consider those that occurred within eight years of the date of application as possibly relating to the fitness of applicants. Additionally, the TABC will consider only the criminal history of applicants whose percentage of ownership meets the relevant threshold established under title 57. *See, e.g., id.* § 57-4-201(b)(2) (limiting the consideration of criminal history to applicants with an ownership interest of at least five percent when the applicant seeks a license to sell liquor by the drink). The TABC will not consider any convictions that have been expunged from the applicant’s criminal history. In sum, the TABC will consider only criminal convictions that meet the criteria of this paragraph or the criteria of section 2(b)(4)(B) of the Fresh Start Act.



## II. Procedure for Reviewing Convictions under the Fresh Start Act

In addition to altering the substance of the TABC's application review, the Fresh Start Act also alters the procedure of the TABC's application review. Before denying an initial or renewal application based on the applicant's criminal history, the TABC must notify the applicant in writing that the criminal history disqualifies the applicant from receiving the license or permit. Fresh Start Act, 2018 Tenn. Pub. Ch. 793, § 2(b)(2). The notification must include the TABC's rationale for denying the application based on the six factors listed in section 2(b)(4)(A) of the Fresh Start Act and also the earliest date upon which the applicant is eligible to reapply. *Id.* § 2(b)(2). Because an applicant may have information regarding the six factors listed in section 2(b)(4)(A) that it did not provide to the TABC with the application, the TABC will allow applicants to provide additional information relevant to the issue of whether the criminal conviction disqualifies the applicant from receiving a license or permit. The applicant shall submit any additional information within ten days of the date the TABC issued the notification. After reviewing the additional information, the TABC may reconsider its rationale for denying the application and instead grant the application. Alternatively, the TABC may deny the application, taking into account the additional information and how it relates to the factors listed in section 2(b)(4)(A) of the Fresh Start Act. If the TABC is going to deny the application, it will typically do so after the applicant's time for seeking judicial review of the TABC's notification has expired. *See id.* § 2(c).

Although the Fresh Start Act allows an applicant to petition the Davidson County chancery court for review of the TABC's notice that it intends to deny the application, *id.* § 2(c), the Fresh Start Act does not alter the existing methods available to seek review of the TABC's denial of an application, *id.* § 2(e). As an example, the process for an applicant to request a hearing to review the denial of a server permit under Tennessee Code Annotated section 57-3-704(b) continues in effect.

## III. Summary of Application Review Process under the Fresh Start Act

Given these changes to the substance and procedure of TABC's application review, a summary of the TABC's application review process under the Fresh Start Act is appropriate. When the TABC receives an application for a license or permit, it will review the application to determine if the applicant's criminal history includes any of the following:

- 1) felony or misdemeanor convictions within eight years related to selling, dispensing, possessing, transporting, storing, manufacturing, or otherwise handling alcoholic beverages or beer;
- 2) felony or misdemeanor convictions within eight years related to the revenue laws governing alcoholic beverages or beer or any other tax-related offense;
- 3) felony or misdemeanor convictions within eight years related to selling, dispensing, or manufacturing Schedule I or II controlled substances or controlled substance analogues;
- 4) felony convictions within eight years involving theft, dishonesty, deceit, or intoxication;
- 5) Class A, B, or C felony convictions not defined under title 39, chapter 17, part 4;
- 6) felony convictions for which the offender must register under the Tennessee Animal Abuser



Registration Act of title 40, chapter 39, part 1; or

7) felony convictions for which the offender must register under the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 of title 40, chapter 39, part 2 or 3.

If the applicant's criminal history includes any of the above offenses, then the TABC will consider the following six factors:

- 1) The nature and seriousness of the crime for which the individual was convicted;
- 2) The length of time since the commission of the crime;
- 3) The relationship between the nature of the crime and the purposes of regulating the occupation, profession, business, or trade for which the license, certificate, or registration is sought;
- 4) The relationship between the crime and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation, profession, business, or trade;
- 5) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against the relationship of crime to occupation, profession, business, or trade; and
- 6) Any applicable federal laws regarding an individual's participation in the occupation, profession, business, or trade.

The TABC will weigh these factors to determine whether the conviction directly relates to the applicable occupation, profession, business, or trade such that the TABC should deny the application. If after conducting this analysis, the TABC determines that the application should be denied based on the applicant's criminal history, the TABC will notify the applicant in writing that it intends to deny the application. The notification will include the TABC's justification for its intent to deny the application based on the six above factors and the earliest date the applicant is eligible to reapply. Within ten days of the date the TABC issued its notification, the applicant may submit additional information that he or she believes is relevant to the six above factors. After receiving any additional information, the TABC will either grant or deny the application. If the TABC is going to deny the application, it will typically do so at least thirty days after the date the notification was provided to the applicant—or after the applicant's time for seeking judicial review of the TABC's notification has expired. If appropriate under the circumstances, the TABC may deny the application sooner after receiving any additional information from the applicant.

If the TABC denies an application based on the applicant's criminal history, it will notify the applicant in writing. The notification of denial will include the TABC's justification for its denial based on the six above factors. The applicant's ability to seek review of the TABC's denial is governed by the Uniform Administrative Procedures Act and title 57. The details of that review are outside the scope of this memo.

Clayton Byrd  
TABC Executive Director