



Business Regulations

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Business Regulations

Reference Number: MTAS-54

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Adult-oriented Businesses

Reference Number: MTAS-72

Three state laws regulate adult-oriented businesses:

- T.C.A. §§ 7-51-1101, *et seq.* (Adult-Oriented Establishment Registration Act of 1998). Counties are authorized (but not required) to adopt by a two-thirds vote the Adult-Oriented Establishment Registration Act of 1998. That act expressly preserves the right of municipalities to adopt and enforce "other lawful and reasonable restrictions, regulations, licensing, zoning, and other criminal, civil, or administrative provisions concerning the location, configuration, code compliance, or other business operations or requirements of adult-oriented establishments." T.C.A. § 7-51-1121. The act defines and covers adult bookstores, adult mini-motion and motion picture theaters, adult cabarets, escort agencies, sexual-encounter centers, massage parlors, rap parlors, saunas, and similar businesses. The act prohibits adult businesses within 1,000 feet of any child-care facility, school, public park, residence, family recreation center, or place of worship, but it does not prevent local ordinances setting distance requirements. In any county that has adopted the act, such businesses must obtain a license from the county. The act prescribes the rules and regulations that adult-oriented businesses must follow, and the adult-oriented establishment board (created by the county) is empowered to adopt additional rules and to suspend and revoke the licenses of adult-oriented businesses. In addition, first offenders may be fined up to \$500. A subsequent offense is a Class A misdemeanor. This statute was upheld in the case of *American Show Bar Series Inc. v. Sullivan County*, 30 S.W. 3d 324 (Tenn. App. 2000).
- Municipalities that disqualify persons with criminal records from operating or performing in these establishments are required to conduct a criminal records check on applicants through the TBI and FBI. The city must require two sets of fingerprints, which must be sent to the TBI. Costs must be paid by the city but may be added to the application fee. T.C.A. § 7-51-1122.
- T.C.A. § 27-9-111 makes mandatory the judicial review of decisions of boards and commissions that revoke, suspend, or deny permits or licenses required for engaging in adult businesses. The court must hear and decide the matter within 40 days of the date the court granted certiorari.
- T.C.A. § 57-4-204 prohibits certain sexual and pornographic conduct in establishments that sell intoxicating liquor. Generally, the Alcoholic Beverage Commission is the agency designated to enforce the statute. However, the statute expressly provides that "Each county, city, or metropolitan government is empowered upon approval by a two-thirds vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of subsections (a)-(d) [which contain the prohibited conduct], and such law enforcement officers shall report such violations to the commission for appropriate action by such commission." T.C.A. § 57-4-204(e).
- T.C.A. § 39-13-517. This statute prohibits public indecency, the definition of which includes various kinds of sexual activities. Its definition of "public place" includes, but is not limited to, streets, sidewalks, parks, beaches, and business and commercial establishments of various kinds. It preserves the right of local governments to regulate "any activity where alcoholic beverages, including malt beverages, are sold for consumption." T.C.A. § 39-13-517(g). First and second offenses are Class B misdemeanors carrying a fine of \$500. A third or subsequent offense is a Class A misdemeanor with a fine of \$1,500 and a jail term of up to 11 months, 29 days, or both.

Many municipalities also have ordinances regulating adult-oriented businesses. At both the state and local levels, the most successful approach to the regulation of such businesses generally has been

based upon the regulation of their "secondary effects." (See U.S. Supreme Court cases *Renton v. Playtime Theaters Inc.*, 475 U.S. 41 (1986); *Barnes v. Playtime Theaters Inc.*, 501 U.S. 560 (1991); and *City of Erie v. Pap's A.M.*, *tbda* "Kandyland," 130 S.Ct. 1382 (2000)). Competent legal advice should be sought and the federal and state cases interpreting the above and similar statutes in other jurisdictions should be read before a municipality adopts or enforces either a state law or municipal ordinance regulating adult-oriented businesses.

Fireworks

Reference Number: MTAS-73

The state requires anyone manufacturing, distributing, selling, or displaying fireworks to have a permit issued by the state fire marshal. An application for a retailer's permit must be accompanied by a statement that selling fireworks within its county or municipality is permissible. The statement must be signed by the mayor or an appointee responsible for enforcing this requirement. It is illegal to sell any fireworks in a county or municipality where sale has been made illegal by ordinance or law. It also is illegal to ship fireworks for sale at retail into one of those municipalities or counties. T.C.A. §§ 68-104-105. The minimum age to purchase common fireworks is 16. Persons 16 or 17 who wish to buy these fireworks must show a state-issued ID or be accompanied by an adult. Municipalities may adopt the offense of selling fireworks to an underage person by reference. T.C.A. §§ 68-104-112 and 114.

In counties where sales are not prohibited, a city may by private act or ordinance regulate, restrict, or totally prohibit the sale of fireworks within the city. T.C.A. §§ 68-104-116. Retail sales of Class C common fireworks are prohibited in any county of more than 335,000 population except in any city therein with a population of 600 to 620 that permitted such sales before 1984, or unless the retailer has been selling fireworks annually at the stand for at least 45 years. T.C.A. § 68-104-112(a)(4).

Display Fireworks

T.C.A. §§ 68-104-201, *et seq.*, establish a state program of licensing display fireworks (Class B or 1.3) exhibitors and a certification program for display fireworks operators.

Exhibitors must file an application with the state and carry a minimum of \$1 million in general liability insurance for the benefit of any person injured by a fireworks display. Operators, or the people who actually shoot the fireworks, must be trained and certified.

A municipality performing a fireworks display need not be a licensed exhibitor but must have a certified operator supervising or discharging the display, show proof of insurance, and have the fireworks supplied by a licensed exhibitor. Prior to any public fireworks display, an application must be filed with the state fire marshal at least 10 days prior to the display. T.C.A. § 68-104-211.

Municipalities may enforce local regulations relating to displays of fireworks. Municipalities also may adopt the criminal provisions of the law as an ordinance violation. Local ordinances also may regulate the storage of these fireworks.

A display permit application must bear the "signed" approval of the chief supervisory official of the fire department. Written notification must be sent to chief law enforcement officer. T.C.A. § 68-104-211.

Miscellaneous Business Regulations

Reference Number: MTAS-84

Antiques Dealers' Records

Antiques dealers are required to keep records containing specified information for any item they purchase "exceeding the value of \$50" and to preserve (no time period is specified, so presumably permanently) such records for inspection at any time by any city or county police officer. T.C.A. § 62-22-101. Dealers in antique, used, or scrap jewelry and precious metals must keep certain records and deliver daily to the police chief copies of logs containing specified information. T.C.A. §§ 38-1-201, *et seq.*

Pawnbrokers

Cities may adopt state provisions regulating pawnbrokers and other regulations they "may deem right and proper." T.C.A. § 45-6-219. Cities may not regulate interest, fees, insurance charges, hours, types

of pawn transactions, or license requirements, nor may cities make requirements other than those under the state statutes. A law enforcement official of a city may not charge a pawnbroker for receiving or processing daily reports or pawn tickets or any other information required by the law enforcement official. A pawnbroker is required to have a computer system in operation that is capable of electronically transferring information regarding pledged goods to a requesting law enforcement agency. T.C.A. § 45-6-221. The state code intimates that even though a city may not license pawnbrokers, a city may suspend or revoke a pawnbroker's license if the owner, major stockholder, or managing partner is convicted of violating the state statute. Upon request, pawnbrokers must furnish law enforcement agencies with the names of suppliers from whom they bought merchandise for resale. T.C.A. §§ 45-6-201, *et seq.* Pawn shop operators in Knox and Shelby counties must obtain the thumbprint or fingerprint of the pledger. T.C.A. § 45-6-209.

Closing-out Sales

A city may elect to regulate "going-out-of-business" sales by requiring licenses and verifying the authenticity of such sales. T.C.A. §§ 6-55-401–413. Failing to comply with municipal regulations of liquidation sales is an unfair or deceptive trade practice under T.C.A. § 47-18-104.

Fire and Burglar Alarms

The Alarm Contractors Licensing Act of 1991 (T.C.A. §§ 62-32-301, *et seq.*) prohibits municipalities and counties from offering services as an alarm system contractor except for facilities wholly owned by the municipality or county. As set forth in T.C.A. § 62-32-321, municipalities may provide monitoring and response service to alarm systems if

- no charge is made for the service;
- using the local government service is not mandatory; and
- response by law enforcement officials, firefighters, and other emergency personnel is not conditioned on using the service.

No municipality may enact any regulations relating to licensing alarm businesses after July 1, 1993. Any municipal regulation requiring certification or licensing of alarm businesses or their employees is superseded.

A municipality may impose a fine not exceeding \$50 for each false alarm unless the false alarm is due exclusively to a violent act of nature.

A municipality may require alarm businesses and agents to register their names, addresses, and license certificate numbers. A city may not impose a fee or require an application for this registration.

Fire Extinguisher Firms

Regulating fire extinguisher firms is exclusively a state function except that a municipality may require permits for installing fire extinguisher systems and require that the installation of such systems conform to applicable building codes and requirements. T.C.A. § 62-32-213.

Junkyards

Restrictions have been imposed on junkyards located within 1,000 feet of an interstate or primary highway. They are enforced and implemented by the Tennessee Department of Transportation. "Junkyard" is defined to include a place where 10 or more abandoned motor vehicles are stored and any place that stores, buys, or sells junk. T.C.A. §§ 54-20-101, *et seq.* but it does not include recycling centers as defined in T.C.A. § 54-20-103(6)(B) or solid waste facilities registered under T.C.A. § 68-211-106. Otherwise, the definition of "junk" includes a wide variety of materials. A municipality is empowered to enforce regulations at least as stringent as those established under this statute for city streets that are in the state highway system. T.C.A. §§ 54-20-101, *et seq.*

Automobile Graveyards

For city streets that are not a part of the state highway system, a municipality is empowered by ordinance to license and regulate "any lot or place which is exposed to the weather" where more than five motor vehicles, not economically practical to make operative, are located. T.C.A. § 7-51-701.

Regulation of Taxicabs and Similar Vehicles

Municipalities are empowered to license, control, and regulate taxicabs by ordinance or resolution. The statute outlines the scope of this authority and extends to a municipality the full extent of antitrust immunity accorded to the state as sovereign under state and federal laws. Governmental entities in a county of 287,700 to 287,800 (Hamilton County) are exempted from this law. Governmental entities in counties with more than 500,000 population (Shelby and Davidson) also may regulate limousine, sedan,

shuttle, and taxicab services. T.C.A. §§ 7-51-1001–1007. T.C.A. § 6-54-128 requires a criminal records check on cab drivers through the TBI and FBI by municipalities in counties with over 100,000 population that choose to license and regulate persons operating vehicles for hire and disqualify those convicted of specified crimes. Municipalities are not permitted to regulate transportation network companies, such as Uber and Lyft. T.C.A. § 65-15-302.

Regulation of Towing or Wrecker Companies

Federal law (49 U.S.C. § 14501(c)) restricts municipal regulation of towing and wrecker companies. Under the noted federal statute, which deregulated the motor carrier industry, including towing companies, it appears that municipalities may do only the following relative to towing and wrecker companies:

- Regulate the price of non-consensual tows;
- Establish standards for towing businesses that perform work for the city itself as a market participant; and
- Regulate safety aspects of the towing business where this authority is delegated by the state.

All other business regulation of towing companies appears to be pre-empted. See *Petrey v. City of Toledo*, 246 F. 3d 548 (6th Cir. 2001) and *City of Columbus v. Ours Garage and Wrecker Service*, 122 S. Ct. 2226 (2002).

False Claims

T.C.A. §§ 4-18-101, *et seq.*, make any person or entity that makes a false or fraudulent claim against the state or any municipality liable for three times the amount of damages. In addition, the person or entity is liable for court costs of a civil action to recover these damages and for a civil penalty of not less than \$2,500 nor more than \$10,000.

Manufactured Homes

State law provisions regulating the installation of manufactured homes pre-empt any local ordinances that regulate their installation. T.C.A. § 68-126-412.

Price Gouging During States of Emergency

T.C.A. §§ 47-18-5101, *et seq.*, and T.C.A. § 47-18-104 make it unlawful for businesses to charge excessive prices for essential goods during states of emergency. Local ordinances prohibiting and penalizing similar conduct are not pre-empted.

Limited License Plumbers

State law regulates limited license plumbers (plumbers who do plumbing work at a total cost of less than \$25,000). T.C.A. §§ 62-6-401, *et seq.* Municipalities may have stricter testing and experience requirements. The state law also makes other allowances for local regulation of these plumbers. The state law apparently does not apply in the 24th and 25th senatorial districts. T.C.A. § 62-6-416.

Sport Shooting Ranges

Owners, operators, and users of a sport shooting range are granted protection from nuisance and other types of liability not involving bodily injury when the range complied with noise control ordinances in effect at the time the range began operation. For ranges that opened for operation after July 1, 2004, this protection from nuisance liability does not apply until one year after the range begins operation. T.C.A. § 39-17-316.

Charitable Gaming

Municipalities may not regulate charitable gaming. T.C.A. § 3-17-112 and T.C.A. § 39-17-659.

Tax Refund Loan Businesses

Municipalities may not regulate tax refund loan businesses. T.C.A. § 62-29-204.

Home Improvement Contractors

Home improvement contractors are regulated in T.C.A. Title 62, Chapter 6, Part 5. A municipality may not require that any person obtain an additional authorization or license to transact a home improvement business; however, a municipality is not prohibited from requiring licenses for persons performing plumbing work, electrical work or gas and mechanical work. T.C.A. § 62-6-503. Except for a permit for any home improvement work to be performed by the owner of property, a municipality may not issue a permit for any home improvement work unless the permit lists each contractor's home improvement license number. T.C.A. § 62-6-503(d).

Scrap Metal Dealers

T.C.A. §§ 62-9-101–114 regulate scrap metal dealers at the state level. T.C.A. § 62-9-105 purports to authorize local law enforcement officers to inspect scrap metals purchased by and the records of these dealers without a warrant or subpoena during usual business hours, but this authority is constitutionally suspect. Under T.C.A. § 62-9-111, local governments, landfills, and solid waste processing facilities may sell any scrap metal lawfully attained by them. Payment to the governmental entity must be by check or money order and must be mailed. In addition, a governmental entity may register as a scrap metal dealer.

Posting of Nutritional Information

T.C.A. § 68-14-704 prohibits a non-elected body or any municipality, county or metropolitan government from enacting any legislation, rule or regulation pertaining to food safety or the provision of nutritional information or menu of any food service establishment.

Appraisal Management Companies

As of July 1, 2011 persons and companies engaged in appraisal management are regulated by T.C.A. Title 62, Chapter 39, Part 4. Banks, savings and loan institutions, licensed attorneys, licensed accountants or state and local governments who order appraisals for tax purposes are exempt from the act. T.C.A. § 62-39-404.

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