

Regular Session, 2012

HOUSE BILL NO. 1098

BY REPRESENTATIVE CHAMPAGNE

SALES/TOBACCO LICENSE: Establishes one permit for tobacco retail dealers by eliminating the tobacco registration certificate

1 AN ACT

2 To amend and reenact R.S. 26:902 through 905, 906(B), (C), (D), and (E), 912, 913, 918(B),
3 and 919(A), (E), and (F) and to repeal R.S. 26:907 and 915, relative to tobacco
4 product permits for retail dealers; to eliminate requirements relative to registration
5 certificates for tobacco retail dealers and all references thereto; to provide for a
6 single class of permits for tobacco retail dealers; to provide for a decrease in retail
7 dealer permit fees; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 26:902 through 905, 906(B), (C), (D), and (E), 912, 913, 918(B), and
10 919(A), (E), and (F) are hereby amended and reenacted to read as follows:

11 §902. ~~Registration certificates; permits~~ Permits

12 The commissioner shall issue as authorized by this Section the following
13 types of ~~certificates~~ permits and shall adopt rules and regulations that specify the
14 identifying information that is required to appear on the face of each type of
15 ~~certificate or permit~~:

16 (1) ~~Retail Dealer Registration Certificate: A retail dealer registration~~
17 ~~certificate shall be issued to any dealer, not otherwise required by this Chapter to~~
18 ~~obtain a permit, other than a wholesale dealer or vending machine operator for each~~

1 ~~retail outlet where cigars, cigarettes, or the tobacco products are offered for sale~~
2 ~~either over the counter or by vending machine.~~

3 ~~(2)~~ Retail Dealer Permit: A retail dealer permit shall be issued to a dealer
4 other than a wholesale dealer or vending machine operator for each retail outlet
5 where cigars, cigarettes, or other tobacco products are offered for sale either over the
6 counter or by vending machine.

7 ~~(3)~~(2) Vending Machine Operator Permit: A vending machine operator
8 permit shall be issued to a vending machine operator operating one or more vending
9 machines. Licensed wholesale dealers who operate vending machines shall not be
10 required to obtain a vending machine operator permit.

11 ~~(4)~~(3) Vending Machine Permit: A vending machine permit shall be issued
12 to the vending machine operator or wholesale dealer for each vending machine he
13 operates and such permit shall be affixed to the front surface of the vending machine
14 in a location as designated by the commissioner.

15 ~~(5)~~(4) Wholesale Dealer Permit: A wholesale dealer permit shall be issued
16 to a wholesale dealer for each wholesale place of business operated by the wholesale
17 dealer.

18 §903. Permit fees

19 The fees for each ~~registration certificate~~ or permit shall be as follows:

20 (1) ~~Retail dealer registration certificate -- \$25.00 per year or any portion~~
21 ~~thereof.~~

22 ~~(2)~~ Retail dealer permit -- ~~\$75.00~~ 25.00 per year or any portion thereof.

23 ~~(3)~~(2) Vending machine operator -- \$75.00 per year or any portion thereof.

24 ~~(4)~~(3) Vending machine -- \$5.00 per machine per year or any portion
25 thereof.

26 ~~(5)~~(4) Wholesale dealer -- \$75.00 per year or any portion thereof.

27 ~~(6)~~(5) Tobacconist--The commissioner of alcohol and tobacco control shall
28 promulgate rules to issue a single permit for bona fide Louisiana tobacconists. Such
29 single permit shall allow any bona fide Louisiana tobacconist to operate as a retail

1 tobacco dealer and as a wholesale tobacco dealer. Any fee assessed for such single
2 tobacconist permit shall be set at ~~the current rate in effect on August 15, 2010~~ one
3 hundred dollars.

4 §904. ~~Registration certificate and permit terms~~ Permit terms

5 A. ~~Except as otherwise provided in this Section, each registration certificate~~
6 ~~shall be valid for only one year. The commissioner may issue registration~~
7 ~~certificates which are valid for two years to applicants in good standing with the~~
8 ~~office of alcohol and tobacco control.~~

9 B. ~~To provide for the even distribution of the expiration and renewal of~~
10 ~~tobacco product certificates, the commissioner may establish by administrative rule~~
11 ~~a system by which the expiration dates of the registration certificates are staggered~~
12 ~~throughout the year. Certificates issued may vary in length from six months to~~
13 ~~twenty-four months. The fee for the registration certificate shall be apportioned to~~
14 ~~comply with the yearly fee established in this Chapter.~~

15 C. ~~Except as provided in Subsection D~~ B of this Section, each permit shall
16 be valid for the designated time period unless suspended or revoked. The
17 commissioner may issue permits which are valid for two years to applicants in good
18 standing with the office of alcohol and tobacco control.

19 ~~D~~.B. To provide for the even distribution of the expiration and renewal of
20 tobacco product permits, the commissioner may establish by administrative rule a
21 system by which the expiration dates of the permits are staggered throughout the
22 year. Permits issued may vary in length from six months to twenty-four months.
23 The fee for ~~said~~ the permits shall be apportioned to comply with the yearly fee
24 established in this Chapter.

25 ~~E~~.C. Prior to issuing any permits valid for more than one year, the
26 commissioner shall promulgate rules in accordance with the Administrative
27 Procedure Act to provide the requirements, qualifications, and conduct which
28 constitutes "good standing" for purposes of qualifying for a two-year permit.

1 §905. Renewal of a ~~registration certificate or permit~~

2 A. ~~Persons holding registration certificates under this Chapter shall annually~~
3 ~~file application for renewal for the ensuing year and pay the fees in accordance with~~
4 ~~this Chapter. If the commissioner has authorized permits which are valid for two~~
5 ~~years as authorized by the provisions of R.S. 26:904, the person holding the~~
6 ~~certificate shall file for renewal and pay fees in accordance with this Chapter and as~~
7 ~~authorized by rules adopted by the commissioner pursuant to the Administrative~~
8 ~~Procedure Act.~~

9 B. ~~If a dealer fails to file an application and pay the registration certificate~~
10 ~~fees by the date established by the commissioner, there shall be added to the fee, in~~
11 ~~addition to other penalties provided in this Chapter, a delinquency penalty of twenty-~~
12 ~~five percent if the failure is not more than thirty days, with an additional twenty-five~~
13 ~~percent for each additional thirty days or fraction thereof during which the failure~~
14 ~~continues. If the dealer fails to make his application by the date established by the~~
15 ~~commissioner, the commissioner may issue a notice of violation of this Chapter.~~

16 C. Persons holding permits under this Chapter shall annually file application
17 for renewal for the ensuing year and pay the permit fees in accordance with this
18 Chapter. If the commissioner has authorized permits which are valid for two years
19 as authorized by the provisions of R.S. 26:904, the person holding the ~~certificate~~
20 permit shall file for renewal and pay fees in accordance with this Chapter and as
21 authorized by rules adopted by the commissioner pursuant to the Administrative
22 Procedure Act.

23 D. ~~B.~~ If a dealer fails to file an application and pay the permit fees by the date
24 established by the commissioner, there shall be added to the fee, in addition to other
25 penalties provided in this Chapter, a delinquency penalty of twenty-five percent if
26 the failure is not more than thirty days, with an additional twenty-five percent for
27 each additional thirty days or fraction thereof during which the failure continues. If
28 the dealer fails to make his application by the date established by the commissioner,

1 the commissioner may, without notice or hearing, suspend his right to possess or sell
2 tobacco products.

3 E.C. Renewal permits may be withheld or denied on the same grounds and
4 in the same manner as an original permit.

5 §906. General requirements

6 * * *

7 B. Application for ~~registration certificates or permits~~ shall be on forms
8 provided by the commissioner. The application shall be signed by each person
9 owning the business or having ownership interest therein. If the applicant is a
10 corporation, partnership, limited partnership, or limited liability company, a duly
11 authorized agent, partner, or officer shall sign the application.

12 C. The application shall be accompanied by the fees prescribed herein which
13 fees shall be retained by the office to help defray the cost of printing, processing, and
14 issuing the ~~registration certificates or permits~~, providing server or seller training, and
15 enforcement expenses of the office of alcohol and tobacco control. The office shall
16 not require that annual renewal fees be paid by certified check or money order. A
17 personal check or business check shall be sufficient for payment of the annual
18 renewal fee to obtain a ~~registration certification or permit~~ by a dealer or vending
19 machine operator. If the personal or business check is denied by the bank for any
20 reason that makes it a nonnegotiable instrument, then the permit that was issued shall
21 be considered revoked until such time as proper payment is made with cash, certified
22 funds, money order, or cashier's check. ~~Furthermore, said~~ The maker shall lose ~~their~~
23 the privilege of tendering personal or business checks for renewal of tobacco
24 permits.

25 D. The application shall be made on forms secured from the office, and shall,
26 in addition to such other information as the commissioner may require, show the true
27 and correct name of such dealer, the dealer's post office address, the nature of the
28 operation for which the ~~registration certificate or permit~~ is sought, the location of the

1 place of business as to which the ~~registration certificate or~~ permit shall apply and the
2 trade name of the business, if any.

3 E. All applications for ~~registration certificates or~~ permits shall be mailed or
4 delivered to the commissioner in Baton Rouge, Louisiana. Upon receipt of an
5 application, the commissioner shall stamp the day, month, and year received.

6 * * *

7 §912. ~~Registration certificate; permit~~ Permits; necessity of display; penalties

8 A. A ~~registration certificate or~~ permit issued under this Chapter is a personal
9 privilege and cannot be transferred. If over fifty-one percent of a corporation is sold
10 or transferred during the period for which a ~~registration certificate or a~~ permit was
11 issued, a new ~~registration certificate or~~ permit must be applied for, and the new
12 owner must comply with the provisions set forth in this Chapter. If the holder of the
13 ~~registration certificate or~~ permit is an association, partnership, or limited partnership,
14 a change of the controlling interest shall constitute a change of ownership under this
15 Chapter. If the business is physically relocated during such period, the registration
16 certificate holder or permittee must notify the commissioner in writing so that proper
17 change may be noted thereon.

18 B. The ~~registration certificate or~~ permit shall at all times be publicly
19 displayed by the dealer in his principal place of business so as to be easily seen by
20 the public unless the dealer is solely a vending machine operator. The failure of a
21 dealer or vending machine operator to publicly display his ~~registration certificates~~
22 ~~or~~ permits, as required by this Chapter, shall be grounds for the issuance of a fine or
23 the withholding, suspension, or revocation of the permit.

24 C. Each ~~registration certificate or~~ permit shall include a unique number
25 assigned by the commissioner.

26 D. Nothing herein shall prohibit an individual, partnership, or corporation
27 otherwise qualified from obtaining multiple ~~registration certificates or more than one~~
28 ~~type of permit~~ permits.

1 §913. Violation

2 No person shall perform any action for which a ~~registration certificate or~~
3 permit is required by this Chapter unless he holds the proper ~~registration certificate~~
4 ~~or~~ permit. Each day of business which is conducted without such a valid,
5 unsuspended ~~registration certificate or~~ permit shall constitute a separate violation of
6 this Chapter.

7 * * *

8 §918. Civil penalties

9 * * *

10 B. Any fine imposed upon any ~~registration certificate holder or~~ permittee or
11 the revocation or suspension of a permit is in addition to and is not in lieu of or a
12 limitation upon any other penalty imposed by law and not contained in this Chapter.

13 §919. Administrative hearings

14 A. When the commissioner holds a hearing pursuant to this Chapter, he shall
15 issue a written summons or notice to the applicant or permittee, as the case may be,
16 directing him to show cause why his application should not be refused or why he
17 should not be assessed a penalty or why his permit should not be suspended or
18 revoked. The notice or summons shall state the time, place, and hour of the hearing,
19 which shall be not less than ten nor more than thirty calendar days from the day of
20 the notice. The notice or summons shall enumerate the cause or causes alleged for
21 refusing the application or for assessing the penalty or suspending or revoking the
22 permit. If a petition has been filed opposing the issuance of the permit or asking for
23 its suspension or revocation, a copy of the petition shall accompany the notice or
24 summons. All notices or summonses shall be sent by certified mail to the applicant;
25 ~~registration certificate holder,~~ or permittee and directed to him at the address of his
26 place of business as given in his application for the permit. When so addressed and
27 mailed, notices or summonses shall be presumed to have been received by the
28 applicant or permittee.

29 * * *

1 E. If a ~~registration certificate holder~~, permittee; or applicant who has been
 2 notified of a hearing does not appear, the hearing may proceed without him and the
 3 commissioner may consider and dispose of the case, but in all cases the
 4 commissioner, upon application or ex proprio motu, may grant continuances from
 5 time to time. If the continuance be granted to fix a future date by written consent or
 6 in the presence of the permittee, ~~registration certificate holder~~, or applicant, or his
 7 counsel, no further notice of the hearing date need be given. In all other cases the
 8 same notice of hearing as in original hearing shall be given.

9 F. In hearings of the commissioner which finally result in withholding the
 10 issuance of a ~~registration certificate~~ or permit or in suspending or revoking a permit,
 11 the commissioner shall assess the costs of the hearing to the applicant or permittee.
 12 The costs are recoverable by the commissioner in any appellate proceeding instituted
 13 by the applicant or permittee or in any other judicial proceeding where the
 14 commissioner is successful.

15 Section 2. R.S. 26:907 and 915 are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Champagne

HB No. 1098

Abstract: Establishes one permit for tobacco retail dealers by eliminating the tobacco registration certificate.

Present law requires the commissioner to issue certificates and to adopt rules and regulations that provides identifying information on the face of the certificate or permit.

Proposed law retains present law except that it removes the requirement relative to a registration certificate.

Present law provides for a retail dealer registration certificate to be issued to any dealer, other than a wholesale dealer or vending machine operator for each retail outlet where cigars, cigarettes, or the tobacco products are offered for sale either over the counter or by vending machine.

Proposed law deletes present law.

Present law provides for fees relative to registration certification or permit for each year or any portion thereof as follows:

- (1) \$25 for a retail dealer registration certificate.
- (2) \$75 for a retail dealer permit.
- (3) \$5 for a vending machine.
- (4) \$75 for a wholesale dealer.
- (5) Requires the commissioner of the ATC to promulgate rules to issue a single permit for bona fide La. tobacconists, which allows the tobacconist to operate as a retail tobacco dealer and as a wholesale tobacco dealer and any fee assessed will be set at the current rate in effect on Aug. 15, 2010.

Proposed law retains present law except that it deletes the retail dealer registration certificate fee and changes the retail dealer permit fee from \$75 to \$25.

Proposed law reduces the fee for a single tobacconist permit to \$100.

Present law requires that each registration certificate is valid for only one year and authorizes the commissioner to issue registration certificates that are valid for two years if the applicant is in good standing with the ATC.

Proposed law deletes present law.

Present law authorizes the commissioner to establish by administrative rule, a system by which the expiration dates of the registration certificates are staggered throughout the year and allows the certificates to vary in length from six months to 24 months.

Proposed law deletes present law.

Present law provides that any person holding registration certificates to annually file applications for renewal for the ensuing year and pay the fees in accordance with present law and if the commissioner authorized permits that were valid for two years, the certificate holder shall file for renewal and pay fees in accordance with the rules adopted by the commissioner pursuant to the Administrative Procedure Act.

Proposed law deletes present law.

Present law requires a delinquency penalty of 25% if the registration certificate fees are not more than 30 days past the established date for payment and an additional 25% for each additional 30 days the payment of fees are not paid and a notice of violation may be issued by the commissioner.

Proposed law deletes present law.

Present law provides for general requirements, violations, and civil penalties relative to registration certificates or permits.

Proposed law retains present law except all references to registration certificates are deleted from present law.

(Amends R.S. 26:902-905, 906(B), (C), (D), and (E), 912, 913, 918(B), and 919(A), (E), and (F); Repeals R.S. 26:907 and 915)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added a provision to reduce the single tobacconist permit fee to \$100.
2. Made technical amendments.