

ACT No. 143

Regular Session, 2012

HOUSE BILL NO. 1098

BY REPRESENTATIVE CHAMPAGNE

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

(1) ~~Retail Dealer Registration Certificate: A retail dealer registration certificate shall be issued to any dealer, not otherwise required by this Chapter to obtain a permit, 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.~~

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

1 ~~(3)~~(2) Vending Machine Operator Permit: A vending machine operator
 2 permit shall be issued to a vending machine operator operating one or more vending
 3 machines. Licensed wholesale dealers who operate vending machines shall not be
 4 required to obtain a vending machine operator permit.

5 ~~(4)~~(3) Vending Machine Permit: A vending machine permit shall be issued
 6 to the vending machine operator or wholesale dealer for each vending machine he
 7 operates and such permit shall be affixed to the front surface of the vending machine
 8 in a location as designated by the commissioner.

9 ~~(5)~~(4) Wholesale Dealer Permit: A wholesale dealer permit shall be issued
 10 to a wholesale dealer for each wholesale place of business operated by the wholesale
 11 dealer.

12 §903. Permit fees

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

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

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

17 ~~(3)~~(2) Vending machine operator -- \$75.00 per year or any portion thereof.

18 ~~(4)~~(3) Vending machine -- \$5.00 per machine per year or any portion
 19 thereof.

20 ~~(5)~~(4) Wholesale dealer -- \$75.00 per year or any portion thereof.

21 ~~(6)~~(5) Tobacconist--The commissioner of alcohol and tobacco control shall
 22 promulgate rules to issue a single permit for bona fide Louisiana tobacconists. Such
 23 single permit shall allow any bona fide Louisiana tobacconist to operate as a retail
 24 tobacco dealer and as a wholesale tobacco dealer. Any fee assessed for such single
 25 tobacconist permit shall be ~~set at the current rate in effect on August 15, 2010~~ one
 26 hundred dollars.

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

28 A. ~~Except as otherwise provided in this Section, each registration certificate~~
 29 ~~shall be valid for only one year. The commissioner may issue registration~~

1 ~~certificates which are valid for two years to applicants in good standing with the~~
 2 ~~office of alcohol and tobacco control.~~

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

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

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

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

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

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

1 corporation, partnership, limited partnership, or limited liability company, a duly
2 authorized agent, partner, or officer shall sign the application.

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

16 D. The application shall be made on forms secured from the office, and shall,
17 in addition to such other information as the commissioner may require, show the true
18 and correct name of such dealer, the dealer's post office address, the nature of the
19 operation for which the ~~registration certificate or permit~~ is sought, the location of the
20 place of business as to which the ~~registration certificate or permit~~ shall apply and the
21 trade name of the business, if any.

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

25 * * *

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

27 A. A ~~registration certificate or permit~~ issued under this Chapter is a personal
28 privilege and cannot be transferred. If over fifty-one percent of a corporation is sold
29 or transferred during the period for which a ~~registration certificate or a permit~~ was
30 issued, a new ~~registration certificate or permit~~ must be applied for, and the new

1 owner must comply with the provisions set forth in this Chapter. If the holder of the
 2 ~~registration certificate or~~ permit is an association, partnership, or limited partnership,
 3 a change of the controlling interest shall constitute a change of ownership under this
 4 Chapter. If the business is physically relocated during such period, the registration
 5 certificate holder or permittee must notify the commissioner in writing so that proper
 6 change may be noted thereon.

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

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

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

18 §913. Violation

19 No person shall perform any action for which a ~~registration certificate or~~
 20 permit is required by this Chapter unless he holds the proper ~~registration certificate~~
 21 ~~or~~ permit. Each day of business which is conducted without such a valid,
 22 unsuspended ~~registration certificate or~~ permit shall constitute a separate violation of
 23 this Chapter.

24 * * *

25 §918. Civil penalties

26 * * *

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

1 §919. Administrative hearings

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

17 * * *

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

26 F. In hearings of the commissioner which finally result in withholding the
 27 issuance of a ~~registration certificate~~ or permit or in suspending or revoking a permit,
 28 the commissioner shall assess the costs of the hearing to the applicant or permittee.
 29 The costs are recoverable by the commissioner in any appellate proceeding instituted

1 by the applicant or permittee or in any other judicial proceeding where the
2 commissioner is successful.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____