

CHAPTER 72. CIGARETTE DEALER LICENSES

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Authority

The provisions of this Chapter 72 issued under section 6 of The Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A), unless otherwise noted.

Source

The provisions of this Chapter 72 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979, unless otherwise noted.

§ 72.1. Licensing of dealers.**(a) *Licensing of cigarette stamping agents.***

(1) The Department may license as its agent for a 1-year period and may renew the license for further periods of 1 year if the agent is and remains of good moral character who meets the requirements imposed by the following provisions for the privilege of operating as a cigarette stamping agent:

(i) The applicant is a wholesale dealer licensed by the Commonwealth.

(ii) The applicant maintains warehousing facilities, adequate to protect the revenue, for the purpose of receiving, storing and distributing cigarettes and conducting business.

(iii) The applicant is a person of good moral character and of reasonable financial stability and is reasonably experienced in the wholesale cigarette business. To satisfy this requirement, an applicant shall provide the Department with:

(A) A detailed description of the applicant's business activities, including a history of the applicant's experience in the wholesale cigarette business. An applicant seeking a renewal of a license need not follow this requirement.

(B) Current financial statements prepared in accordance with generally accepted accounting principles.

(iv) The applicant, or any shareholder controlling more than 10% of the stock if the applicant is a corporation or any officer or director if the applicant is a corporation has not been convicted of any crime involving moral turpitude.

(v) The applicant has filed required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to an authorized deferred payment plan.

(2) The cigarette stamping agency license is valid for one specific location only.

(3) The Department may reject an application for a new or renewal license if it finds that any of the requirements in paragraph (1) or (2) have not been met or finds that applicant or licensee has:

(i) Failed to disclose material information required.

(ii) Made a material false statement in his application.

(iii) Violated any provisions of the code, the act or this article.

(4) For purposes of this section, a person convicted of committing any felony, any infamous crime or any crime involving moral turpitude is not a person of good moral character and will not be licensed as a cigarette stamping agent.

(b) *Licensing of wholesalers.*

(1) Applicants for a wholesale license or renewal thereof shall meet the following requirements:

(i) The premises on which the applicant proposes to conduct business are adequate to protect the revenue.

(ii) The applicant is a person of reasonable financial stability and reasonable business experience. To satisfy this requirement, an applicant shall provide the Department with:

(A) A detailed description of the applicant's business activities, including a history of the applicant's experience in the wholesale cigarette business. An applicant seeking a renewal of a license is not required to follow this requirement.

(B) Current financial statements prepared in accordance with generally accepted accounting principles.

(iii) The applicant, or any shareholder controlling more than 10% of the stock if the applicant is a corporation or any officer or director if the applicant is a corporation, has not been convicted of any crime involving moral turpitude.

(iv) The applicant has not failed to disclose any material information required by the Department, including information that the applicant has complied with this article by providing a signed statement, under penalty of perjury, of adherence to State presumptive minimum prices or written approval from the Department to sell at a specific different price.

(v) The applicant has not made a material false statement in his application.

(vi) The applicant has not violated any provision of the code, the act or this article.

- (vii) The applicant has filed the required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to an authorized deferred payment plan.
- (2) The wholesale dealer's license is valid for one specific location only.
- (c) *Licensing of retailers.* An applicant for a retail license or renewal thereof shall meet the following requirements:
 - (1) The premises in which the applicant proposes to conduct business are adequate to protect the revenues.
 - (2) The applicant has not failed to disclose any material information required by the Department, including information that the applicant has complied with this article by providing a signed statement, under penalty of perjury, of adherence to State presumptive minimum prices or written approval from the Department to sell at a specific different price.
 - (3) The applicant has not made any material false statement in the application.
 - (4) The applicant has not violated any provision of the act, the code or this article.
 - (5) The applicant has filed the required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to an authorized deferred payment plan.

§ 72.2. Posting of license.

- (a) Dealers shall conspicuously display their licenses at the locations for which issued. Dealers operating vending machines shall post their licenses at their business headquarters as listed in their license application.
- (b) A dealer who violates subsection (a) shall be subject to a \$100 fine for the first offense, a \$200 fine for the second offense and a \$300 fine for the third and any further offense.

§ 72.3. Assignment of license.

A dealer's license is not assignable. An attempt to assign a dealer's license shall immediately result in the cancellation of the license.

§ 72.4. Timing of application for renewal of existing license.

- (a) A dealer shall apply for a renewal of its license by January 15 of the year in which its license expires.
- (b) A dealer who files an application for renewal of its license after January 15 of the year in which its license expires is not permitted to operate under the existing license after the last day of February of that same year. In this instance, the Department will treat the application for renewal as an application for a new license and the dealer shall be prohibited from stamping or selling cigarettes until its application is approved by the Department.

§ 72.5. Denials, revocations and suspensions.

(a) *Denial of license application and requests for renewal.*

(1) Whenever the Department denies a license application or request for renewal, the Department will send a notice by registered or certified mail at the last known address of the applicant or dealer. The notice will set forth the basis of the Department's denial and inform the applicant or dealer that the Department's actions may be protested through a hearing process. To avail itself of the hearing process, the applicant or dealer shall file a complaint with the Department's Cigarette Licensing, Marketing and Control Board within 30 days after the mailing date in the notice under section 207-A of the code (72 P. S. § 207-A).

(2) A dealer may continue to operate under its license for a 30-day period following the mailing date in the denial notice. If the dealer files an appeal with the Cigarette Licensing, Marketing and Control Board, the dealer may continue to operate under its license during the period of administrative appeal before the Board.

(b) *Revocation or suspension of license.* Whenever the Department determines that a dealer has committed a violation of the act or the code that would result in the suspension or revocation of that dealer's license, the Department will file a complaint with the Cigarette Licensing, Marketing and Control Board under the procedures in section 207-A of the code. Within 30 days after the termination of a hearing, the Board shall recommend its decision to the Secretary. If the Secretary's decision results in the suspension or revocation of the dealer's license, the dealer shall immediately surrender its license to the Department, notwithstanding the dealer's right of further administrative or judicial appeal.

§ 72.6. Change in status of cigarette dealer's business.

A cigarette dealer shall immediately inform the Department, in writing, prior to or immediately after:

(1) Taking actions that would change any information on the dealer's license application or as last reported to the Department, including a change of name or, if the dealer is a corporation or partnership, a change in the dealer's officers, directors or partners.

(2) Filing a certificate of dissolution with the Department of State or filing a similar document in another jurisdiction.

(3) Filing a voluntary petition in bankruptcy or receivership or receiving notice of an involuntary bankruptcy petition.

(4) Merging or consolidating with another business.

(5) Terminating business activities.

(6) If the dealer is a corporation, the acquisition by any person or entity of 10% or more of the number of shares of voting stock of the corporation.

§ 72.7. Cigarette vending machines.(a) *Licenses.*

(1) Each cigarette vending machine shall have a current license, evidenced by a decal issued by the Department, which shall be affixed by its adhesive to and conspicuously displayed on each machine. Each cigarette vending machine shall also have the name and address of the owner and the name and address of the operator conspicuously and visibly displayed on each machine.

(2) Each dealer, at the time of the dealer's application for a license or request for renewal, shall provide the Department with a list identifying the location of each vending machine in this Commonwealth from which cigarettes will be sold, specifying the establishment, address and county.

(b) *Notification of business relocation.* A dealer that relocates vending machines shall notify the Department in writing within 10 days after the relocation. The notification to the Department shall include:

- (1) The dealer's name.
- (2) The dealer's license number.
- (3) The location of the vending machine, specifying the establishment, address and county.

(c) *Extra cigarette vending machine decals.* A dealer may subsequently request extra decals for new vending machines which will be placed in additional locations without identifying the actual locations. These requests for decals are limited to no more than ten or 10% of the listed locations previously on file with the Department, whichever is greater. Once the new vending machines are placed in operation, the dealer shall, within 10 business days, notify the Department of the locations of the additional vending machines, specifying the establishment, address and county. The Department will revoke additional decals if the dealer fails to notify the Department of the locations of the additional vending machines.

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