

§1558. Revocation or suspension procedure

1. Violation of law or rule. Upon discovering a violation of state law or rule related to retail tobacco sales, the commissioner or the commissioner's designee shall:

A. Report the violation to the District Court in a signed complaint; or [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

B. Issue warnings to the licensees involved. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF).]

[PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

2. Notice and hearing. Except as provided under subsection 7, upon receipt of a signed complaint prepared under subsection 1, paragraph A, notice must be provided and a hearing must be held according to the following procedures.

A. The commissioner or the commissioner's designee shall notify the licensee or the licensee's agent or employee by serving the licensee or the licensee's agent or employee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee or the licensee's agent or employee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice upon the licensee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license. Service of the complaint and hearing notice upon a licensee's agent or employee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the agent or employee at the time the agent or employee was initially notified by the department of the violation. The commissioner or the commissioner's designee shall file proof of service with the District Court. [PL 2009, c. 199, §5 (AMD).]

B. The District Court shall conduct a hearing limited to the facts, laws and rules specified in the complaint. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

C. The District Court shall conduct the hearing in the following manner.

(1) The District Court may administer oaths to witnesses and issue subpoenas at the request of any party, including subpoenas to compel the attendance of parents and legal guardians of unemancipated minors.

(a) The department shall pay to the witnesses the legal fees for travel and attendance, except that, notwithstanding Title 16, section 253, the department is not required to pay the fees before the travel and attendance occur.

(2) Hearsay testimony is not admissible during the hearing. The licensees, agents or employees named in the complaint have the right to have all witnesses testify in person at the hearing.

(3) The District Court shall render a decision in each case based on the facts, laws and rules cited in the complaint. The findings must specify the facts found and the laws or rules violated. [PL 2009, c. 199, §5 (AMD).]

[PL 2009, c. 199, §5 (AMD).]

3. Suspension or revocation decision.

[PL 2011, c. 559, Pt. A, §22 (RP).]

4. Suspension of penalty; case on file. After the hearing, the District Court may:

A. Suspend a penalty; or [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF).]

B. Place a case on file instead of imposing a penalty. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF).]

[PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

5. Application of suspension or revocation. A suspension or revocation applies to premises and persons in the following manner.

A. If a licensee is interested directly or indirectly in more than one license, suspensions apply only to the premises where the violation occurs. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF).]

B. If a licensee is interested directly or indirectly in more than one license, the District Court may order that a revocation apply to any of those premises or machines. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

C. If the licensee is a corporation, the District Court shall treat the officers, directors and substantial stockholders as individuals. [PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

[PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

6. Term of suspension or revocation. Suspensions must be for a definite period of time. If the District Court revokes a license, the court shall specify when the department may reinstate a license to the person whose license is revoked.

[PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

7. Warnings. Upon the written recommendation of the commissioner, or the commissioner's designee, the District Court, instead of notifying a licensee against whom a complaint is pending to appear for hearing, may send the licensee a warning. Warnings must be sent by registered or certified mail and contain a copy of the complaint. A licensee to whom a warning is sent may demand a hearing by notifying the District Court by registered or certified mail within 10 days from the date the warning was mailed.

[PL 1995, c. 470, §9 (NEW); PL 1995, c. 470, §19 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

8. Fines. Notwithstanding any other provisions of this Title, the District Court may impose on a licensee or the licensee's agent or employee a fine of a specific sum of not less than \$50 nor more than \$1,500 for any one offense. The fine is independent of any fine or forfeiture adjudged under subchapter 1 or 2 and may be imposed instead of or in addition to any suspension or revocation of a license.

A. The District Court shall maintain a record of all fines received by the court. Any fines received must be credited as follows: 1/2 to the Department of Health and Human Services in a nonlapsing account to be used by the department to defray administrative costs of retail tobacco licensing and 1/2 to a nonlapsing account to be used by the Attorney General to support enforcement and responsible retailing education programs. Annually, the court shall report to the department the total amount of fines collected. [PL 2011, c. 657, Pt. AA, §60 (AMD).]

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SECTION HISTORY

PL 1995, c. 470, §9 (NEW). PL 1995, c. 470, §19 (AFF). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 689, §B6 (REV). PL 2005, c. 223, §5 (AMD). PL 2009, c. 199, §§5, 6 (AMD). PL 2011, c. 559, Pt. A, §22 (AMD). PL 2011, c. 657, Pt. AA, §60 (AMD).

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