

2016 Regular Session

HOUSE BILL NO. 893

BY REPRESENTATIVE THIBAUT

TOBACCO/TOBACCO PRODUCTS: Provides relative to tobacco dealers

1 AN ACT

2 To amend and reenact R.S. 26:901(34) and 920(B) and (C), relative to the office of alcohol
3 and tobacco control; to provide for the definition of tobacco "wholesale dealers"; to
4 reduce the period within which to file appeals; to remove the authority to file
5 suspensive appeals; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 26:901(34) and 920(B) and (C) are hereby amended and reenacted
8 to read as follows:

9 §901. Definitions

10 As used in this Chapter, the following terms have the meaning ascribed to
11 them in this Section, unless the context clearly indicates otherwise:

12 * * *

13 (34) "Wholesale dealer" means a dealer whose principal business is that of
14 a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail dealers
15 for purpose of resale, who is a bona fide wholesaler, and fifty percent of whose total
16 tobacco sales are to retail stores other than its own or those of its subsidiaries,
17 affiliates, or parent companies, within Louisiana. Wholesale dealer shall include any
18 person in the state who acquires cigarettes solely for the purpose of resale in vending
19 machines, provided such person services fifty or more cigarette vending machines
20 in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette

1 and tobacco stamps as of January 1, 1974. If any person is engaged in the business
2 of making sales at both wholesale and retail, "wholesaler" shall apply only to the
3 wholesale portion of the business.

4 * * *

5 §920. Appeal

6 * * *

7 B. Any party aggrieved by a decision of the commissioner to withhold,
8 suspend, or revoke a permit may, within ~~thirty~~ ten days of the notification of the
9 decision, take a devolutive ~~or suspensive~~ appeal to the district court having
10 jurisdiction of the applicant's or permittee's place of business, proposed or actual as
11 the case may be. Such appeals shall be filed in the district courts in the same manner
12 as original suits are instituted therein. The appeals shall be tried de novo. Either
13 party may amend and supplement his pleadings and additional witnesses may be
14 called and heard. When there has been a previous criminal prosecution for the same
15 or a similar act upon which the refusal, suspension, or revocation of a permit is being
16 considered, evidence of an acquittal, dismissal, or plea of nolo contendere in a court
17 of competent jurisdiction is admissible in the trial of the appeal.

18 C. Within ~~thirty~~ ten calendar days of the signing of the judgment by the
19 district court in any such appeal case, the commissioner or the applicant for a permit
20 or permittee, as the case may be, may ~~file a devolutive or suspensive~~ devolutively
21 appeal of the judgment to the appellate court of proper jurisdiction. These appeals
22 shall be perfected in the manner provided for in civil cases and shall be devolutive
23 ~~or suspensive~~ only. If the district court determines that the decision of the
24 commissioner in withholding, suspending, or revoking the permit was in error, the
25 decision of the commissioner shall not be voided if the commissioner takes an appeal
26 to the court of appeals in the time provided for suspensive appeals.

27 * * *

1 Section 2. This Act shall become effective on July 1, 2016; if vetoed by the governor
2 and subsequently approved by the legislature, this Act shall become effective on July 1,
3 2016, or on the day following such approval by the legislature, whichever is later.

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)]

HB 893 Original

2016 Regular Session

Thibaut

Abstract: Relative the definition of "wholesale dealer", includes affiliates and parent companies in the limitation of sales to subsidiaries of the wholesale dealer, reduces the time period to appeal a commissioner's or district court's decision, and removes the authority to file a suspensive appeal.

Present law defines "wholesale dealer" as a dealer whose principal business is that of a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail dealers for purpose of resale, who is a bona fide wholesaler, and 50% of whose total tobacco sales are to retail stores other than its own or its subsidiaries within Louisiana.

Proposed law specifies that the limitation applied to 50% of the wholesale dealer's subsidiaries includes its affiliates and parent companies within Louisiana.

Present law provides that any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit may, within 30 days of the notification of the decision by the commissioner, take a devolutive or suspensive appeal to the district court.

Proposed law reduces the delay to take an appeal of the commissioner's decision from 30 days to 10 days, and removes the authority to file a suspensive appeal.

Present law provides that the commissioner or the applicant for a permit or permittee may file a devolutive or suspensive appeal of the district court's decision within 30 calendar days of the signing of the judgment by the district court, and that the appeal of the judgment to the appellate court shall be perfected in the manner provided for in civil cases and shall be devolutive or suspensive only.

Proposed law reduces the delay to take an appeal of the district court's decision from 30 days to 10 days, and removes the authority to file a suspensive appeal.

Effective July 1, 2016.

(Amends R.S. 26:901(34) and 920(B) and (C))