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TITLE 13
Revised Statutes
Courts and Judicial Procedure

Chapter 32. Particular Classes of Actions and Cases

Part XIII Master Settlement Agreement – Requirements for Tobacco
Product Manufacturers

TITLE 15
Revised Statutes
Criminal Procedure

**Chapter 3-B. Registration of Sex Offenders, Sexually Violent Predators,
and Child Predators**

TITLE 26
Revised Statutes
Alcoholic Beverages

Chapter 1. Alcoholic Beverage Control Law

Part I General Provisions
Part II Permits
Part III Regulatory Provisions
Part IV Penal Provisions

Chapter 2. Alcoholic Beverage Control and Taxation

Part I Definitions
Part II Permits for Dealers in Beverages of Low
Alcoholic Content
Part III Gallonage Tax
Part IV Exemptions
Part V Administration
Part VI Local Taxation and Regulation
Part VII Penal Provisions

Chapter 3. Local Option

Chapter 4. Miscellaneous Penal Provisions

| | |
|-------------------|---|
| Part I | Definitions |
| Part II | Poisonous Beverages |
| Part III | Dispensing Alcoholic Beverages to Particular Persons |
| Part IV | Offenses in Prohibition Territory |
| Part V | Cash Sales of Certain Beverages |
| Chapter 5. | Commissioner of Alcohol and Tobacco Control |
| Chapter 6. | Business Relations—Wholesalers and Suppliers of Beer |
| Chapter 7. | Tobacco Products |
| Chapter 8. | Responsible Vendor Program |

TITLE 40
Revised Statutes
Public Health and Safety

Chapter 5.

| | |
|-------------|--|
| Part I. | Division of Health and Health Officers |
| Part LXIII. | Louisiana Smokefree Air Act |

TITLE 47
Louisiana Revised Statutes
Tobacco Tax

| | |
|---------------------|-------------------------------------|
| Chapter 8. | Tobacco Tax |
| Chapter 8-A. | Delivery Sales of Cigarettes |

TITLE 51
Trade and Commerce
Unfair Trade

| | |
|-------------------|--------------------------------|
| Chapter 1. | Part VIII. Unfair Trade |
| | Subpart E. Unfair Sales Law |

TITLE 55
Louisiana Administrative Code
Public Safety

Part VII. Alcoholic Beverages

Subpart 1. Beer and Liquor Regulations

Chapter 1. Beer Cash Regulations

Chapter 3. Liquor Credit Regulations

Chapter 5. Responsible Vendor Program

Chapter 7. Live Entertainment

Chapter 31. Tobacco Permits

Subpart 2. Tobacco

Subpart E. Unfair Sales Law

TITLE 13 COURTS AND JUDICIAL PROCEDURE

Chapter 32. Particular Classes of Actions and Cases

Part XIII. MASTER SETTLEMENT AGREEMENT – REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS

Section

- 5061. Findings and Purpose
- 5062. Definitions
- 5063. Requirements

Part XIII-A. MASTER SETTLEMENT AGREEMENT – COMPLEMENTARY PROCEDURES

Section

- 5071. Findings and Purpose
- 5072. Definitions
- 5073. Certification; directory; tax stamps
- 5074. Agent for service of process
- 5075. Reporting of information; escrow installments
- 5076. Penalties; other remedies
- 5077. Miscellaneous provisions
- 5078. Bond

**Part XIII. MASTER SETTLEMENT AGREEMENT –
REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS**

§ 5061. Findings and Purpose

The Legislature of Louisiana hereby finds and declares that:

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of this state. The surgeon general has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the state pays millions of dollars each year to provide medical assistance for those persons for health conditions associated with cigarette smoking.

(4) It is the policy of this state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the “Master Settlement Agreement”, with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the state, tied in part to their volume of sales; to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of this state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may

arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 5062. Definitions

As used in this Part, the following words and phrases shall have the following meanings ascribed to them:

(1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns”, “is owned”, and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) “Allocable share” means allocable share as that term is defined in the Master Settlement Agreement.

(4) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

(b) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subparagraph (a) of this Paragraph.

(d) The term “cigarette” includes “roll-your-own” i.e., any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette”.

(5) “Master Settlement Agreement” means the settlement agreement, and related documents, entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(6) “Qualified escrow fund” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with R.S. 13:5063(C)(2).

(7) “Released claims” means released claims as that term is defined in the Master Settlement Agreement.

(8) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(9) “Tobacco product manufacturer” means an entity that after July 1, 1999, directly, and not exclusively through any affiliate:

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(c) Becomes a successor of an entity described in Subparagraph (a) or (b) of this Paragraph.

(d) The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of Subparagraphs (a) through (c) of this Paragraph.

(10) “Units sold” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs, or “roll-your-own” tobacco containers, bearing the excise tax stamp of the state. The Department of Revenue shall adopt such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

§ 5063. Requirements

A. Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after July 1, 1999, shall comply with either Subsection B or C of this Section.

B. The tobacco product manufacturer shall become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement.

C. (1) The tobacco product manufacturer shall place into a qualified escrow fund by April fifteenth of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

- (a) 1999: \$.0094241 per unit sold after July 1, 1999.
- (b) 2000: \$.0104712 per unit sold.
- (c) For each of 2001 and 2002: \$.0136125 per unit sold.
- (d) For each of 2003 through 2006: \$.0167539 per unit sold.
- (e) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to this Subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this Paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement, including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under Subparagraphs (a) and (b) of this Paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this Subsection shall annually certify to the attorney general that it is in compliance with this Subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this Section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this Section shall:

(a) Be required within fifteen days to place such funds into escrow as shall bring it into compliance with this Section. The court, upon a finding of a violation of this Subsection, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(b) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with this Section. The court, upon a finding of a knowing violation of this Subsection, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state whether directly or through a distributor, retailer, or similar intermediary for a period not to exceed two years.

(4) Each failure to make an annual deposit required under this Subsection shall constitute a separate violation.

Part XIII-A. MASTER SETTLEMENT AGREEMENT – COMPLEMENTARY PROCEDURES

§ 5071. Findings and Purpose

The Legislature of Louisiana finds that violations of R.S. 13:5061 et seq., threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations and aid the enforcement of R.S. 13:5061 et seq., and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

§ 5072. Definitions

As used in this Part, the following words and phrases shall have the following meanings ascribed to them:

(1) “Brand family” means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to “menthol”, “lights”, “kings”, and “100s”, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) “Cigarette” has the same meaning as provided in R.S. 13:5062(4) and R.S. 47:842(2).

- (3) “Commissioner” means the commissioner of alcohol and tobacco control.
- (4) “Days” means calendar days unless otherwise specified.
- (5) “Dealer” has the same meaning as provided in R.S. 47:842(4).
- (6) “Importer” means any person in the United States to whom non-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, and any person who smuggles or otherwise unlawfully brings cigarettes into the United States.
- (7) “Manufacturer” has the same meaning as provided in R.S. 47:842.
- (8) “Master Settlement Agreement” has the same meaning as provided in R.S. 13:5062(5).
- (9) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.
- (10) “Package” means any pack or other container on which a stamp could be applied consistent with and as required by R.S. 47:841 et seq., that contains one or more individual cigarettes for sale. Nothing in this Chapter shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to “package” shall not include a container of multiple packages.
- (11) “Participating manufacturer” has the meaning given that term in section II (jj) of the Master Settlement Agreement and all amendments thereto.
- (12) “Person” means any natural person, trustee, company, partnership, corporation, or other legal entity.
- (13) “Purchase” means acquisition in any manner, for any consideration. The term shall include transporting or receiving product in connection with a purchase.
- (14) “Qualified escrow fund” has the same meaning as provided in R.S. 13:5062(6).
- (15) “Retailer” means “retail dealer” as provided in R.S. 26:901 and R.S. 47:842.
- (16) “Sale” or “sell” means any transfer, exchange, or barter in any manner or by any means for any consideration. The term shall include distributing or shipping product in connection with a sale. References to a sale “in” or “into” a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale “from” a state refer to the sale of cigarettes that are

located in that state to the destination in question without regard to where title was transferred.

(17) “Sales Entity Affiliate” means an entity that sells cigarettes that it acquires directly from a manufacturer or importer and is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(18) “Secretary” means the head of the Department of Revenue, which is the agency responsible for collection of the excise tax on cigarettes.

(19) “Stamping agent” means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(20) “State directory” or “directory” means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

(21) “Tobacco product manufacturer” has the same meaning as provided in R.S. 13:5062(9).

(22) “Units sold” has the same meaning as defined in R.S. 13:5062(10) and shall include (a) cigarettes that are required to be sold in a package bearing a stamp as well as (b) roll-your-own tobacco.

§ 5073. Certifications; directory; tax stamps

A. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the secretary and attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is a participating manufacturer; or is in full compliance with R.S. 13:5061 et seq., including all installment payments required by R.S. 13:5075(J). For the initial certification submitted no later than the thirtieth of April each year, a manufacturer shall pay to the attorney general a fee of five hundred dollars. The fees generated pursuant to this Section shall be deposited in the Tobacco Settlement Enforcement Fund and used

solely and exclusively for purposes of enforcement of the Master Settlement Agreement, pursuant to R.S. 39:98.7.

(2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the secretary.

(3)(a) A nonparticipating manufacturer shall include in its certification:

(i) A list of all of its current and past brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

(ii) A list of all of its current and past brand families that have been sold in the state at any time during the current calendar year.

(iii) Indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification.

(iv) Identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year.

(v) Any other information required under R.S. 13:5075(I).

(vi) As a condition precedent to being listed and having its brand families listed on the state directory, a manufacturer must certify annually that it holds a valid permit under 26 U.S.C. 5713 and provide a copy of such permit to the attorney general.

(b) The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the secretary.

(4) In the case of a nonparticipating manufacturer, such certification shall further certify:

(a) That such nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by R.S. 13:5074.

(b) That such nonparticipating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund.

(ii) Has executed a qualified escrow agreement that has been reviewed and approved

by the attorney general and that governs the qualified escrow fund.

(c) That such nonparticipating manufacturer is in full compliance with R.S. 13:5061 et seq., and this Part and any regulations promulgated pursuant thereto.

(d)(i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to R.S. 13:5061 et seq., and all regulations promulgated thereto.

(ii) The account number of such qualified escrow fund and any subaccount number for Louisiana.

(iii) The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing.

(iv) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to R.S. 13:5061 et seq., and all regulations promulgated thereto.

(e) Sufficient information to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent pursuant to R.S. 13:5078.

(f) In the case of a nonparticipating manufacturer located outside of the United States, the nonparticipating manufacturer shall provide a declaration from each of its importers into the United States of any of its brand families to be sold in this state. The declaration shall be on a form prescribed by the attorney general and shall state the following:

(i) The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees.

(ii) The importer consents to personal jurisdiction in Louisiana for the purposes of claims by the state for any obligation to place funds into a qualified escrow fund for payment of any civil penalties and for payment of any reasonable costs and expenses of investigation or prosecution, including attorney fees.

(iii) The importer has appointed a registered agent for service of process in Louisiana according to the same requirements as established in this Part for any nonresident or foreign nonparticipating manufacturer that has not yet registered to do business in

this state as a foreign corporation or business entity.

(5) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement.

(b) In the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of R.S. 13:5061 et seq. Nothing in this Section shall be construed as limiting or otherwise affecting the right of the state to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of R.S. 13:5061 et seq.

(6) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(7) Every tobacco product manufacturer shall include in its annual certification a list of the names and addresses of all sales entity affiliates that may transact business in the state on its behalf and shall provide supporting documentation to establish to the satisfaction of the attorney general its status as a sales entity affiliate pursuant to R.S. 13:5072(17).

B. Not later than ninety days after June 25, 2004, the attorney general shall develop and make available for public inspection or publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Subsection A and all brand families, including country of origin, that are listed in such certifications (the directory), except as noted below.

(1) The attorney general shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the secretary or attorney general determines is not in compliance with Paragraphs (2) and (3) of Subsection A, unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general and the secretary.

(2) Neither a tobacco product manufacturer nor brand family shall be included or

retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that:

(a) Any escrow payment required pursuant to R.S. 13:5061 et seq., by the date due for any quarter for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(b) Any outstanding final judgment, including interest thereon, for a violation of R.S. 13:5061 et seq. has not been fully satisfied for such brand family or such manufacturer.

(3) A manufacturer and its brand families may be removed from the state directory if they are removed from the directory of another state based on acts or omissions that, if they had occurred in this state, would be grounds for removal from the state directory under this Section, unless the manufacturer demonstrates that its removal from the other state's directory was effected without due process. Procedure for removal from the state directory shall be governed by the procedure set forth in R.S. 13:5077(A). A manufacturer that is removed from the state directory under this Subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

(4) Failure to submit complete and accurate reports as required pursuant to R.S. 13:5075 shall result in the manufacturer and its brand families being removed from the state directory under the procedure set forth in R.S. 13:5077(A).

(5) The attorney general shall update the directory as necessary in order to correct mistakes and to list or de-list a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this Part. Fifteen days prior to the listing or de-listing of a tobacco product manufacturer or brand family, the attorney general shall transmit a notification to every stamping agent.

(6) Every stamping agent shall provide and update as necessary an electronic mail address or facsimile telephone number to the secretary and the attorney general for the purpose of receiving any notifications as may be required by this Part.

C. It shall be unlawful for any person:

(1) To affix a Louisiana tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(2) To sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the state directory; or, in the event of cigarettes subject to a de-listing

notice described in this Section, sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes received, imported, or stamped after the date of de-listing from the state directory.

(3) To order, purchase, or offer to purchase cigarettes of a tobacco product manufacturer or brand family identified by the attorney general to be de-listed from the directory, after receipt of the notice described in this Section.

§ 5074. Agent for service of process

A. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this Part and R.S. 13:5061 et seq., may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to the satisfaction of the secretary and attorney general.

B. The nonparticipating manufacturer shall provide notice to the secretary and attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the secretary and the attorney general of said termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

C. Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as herein required, shall be deemed to have appointed the secretary of state as such agent, and may be proceeded against in the courts of this state by service of process upon the secretary of state. Such service shall be considered valid service on said nonparticipating manufacturer; however, the appointment of the secretary of state as such agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

D. This Section shall be applicable to importers, as defined in this Part, with regard to

the appointment and continuous retention of an agent for service of process as well as related notice requirements and obligations detailed in this Section.

§ 5075. Reporting of information; escrow installments

A. Not later than twenty calendar days after the end of each calendar month, and more frequently if so directed by the secretary or the attorney general, each stamping agent shall submit such information as the secretary and attorney general require to facilitate compliance with this Part, including but not limited to a list by brand family of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, purchased from tobacco product manufacturers during the previous calendar month or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain and make available to the secretary and the attorney general all invoices and documentation of purchases and sales of all tobacco product manufacturer cigarettes and any other information relied upon in reporting to the secretary and the attorney general for a period of three years.

B. The requirements of Subsection A of this Section shall be satisfied if the stamping agent timely submits to the secretary and attorney general reports required generally under R.S. 47:841 et seq. and this Chapter and certifies that the reports are complete and accurate.

C. (1) Each manufacturer and importer that sells any cigarettes in or into the state shall, within twenty days following the end of the month, file a report on a form to be prescribed by the attorney general and certify that the report is complete and accurate. The report shall contain the following information:

(a) The total number of cigarettes sold by that manufacturer or importer in or into the state during that month, identified by name and number of cigarettes.

(b) The manufacturers of those cigarettes.

(c) The brand families of those cigarettes.

(d) The purchasers of those cigarettes.

(2) A manufacturer's or importer's report shall include cigarettes sold in or into the state through its sales entity affiliate

D. The requirements of Subsection C of this Section shall be satisfied and no further report shall be required under this Section with respect to cigarettes if the manufacturer or importer timely submits to the attorney general and secretary the

report or reports required to be submitted by it with respect to those cigarettes under 15 U.S.C. 376 to the attorney general and certifies that the reports are complete and accurate.

E. Upon request by the attorney general, a manufacturer or importer shall provide copies of reports filed in other states containing information similar to those provided by Subsections A and C of this Section.

F. Any reports submitted to the secretary or commissioner under R.S. 47:841 et seq. or R.S. 26:901 et seq. shall also be submitted contemporaneously to the attorney general.

G. The secretary is authorized to disclose to the attorney general any information received under this Part and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this Part. The secretary, attorney general, and commissioner shall share with each other the information received under this Part and may share such information with other federal, state, or local taxing agencies or law enforcement authorities only for purposes of enforcement of this Part, R.S. 13:5061 et seq., or corresponding laws of other states. Additionally, the sharing of information by the secretary under this Chapter shall not constitute a violation of R.S. 47:1508.

H. The attorney general may require at any time from the nonparticipating manufacturer, proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with R.S. 13:5061 et seq., of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

I. In addition to the information required to be submitted pursuant to this Part and R.S. 13:5061 et seq. or R.S. 47:843 et seq., the secretary and the attorney general may require a stamping agent or tobacco product manufacturer to submit any additional information including but not limited to samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this Part.

J. All escrow deposits under R.S. 13:5061 et seq. shall be made on a quarterly basis, no later than forty-five days after the end of each calendar quarter in which the sales are made. Each failure to make a full quarterly installment deposit shall constitute a separate violation of the state's escrow laws. The secretary and the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. The attorney general shall promptly review the amount deposited by each nonparticipating

manufacturer for each calendar quarter against the reports received and other information and shall provide notice to each nonparticipating manufacturer for which it concludes that an additional deposit was owed.

K. Importers of any brand families of a nonparticipating manufacturer in or into the state shall be jointly and severally liable with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees, and shall consent to personal jurisdiction in Louisiana for the purposes of claims by the state for payment of such obligations.

L. (1) Each manufacturer that sells cigarettes in the state and each importer that imports cigarettes into the state shall do either of the following:

(a) Submit its federal returns to the attorney general by sixty days after the close of the quarter in which the returns were filed.

(b) Submit to the United States Treasury a request or consent under Internal Revenue Code Section 6103(c) authorizing the Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the United States Customs Service to disclose the manufacturer's or importer's federal returns to the attorney general as of sixty days after the close of the quarter in which the returns were filed.

(2) For purposes of this Subsection, "federal returns" mean all federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5, and all adjustments, changes, and amendments to the foregoing.

§ 5076. Penalties; other remedies

A. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated R.S. 13:5073(C) or any regulation adopted pursuant to this Part, the secretary may revoke or suspend the license of the dealer in the manner provided by R.S. 47:846 and R.S. 26:916. Each stamp affixed and each sale, offer to purchase, or offer to sell cigarettes in violation of R.S. 13:5073(C) shall constitute a separate violation. For each violation hereof, the secretary may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of R.S. 13:5073(C) or any regulations adopted pursuant thereto. Such penalty shall be imposed in the manner provided by R.S. 47:843 et seq. and R.S. 26:901 et seq.

B. Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, or imported for personal consumption in this state, in violation of R.S. 13:5073(C) shall be deemed contraband under R.S. 47:865 and R.S. 13:5061 et seq., and such cigarettes shall be subject to seizure and forfeiture as provided in those provisions, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

C. The attorney general, on behalf of the secretary, may seek an injunction to restrain a threatened or actual violation of R.S. 13:5073(C) or 5075(A) or (I) by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this Section, the state shall be entitled to recover the costs of the investigation, action, and reasonable attorney fees.

D. It shall be unlawful for a person to:

(1) Sell or distribute cigarettes; or

(2) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of R.S. 13:5073(C). A violation of this Section shall be punishable as a misdemeanor in accordance with R.S. 47:859.

E. A person who violates R.S. 13:5073(C) engages in an unfair and deceptive trade practice in violation of R.S. 51:1401 et seq.

F. Failure to make annual, quarterly, or monthly payments, when required by the attorney general in accordance with R.S. 13:5075, shall subject the tobacco product manufacturer to the penalties for failure to place funds in escrow contained in R.S. 13:5063(C)(3).

§ 5077. Miscellaneous provisions

A. The attorney general shall provide a notice of removal to any manufacturer that it determines should be removed or have any of its brand families removed from the state directory. The notice shall state the grounds for the removal and inform the manufacturer that it or its brand families will be removed from the state directory thirty days following the date of the notice. During the thirty days following the date of the notice, the manufacturer may (1) fully cure the failure or violation or (2) submit documentation to the attorney general demonstrating that its determination described in the notice was incorrect. Unless the attorney general determines that the manufacturer has satisfied either (1) or (2), it or its brand families will be removed from the state directory thirty days following the date of the notice. A determination

of the attorney general to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by the Administrative Procedure Act. A manufacturer that unsuccessfully challenges a decision not to include or to remove from the directory a brand family or manufacturer shall pay the state's reasonable costs and attorney fees incurred in contesting the challenge.

B. Each person may provide a name and address to which notices issued pursuant to this Section are to be sent. Notice periods under this Section run from the date of notice sent to such name and address or, in the case of a person that does not provide a name and address, the last known company address.

C. No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless such person has certified in writing, under penalty of perjury, that such person will comply fully with this Section.

D. For the year 2004, because the effective date of this Part is later than April 15, 2004, the first report of stamping agents required by R.S. 13:5075(A) shall be due thirty calendar days after June 25, 2004; the certifications by a tobacco product manufacturer described in R.S. 13:5073(A) shall be due forty-five calendar days after June 25, 2004; and the directory described in R.S. 13:5073(B) shall be published or made available within ninety calendar days after June 25, 2004.

E. The secretary, commissioner, and attorney general shall each designate employees who shall oversee the administration and enforcement of the laws and regulations regarding the tobacco Master Settlement Agreement for its office and who shall confer monthly to establish and monitor practices to promote ongoing compliance under the Master Settlement Agreement. A tri-agency summit shall be held on an annual basis for agency representatives and staff.

F. The secretary or the commissioner in conjunction with the attorney general may promulgate regulations necessary to effect the purpose of this Part.

G. In any action brought by the state to enforce this Part, the attorney general, the commissioner, and secretary shall be entitled to recover the costs of the investigation, expert witness fees, the action, and reasonable attorney fees.

H. If a court determines that a person has violated this Part, the court shall order any profits, gains, gross receipts, or other benefits from the violation to be disgorged and paid to the state treasurer for deposit in the tobacco control special fund, which is hereby created. The tobacco control special fund shall be used by the attorney general for tobacco enforcement and control matters. Unless otherwise expressly provided, the remedies or penalties provided by this Part are cumulative to each other and to the

remedies or penalties available under all other laws of this state.

I. If a court of competent jurisdiction finds that the provisions of this Part and of R.S. 13:5061 et seq. conflict and cannot be harmonized, then the provisions in R.S. 13:5061 et seq. shall control. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Part causes R.S. 13:5061 et seq. to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Part shall not be valid. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Part is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this Part.

§ 5078. Bond

A. All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state that is subject to execution under Subsection C of this Section. The bond shall be posted by corporate surety located within the United States or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the attorney general at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

B. The amount of the bond shall be determined as follows:

(1) Unless Paragraph (3) of this Subsection is applicable, for a nonparticipating manufacturer that has been listed on Louisiana's state directory for at least three years, the amount of the bond required shall be fifty thousand dollars or the highest amount owed for any quarter over the past three years, whichever is greater;

(2) Unless Paragraph (3) of this Subsection is applicable, for a nonparticipating manufacturer that has not been listed on Louisiana's state directory for at least three years, the amount of the bond required shall be determined by the attorney general based on any prior history in any state, as well as any other considerations the attorney general deems relevant, but shall not be less than one hundred thousand dollars in any event; and

(3) For a nonparticipating manufacturer that has failed, in the past three years, to make a full and timely escrow deposit due under R.S. 13:5063, unless the failure was not knowing or intentional and was promptly cured upon notice, or for any nonparticipating manufacturer that was involuntarily removed from any state's

directory, unless the removal was determined to have been erroneous, the amount of the bond required shall be the greater of one hundred thousand dollars or the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in any state within the preceding five calendar years.

C. If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under R.S. 13:5063, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under R.S. 13:5063, and then to recover civil penalties and costs authorized under such Section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and from the importers that sold its cigarettes during that calendar quarter.

TITLE 15 CRIMINAL PROCEDURE
Chapter 3-B. Registration of Sex Offenders,
Sexually Violent Predators, and Child Predators

Section

541.1. Posting of the National Human Trafficking Resource Center hotline;
languages; notice; civil penalty

§ 541.1. Posting of the National Human Trafficking Resource Center hotline; content; languages; notice; civil penalty

A. All of the following establishments shall be required to post information regarding the National Human Trafficking Resource Center hotline:

(1) Every massage parlor, spa, or hotel that has been found to be a public nuisance for prostitution as set forth in R.S. 13:4711.

(2) Every strip club or other sexually-oriented business as set forth in R.S. 37:3558(C).

(3) Every full service fuel facility adjacent to an interstate highway or highway rest stop.

B. (1)(a) Such posting shall be no smaller than eight and one-half inches by eleven inches and shall contain the following wording in bold typed print of not less than fourteen-point font:

“If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farm work, or any other activity, call the National Human Trafficking Resource Center hotline at 1-888-373-7888 to access help and services.”

(b) Such posting shall also comply with any other requirements established by regulations promulgated by the commissioner of the office of alcohol and tobacco control in accordance with the Administrative Procedure Act.

(2) The language in the posting shall be printed in English, Louisiana French, Spanish, and any other languages that the commissioner of alcohol and tobacco control shall require.

C. The following departments of the state shall provide each establishment described in Subsection A of this Section over which that department exercises any regulatory control or authority with the notice required by this Section. The departments shall post on their websites a sample of the posting described in Subsection B of this Section which shall be accessible for download. The departments are as follows:

(1) Department of Revenue and the office of alcohol and tobacco control.

(2) Department of Transportation and Development.

D. A civil penalty in accordance with R.S. 26:96(A) may be assessed for each violation of this Section. The departments listed in Subsection C of this Section or

any law enforcement agency with jurisdiction are charged with the enforcement of this Section.

TITLE 26 ALCOHOLIC BEVERAGES
Chapter 1. Alcoholic Beverage Control Law

Part I. GENERAL PROVISIONS

Section

1. Title.
2. Definitions.
3. Exempt products.
4. to 40. Blank

Part II. PERMITS

Section

71. Permits required; fees; exception.
- 71.1 Class A Permit; definitions.
- 71.2 Class C Permit; definitions.
- 71.3 Microdistillery; retail sales for consumption on or off premises
72. Permit for light wine; restaurants and cafeterias.
73. Restaurant “R” permit; application; fees.
- 73.1. Limitations on issuance of permits.
74. Local license and permit fees.
75. Operation without permit prohibited.
76. Personal nature of permits; return of permits;
 necessity of display; penalties.
77. Notice of application for retail dealer’s permit.
78. Content of application for permit; commissioner power
 as ex officio notary.
79. Submission of applications; delay.
80. Qualifications of applicants for permits.
81. Location of business limited.
82. Issuance of wholesale permit.
83. Interposed persons.
84. Misstatement or suppression of fact in application.
85. Combination of wholesale and retail business prohibited;
 exceptions.
- 85.1 Combination of manufacturing and retail business permitted;
 certain circumstances
- 85.2 Museum permit; requirements; authorization; circumstances

- 86. Authority of commissioner and local authorities to withhold permits.
- 87. Procedure for determination to issue or withhold permit.
- 88. Renewal of permit.
- 89. Form of application for renewal of permit.
- 90. Acts prohibited on licensed premises; suspension or revocation of permits.
- 91. Additional causes for suspension or revocation of permits.
- 92. Proper petitioners in action by commissioner to suspend or revoke permit.
- 93. Procedure for suspending or revoking permit.
- 94. Cause necessary to withholding, suspending, or revoking of permit.
- 95. Convictions by court not essential to withholding, suspending, or revoking permits.
- 96. Revocation and suspension not exclusive penalty.
- 97. Status of premises after revocation of permit.
- 98. Notice of hearing by commissioner.
- 99. Place of hearing.
- 99.1 Participation in hearing by video conference
- 100. By whom conducted; record; briefs.
- 101. Contempt at hearings; penalty.
- 102. Procedure when permittee or applicant fails to appear at hearing; continuances.
- 103. Basis for determination by commissioner to suspend or to revoke permit.
- 104. Costs of hearings.
- 105. Decisions to withhold, suspend, or revoke permits final unless appealed and reversed.
- 106. Appeals to courts.
- 107. Summary proceedings on appeal.
- 108. Interference by courts prohibited.
- 109. to 140. Blank

Part III. REGULATORY PROVISIONS

Section

- 141. Export of beverages controlled by commissioner.
- 142. Distribution through wholesalers only.
- 143. Invoices and records of dealers.
- 144. False invoice or bill of sale prohibited.
- 145. Refusal to allow inspection.
- 146. Regulation of traffic in wines.
- 147. Sale or keeping for sale in dry area; penalty.
- 148. Cash or short-term credit sales only; timely payment; penalty for violation.
- 149. Refilling used containers prohibited; exception.
- 150. Unfair practices.
- 151. Permits necessary prior to purchase of alcoholic beverages.
- 152. Forms for default notices and delinquent lists; rules for filing and publication.
- 153. to 170. Blank

Part IV. PENAL PROVISIONS

- 171. General penalty.
- 172. to 240. Blank

PART I. GENERAL PROVISIONS

§ 1. Title

This Chapter may be cited as “The Alcoholic Beverage Control Law.”

§ 2. Definitions

For purposes of this Chapter, the following terms have the respective meanings ascribed to them in this Section, unless a different meaning clearly appears from the context:

(1) “Alcoholic beverages” means any fluid or solid capable of being converted into fluid, suitable for human consumption and having an alcoholic content of more than six per cent by volume, including alcohol.

(2) “Bottler of wine” means any wine wholesaler who imports wine into the state in bulk and puts it in a closed container for distribution to other wholesale dealers.

(3) “Broker” means any person, other than licensed dealers, who may solicit, receive, or transmit orders for beverage alcohol as an agent of one or more licensed dealers, and does not maintain an inventory of, possess a property right in, or deliver any beverage alcohol.

(4) “Commissioner” means the commissioner of alcohol and tobacco control who shall be the assistant secretary of the office of alcohol and tobacco control in the Department of Revenue.

(5) “Cordial liquors and specialties” means liquor obtained by the process of mixing or redistilling with or over fruit, flowers, plants, or juices therefrom and to which sugar or dextrose, or both, have been added in an amount not less than two and one-half per cent by weight of the finished product.

(6) “Dealer” means any person who, as a business, manufactures, blends, rectifies, distills, processes, imports, stores, uses, handles, holds, sells, offers for sale, solicits orders for the sale of, distributes, delivers, serves, or transports any alcoholic beverage in the state or engages herein in any business transaction relating to any such beverage.

(7) “Dinner theater” means an establishment that is a “restaurant establishment”, as defined by R.S. 26:73(C)(1), where food orders are taken and food service is provided in both a restaurant dining area and where patrons are seated to view live theatrical productions or the showing of film, still pictures, electronic or digital

reproductions, or other visual reproductions.

(8) "Liquor" means all distilled or rectified alcoholic spirits, brandy, whiskey, rum, gin, and all similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, such as liquors, cordials, and similar compounds.

((9) "Liquor retail distribution center" means any liquor retailer who has continuously maintained a distribution center or centers for distribution to its wholly owned retail permittees on or prior to January 1, 1961, in this state, or any commercial airline which stores alcoholic beverages in sealed containers of any size at any airport regularly served by the permittee. Such possession for retail sale or distribution therefrom shall be limited to alcohol of high volume content in any quantity.

(10) "Liquor retailer" means any dealer, other than a manufacturer or wholesaler, who sells, offers for sale, exposes for sale, or has in his possession for sale or distribution any alcoholic beverages in any quantity.

(11) "Liquor wholesaler" means any dealer who sells any alcoholic beverage to other licensed liquor wholesale dealers or to licensed retail liquor dealers in the state or who sells alcoholic beverages for delivery beyond the borders of the state in amounts to be fixed by the commissioner, or who imports any alcoholic beverages into the state, and who meets the standards set forth in this Chapter.

(12) "Manufacturer" means any person, other than a wine producer, who personally or through any agent whatever engages in the making, blending, rectifying, or processing of any alcoholic beverage in Louisiana; engages in the making, blending, rectifying, or processing any alcoholic beverage outside Louisiana for sale in Louisiana; or engages in the business of supplying alcoholic beverages to licensed wholesale dealers in Louisiana. A manufacturer who engages in the making, blending, rectifying or processing of any alcoholic beverages in a facility entirely located in the state of Louisiana may sell or serve only those products that are made, blended, rectified, or processed at that facility to the public only at that facility for consumption on or off the premises but not for resale. The total amount of such sales to the public for any given month shall not exceed one case per person for each thirty-day period. Any manufacture who sells its products to the public pursuant to this Paragraph shall remit all state and parish or municipal sales and excise taxes to the proper tax collecting authority for all products sold to the public. A manufacturer who sells or serves its products to the public pursuant to this Paragraph, shall comply with all local zoning laws and regulations.

(13) "Microdistiller" means any person who operates a microdistillery.

(14) "Microdistillery" means a retail outlet where a microdistiller engages in the

distilling, making, blending, rectifying, or processing of any alcoholic beverage in Louisiana in quantities of not more than twelve thousand gallons per year for retail sale for consumption on or off the licensed premises in accordance with the provisions of this Chapter and regulations, if any, promulgated by the commissioner.

(15) “Outlet” means a place where any person draws or removes any alcoholic beverage from its container for consumption on the premises.

(16) “Package house-Class B” means a place consisting of no less than five hundred square feet of public habitable area which sells alcoholic beverages in factory sealed containers for transportation and consumption off the premises and where no person is allowed to tamper with or otherwise disrupt the manufacturer's seal on or about the licensed premises.

(17) “Regulated beverage” means any alcoholic beverage.

(18) “Solicitor” means any person who offers for sale or solicits any orders for the sale of any regulated beverage, other than in a regularly established and licensed place of business in this state, for delivery or shipment to any point in the state, whether done as owner, agent, or servant.

(19) “Sparkling wine” means any effervescent alcoholic beverage derived from the juice of any fruit, or synthesis thereof, charged with carbon dioxide, either artificially or as the result of secondary fermentation within the container.

(20) “Still wine” means any non-effervescent alcoholic beverage derived from the juice of any fruit, or synthesis thereof.

(21) “Supplier” means any person, other than a wine producer, who manufactures, makes, blends, rectifies, distills, processes, or purchases alcoholic beverages outside the state of Louisiana and imports, sells, offers for sale, solicits orders for sale, distributes, or delivers such alcoholic beverages in Louisiana.

(22) “Wholesale dealer” means a person who sells alcoholic beverages of high alcoholic content to licensed wholesale dealers or licensed retail dealers exclusively, within the state or to any person for delivery beyond the borders of the state to a licensed dealer in that state and who conducts a bona fide wholesale business and maintains a warehouse or warehouses for the storage and warehousing of alcoholic beverages of high alcoholic content in the area where domiciled and licensed by the state, and conducts and maintains systematic and regular solicitations, distribution, deliveries, and sales of said beverages to licensed retail dealers located within the boundary of each parish, municipality, or geographic area, as contractually defined between the wholesaler and his supplier, in which the wholesale dealer makes any

sale or delivery.

(23) “Wine package house” means a place where a person sells only sparkling wine and still wine in the original package or closed container, prepared for transportation and consumption off the premises.

(24) “Wine producer” means any person who, directly or indirectly, personally or through any agency, cultivates and grows grapes, fruits, berries, honey, or vegetables from which wine of an alcoholic content in excess of six percent by volume is produced and bottled from a fermentation of such grapes, fruits, berries, honey, or vegetables in Louisiana or outside the state for shipments to licensed wholesale dealers within the state subject to the provisions of R.S. 26:364.

(25) “Winery” means a plot of land located in Louisiana used to cultivate and grow grapes, fruits, berries, honey, or vegetables for the purpose of fermenting such grapes, fruits, berries, honey, or vegetables to produce and bottle wine of an alcoholic content in excess of six percent by volume.

(26) “Wine wholesaler” means any dealer who sells only sparkling wine and still wine to other licensed wholesale dealers or to licensed retail dealers for resale within the state.

§ 3. Exempt products

A. The provisions of this Chapter do not apply to the sale of:

(1) Patent, antiseptic, and toilet preparations.

(2) Flavoring extracts, syrups, and food products.

(3) Scientific, chemical, mechanical, and industrial products.

(4) Alcohol for industrial use or purposes only and which is so denatured as to be unfit for human consumption.

B. No person shall knowingly sell any of these products for beverage purposes or sell any of them under circumstances from which he may reasonably deduce the intention of the purchaser to use them for beverage purposes.

PART II. GENERAL PROVISIONS

§ 71. Permits required; fees; exception

A. Except as provided in Subsections B and C of this Section, before engaging in the business of manufacturing, supplying, or dealing in alcoholic beverages, all persons shall obtain from the commissioner, according to established rules and regulations, a permit to conduct each separate business and shall pay the commissioner a fee not to exceed the amounts provided for in the following schedule and in accordance with regulations promulgated pursuant to the provisions of the Administrative Procedure Act for each year the permit is valid:

(1)(a) In-state manufacturers - one thousand dollars for each establishment in the state.

(b) Out-of-state manufacturers and suppliers who do not maintain an establishment in the state.

(i) Manufacturers and suppliers who sell less than one thousand cases of their product in the state - two hundred dollars.

(ii) All other out-of-state manufacturers and suppliers - one thousand dollars.

(2) Wholesalers--two thousand five hundred dollars for each place of business in the state.

(3) Retailers--(a) There shall be three types of Class A retail liquor permits:

(i) Class A--General--two hundred dollars for each place of business in any city in the state and one hundred dollars for each place of business in a town, village, or unincorporated place.

(ii) Class A-Restaurant--two hundred dollars for each establishment in the state.

(iii) Class A--Special--two hundred dollars for each facility in the state.

(b) Those operating package houses--one hundred dollars for each place of business in any city in the state and fifty dollars for each place of business in a town, village, or unincorporated place. This permit is known as a Class B Retail Liquor Permit.

(c) Those operating Class C Package Stores--one hundred dollars for each place of business in any city in the state and fifty dollars for each place of business in a town, village, or unincorporated place. This permit shall be known as a Class C Package

Store Permit.

(d) Microdistiller, which authorizes the holder of a Retailers Class A permit to engage in the distilling, making, blending, rectifying, or processing of any alcoholic beverage in Louisiana at a single location in an amount not to exceed twelve thousand gallons per year, and which further authorizes the sale at retail of such distilled beverages from that location – one thousand dollars.

(e) A fee of one hundred dollars for each one hundred thousand dollars of gross retail liquor sales, after the first one hundred thousand dollars of gross retail liquor sales, shall be levied according to the schedule below which shall be in addition to those fees enumerated in Subparagraphs (a) and (b) of this Paragraph:

| GROSS SALES | ADDITIONAL FEES |
|------------------------------|------------------------|
| \$0.00 to \$99,999.99 | -0- |
| \$100,000.00 to \$199,999.99 | \$100.00 |
| \$200,000.00 to \$299,999.99 | \$200.00 |
| \$300,000.00 to \$399,999.99 | \$300.00 |
| \$400,000.00 to \$499,999.99 | \$400.00 |
| \$500,000.00 to \$599,999.99 | \$500.00 |
| \$600,000.00 and over | \$600.00 |

(4) Solicitors or brokers --five dollars each. No solicitor shall represent more than one dealer, and that dealer's name and address shall appear on the solicitor's permit.

(5) Retail distribution centers, other than manufacturers, wholesalers, retailers, or solicitors--one thousand dollars for each storage facility in the state. Any such permit issued pursuant to this Section shall be expressly prohibited from transfer in accordance with R.S. 26:76.

(6) Wine producers--fifty dollars.

(7) Wineries--fifty dollars.

B. Any person not otherwise a dealer in alcoholic beverages coming into possession of any alcoholic beverages as executor, administrator, trustee, or other fiduciary, as security for or in payment of a debt, or as an insurer, or its transferee or assignee for

the salvage or liquidation of an insured casualty or damage or loss may sell the beverages in one lot or parcel to a duly licensed wholesale or retail dealer without qualifying as a dealer. Immediately after taking possession of the alcoholic beverages, the person shall register with the secretary of the Department of Revenue and furnish to him a detailed list of the alcoholic beverages and post with the secretary a bond in such amount as the secretary deems sufficient to protect the state from any taxes due on the alcoholic beverages. The person shall pay to the secretary a registration fee of ten dollars, which fee shall permit the sale of only the alcoholic beverages detailed in the registration request.

C. If proposition five on the local option ballot, as delineated in R.S. 26:588(A), is approved by a majority vote cast in the election, a “Retailers, Class A” state permit shall be authorized for a Class “R” restaurant permittee in the locality for which the local election was held.

§ 71.1. Class A permit; definitions

The commissioner shall issue the following four types of Class A retail liquor permits:

(1) Class A-General:

(a) A Class A-General retail permit shall be issued only to a retail outlet where beverage alcohol is sold on the premises for consumption on the premises by paying customers. Such an establishment must be equipped with a permanent wet bar equipped with a non-movable sink and a backbar or similar equipment for public display and to inform the public of brands and flavors offered for sale.

(b) A Class A--General retail establishment shall be staffed by a bartender whose primary duty is to open and/or prepare beverage alcohol products for consumption on the premises by paying customers, or prepared with an appropriate lid or cover on the container for take out service. Such an establishment must meet all state and local zoning requirements as set forth by the state and by parishes and municipalities where a Class A--General retail outlet is located.

(c) Repealed by Acts 1995, No. 1016, § 2.

(d) A Class A-General retail permit shall be issued only to an establishment where the state law provides that no person under the age of eighteen years is allowed on the premises except as provided in R.S. 26:90(A)(8)(a).

(e) Notwithstanding the provisions of Subparagraphs (a) through (d) of this

Paragraph, the commissioner shall not issue a Class A-General liquor permit to any bona fide commercial film theater unless the bona fide commercial film theater complies with the requirements of R.S. 26:73(C)(1)(a), (b), and (c) and alcoholic beverage sales are physically segregated from all other concession sales and no one under the age of eighteen is allowed to enter the area where such alcoholic beverages sales are conducted

(f) Notwithstanding the provisions of Subparagraphs (a) through (e) of this Paragraph, the commissioner may issue a Class A--General retail permit to any retail establishment for consumption on or off the premises. Such establishment must meet all state and local zoning requirements as set forth by the state and by parishes and municipalities where the retail outlet is located. A Class A--General retail permit issued pursuant to the authority granted by this Subparagraph shall not be deemed or qualify as a prerequisite for the issuance of any other type license or permit issued by the state or any political subdivisions thereof.

(g) The licensed premises of a Class A-General retail permit shall be able to accommodate a minimum of twenty-five patrons and contain no less than three hundred seventy-five square feet of public habitable floor area.

(h) A Class A-General retail establishment shall comply with the Department of Health and Hospitals guidelines for the required number of public restrooms and their locations within the retail establishment and shall provide documentation of compliance from the office of public health.

(i) Any Class A-General retail permit application submitted prior to September 1, 2001, shall not be required to meet the qualifications set forth in Subparagraph (g) of this Paragraph.

(2) Class A-Restaurant:

A Class A-Restaurant permit shall be issued only to a "restaurant establishment" as defined by R.S. 26:73(C)(1) or a dinner theater as defined in R.S. 26:2(6) and issued to a facility in conjunction with a Class "R" restaurant permit under the provisions of R.S. 26:73.

(3) Class A--Special:

(a) A Class A--Special permit shall be issued to any facility which is situated on state-owned land, and which is being developed or operated by the state for public purposes, without the necessity for a local permit from the parish or municipality, notwithstanding the provisions of R.S. 26:81(B)(1) and (C), 273(A)(1), 281(B) and (C)(1), 582, and 595, if all other pertinent qualifications and conditions of this Title

are satisfied, and such establishment meets all state zoning requirements as set forth by the state.

(b)(i) The provisions of Subparagraph (a) of this Paragraph shall apply only to the Sabine River Authority Conference and Recreational Facility, located in Ward 3, Sabine Parish, Louisiana and shall be applicable only after the following proposition has been submitted to a local referendum election to the voters of Ward 3, Sabine Parish at the congressional general election to be held in 1994, with a favorable vote of a majority of votes cast, to wit:

“Shall the sale of alcoholic beverage of both high and low alcohol content for consumption on the premises be permitted at the Sabine River Authority Conference and Recreational Facility in Ward 3, Sabine Parish, Louisiana?”

(ii) This Subparagraph shall be the sole and only enabling act necessary to call this election, notwithstanding the provisions of R.S. 26:587.

(c) A Class A-Special permit shall be issued to the convention center facility located in the city of Natchitoches.

(4) Class A-Restaurant-Conditional:

(a) Any retail establishment holding a Class A-General permit issued pursuant to this Section may be issued a Class-A-Restaurant-Conditional permit, provided it meets the requirements of R.S. 26:73(C)(1)(a), (b), (c) and (d) during the hours from 7:00 a.m. until 11:00 p.m. each day of operation.

(b) Notwithstanding the provisions of R.S. 26:90(A)(3)(a) or any other law to the contrary, any establishment which qualifies and receives a Class-A-Restaurant-Conditional permit may permit any person under the age of eighteen on the premises between the hours of 7:00 a.m. and 11:00 p.m.

(c) No additional fee shall be charged for the application or issuance of a Class-A-Restaurant-Conditional permit.

(d) Notwithstanding any other provision of law to the contrary, a retail establishment located at a public or private golf course licensed to operate video draw poker devices pursuant to the provisions of Chapter 6 of Title 27 of the Louisiana Revised Statutes of 1950 prior to January 1, 2004, may be issued a Class A-Restaurant-Conditional permit regardless of the amount or the percentage of food or food items sold at that establishment provided that the establishment meets all other criteria required by the provisions of this Chapter.

§ 71.2. Class C Permit; definitions

A. For purposes of this Section, “Class C--Package Store” shall be defined as an establishment that meets all of the following:

(1) Operates as a place of business where alcoholic beverages are the principal commodity sold for off-premise consumption.

(2) Does not offer to sell, sell, or otherwise distribute motor fuel at the licensed establishment.

(3) Sells alcoholic beverages, including frozen specialty beverages, in closed containers prepared for transportation and consumption off the premises only.

(4) Has a public habitable floor area of no less than one thousand square feet.

(5) Does not allow any person under the age of eighteen to enter, visit, or loiter in or about the licensed establishment.

(6) Does not employ any person under the age of eighteen.

(7) Does not allow the consumption of any alcoholic beverage for any purpose or reason on or about the licensed establishment unless and except as otherwise provided for in this Title.

(8) Does not permit the mixing of alcoholic beverages or the sale and/ or service of mixed alcoholic beverages on the premises of the licensed establishment; however, the mixing of frozen specialty beverages may be permitted according to rules and regulations promulgated by the commissioner pursuant to Subsection B of this Section.

B. The commissioner shall promulgate rules in accordance with the Administrative Procedure Act related to the requirements, qualifications, and conduct of Class C--Package Store licensees.

§ 71.3. Microdistillery; retail sales for consumption on or off premises

A. Any person who has properly obtained a microdistiller’s permit as provided for in

R.S. 26:71, shall be authorized to engage in the distilling, making, blending, rectifying, or processing of any alcoholic beverage in Louisiana in a quantity not to exceed twelve thousand gallons during the licensed year. The holder of such permit shall also be authorized to sell the manufactured beverages at retail for consumption on or off the licensed premises, if the holder also has been issued a Retailer Class A permit.

B. The provisions of this Section shall not authorize the holder of a microdistiller's permit to sell the manufactured beverages at wholesale or to any wholesale dealer.

C. The microdistiller shall not sell any alcoholic beverages for transportation off the premises to any other licensed alcoholic beverage retail dealer.

D. Beverages produced by a microdistiller shall be taxed in the same manner and at the same rate as beverages produced by other manufacturers, as provided by law.

E. Notwithstanding the provisions of R.S. 26:149, microdistillers may reuse alcoholic beverage containers in connection with distilling and bottling operations.

F. Prior to commencing distilling operations, microdistillers shall obtain approval from the state fire marshal.

§ 72. Permit for wine and malt beverages

A. Before the operator of any alcoholic beverage outlet where wine or malt beverages are legally sold for consumption on the premises or sold in factory-sealed containers for transportation and consumption off the premises, shall engage in the business of handling such wine or malt beverages, he shall obtain annually from the commissioner, before commencing such business, a permit to conduct such retail business, and shall pay for each permit the sum of thirty dollars.

B. Nothing in this Section is to be construed to take the place of any license or permit now or to be hereafter issued by any municipality or parish governing authority nor any fee or fees collected therefor.

C. As used in this Section, "wine" means any effervescent or non-effervescent alcoholic beverage derived from the juice of any fruit or synthesis thereof, of an alcoholic content more than six percent by volume. Wine is exclusive of all "liquors," whether they be defined as intoxicating or spirituous liquors, which are produced by distillation.

D. As used in this Section, “malt beverages” means beverages obtained by alcoholic fermentation of an infusion or by a brewing process or concoction of barley or other grain, malt, sugars, and hops in water, including among other things, ale, beer, stout, porter and the like and containing more than six percent alcohol by volume. Malt beverages are exclusive of all “liquors,” whether they be defined as intoxicating or spirituous liquors, which are produced by distillation.

§ 73. Restaurant “R” permit; application; fees

A. The legislature hereby finds and declares that the food service industry is a viable industry in Louisiana with significant economic impact and finds that a restaurant establishment's purpose and primary function is to take orders for and serve food and food items. Such service of food may include the serving of alcoholic beverages in conjunction with meals.

B. (1) The commissioner shall issue, upon proper application and payment of an administrative fee, a special Class “R” restaurant permit to any restaurant establishment as defined in Subsection C of this Section which has been issued a state Class A Retail Liquor Permit for the sale of beverages of high alcohol content.

(2) Municipal and parish governing authorities may issue “R” permits similar to those provided for in this Section. The provisions of this Paragraph shall not apply to those municipal and parish governing authorities that are issuing such permits on July 1, 1984.

C. (1) For purposes of this Section, “restaurant establishment” shall be defined as an establishment:

(a) Which operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

(b) Which serves food on all days of operation.

(c) Which maintains separate sales figures for alcoholic beverages.

(d) Which operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.

(e) Which has a public habitable floor area of no less than five hundred square feet dedicated to the exclusive use of the applicant's or licensee's business. This

Subparagraph shall not apply to business locations that apply to or have been licensed to sell or serve alcoholic beverages prior to August 1, 2006, and have not discontinued the sale and service of such beverages for more than six months. Notwithstanding any other provision of this Chapter, the commissioner may waive this requirement for any building listed as a historic building on an official registry or located within an officially designated historic district.

(2) Sparkling or still wine sold or served by the bottle in conjunction with food service shall not be considered an alcoholic beverage by the commissioner when determining gross revenue for purposes of this Section only.

(3) Notwithstanding any other provision of law to the contrary, a business's trade name shall not disqualify such business as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

(4) Notwithstanding any other provision of law to the contrary, a business which provides live entertainment, requires cover charges, offers alcoholic or other beverages at a reduced cost or engages in similar activity shall not be disqualified as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

(5) The provisions of this Section shall not prohibit a parish or municipality from enacting ordinances that establish more restrictive requirements for parish or municipal licenses or permits to sell alcoholic beverages at restaurant establishments.

(6) Notwithstanding any provision of law to the contrary, no local or state Class "R" restaurant permit shall be issued to any establishment that provides the type of live entertainment described in R.S. 26:90(E).

D. For new restaurant establishments without prior business experience on which to determine the gross revenue from the sale of the items in Subparagraph (C)(1)(a) of this Section, the commissioner may issue a temporary license, which shall be valid for sixty days to allow the establishment to make such determination.

E. (1) The permit provided for in this Section shall be applied for annually.

(2) Both the original and renewal applications for such permit shall be in writing, be sworn to in front of a notary public, and shall contain all of the following:

(a) The full name of the applicant.

(b) A complete description and correct street address of the premises in which the restaurant is located.

(c) Proof of issuance of state Class “A” permit.

F. All applications shall be accompanied by an administrative fee, which shall be remitted to the office of alcohol and tobacco control, as follows:

(1) For administrative fees for new or renewal of permit--twenty-five dollars.

(2) For a temporary permit as provided for in Subsection C--ten dollars.

G. The permit shall be revoked whenever the establishment's Class A permit is revoked by the state or local Alcohol Beverage Control Board for failure to meet or maintain criteria required for the permit.

H. Notwithstanding the provisions of R.S. 26:81(B)(1) and (C), 273(A)(1), 281(B) and (C)(1), 582, and 595, and if all other pertinent qualifications and conditions of this Title are satisfied, the commissioner shall issue a Class A-General Permit or a Class A-Restaurant Permit and a Class “R” restaurant permit, and the municipal governing authority or parish governing authority shall issue any and all required local permits to serve high alcohol content beverages for a restaurant establishment, as defined in Subsection C of this Section, or a hotel, if the restaurant or hotel is located within a geographically definable area within any municipality which has been designated by the appropriate authority of the United States Department of the Interior as a national historic landmark district or by the appropriate municipal authority as a local historic district. For restaurant establishments, the provisions of this Subsection shall be applicable only to an establishment that grosses sixty percent of its average monthly sales from the retail sale of food or food items that are prepared for service and consumption on the premises of the establishment.

§ 73.1. Limitations on issuance of permits

The commission shall not issue a permit of any class to any donut shop for the sale of alcoholic beverages. For purposes of this Section, “donut shop” shall be defined as an establishment:

(1) Which sells donuts, pastries, or other confections;

(2) Does not operate a fully equipped kitchen used for the preparation of uncooked foods, other than donuts, pastries, or other confections, for service and consumption of such foods on the premises; and

(3) Does not prepare and serve uncooked foods, other than donuts, pastries, or other confections, at least five days a week.

§ 74. Local license and permit fees

A. Parishes and municipalities may require annual permits and fees from dealers holding state permits under this Chapter. No parish or municipality shall require a permit or fee except for establishments located within their territorial limits. No parish or municipality shall require a permit or fee for any commercial airline which is issued a permit as a liquor retail distribution center.

B. Parishes and municipalities requiring permits and fees may furnish the commissioner with a certified copy of the ordinance levying them and may require him to collect the permit fees under rules and regulations. The commissioner shall remit the amount of such fees collected by him quarterly to the parishes and municipalities for which collected, after deducting two per cent for collection costs.

C. The fees charged shall not exceed five hundred dollars per year.

D. Those jurisdictions requiring a person to obtain a license in order to sell or handle beverage alcohol shall not require such person to obtain a new permit due to his change of employment until the original permit has expired. This provision shall not apply to those persons employed as bartenders.

E. When a person obtains the required local wholesaler's permit to engage in business as a wholesaler of beverages of high alcoholic content, he may do business in other municipalities or parishes and these municipalities and parishes shall not impose a tax or license of any nature on him to do business within their territorial limits unless he maintains a regular branch of his wholesale business within their respective limits.

§ 75. Operation without permit prohibited

A. No person shall do any act for which a permit is required by this Chapter or by local authorities acting hereunder unless he holds the proper state and local permit. Each day's conduct of business by dealer without such a valid, unsuspended permit constitutes a separate violation of this Chapter.

B. A permit is required of any person who does any act as a dealer.

C. (1) Notwithstanding any law to the contrary, beer, wine, or other spirit sampling for the purpose of allowing a consumer to try the taste of a product may be conducted on the premises of a Class A, Class B or a Special Event permit holder.

(2) The commissioner shall promulgate rules and regulations for the conducting of beverage alcohol sampling, which shall allow manufacturers and wholesalers to provide and display a limited amount of point of sales materials.

§ 76. Personal nature of permits; return of permits; necessity of display; penalties

A. The following shall apply to permits issued under this Chapter:

(1)(a) Except as otherwise provided in this Subsection, permits are valid for only one year, unless expired, suspended, or revoked.

(b) Notwithstanding Subparagraph (a) of this Paragraph, the commissioner may issue permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control.

(c) Prior to issuing any permits valid for more than one year, the commissioner shall promulgate rules in accordance with the Administrative Procedure Act to provide the requirements, qualifications, and conduct which constitutes “good standing” for purposes of qualifying for a two-year permit.

(2) The permit is not transferrable, assignable or heritable. The permit must be returned to the office of alcohol and tobacco control or surrendered to an agent of the commissioner within five days of closure, when the ownership of the business is transferred or the business is terminated. When ownership of the business is transferred, the new owner shall be allowed to continue to operate using the transferor’s permit until a new permit is issued or denied, if the new owner notifies the office of alcohol and tobacco control of the transfer within five days of the transfer and applies for a new alcoholic beverage permit within fifteen days of the transfer of ownership. If the permit holder is a corporation or limited liability company, the permit holder shall notify the office of alcohol and tobacco control of any changes in the officers, directors, managers, shareholders, members, or persons previously qualified to conduct or manage the business within fifteen days of the date of such changes. The notification shall include the suitability documents and

information for each new individual required to possess the qualifications of the applicants. However, in the event of the dissolution of a partnership by death, the surviving partner or partners may operate under the partnership permit. The office of alcohol and tobacco control shall be notified of any changes to the licensed business premises which increase or decrease the previously approved licensed business premises prior to any such changes.

(3) Receivers and trustees in bankruptcy may operate under the permit of the person succeeded.

(4) When the location of a place of business is proposed to be changed, the proposal shall be received and must be approved by the issuing authority before such action is taken. The change of location shall be noted on the permit by the issuing authority and the permit shall be invalid unless the notation is made.

(5) The permit, in addition to any other permit required to be displayed, shall be posted in a conspicuous place on the licensed premises, so as to be easily seen and read by the public. No other signs or notices, except those required by state or federal law, shall be required to be displayed by the retail dealer.

(6) A partnership may include a surviving spouse not separate in community and that spouse may operate under the partnership permit for the remainder of the term.

(7) A partnership, corporation, or any other authorized legal entity recognized under the laws of the state of Louisiana may include a spouse who has a regime of separation of property, pursuant to Civil Code Article 2370, and may include a spouse who owns the interest in the partnership, corporation, or other legal entity as that spouse's separate property, pursuant to Civil Code Article 2341, and that spouse may operate under the permit of the partnership, corporation, or other legal entity for the remainder of the term after final conviction of the other spouse for any felony that is not directly related to the Alcoholic Beverage Control Law permit.

B. The failure of a retail dealer to publicly display his permits, as required by Paragraph (5) above, shall be grounds for the withholding, suspension, or revocation of the dealer's retail permit.

§ 77. Notice of application for retail dealer's permit

A. Prior to making application for a retail dealer's permit, each applicant shall insert an appropriate signed notice similar to the following in a newspaper published in the municipality in which he desires to operate his business or in the newspaper

published nearest to his place of business, if it is not located in a municipality in which a newspaper is published:

“I am applying for a permit to sell alcoholic beverages at retail at the following address: _____ in the Parish of _____.”

B. The publication of this notice is not required of permittees seeking the renewal of their permits.

C. In addition to publishing the notice required by Subsections A and B of this Section, each new applicant shall pay a notice of intent fee in the amount of fifty dollars to the office of alcohol and tobacco control. The office will furnish a “Notice of Intent” poster to each person who pays a notice of intent fee. Except in East Baton Rouge Parish, no other local or state notice of intent fee shall be required or assessed.

D. The notice of intent poster shall display, at a minimum, the following information: “NOTICE--I am applying to the office of alcohol and tobacco control of the state of Louisiana for a permit to sell beverages of alcoholic content at retail at this location. Interested persons should contact the office of alcohol and tobacco control.” The notice of intent poster shall also display the current address and telephone number of the office of alcohol and tobacco control.

E. Each notice of intent poster shall be posted conspicuously outside the premises for which application is to be made for no less than fifteen consecutive days prior to the filing of an application for a retailer's permit for the premises. Such display of a notice of intent poster furnished by the office of alcohol and tobacco control shall serve as the only state official public notice required. However, if the application is for premises for which a permit was in effect within the previous six months, the notice of intent poster shall be posted upon the filing of the application and remain posted for at least fifteen days thereafter.

F. The surviving spouse of a deceased licensee may, at the time of death, apply for a retail permit for the premises within one year from the date of death without complying with the requirements of this Section.

§ 78. Content of application for permit; commissioner power as ex officio notary

A. Applications for state and local permits to engage in any business or operation regulated by this Chapter shall be in writing and sworn to, and shall contain the full name of the applicant, his social security number, his federal employer identification number, if applicable, his Louisiana Department of Revenue business account

number, if applicable, his correct home address, and an accurate description and correct street address of the premises wherein the business or operation is to be conducted, which address shall be considered the proper address for all notices to the applicant or permittee required by this Chapter, and shall be accompanied by an affidavit of the applicant showing that he meets the qualifications and conditions set out in R.S. 26:80.

B. Unless he is seeking a renewal of his permit, an applicant for a retail dealer's permit shall attach to his application, as a part thereof, a sworn affidavit stating that he has complied with the provisions of R.S. 26:77.

C. (1) The commissioner and his agents shall be ex officio notaries public within their respective territorial jurisdiction to exercise the functions of a notary public only to administer oaths or affirmations and to notarize applications for permits required of the office of alcohol and tobacco control to engage in the business of dealing in alcoholic beverages as provided for by the provisions in this Title.

(2) All acts performed by such an ex officio notary public authorized by this Subsection shall be performed without charge or other compensation and without the necessity of giving bond.

(3) The commissioner may suspend or terminate the authority of an agent to act as an ex officio notary at any time, and separation from the employ of the office of alcohol and tobacco control shall automatically terminate the powers of such an ex officio notary public.

§ 79. Submission of applications; delay

All applications for state permits shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, and all applications for local permits shall be mailed or delivered to the respective local authorities. An applicant shall mail or deliver both his applications for state and local permits within twenty-four hours of each other. If he fails to do so, his state application may be withheld and the permits denied. Upon receipt of an application, the commissioner or the local authorities, as the case may be, shall stamp the day, month, and year received, and the commissioner shall verify that the applicant does not owe the state or the political subdivision in which the business is located any delinquent sales taxes, penalties, or interest, excluding items under formal appeal pursuant to the applicable statutes. The commissioner and officers or employees specifically so authorized by the commissioner and local authorities may issue the permits immediately after proper investigation but, for a

period of thirty-five days after issuance, such permits shall operate on a probationary basis subject to final action on, opposition to, or withholding of, the permits as hereinafter provided. Notwithstanding any other provision of this Chapter, prior to August 1, 2016, the commissioner may waive all state application fees or provide an equal credit to an applicant's account when a permit is not issued within three business days after receipt of a fully and properly completed application.

§ 80. Qualifications of applicants for permits

A. Applicants for state and local permits of all kinds shall demonstrate that they meet all of the following qualifications and conditions:

(1) Be a person of good character and reputation and over eighteen years of age. In considering a person's good character or reputation, the commissioner may consider a person's arrests in determining suitability.

(2) Be a citizen of the United States and the state of Louisiana and a resident of the state of Louisiana continuously for a period of not less than two years next preceding the date of the filing of the application. However, the requirements as to Louisiana citizenship do not apply to wholesalers or retailers who held permits on or prior to January 1, 1946.

(3) Be the owner of the premises, have a bona fide written lease therefor, or be a commercial lessor or a noncommercial lessor licensed pursuant to R.S. 4:701 et seq., exclusively for the sole purpose of conducting charitable gaming.

(4) Have not been convicted of distributing or possessing with the intent to distribute any controlled dangerous substance classified in Schedule I of R.S. 40:964, on any premises licensed pursuant to this Title, where the applicant held or holds an interest in the licensed business. The prohibition provided for in this Subsection shall be for the lifetime of the offender.

(5) Have not been convicted of a felony under the laws of the United States, the state of Louisiana, or any other state or country.

(6) Have not been convicted in this or in any other state or by the United States or any other country of soliciting for prostitution, pandering, letting premises for prostitution, contributing to the delinquency of juveniles, keeping a disorderly place, or illegally dealing in controlled dangerous substances.

(7) If also applying for a video gaming license under the provisions of Chapter 6 of Title 27 of the Louisiana Revised Statutes of 1950, have not been convicted in this or

in any other state or by the United States or any other country of theft or any crime involving false statements or declarations, or gambling as defined by the laws and ordinances of any municipality, any parish, any state, or the United States.

(8) Have not had a license or permit to sell or deal in alcoholic beverages, issued by the United States, any state, or by any political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application, or been convicted or had a judgment of court rendered against the applicant involving the sale or service of alcoholic beverages by this or any other state or by the United States for two years prior to the application.

(9) Have not been adjudged by the commissioner, or convicted by a court of violating any of the provisions of this Chapter.

(10) Have not been convicted of violating any municipal or parish ordinances adopted pursuant to the provisions of this Chapter. If the applicant has been so convicted, the granting of a permit or of a renewal shall be within the discretion of the commissioner.

(11) Not be the spouse of a person who does not meet the requirements of Paragraphs (1) and (3) through (10), and (12) of this Subsection; however, in such cases the age of the ineligible spouse shall be immaterial. For purposes of this Paragraph, the term "spouse" shall also include persons who are considered married outside of the United States, persons who ordinarily hold themselves out as husband and wife, or persons who file their state and federal income tax returns as either "married filing jointly" or "married filing separate".

B. If the applicant is a partnership recognized by Louisiana law, or anyone in such partnership with or financed by another, all members of such partnership, or all the persons furnishing the money shall also possess the qualifications required of an applicant. The application shall name all partners or financial backers and furnish their social security numbers and proper addresses. If a partner of a partnership applying for retail or manufacturer's permits is a corporation or limited liability company, the requirements as to citizenship and residence shall not apply to officers, directors, and stockholders of the corporation or members of the limited liability company. The corporation or limited liability company shall either be organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

C. (1) If the applicant is a corporation or a limited liability company, all officers and directors and all stockholders or members owning in the aggregate more than five percent of the stock or of the membership interest in a limited liability company and

the person or persons who shall conduct or manage the business shall possess the qualifications required of an applicant, to be shown by the affidavit of each accompanying the application. Each affidavit shall include the signatory's Louisiana Department of Revenue business account number, his social security number, and his correct home address.

(2) The requirements as to citizenship and residence do not apply to officers, directors, or stockholders of corporations or members of limited liability companies applying for retail permits; to officers, directors, or stockholders or members of a manufacturer; or to officers, directors, or stockholders of any corporation which on January 31, 2003, had held a wholesale dealer permit continuously for at least the past three years. The provisions of this Paragraph apply only to a corporation, limited liability company, partnership, or any other legal business entity either organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

(3) Notwithstanding any other provisions of law to the contrary, the commissioner may accept from a publicly traded or other corporation or entity, other than any gaming entity regulated pursuant to the provisions of R.S. 27:20 et seq., R.S. 27:41 et seq., or R.S. 27:301 et seq., the necessary documentation of those persons described in Subsection D of this Section and three officers of the corporation in full satisfaction of the requirements of this Section.

D. If the applicant's business is to be conducted wholly or partly by one or more managers, agents, servants, employees, or other representatives, those persons shall also possess the qualifications required of the applicant and shall furnish verification of suitability in accordance with Paragraph (H)(6) of this Section; however, convicted felons may be employed by an applicant if, in the applicant's business, alcoholic beverages are not the principal commodities sold, handled, or given away.

E. If the applicant, or any other person required to have the same qualifications, does not possess the required qualifications, the permit may be denied; however, if a sales tax clearance is not issued, the permit shall be denied. Nevertheless, if the sales tax clearance request is not processed within the time limitations provided in R.S. 26:78, the permit shall be issued if all other qualifications are met by the applicant.

F. (1)(a) Notwithstanding the provisions of Subsections A and B, a permit may be granted by the commissioner if the applicant has been pardoned, has had any misdemeanor conviction discharged or dismissed, or the applicant's civil rights have been restored, or, if the applicant is a firm, association, partnership, trust, domestic or foreign corporation, or other legal entity, the applicant has terminated its relationship with the person or persons whose action directly contributed to the applicant's

conviction.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to any applicant who is also applying for a video gaming license under the provisions of Chapter 6 of Title 27 of the Louisiana Revised Statutes of 1950.

(2) In the granting of a permit, a conviction or plea of guilty or nolo contendere by the applicant shall not constitute an automatic disqualification of the applicant as otherwise required pursuant to the provisions of Paragraphs (A)(5), (6), and (7) of this Section, if all of the following criteria are met:

(a) The felony for which the applicant was convicted is not a crime of violence as defined in R.S. 14:2(B).

(b) Ten years or more have elapsed between the date of application and the successful completion of any sentence, deferred adjudication, or period of probation or parole and the final discharge of the defendant.

G. Notwithstanding the provisions of Subsections A and B, the commissioner may grant or continue a permit with respect to an applicant, even though the applicant's spouse has been convicted of a felony, if the applicant:

(1) Had state and local permits prior to the spouse's felony conviction, and

(2)(a) Has a regime of separation of property, pursuant to Civil Code Article 2370, and is the owner of the premises or has a bona fide written lease therefor, or

(b) Owns the permitted premises as the applicant's separate property, pursuant to Civil Code Article 2341.

H. (1) In order to determine suitability, the applicant, members of a partnership recognized by Louisiana law, the officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such a corporation or company shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety and Corrections, public safety services, office of state police, to the Federal Bureau of Investigation (F.B.I.) for a national criminal history record check.

(2) In order to determine the suitability of an applicant, the office of alcohol and tobacco control shall require members of a partnership recognized by Louisiana law, the officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such a corporation or company, to furnish to the office of alcohol and tobacco control a full

set of fingerprints to enable a criminal background investigation to be conducted. The office of alcohol and tobacco control shall submit the completed fingerprint card to the office of state police. The office of state police is authorized to submit the fingerprints to the F.B.I. for a national criminal history background check.

(3) The office of alcohol and tobacco control shall require a background investigation by means of fingerprint checks by the office of state police and the F.B.I. of each applicant, members of a partnership recognized by Louisiana law, the officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such a corporation or company applying for an alcoholic beverage permit.

(4) In addition to the other requirements established by law, the submittal of fingerprints shall be a prerequisite to the issuance of a permanent alcoholic beverage permit by means of fingerprint checks by the office of state police and the F.B.I.

(5) The office of state police shall require each applicant, members of a partnership recognized by Louisiana law, officers and directors of a corporation, the stockholders of a corporation, and the members of a limited liability company owning more than five percent of such a corporation or company applying for an alcoholic beverage permit pursuant to this Chapter to be fingerprinted. Such fingerprints shall be available for use by the office of state police and for transmittal to the F.B.I. for a national criminal history record check. The information obtained from the national criminal history record check conducted pursuant to this Section may be used by the office of alcohol and tobacco control to determine the applicant's eligibility for an alcoholic beverage permit.

(6) In order to determine the suitability of the spouses of those persons required to submit fingerprints in accordance with this Section, and all other persons required to possess the same qualifications required of the applicant, except for those persons otherwise provided for in this Section, the office of alcohol and tobacco control shall require such persons to provide verification of suitability in accordance with rules adopted by the commissioner pursuant to the Administrative Procedure Act. Fingerprints shall not be required unless the commissioner requests fingerprints based upon credible information that a person may not meet the qualifications of an applicant.

I. All licensees and persons required to be qualified pursuant to the provisions of this Chapter shall have a continuing duty to inform the commissioner of any action which they believe would constitute a violation of this Chapter. No person who so informs the commissioner shall be discriminated against by an applicant or licensee because of supplying such information.

J. All licensees and any other persons who have been found suitable in accordance with the provisions of this Section shall maintain suitability throughout the term of the license.

§ 81. Location of business limited

A. No permit shall be granted under this Chapter in contravention of any municipal or parish ordinances adopted pursuant to the zoning laws of the state.

B. (1) No permit shall be issued by the commissioner or by any municipality or parish to authorize any business in any subdivision of the state where the business has been prohibited by referendum vote.

(2) In any subdivision where saloons are prohibited, but package sales of liquor are permitted, Class B package liquor permits may be issued in combination with Class A retail beer permits.

(3) Any premises licensed to deal in alcoholic beverages, upon proper application, shall be issued a permit for beverages of low alcoholic content as defined in R.S. 26:241. The new permit shall be of the same class as the one for which the premises has a license.

C. (1) When prohibited by municipal or parish ordinance, no permit shall be granted for any premises situated within three hundred feet or less, as fixed by the ordinance, of a public playground or of a building used exclusively as a church or synagogue, public library, school, full-time day care center as defined in R.S. 17:405(A)(4), or a correctional facility housing inmates, including but not limited to a halfway house. In municipalities and in unincorporated areas which are divided into subdivisions with streets, blocks, and sidewalks, subject to the adoption of the alternate method of measurement as provided for in Paragraph (2) of this Subsection, this distance shall be measured as a person walks using the sidewalk from the nearest point of the property line of the church, synagogue, public library, public playground, school, full-time day care center, or correctional facility housing inmates, including but not limited to a halfway house to the nearest point of the premises to be licensed.

(2) A municipality may adopt an ordinance establishing an alternate method of measurement of the three hundred foot limitation by measuring in a straight line from the nearest point of the property line of the church or synagogue, public library, school, or full-time day care center to the nearest point of the premises to be licensed. Such alternate method of measurement shall only apply prospectively to the issuance of a new alcohol permit issued on or after the date the ordinance has been adopted.

D. Outside of municipalities and unincorporated areas which are not divided into subdivisions with streets, blocks, or sidewalks, parish ordinances may extend the prohibition to a distance of five hundred feet of the church, synagogue, public library, school, full-time day care center, playground, or a correctional facility housing inmates, including but not limited to a halfway house. The measurement of this distance shall be made in the same manner as the measurement is made in municipalities.

E. The prohibitions in this Section do not apply to any premises which are maintained as a bona fide hotel, or fraternal organization, nor to any premises which have been licensed to deal in alcoholic beverages for a period of one year or longer prior to the adoption of the ordinance.

F. For the purposes of this Section, "public library" shall mean a public library which is located in a permanent structure and is open to the public for three or more days per week.

§ 82. Issuance of wholesale permit

A. No wholesale permit shall be issued or held after issuance by any person unless at all times he meets the standards set forth as follows:

(1) Maintains warehouse space either owned or leased by the wholesaler, or dedicated to his use in a public warehouse, and:

(a) Such space shall be sufficient to store at one time a stock of liquor equal to ten percent or more of the wholesaler's annual case volume of liquor sales to retailers within this state, or

(b) Maintains at all times in the warehouse a stock of liquor owned by him, not consigned, nor then sold, consisting of not less than five percent of his annual sales to retailers, and whose cost of acquisition is fifty thousand dollars or more.

(2) Maintains delivery equipment which shall be leased or owned and dedicated to his primary use for the distribution and delivery of alcoholic beverages. The requirement that the delivery equipment be dedicated to a primary use for the distribution and delivery of alcoholic beverages shall not apply to any person continuously holding a wholesale permit issued pursuant to this Chapter for the three years immediately prior to January 1, 2010.

(3) Maintains brand representation with at least one distillery, or liquor manufacturer.

(4) Maintains sales of liquor to retailers generally within his immediate trade area, making sales to at least twenty percent of the retailers in said area with separate sales to retailers accounting for at least fifty percent of the gallonage handled by him.

B. No wholesale permit shall be issued or held after issuance by any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail permittees of the alcoholic beverages on hand, and the commissioner may revoke any wholesale permit when the permittee fails for a period of forty-five days actively and in good faith to engage in the wholesale business, and shall revoke any wholesale permit for any other violation of this Section or the rules and regulations adopted pursuant to the enforcement hereof.

C. Sale by a wholesaler to himself as a retailer, or as a partner in a retail establishment is not a bona fide wholesale transaction. No wholesaler shall store any of his stock on the premises of any retail establishment.

D. Persons engaged primarily in the sale, handling, distribution, and storage of alcoholic beverages which are ultimately delivered or transported beyond the borders of the state are exempt from complying with the standards set forth in this Section.

E. The commissioner may adopt and publish rules and regulations for the enforcement of this Section.

§ 83. Interposed persons

No permit shall be issued to any person who is an interposed person for the owner or proprietor of a business. The commissioner may require a full disclosure, in writing and under oath, of the details of the operation of any person it suspects of being interposed for another. The commissioner may summarily rule before the commissioner for examination, any person suspected of being an interposed person. A person who is subsidized, financed, or employed by a liquor manufacturer to operate a business without disclosing the ownership of the liquor manufacturer shall be considered an interposed person for the liquor manufacturer under this Chapter.

§ 84. Misstatement or suppression of fact in application

Any misstatement or suppression of fact in an application or accompanying affidavit

is a ground for denial of permit.

§ 85. Combination of manufacturer, wholesale, and retail business prohibited; exceptions

Except as provided in Paragraphs (1) through (6) of this Section, no person shall, at the same time, engage in business as a manufacturer or wine producer and as a wholesaler, as a wholesaler and as a manufacturer or wine producer, as a manufacturer or wine producer and as a retailer, as a retailer and as a manufacturer or wine producer, as a wholesaler and as a retailer, or as a retailer and as a wholesaler of any regulated beverage. However:

(1) Any person who, from January 1, 1940, until July 28, 1948, was continuously a duly licensed manufacturer in the state of any established brand of alcoholic beverage and sold alcoholic beverages at wholesale and retail may be issued, subject to the other requirements of this Chapter, permits as a manufacturer and as a wholesaler and as a retailer of alcoholic beverages.

(2) Any person who, from January 1, 1947, until July 28, 1948, was the holder of a wholesale or retail permit, or of both, may procure, subject to the other requirements of this Chapter, permits under this Chapter either as a wholesaler or as a retailer, or as both.

(3) Any corporation, which on January 31, 2003, had held a wholesale dealer permit continuously for at least the past three years and whose officer, director, or stockholder is also an officer, director, or stockholder of a manufacturer, may be issued a wholesale dealer permit.

(4) A wine producer may sell or serve its finished product at retail directly to consumers at its winery.

(5) Provided that wine producers comply with the provisions of R.S. 26:90, wine producers who own and operate one or more wineries, may sell or serve their finished products at retail directly to consumers at fairs, festivals, farmers' markets and similar venues defined by the commissioner pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act.

(6) Notwithstanding any other provision of law to the contrary, wine producers who operate one or more wineries may sell and ship directly to a consumer in Louisiana provided that the total amount of sparkling wine or still wine shipped to any single household address in seven hundred fifty milliliter bottles, not to exceed one hundred

forty-four bottles per adult person per household address per calendar year.

§ 85.2. Museum permit; requirements; authorizations; circumstances

A. Notwithstanding any other provision of law to the contrary, any person who holds a valid manufacturer's permit issued by the state of Louisiana and operates a museum facility within a historic preservation district that is historical in nature, designed to provide information regarding the history of and feature the manufacturer's product to public visitors to the facility and in which guided tours are provided to such visitors may, if otherwise eligible for an AR exception permit or an AG exception permit, as provided in this Title, apply for and receive a special permit which is limited authorization for the sale of special decanters or commemorative bottles produced by the manufacturer exclusively for sale within the museum facility, for the provision of a sample to museum visitors of the manufacturer's product, of up to one ounce serving per visitor, contained in the special decanter or commemorative bottle as part of an educational program offered to visitors of the historic museum facility, and to conduct tastings and samplings within the museum facility of the manufacturer's product. Such permit shall be known as a "museum permit."

B. A wholesaler shall permit a museum permit holder to deliver directly a special decanter or commemorative bottle to the museum facility operated by the permit holder; however, the wholesaler shall include the amounts delivered in its inventory and depletions for purposes of tax collection imposed pursuant to this Title.

§ 86. Authority of commissioner and local authorities to withhold permit

The commissioner with respect to state permits and municipal authorities and parish governing authorities with respect to local permits may withhold the issuance of permits in the manner and under the terms and conditions specified in this Chapter.

§ 87. Procedure for determination to issue or withhold permit

A. The right to determine what persons shall or shall not be licensed under this Chapter shall be exercised in the following manner:

(1) Municipal authorities and parish governing authorities shall, independently of the commissioner, investigate all applications filed with them for local permits, and shall withhold the issuance of a permit where that action is justified under the provisions of

this Chapter. The decision to withhold a local permit shall be made within thirty-five calendar days of the filing of the application. Within that period, the withholding authority shall notify the commissioner in writing that it is withholding the permit and give the reason therefor. Upon receipt of this notice, supported by reasons enumerated in or authorized by this Chapter, the commissioner shall withhold issuance of the applicant's state permit. Within five calendar days after the receipt of the notice from the local authorities, the commissioner shall notify the applicant in writing of the action and shall assign the reasons therefor. Such notice shall be either delivered to the applicant in person or sent to him by registered mail at the business address given in his last application. When so addressed and mailed, it shall be conclusively presumed to have been received by the applicant.

(2) The commissioner shall investigate all applications for state permits and shall withhold the issuance of the permit where that action is justified under the provisions of this Chapter. The decision to withhold the permit shall be made within thirty-five calendar days of the filing of the application. Within that period, the commissioner shall notify in writing the municipal authority or parish governing authority, as the case may be, where the applicant has his place of business, that it is withholding the permit and shall give his reasons therefor. Upon receipt of this notice, the governing authorities of the municipality or parish, as the case may be, shall withhold the issuance of the local permit. Within five calendar days of the decision to withhold the permit the commissioner shall notify the applicant in writing of the withholding of the permit and shall assign the reasons therefor. Such notice shall be either delivered to the applicant in person or sent to him by certified mail at the mailing address given in his last application. When so addressed and mailed, it shall be conclusively presumed to have been received by the applicant.

(3) Any person may oppose the issuance of any permit by filing with the commissioner a sworn petition of opposition within thirty-five days of the date the application for a state permit was received. If this petition is timely filed, the commissioner shall withhold the state permit and immediately notify the proper local authority, who shall withhold the local permit. The commissioner shall summon the applicant and hold a hearing on the petition of opposition in the manner provided by this Chapter.

B. No petition of opposition shall be acted upon by the commissioner unless the petitioner states in an affidavit that he, together with witnesses, if any, will appear at the hearing to establish the allegations of the petition and unless the petition sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the withholding of a permit.

§ 88. Renewal of permit

A. Except as otherwise provided by law, persons holding permits under this Chapter, whether state or local, shall annually file application for renewal thereof for the ensuing year and pay the permit fees in accordance with this Chapter and the rules and regulations established by the commissioner. If a dealer fails to file the application and pay the permit fees by the date established by the commissioner, there shall be added to the fee, in addition to other penalties provided in this Chapter, a delinquency penalty of five percent if the failure is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the failure continues. If the dealer fails to make his application by the date established by the commissioner, the commissioner may, without notice or hearing, suspend his right to do business.

B. Any dealer whose application for renewal is filed before the date established by the commissioner may continue business until issuance of the new permit, under the previous permit if it has not been suspended or revoked or the new permit withheld or denied.

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

§ 89. Form of application for renewal of permit

The commissioner may, by regulation, prescribe the form of application to be used when the applicant is not seeking a new permit but only the renewal of a current permit held by him. Nothing in this regulation shall alter the qualifications required in this Chapter.

§ 90. Acts prohibited on licensed premises; suspension or revocation of permits

A. No person holding a retail dealer's permit and no agent, associate, employee, representative, or servant of any such person shall do or permit any of the following acts to be done on or about the licensed premises:

(1)(a) Sell or serve alcoholic beverages to any person under the age of twenty-one years, unless such person submits any one of the following:

(i) A valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license.

(ii) A valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license.

(iii) A valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card.

(iv) A valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa.

(v) A valid, current, military or federal identification card issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card.

(vi) A valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card.

(b) Each form of identification listed above must on its face establish the age of the person as twenty-one years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional identification which contains the name, date of birth, and photograph of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this Paragraph.

(2) Sell or serve alcoholic beverages to any intoxicated person.

(3)(a) Intentionally entice, aid, or permit any person under the age of eighteen years to visit or loiter in or about any place where alcoholic beverages or beer are the principal commodities sold, handled, or given away. The provisions of this Section shall in no way prohibit the presence of any person under the age of eighteen years on or about a licensed premises for any function sponsored by a religious or charitable organization with tax exempt status under Section 501(3) of the Internal Revenue

Code of the United States, or by a fraternal beneficiary society with tax exempt status under 501(8) of the said code, and no alcoholic beverages are sold, handled, given away, or accessible during the presence of any such person.

(b) Permit any person under eighteen years of age to work in any capacity unless that person is a musician performing in a band on the premises under written contract for a specified period of time by the permittee, and the musician is under direct supervision of his parent or legal guardian.

(4) Permit any prostitute to frequent the licensed premises or to solicit patrons for prostitution on the licensed premises.

(5) Sell, offer for sale, possess, or permit the consumption on or about the licensed premises of any kind or type of alcoholic beverage, the sale or possession of which is not authorized under his permit, except as provided for in R.S. 26:793(A)(5).

(6) Intentionally conduct illegal gambling, as defined by law, on the premises described in the application for the permit.

(7) Employ or permit persons, commonly known as B drinkers, to solicit patrons for drinks and to accept drinks from patrons and receive therefor any commission or remuneration in any other way.

(8)(a) Employ anyone under the age of eighteen in any capacity in an establishment where the sale of alcoholic beverages constitutes its main business unless the minor is a musician performing in a band on the premises under written contract with the permittee for a specified time period and is under the direct supervision of his parent or guardian during such time. If the sale of alcoholic beverages does not constitute the main business of the establishment, anyone under the age of eighteen may be employed as long as the minor's employment does not involve the sale, mixing, dispensing, or serving of alcoholic beverages for consumption on the premises.

(b) If the sale or handling of alcoholic beverages does not constitute the main business and alcoholic beverages are not sold for consumption on the premises, an employee under the age of eighteen years may be permitted to participate in the sale of packaged alcoholic beverages to collect the price and taxes and issue receipts therefor, or may be permitted to bag packaged alcoholic beverages, or both, where immediate supervision is provided.

(9) Fail to keep the premises clean and sanitary.

(10) Permit the playing of pool or billiards by any person under eighteen years of age, or permit such a person to visit or frequent the licensed premises operating a pool or billiard hall, except in a structure where the position of the pool or billiards playing

area is separate and distinct from the area where alcoholic beverages are dispensed to patrons.

(11) Illegally sell, offer for sale, possess, or permit the consumption on or about the licensed premises of any kind or type of narcotics or habit forming drugs.

(12) Accept Supplemental Nutrition Assistance Program “SNAP” electronic benefit transfer cards as payment for alcoholic beverages in violation of the provisions of 7 U.S.C. 2011 et seq., and any federal regulation issued pursuant thereto.

(13) Permit any disturbance of the peace or obscenity, or any lewd, immoral, or improper entertainment, conduct, or practices on the licensed premises.

(14)(a) Play live or recorded music which is so unreasonably intrusive or offensive as to interfere with the comfortable enjoyment of the property of a person residing within two hundred feet of the premises. This prohibition shall not apply to any licensed premises which are not located within two hundred feet of a residence or which were not located within two hundred feet of a residence on the date that the first permit was granted for the premises or to any licensed premises which are not located in an unzoned unincorporated area. This prohibition shall not apply to any premises which provide an entry area with two separate doors or sets of doors separating the exterior of the entrance from the area where music is played. Any licensed premises which are not, on the effective date of this Paragraph, in compliance with the provisions of this Paragraph, shall have a reasonable time either to modify the premises to comply with this Paragraph or to cease the playing of music as described herein.

(b) Any person residing within two hundred feet of licensed premises on which is played live or recorded music which is so unreasonable, intrusive, or offensive as to interfere with the comfortable enjoyment of his property shall have a cause of action for damages and may obtain injunctive relief if the premises are not in compliance with the provisions of this Paragraph.

(15) Sell or serve any alcoholic beverages at a price fixed on an “all you can drink” basis after the hour of 10:00 p.m.

(16)(a) Sell, deliver, or give away any alcoholic beverage for dispensation by means of an alcoholic beverage vaporizer.

(b) Purchase, possess, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(c) Allow or permit any customer or person to bring, keep, maintain, or use an

alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

B. The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of high alcoholic content shall be held at any premises where such conduct or acts are permitted:

(1) Employment or use of any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(2) Employment or use of the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume, or clothing as described in Paragraph (1) of this Subsection.

(3) Encouraging or permitting any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, or genitals of any other person.

(4) Permitting any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion thereof.

C. Acts or conduct on licensed premises in violation of this Section are deemed to constitute lewd, immoral or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of high alcoholic content shall be held at any premises where such conduct and acts are permitted.

D. Live entertainment is permitted on any licensed premises, except that no permittee shall permit any person to perform acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

(2) The touching, caressing or fondling of the breast, buttocks, anus, or genitals.

(3) The displaying of the pubic hair, anus, vulva, genitals, or nipple of the female breast.

E. Subject to the provisions of Subsection D of this Section, entertainers whose breasts or buttocks are exposed to view shall perform only upon a stage at least

eighteen inches above the immediate floor level and removed at least three feet from the nearest patron.

F. No permittee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

G. The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of high alcoholic content shall be held at any premises where such conduct or acts are permitted, including the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

(2) Any person being touched, caressed or fondled on the breast, buttocks, anus, or genitals.

(3) Scenes wherein a person displays the vulva or the anus or the genitals.

(4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

H. Violation of this Section by a retail dealer's agent, associate, employee, representative, or servant shall be considered the retail dealer's act for purposes of suspension or revocation of a permit.

I. Violation of this Section is punishable as provided in R.S. 26:171 and is also sufficient cause for the suspension or revocation of a permit.

J. Notwithstanding the issuance of a permit by way of renewal, the commissioner may revoke or suspend such permit, as prescribed by this Chapter, for violations of this Section occurring during the permit period immediately preceding the issuance of such permit.

K. Allow the sale, dispensing, or distribution of beverages of high alcoholic content in any type of automatic mechanical vending machine activated by the use of a coin, token, or similar instrument except in Class A establishments pursuant to rules promulgated by the commissioner in accordance with the Administrative Procedure Act. Such rules shall include procedures for the prevention of access to the machines by underage or intoxicated persons. The provisions of this Subsection shall not apply to establishments exempt from holding permits under this Chapter.

§ 91. Additional causes for suspension or revocation of permits; fines

A. In addition to any other causes enumerated in this Chapter, the commissioner may suspend or revoke any permit for any one of the following causes:

(1) If the applicant or any of the persons who must possess the same qualifications failed to possess the qualifications required in R.S. 26:80 at the time of application or fails to maintain such qualifications during the licensed year.

(2) If there was any misstatement or suppression of fact in the application for the permit or if applicant, licensee, or any other person required to meet the qualifications of an applicant, with the intent to misstate or suppress, fails to provide information and documentation, known of at the time of application or learned of at any time after the issuance of a permit, that may reveal any fact material to a suitability determination or knowingly supplies information, during the initial application or following the issuance of a permit, which is untrue or misleading as to a material fact pertaining to the provisions of R.S. 26:80.

(3) If the permit was issued to an interposed person in contravention of R.S. 26:83.

(4) If the permit was granted to any person who is or has been engaged in an alcoholic beverage business with a person whose application for a permit has been denied or whose permit has been revoked.

(5) If the holder of any permit has been convicted by any court of competent jurisdiction of any one of the following offenses:

(a) Violation of the Sunday closing law.

(b) Violation of any municipal or parish ordinance providing for Sunday closing hours.

(c) Violation of any municipal or parish ordinance enacted pursuant to the authorization of this Chapter.

(6) If, without a proper license, a retailer allows any person to consume any alcoholic beverage on the licensed premises or on any parking lot or open or closed space within or contiguous to the licensed premises.

(7) If any dealer or any person listed in Subsection B of R.S. 26:80 violates or has violated any provision of this Chapter.

(8) If any dealer fails to pay any excise taxes due by any regulated business to any parish or municipality.

(9) If the holder of any retail dealer's permit, or his agent, employee, or representative allows the placement or operation of a video draw poker device upon his licensed premises in violation of Part V-B of Chapter 14 of Title 33 of the Louisiana Revised Statutes of 1950.

B. In addition to any other causes enumerated in this Chapter, the commissioner shall suspend or revoke any permit of any dealer that fails to pay any sales taxes due to the state.

C. No retail dealer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates shall require a wholesaler of such beverages to obtain a license or permit, whether or not accompanied by a fee, from a retailer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates for the privilege of soliciting for sale or selling alcoholic beverages to the retailer. For purposes of this Subsection, fees shall not mean allowances, incentives, or any other recognized market practices.

§ 92. Proper petitioners in action by commissioner to suspend or revoke permit

The commissioner, the secretary of the Department of Revenue, municipal authorities, governing authorities of parishes, sheriffs, law enforcing authorities, citizens, and any trade organization consisting of manufacturers and distributors of alcoholic beverages through its authorized representative have the right to have a permittee cited by the commissioner to show cause why his permit or permits should not be suspended or revoked.

§ 93. Procedure for suspending or revoking permit

The procedure for the suspension or revocation of permits shall be substantially as follows:

A. The commissioner shall have periodic examinations made of the business of all persons holding permits under this Chapter. If a violation of any provision of this Chapter or of any rule or regulation of the commissioner is observed, the

commissioner may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the commissioner may instruct any agent or employee of the commissioner to prepare and file, upon information and belief based upon the facts in hand, a petition for suspension or revocation of the permit, setting forth the facts and circumstances of the violation, and shall thereupon summon the permittee to appear and show cause why the permit should not be suspended or revoked.

B. The secretary of the Department of Revenue, municipal authorities, sheriffs, and other law enforcing officers shall have periodic investigations made of the business of all permittees within their respective jurisdictions. If any violation of any provision of this Chapter or of any rule or regulation of the commissioner is observed, such authorities may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, they shall file an affidavit with the commissioner, setting forth the facts and circumstances of the violation. Thereupon, the commissioner shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

C. Any person may file with the commissioner or with the municipal officers or parish authorities a sworn petition requesting that a permit be suspended or revoked. If the petition is filed with the local authorities, they shall immediately transmit it to the commissioner. When such a petition is received by the commissioner, he shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

D. No such petition shall be considered by the commissioner unless sworn to by the petitioner in an affidavit which also affirms that the petitioner, together with witnesses, if any, will appear at the hearing to establish the allegations of the petition, and unless the petition sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the suspension or revocation of a permit.

E. In accordance with the provisions of R.S. 49:961(C), the commissioner may order a summary suspension of a permit.

§ 94. Cause necessary to withholding, suspending, or revoking of permit

No permit shall be withheld, suspended, or revoked except for causes specified in this Chapter. If a person holds more than one permit and any one of them is suspended or revoked, the commissioner may suspend or revoke all of his permits.

§ 95. Convictions by court not essential to withholding, suspending, or revoking permits

Conviction by a court of violation of the provisions of this Chapter is not a condition precedent to the refusal, suspension, or revocation of a permit under this Chapter for a violation of any of the provisions of this Chapter or of the commissioner's published rules. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of an acquittal in a court of competent jurisdiction is admissible in a proceeding before the commissioner. The commissioner shall withhold, suspend, or revoke permits for violations of this Chapter, regardless of any prosecution in the court or of the result of any such prosecution.

§ 96. Revocation and suspensions not exclusive penalty

A. (1) Notwithstanding any other provision of this Chapter to the contrary, the commissioner may, in lieu of or in addition to revocation or suspension of a permit issued under the authority of this Chapter, impose the following schedule of fines to be paid into the state treasury for:

(a) A first offense, not less than fifty dollars but not more than five hundred dollars.

(b) A second offense that occurs within three years of the first offense, not less than two hundred fifty dollars but not more than one thousand dollars.

(c) A third offense that occurs within three years of the first offense, not less than five hundred dollars but not more than two thousand five hundred dollars.

(2) A retail dealer who is required pursuant to R.S. 15:541.1 to post information regarding the National Human Trafficking Center hotline and fails to post such information may be assessed a fine in accordance with the provisions of this Section.

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

§ 97. Status of premises after revocation of permit

When a permit is revoked for any legal cause, the commissioner may, at the same time, order that no state or local permit shall be issued covering the same premises

until one year after the date of revocation.

§ 98. Notice of hearing by commissioner

Whenever the commissioner is to hold a hearing pursuant to the provisions of this Part, he shall issue a written summons or notice thereof to the applicant or permittee directing him to show cause why his application should not be refused or why his permit should not be suspended or revoked. The notice or summons shall state the time, place, and hour of the hearing, which shall be not less than ten nor more than thirty calendar days from the date of the notice. The notice or summons shall enumerate the cause or causes alleged for refusing the application or for suspending or revoking the permit. When a petition has been filed opposing the issuance of the permit or asking for its suspension or revocation, a copy of the petition shall accompany the notice or summons. All notices or summonses shall be either delivered to the applicant or permittee in person sent by certified mail to the applicant or permittee and directed to him at the mailing address as given in his last application for the permit. When so addressed and mailed, notices or summonses shall be conclusively presumed to have been received by the applicant or permittee.

§ 99. Place of hearing

Hearings by the commissioner shall, in his discretion, be held either at the state capital or in the parish in which the licensed premises in question is located.

§ 99.1. Participation in hearing by video conference

To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing as authorized by this Chapter. Prior to utilizing such technology, the commissioner shall adopt rules pursuant to the provisions of the Administrative Procedure Act to provide for the methods and requirements of utilizing teleconference, video link, or other visual remote communications technology for conducting any hearings authorized by the provisions of this Chapter.

§ 100. By whom conducted; record; briefs

Hearings may be held by the commissioner or by any person designated and

authorized by the commissioner. If the hearing is to be held by a person designated by the commissioner, that person shall take an oath for the faithful performance of his duties. The oath may be administered by anyone qualified by law to administer oaths in this state. The commissioner, or the person designated to hold a hearing, may administer oaths, issue subpoenas for the attendance of witnesses and the production of books, papers, accounts, and documents, and examine witnesses and receive testimony at the hearing. Whenever a hearing is conducted by a person designated by the commissioner to hold the hearing, the testimony received shall be reduced to writing and a transcript thereof, together with all documentary evidence, if any, and all written arguments or briefs submitted shall be made and certified by the hearing examiner to the commissioner for his consideration and decision.

§ 101. Contempt at hearings; penalty

If a person fails to comply with a subpoena issued by the commissioner or by any duly authorized person holding the hearing or if a witness refuses to testify in any matter regarding which he may be lawfully interrogated, the person conducting the hearing shall adjudge him guilty of contempt and may fine him not more than one hundred dollars or imprison him for not more than thirty days, or both. The sheriff of the parish in which the hearing is held shall execute the judgment of contempt.

§ 102. Procedure when permittee or applicant fails to appear at hearing; continuances

If a permittee or applicant who has been notified of a hearing does not appear, the hearing may proceed without him and the commissioner may consider and dispose of the case, but in all cases the commissioner, upon application or ex propria motu, may grant continuances from time to time. If the continuance be granted to a fixed future date by written consent or in the presence of the permittee, applicant, or his counsel, no further notice of the hearing date need be given. In all other cases the same notice of hearing as in original hearings shall be given.

§ 103. Basis for determination by commissioner to suspend or to revoke permit

In determining cases involving the suspension or revocation of permits, if the commissioner finds that the violation is of a minor nature, or that there are extenuating circumstances, or that there are reasonable grounds to expect that the permittee will not again violate any of the provisions of this Chapter, the

commissioner may suspend the permit for such time as he thinks proper. If the permittee has previously been fined or had a permit suspended or revoked, or if the violation is flagrant or serious, the commissioner may revoke the permit or permits and shall immediately notify the state and local authorities of this action. When the commissioner either suspends or revokes a permit, all permits to deal in beverages as herein defined and all similar local permits are ipso facto suspended or revoked without action on the part of state or local governing authorities. The commissioner shall retain jurisdiction to re-open cases at any time upon petition or ex propria motu, and for good cause shown may modify, revise, or reverse his former findings and decisions, and all such re-opened cases shall be heard and determined under the same rules of procedure as original cases.

§ 104. Costs of hearings

In hearings of the commissioner which finally result in withholding the issuance of a permit or in suspending or revoking a permit, the commissioner shall assess the costs of the hearing to the applicant or permittee. The costs are recoverable by the commissioner in any appellate proceeding instituted by the applicant or permittee or in any other judicial proceeding.

§ 105. Decisions to withhold, suspend, or revoke permits final unless appealed and reversed

Decisions of the commissioner in withholding, suspending, or revoking permits and of local authorities in withholding permits are final and binding on all parties unless appealed in the manner provided in R.S. 26:106 and finally reversed by the courts.

§ 106. Appeals to courts

A. Any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit or of the local authorities to withhold a permit may, within ten days of the notification of the decision, take a devolutive appeal to the district court having jurisdiction of the applicant's or permittee's place of business, proposed or actual as the case may be. Such appeals shall be filed in the district courts in the same manner

as original suits are instituted therein. The appeals shall be tried de novo. Either party may amend and supplement his pleadings and additional witnesses may be called and heard. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of an acquittal in a court of competent jurisdiction is admissible in the trial of the appeal.

B. Within ten calendar days of the signing of the judgment by the district court in any such appeal case, the commissioner or the applicant for a permit or permittee, as the case may be, may devolutively appeal the judgment to the appellate court of proper jurisdiction. These appeals shall be perfected in the manner provided for in civil cases and shall be devolutive only. If the district court determines that the decision of the commissioner or of the local authorities in withholding, suspending, or revoking the permit was in error, the decision of the commissioner or local authorities shall not be voided if the commissioner or local authorities take an appeal to the court of appeals in the time provided for suspensive appeals.

§ 107. Summary proceedings on appeal

All proceedings in the district and appellate courts arising under this Part are civil in nature and shall be heard summarily by the court, without a jury, shall take precedence over other civil cases, and shall be tried in chambers or in open court, in or out of term.

§ 108. Interference by courts prohibited

The courts of this state shall have jurisdiction to issue restraining orders and writs of injunction restraining the commissioner as provided in the constitution, but no writ or order shall issue before a decision has been made by the commissioner either withholding the application for a permit, or suspending or revoking a permit under the provisions of this Chapter.

PART III. REGULATORY PROVISIONS

§ 141. Export of beverages controlled by commissioner

The commissioner may promulgate rules regulating the sale, handling, distribution, storage, and transportation of alcoholic beverages for delivery beyond the borders of

the state. The failure to comply with any such rule shall, in addition to any other penalties imposed by this Chapter, be cause for the suspension or revocation of the dealer's permit.

§ 142. Distribution through wholesalers only

Except as provided for in R.S. 26:71.3, 85, 271.1 and 359, no alcoholic beverage produced or manufactured inside or outside of this state shall be sold or offered for sale in Louisiana or shipped or transported into or within the state except to the holder of a wholesaler's permit and for delivery at the place of business of the wholesaler as shown in his permit.

§ 143. Invoices and records of dealers

A. Every manufacturer and every wholesaler of alcoholic beverages shall, at the time of shipping or delivering, make a true duplicate invoice of each shipment showing full and complete details of each sale or delivery of the beverages. This invoice shall be retained for a period of two years for the inspection and use of the commissioner. They shall also keep a record of the manufacture and purchase of such beverages by them and shall hold all books, records, and memoranda pertaining to the manufacture and purchase of these beverages subject to the inspection of the commissioner.

B. Retail dealers shall keep a record of all alcoholic beverages purchased by them and shall hold all books, records, and memoranda pertaining to the purchase and sale of such alcoholic beverages for inspection by the commissioner or his agents.

C. In lieu of the invoices required herein for manufacturers and wholesalers, a computer-generated record may be used for the purposes of substantiating the details of each sale or delivery of alcoholic beverages. This record shall be retained for a period of two years for the inspection and use of the commissioner.

§ 144. False invoice or bill of sale prohibited

No person shall use, exhibit, or present to the commissioner, or his agents or employees, any invoice or bill of sale that bears an untrue date or falsely states the nature or quantity of the goods therein listed.

§ 145. Refusal to allow inspection

No person shall refuse to allow the commissioner, or his agents or employees, to make an inspection of any place or business where alcoholic beverages are stored, sold, or handled, or otherwise hinder or prevent the inspection.

§ 146. Regulation of traffic in wines

In order to regulate the traffic in sparkling and still wines, the commissioner shall make and publish reasonable rules and regulations governing the manufacture, labeling, stocking, pricing, and advertising of all such wines. The rules so made shall conform to the substantive provisions of the labeling and advertising regulations issued under the Federal Alcohol Administration Act of the United States. No person shall have in his possession or sell, offer for sale, or distribute any sparkling or still wine not labeled in conformity with the regulations issued by the commissioner and no person shall publish or disseminate any advertisement for sparkling or still wine that does not conform to the regulations issued by the commissioner.

§ 147. Sale or keeping for sale in dry area; penalty

A. No person shall sell or keep for sale any alcoholic beverages for beverage and business purposes in any subdivision of the state where the sale of alcoholic beverages is prohibited by law or ordinance.

B. Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both.

§ 148. Cash or short-term credit sales only; timely payment; penalty for violation

A. No manufacturer or wholesale dealer shall sell, offer to sell, or deliver any alcoholic beverage to any retail dealer in this state, and no retail dealer in alcoholic beverages shall buy or accept delivery for any such beverage, for any consideration other than cash or on terms requiring payment not later than the fifteenth day

following that on which actual delivery is made. If any payment is not made punctually when due, the vendor shall immediately notify the commissioner thereof and the commissioner shall promptly notify all manufacturers and wholesale dealers in the state of the default and thereafter no person shall sell any alcoholic beverage to the retailer in default on any other terms than cash delivery, until otherwise authorized by the commissioner. Under penalty of suspension of his permit, the retailer who is in default shall pay his obligation in full within thirty days from the date it became due.

B. Whoever violates this Section may have his license suspended for not more than five days for the first offense and not more than thirty days for a subsequent offense. Each failure of a retail dealer to make payment for any default before the expiration of the period of suspension constitutes a subsequent offense. In addition, the retail dealer may be required to make payment in cash for all alcoholic beverages subsequently sold or delivered to him.

C. The commissioner shall make and publish rules and regulations for the enforcement of this Section.

§ 149. Refilling used containers prohibited; exception

No person shall refill an original container of alcoholic beverages with an alcoholic beverage or have in his possession any original container that has been so refilled, except for three gallon keg type containers of sparkling wine.

§ 150. Unfair practices

A. The commissioner shall adopt and promulgate rules and regulations to prevent any unfair practices in the sale of any “regulated beverages.”

B. The following unfair practices are hereby prohibited:

(1) Misleading or fraudulent advertising or failure or inability to deliver advertised regulated beverages over a minimum period of twenty-four hours from date of advertising, unless the quantity for sale is specified in the advertisement in type as large as the largest used therein.

(2) Misleading or fraudulent substitution of regulated beverages for those ordered or sold.

(3) Adulterating, watering, or in any manner changing the original contents of any container of regulated beverages while in such container, or possessing containers so adulterated, watered, or changed.

(4) Violating any law or laws of this state defining or prohibiting unfair practices.

(5) Permitting, or acquiescing in, the indiscriminate solicitation or acceptance of regulated beverages, or unregulated beverages, from patrons by employees, or habitues, of the dealer's establishment on the licensed premises.

(6) Doing, permitting, or acquiescing in the doing or permitting, of any act or thing in connection with the sale of regulated beverages involving pricing or stocking or involving fraud, deception or coercion.

C. (1) No retail dealer of alcoholic beverages shall substitute one brand of alcoholic beverage for a brand that has been specifically requested by the customer, unless the customer consents to the substitution.

(2) For the purpose of this Subsection, "brand" means a kind, grade, make, or class of alcoholic beverage identified as being the product of a single manufacturer by a stamp, trademark, logo, or name.

(3) Violation of this Subsection by an agent, associate, employee, representative, or servant of a retail dealer shall be considered a violation by the retail dealer for the purpose of this Subsection.

(4) Anyone who violates the provisions of this Subsection may have his license suspended for not more than two days for the first offense, not less than five days nor more than thirty days for a second offense, and not less than thirty days nor more than one year for third and subsequent offenses. In addition, the commissioner may fine anyone violating this Subsection two hundred fifty dollars for the first offense, not less than five hundred dollars nor more than one thousand dollars for a second offense, and not less than two thousand dollars nor more than three thousand dollars on the third and subsequent offenses.

(5) In addition to the penalties set forth in this Subsection, the retail dealer may be liable in civil suit to the customer and to any dealer of the requested alcoholic

beverage for damages which resulted from the substitution. The court shall award the prevailing party in such an action reasonable attorney fees and costs.

D. No retail dealer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates shall require a wholesaler of such beverages to obtain a license or permit, whether or not accompanied by a fee, from a retailer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates for the privilege of soliciting for sale or selling alcoholic beverages to the retailer. For purposes of this Subsection, fees shall not mean allowances, incentives, or any other recognized market practices.

§ 151. Permits necessary prior to purchase of alcoholic beverages

All retail dealers must possess a permit as a condition precedent to purchasing, receiving, or engaging in the business of dealing in alcoholic beverages. An application may be withheld and a solicitor or his wholesaler who sells or delivers alcoholic beverages to the applicant may have their permits suspended or revoked for violation hereof.

§ 152. Forms for default notices and delinquent lists; rules for filing and publication

The commissioner shall prescribe forms for notices of default and for delinquent lists and shall make and publish rules and regulations to govern the filing of such notices and lists and the publication thereof.

PART IV. PENAL PROVISIONS

§ 171. General penalty

Whoever violates any provision of this Chapter or any rule or regulation of the commissioner, where no other penalty is provided for in this Chapter, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both.

CHAPTER 2. ALCOHOLIC BEVERAGE CONTROL AND TAXATION

PART I. DEFINITIONS

Section

241. Definitions.

242. to 270. Blank

PART II. PERMITS FOR DEALERS IN BEVERAGES OF LOW ALCOHOLIC CONTENT

Section

271. Permits required; fees.

271.1 Microbrewery; retail sales on or off premises.

271.2 Class A Permit; definitions.

271.3 Class C Permit; definitions.

272. Restaurant "R" permit; application; fees.

273. Limitations on the issuance of state permits.

274. Local permits.

275. Operation without permit prohibited.

276. Personal nature of permits; Return of permits; necessity of display; penalties.

277. Notice of application for retail dealer's permit.

278. Contents of application for permit; Commissioner power as ex officio notary.

279. Submission of application; delay.

280. Qualifications of applicants for permits.

281. Location of business limited; exception.

282. Misstatement or suppression of fact in application.

283. Authority of commissioner and local authorities to withhold permits.

284. Procedure for determination to issue or withhold permit.

285. Renewal of permit.

286. Acts prohibited on licensed premises; suspension or revocation of permits.

287. Additional causes for suspension or revocation of permits.

288. Withholding or denying of permits; causes.

289. Proper petitioners in action to suspend or revoke permit

290. Procedure for suspending or revoking permit.

291. Cause necessary to withhold, suspend, revoke permit

- 292. Revocations and suspensions not exclusive penalty.
- 293. Status of premises after revocation of permit.
- 294. Enforcement of permit requirements.
- 295. Notice of hearing by commissioner.
- 296. Place of hearing.
- 296.1 Participation in hearing by video conference
- 297. By whom conducted; record; briefs.
- 298. Contempt at hearings; penalty.
- 299. Procedure when permittee or applicant fails to appear at hearing.
- 300. Basis for determination by commissioner to suspend or to revoke permit.
- 301. Costs of hearings.
- 302. Decisions to withhold, suspend, or revoke permits final unless appealed and reversed.
- 303. Appeals to courts.
- 304. Summary proceedings on appeal.
- 305. Interference by courts prohibited.
- 306. Sale of malt beverages in keg; tracking; forms
- 307. to 340. Blank

PART III. GALLONAGE TAX

Section

- 341. Tax on beverages of high and low alcoholic content; importers of wine
- 342. Tax on beverages of low alcoholic content.
- 343. Taxes on beverages on high alcoholic content in lieu of other state excise taxes.
- 344. Taxes collected from dealer.
- 345. Discount on taxes on beverages of low alcoholic content.
- 346. Wholesale dealers to file returns and pay tax monthly on beverages low alcoholic content.
- 347. Refunds.
- 348. Manufacturers or wholesalers to furnish a bond; failure.
- 349. Handling beverages of low alcoholic content without furnishing bond; penalty.
- 350. Maximum stock of beverages of high alcoholic content in dealer's bonded stockroom.
- 351. Limitation on size of containers of beverages of high

- alcoholic content; standards of fill.
- 352. Donated beverages of high alcoholic content taxable.
- 353. Presumption of taxability of beverages of low alcoholic content.
- 354. Payment and reporting of taxes; discounts; rules and regulations; enforcement; forfeitures and penalties; redemption of tax stamps.
- 355. Invoices and records of dealers in beverages of high alcoholic content.
- 356. False invoices of beverages of high alcoholic content.
- 357. Examination of dealers' records; computation and collection of unpaid taxes.
- 358. Civil penalty on dealers in beverages of low alcoholic content for failure to file return and pay tax.
- 359. Distribution of alcoholic beverages through wholesalers only.
- 360. Report of importers of alcoholic beverages.
- 361. Transportation within state of non tax-paid alcoholic beverages by means other than common carrier prohibited.
- 362. Importation of non-tax paid alcoholic beverages to be by common carrier and private carrier under a permit.
- 363. Forfeiture and sale of vehicle improperly hauling non-tax-paid alcoholic beverages.
- 364. Receipt of alcoholic beverages to avoid tax prohibited; out-of-state manufacturers and wholesaler to obtain written authority to make shipment and furnish notice of shipment; enforcement.
- 365. Consignee to have permit from secretary to receive imported alcoholic beverages.
- 366. Exported beverages not subject to tax.
- 367. Handling of exported beverages of high alcoholic content regulated by secretary.
- 368. Highway transporter required to have invoice.
- 369. Carriers to file report showing alcoholic beverages handled.
- 370. Examination of records.
- 371. Searches and seizures.
- 372. Seizure and forfeiture of beverages of high or low alcoholic content.
- 373. Claims to property seized by secretary.
- 374. Waiver of forfeiture of beverages of high alcoholic content.
- 375. Interference with inspection by the secretary prohibited.

376. to 420. Blank

PART IV. EXEMPTIONS

Section

- 421. Exempt products.
- 422. Exemption in favor of United States.
- 423. Tax-free withdrawal of alcohol from industrial alcohol plants or bonded warehouse.
- 424. to 450. Blank

PART V. ADMINISTRATION

Section

- 451. Secretary to collect taxes.
- 452. Bond of secretary as to beverages of low alcoholic content.
- 453. Rules and regulations of the secretary.
- 454. Private counsel.
- 455. Collection of delinquency penalties.
- 456. Concealing violations or hindering enforcement of Chapter.
- 457. Special agents of secretary and commissioner.
- 458. Compromises by secretary.
- 459. Disposition of proceeds of taxes.
- 460. to 490. Blank

PART VI. LOCAL TAXATION AND REGULATION

Section

- 491. Local taxes authorized on beverages are exclusive.
- 492. Local gallonage tax on beverages of low alcoholic content.
- 493. Local regulatory ordinances.
- 493.1 Local regulatory ordinances; bar closing in certain municipalities.
- 494. Sale of beverages of high alcoholic content in violation of local ordinance.
- 495. Copies of pertinent local ordinances to be furnished commissioner.
- 496. to 520. Blank

PART VII. PENAL PROVISIONS

Section

521. General penalty.

522. to 580. Blank

PART I. DEFINITIONS

§ 241. Definitions

The following terms have the respective meanings ascribed to them except in those instances where the context indicates a different meaning:

(1) “Alcoholic beverages” means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout fruit juices, cider, or wine.

(a) “Beverages of low alcoholic content” means alcoholic beverages containing not more than six percent alcohol by volume.

(b) “Beverages of high alcoholic content” means alcoholic beverages containing more than six percent alcohol by volume.

(2) “Beer outlet” means a place where any person draws or removes any malt beverages from containers for sale or consumption on the premises.

(3) “Commissioner” means the commissioner of alcohol and tobacco control who shall be the assistant secretary of alcohol and tobacco control in the Department of Revenue, or his duly authorized agents.

(4) “Dealer” means every person who manufactures alcoholic beverages within Louisiana for handling in Louisiana or who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana or who, not being able to prove that the tax levied by this Chapter has been previously paid, sells, offers for sale, or has in possession for sale or other handling beverages of high alcoholic content.

(5) “Dinner theater” means an establishment that is a “restaurant establishment”, as defined by R.S. 26:73(C)(1), where food orders are taken and food service is provided in both a restaurant dining area and where patrons are seated to view live theatrical productions or the showing of film, still pictures, electronic or digital reproductions, or other visual reproductions.

(6) “Handle” means sell, use, distribute, store, consume, or otherwise handle.

(7) “Liquors” means all distilled or rectified alcoholic spirits, brandy, whiskey, rum, gin, and all similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, such as liquors, cordials, and similar compounds.

(8) “Liter” means a metric unit of capacity equal to one thousand cubic centimeters at four degrees centigrade, and it is equivalent to 33.814 United States fluid ounces. For the purposes of this Part, a liter is subdivided into one thousand equal milliliters.

(9)(a) “Malt beverages containing not more than six percent alcohol by volume” means beverages obtained by alcoholic fermentation of an infusion or by a brewing process or concoction of barley or other grain, malt, sugars, and hops in water, including among other things, ale, beer, stout, porter, and the like. Malt beverages are exclusive of all “liquors” whether they be defined as intoxicating or spirituous liquors, or as alcoholic, vinous, or malt liquors, or however otherwise defined as liquors, which are produced by distillation.

(b) “Malt beverages containing more than six percent alcohol by volume” means beverages obtained by alcoholic fermentation of an infusion or by a brewing process or concoction of barley or other grain, malt, sugars, and hops in water, including among other things, ale, beer, stout, porter, and the like. Malt beverages are exclusive of all “liquors” whether they be defined as intoxicating or spirituous liquors, or as alcoholic, vinous, or malt liquors, or however otherwise defined as liquors, which are produced by distillation.

(c) For purposes of R.S. 26:287(A)(9) and (10) and 741 only, malt beverages shall mean all beverages, regardless of alcoholic content, as defined in this Paragraph and all beverages of low alcoholic content as defined in Paragraphs (16) and (17) of this Section.

(10) “Manufacturer or brewer” means any person who, directly or indirectly, personally or through any agency, person, or establishment, engages in the making, blending, rectifying, brewing, or other processing of alcoholic beverages in Louisiana or outside the state for shipments to licensed wholesale dealers within the state subject to the provisions of R.S. 26:364. A manufacturer or brewer who operates a brewing facility entirely located in the state of Louisiana may sell or serve only those products brewed at that facility to the public only at that facility for consumption on or off the premises but not for resale. The total amount of such sales to the public for any given month shall not exceed ten percent of the total amount of product brewed at that facility monthly or two hundred fifty barrels, whichever is greater. Any manufacture or brewer who sells its products to the public pursuant to this Paragraph shall remit all state and parish or municipal sales and excise taxes to the proper tax collecting authority for all products sold to the public. A manufacturer or brewer who sells or serves its products to the public pursuant to this Paragraph, shall comply with all local zoning laws and regulations.

(11) “Microbrewer” means any person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of beer or other malt beverages for retail sale in an amount not to exceed twelve thousand five hundred barrels per year.

(12) “Microbrewery” means a retail establishment wherein beer and other malt beverages are brewed in small quantities, not to exceed twelve thousand five hundred barrels per year, and where such beverages are sold at retail for consumption on or off the licensed premises.

(13) “Package house-Class B” means a place consisting of no less than five hundred square feet of public habitable area which sells alcoholic beverages in factory sealed containers for transportation and consumption off the premises and where no person is allowed to tamper with or otherwise disrupt the manufacturer's seal on or about the licensed premises.

(14) “Premises”, or “premises to be licensed”, means the building or that part of the building as defined in the application for the permit in which beverages of low alcoholic content are sold, except in cases where such beverages are regularly sold or served outside the building, the terms shall also include such outside area.

(15) “Retail dealer” means every person who offers for sale, exposes for sale, has in his possession for sale or distribution, or sells alcoholic beverages in any quantity to persons other than licensed wholesale or retail dealers.

(16) “Secretary” means the secretary of the Department of Revenue, or his duly authorized agents.

(17) “Sparkling wine” means champagne and any other effervescent wine charged with carbon dioxide, whether artificially or as the result of secondary fermentation of the wine within the container.

(18) “Still wine” means any noneffervescent wine, including any fortified wine, vermouth, any artificial imitation wine, any compound sold as “still wine”, and any fruit juice.

(19)(a) “Wholesale dealer of malt beverages containing not more than six percent alcohol by volume” means those persons who sell malt beverages containing not more than six percent alcohol by volume and alcoholic beverages of low alcoholic content to licensed wholesale dealers or licensed retail dealers exclusively, within the state or to any person for delivery beyond the borders of the state to a licensed dealer in that state and who conduct a bona fide wholesale business and maintain a warehouse or warehouses for the storage and warehousing of malt beverages and

alcoholic beverages of low alcoholic content in the area where domiciled and licensed by the state, and conduct and maintain systematic and regular solicitations, distribution, deliveries, and sales of said beverages to licensed retail dealers located within the boundary of each parish, municipality, or geographic area, as contractually defined between the wholesaler and his supplier, in which the wholesale dealer makes any sale or delivery.

(b) “Wholesale dealer of malt beverages containing more than six percent alcohol by volume” means those persons who sell malt beverages containing more than six percent alcohol by volume and alcoholic beverages of low alcoholic content to licensed wholesale dealers or licensed retail dealers exclusively, within the state or to any person for delivery beyond the borders of the state to a licensed dealer in that state and who conduct a bona fide wholesale business and maintain a warehouse or warehouses for the storage and warehousing of malt beverages and alcoholic beverages of low alcoholic content in the area where domiciled and licensed by the state, and conduct and maintain systematic and regular solicitations, distribution, deliveries, and sales of said beverages to licensed retail dealers located within the boundary of each parish, municipality, or geographic area, as contractually defined between the wholesaler and his supplier, in which the wholesale dealer makes any sale or delivery.

PART II. PERMITS FOR DEALERS IN BEVERAGES OF LOW ALCHOLIC CONTENT

§ 271. Permits required; fees

A. Before engaging in the business of dealing in malt beverages or beverages of low alcoholic content, all manufacturers, wholesale and retail dealers, and microbrewers shall obtain from the commissioner, according to established rules and regulations, a permit to conduct each separate manufacturing, wholesale, retail, or microbrewery business and shall pay for each permit a fee not to exceed the amounts provided for in the following schedule and in accordance with regulations promulgated pursuant to the provisions of the Administrative Procedure Act for each year the permit is valid:

(1)(a) Wholesaler dealers of malt beverages containing not more than six percent alcohol by volume--one thousand dollars.

(b) Wholesaler dealers of malt beverages containing more than six percent alcohol by volume. To obtain this permit, the applicant shall hold the permit provided in Subparagraph (a) of this Paragraph.

(2) Retailers, Class A--There shall be three types of Class A retail permits for beverages of low alcoholic content:

(a) Class A-General which authorizes the retailer to sell for consumption on or off the licensed premises-- seventy dollars for each place of business in the state.

(b) Class A-Restaurant-- seventy dollars for each establishment in the state.

(c) Class A-Special--thirty dollars for each facility in the state.

(3) Retailers, Class B, which authorizes the retailer to sell in sealed containers prepared for transportation and consumption off the premises or any commercial airline which provisions its aircraft with beverages of low alcoholic content in sealed containers of any size at any airport regularly served by the permittee--seventy dollars.

(4) Retailers, Class C Package Store--seventy dollars

(5) Microbrewer, which authorizes the holder of a Retailers, Class A permit to engage in the brewing of beer and other malt beverages at a single location in an amount not to exceed twelve thousand five hundred barrels, and which further authorizes the sale at retail of such brewed beverages from that location--one thousand dollars.

(6)(a) In-state manufacturers--one thousand dollars for each establishment in the state.

(b) Out-of-state manufacturers who do not maintain an establishment in the state.

(i) Manufacturers who sell less than ten thousand barrels--two hundred dollars.

(ii) All other out-of-state manufacturers--one thousand dollars.

B. The commissioner may require applicants to provide information that is reasonably necessary for the administration of this Section, and may prepare appropriate forms for such applications.

§ 271.1. Microbrewery; retail sales on or off premises

A. Any person who has properly obtained a microbrewer's permit as provided for in R.S. 26:271, shall be authorized to engage in the brewing of beer and other malt

beverages in a quantity not to exceed twelve thousand five hundred barrels during the licensed year. The holder of such permit shall also be authorized to sell the manufactured beverages at retail for consumption on or off the licensed premises, if the holder also has been issued a Retailer, Class A permit.

B. The provisions of this Section shall not authorize the holder of a microbrewer's permit to sell the manufactured beverages at wholesale.

C. Beverages produced by a microbrewer shall be taxed in the same manner and at the same rate as beverages produced by other breweries, as provided by law.

§ 271.2. Class A permit; definitions

The commissioner shall issue the following four types of Class A retail permits for beverages of low alcoholic content:

(1) Class A-General:

(a) A Class A-General retail permit shall be issued only to a retail outlet where beverage alcohol is sold on the premises for consumption on the premises by paying customers. Such an establishment must be equipped with a backbar or similar equipment for public display and to inform the public of brands and flavors offered for sale.

(b) A Class A--General retail establishment shall be staffed by a bartender whose primary duty is to open and/or prepare beverage alcohol products for consumption on the premises by paying customers, or prepared with an appropriate lid or cover on the container for takeout service. Such an establishment must meet all state and local zoning requirements as set forth by the state and by parishes and municipalities where a Class A--General retail outlet is located.

(c) Repealed by Acts 1995, No. 1016, § 2.

(d) A Class A-General retail permit shall be issued only to an establishment where the state law provides that no person under the age of eighteen years is allowed on the premises except as provided in R.S. 26:90(A)(8)(a).

(e) Notwithstanding the provisions of Subparagraphs (a) through (d) of this Paragraph the commissioner shall not issue a Class A-General retail permit for beverages of low alcoholic content to a bona fide commercial film theater unless the bona fide

commercial film theater complies with the requirements of R.S. 26:272(C)(1)(a), (b), and (c) and alcoholic beverage sales are physically segregated from all other concession sales and no one under the age of eighteen is allowed to enter the area where such alcoholic beverages sales are conducted.

(f) Notwithstanding the provisions of Subparagraphs (a) through (e) of this Paragraph, the commissioner may issue a Class A--General retail permit for beverages of low alcoholic content to any retail establishment for consumption of beverages of low alcoholic content on or off the premises. Such establishment must meet all state and local zoning requirements as set forth by the state and by parishes and municipalities where the retail outlet is located. A Class A--General retail permit for beverages of low alcoholic content issued pursuant to the authority granted by this Subparagraph shall not be deemed or qualify as a prerequisite for the issuance of any other type license or permit issued by the state or any political subdivision thereof.

(g) The licensed premises of a Class A-General retail permit shall be able to accommodate a minimum of twenty-five patrons and contain no less than three hundred seventy-five square feet of public habitable floor area.

(h) A Class A-General retail establishment shall comply with the Department of Health and Hospitals guidelines for the required number of public restrooms and their locations within the retail establishment and shall provide documentation of compliance from the office of public health.

(i) Any Class A-General retail permit application submitted prior to September 1, 2001, shall not be required to meet the qualifications set forth in Subparagraph (g) of this Paragraph.

(2) Class A-Restaurant:

A Class A-Restaurant permit shall be issued only to a "restaurant establishment" as defined by R.S. 26:272(C)(1) or a dinner theater as defined in R.S. 26:241(5), and issued to a facility in conjunction with a Class "R" restaurant permit under the provisions of R.S. 26:272.

(3) Class A--Special:

(a) A Class A--Special permit shall be issued to any facility which is situated on state-owned land, and which is being developed or operated by the state for public purposes, without the necessity for a local permit from the parish or municipality, notwithstanding the provisions of R.S. 26:81(B)(1) and (C), 273(A)(1), 281(B) and (C)(1), 582, and 595, if all other pertinent qualifications and conditions of this Title are satisfied, and such establishment meets all state zoning requirements as set forth

by the state.

(b)(i) The provisions of Subparagraph (a) of this Paragraph shall apply only to the Sabine River Authority Conference and Recreational Facility, located in Ward 3, Sabine Parish, Louisiana and shall be applicable only after the following proposition has been submitted to a local referendum election to the voters of Ward 3, Sabine Parish at the congressional general election to be held in 1994, with a favorable vote of a majority of votes cast, to wit:

“Shall the sale of alcoholic beverage of both high and low alcohol content for consumption on the premises be permitted at the Sabine River Authority Conference and Recreational Facility in Ward 3, Sabine Parish, Louisiana?”

(ii) This Subparagraph shall be the sole and only enabling act necessary to call this election, notwithstanding the provisions of R.S. 26:587.

(c) A Class A-Special permit shall be issued to the convention center facility located in the city of Natchitoches.

(4) Class A-Restaurant-Conditional:

(a) Any retail establishment holding a Class A-General permit issued pursuant to this Section may be issued a Class-A-Restaurant-Conditional permit provided it meets the requirements of R.S. 26:73(C)(1)(a), (b), (c), and (d) during the hours from 7:00 a.m. until 11:00 p.m. each day of operation.

(b) Notwithstanding the provisions of R.S. 26:286(A)(3)(a) or any other law to the contrary, any establishment which qualifies and receives a Class-A-Restaurant-Conditional permit may permit any person under the age of eighteen on the premises between the hours of 7:00 a.m. and 11:00 p.m.

(c) No additional fee shall be charged for the application or issuance of a Class-A-Restaurant-Conditional permit.

§ 271.3. Class C Permit; definitions

A. For purposes of this Section, “Class C--Package Store” shall be defined as an establishment that meets all of the following:

(1) Operates as a place of business where alcoholic beverages are the principal commodity sold for off-premise consumption.

(2) Does not offer to sell, sell, or otherwise distribute motor fuel at the licensed establishment.

(3) Sells alcoholic beverages, including frozen specialty beverages, in closed containers prepared for transportation and consumption off the premises only.

(4) Has a public habitable floor area of no less than one thousand square feet.

(5) Does not allow any person under the age of eighteen to enter, visit, or loiter in or about the licensed establishment.

(6) Does not employ any person under the age of eighteen.

(7) Does not allow the consumption of any alcoholic beverage for any purpose or reason on or about the licensed establishment unless and except as otherwise provided for in this Title.

(8) Does not permit the mixing of alcoholic beverages or the sale and/or service of mixed alcoholic beverages on the premises of the licensed establishment; however, the mixing of frozen specialty beverages may be permitted according to rules and regulations promulgated by the commissioner pursuant to Subsection B of this Section.

B. The commissioner shall promulgate rules in accordance with the Administrative Procedure Act related to the requirements, qualifications, and conduct of Class C--Package Store licensees.

§ 272. Restaurant “R” permit; application; fees

A. The legislature hereby finds and declares that the food service industry is a viable industry in Louisiana with significant economic impact and finds that a restaurant establishment's purpose and primary function is to take orders for and serve food and food items. Such service of food may include the serving of alcoholic beverages in conjunction with meals.

B. (1) The commissioner shall issue, on proper application and payment of an administrative fee, a special Class “R” restaurant permit to any restaurant establishment as defined in Subsection C of this Section which has been issued a “Retailers, Class A” state permit for the sale of beverages of low alcohol content.

(2) Municipal and parish governing authorities may issue “R” permits similar to those

provided for in this Section. The provisions of this Paragraph shall not apply to those municipal and parish governing authorities that are issuing such permits on July 1, 1984.

C. (1) For purposes of this Section, “restaurant establishment” shall be defined as an establishment:

(a) Which operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

(b) Which serves food on all days of operation.

(c) Which maintains separate sales figures for alcoholic beverages.

(d) Which operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.

(e) Which has a public habitable floor area of no less than five hundred square feet dedicated to the exclusive use of the applicant’s or licensee’s business.. This Subparagraph shall not apply to business locations that have applied to or have been licensed to sell or serve alcoholic beverages prior to August 1, 2006, and have not discontinued the sale and service of such beverages for more than six months. Notwithstanding any other provision of this Chapter, the commissioner may waive, this requirement for any building listed as a historic building on an official registry or located within an officially designated historic district.

(2) Sparkling or still wine sold or served by the bottle in conjunction with food service shall not be considered an alcoholic beverage by the commissioner when determining gross revenue for purposes of this Section only.

(3) Notwithstanding any other provision of law to the contrary, a business's trade name shall not disqualify such business as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

(4) Notwithstanding any other provision of law to the contrary, a business which provides live entertainment, requires cover charges, offers alcoholic or other beverages at a reduced cost or engages in similar activity shall not be disqualified as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

(5) The provisions of this Section shall not prohibit a parish or municipality from enacting ordinances that establish more restrictive requirements for parish or municipal licenses or permits to sell alcoholic beverages at restaurant establishments.

(6) Notwithstanding any provision of law to the contrary, no local or state Class “R” restaurant permit shall be issued to any establishment that provides the type of live entertainment described in R.S. 26:286(E).

D. For new restaurant establishments without prior business experience on which to determine the gross revenue from the sale of the items in Subparagraph (C)(1)(a) of this Section, the commissioner may issue a temporary license, which shall be valid for sixty days to allow the establishment to make such determination.

E. (1) The permit provided for in this Section shall be applied for and issued annually as determined by the commissioner.

(2) Both the original and renewal applications for such permit shall be in writing, be sworn to in front of a notary public, and shall contain the following:

(a) The full name of the applicant.

(b) A complete description and correct address of the premises in which the restaurant is located.

(c) Proof of issuance of a state Class A permit.

F. All applications shall be accompanied by an administrative fee, which shall be remitted to the commissioner as follows:

(1) For administrative fees for annual new or renewal of permit--twenty-five dollars.

(2) For a temporary permit as provided for in Subsection C --ten dollars.

G. The permit shall be revoked whenever the establishment's Class A permit is revoked by the state or local political subdivision for failure to meet or maintain criteria required for the permit.

H. Notwithstanding the provisions of R.S. 26:81(B)(1) and (C), 273(A)(1), 281(B) and (C)(1), 582, and 595, and if all other pertinent qualifications and conditions of this Title are satisfied, the commissioner shall issue a Class A-General Permit or a Class A-Restaurant Permit and a Class “R” restaurant permit, and the municipal governing authority or the parish governing authority shall issue any and all required local permits to serve low alcohol content beverages for a restaurant establishment, as defined in Paragraph (C)(1) of this Section, or a hotel, if the restaurant or hotel is located within a geographically definable area within any municipality which has been designated by the appropriate authority of the United States Department of the Interior as a national historic landmark district or by the appropriate municipal authority as a local historic district. For restaurant establishments, the provisions of

this Subsection shall be applicable only to an establishment that grosses sixty percent of its average monthly sales from the retail sale of food or food items that are prepared for service and consumption on the premises of the establishment.

I. If proposition five on the local option ballot, as delineated in R.S. 26:588(A), is approved by a majority vote cast in the election, a "Retailers, Class A" state permit shall be authorized for a Class "R" restaurant permittee in the locality for which the local election was held.

§ 273. Limitations on the issuance of state permits; exceptions

A. The commissioner shall not:

(1) Issue a permit for the conduct of a business of dealing in beverages of low alcoholic content in any subdivision of the state wherein that business has been prohibited by a local option election held under the provisions of Chapter 3 of Title 26 of the Louisiana Revised Statutes of 1950.

(2) Issue a wholesale dealer's permit to a person or his spouse possessing a manufacturer's permit, retail dealer's permit of either Class A or Class B, or a microbrewer's permit. This prohibition does not apply to persons who have held both wholesale dealer's and retail dealer's permits continuously since July 31, 1946.

(3) Issue a retail dealer's permit to a person or his or her spouse possessing a manufacturer's permit or wholesale dealer's permit. This prohibition does not apply to persons who have held both wholesale dealer's and retail dealer's permits continuously since July 31, 1946.

(4) Issue a manufacturer's permit to a person or his or her spouse possessing a wholesale dealer's permit, a retail dealer's permit, or a microbrewer's permit.

(5) Issue a microbrewer's permit to a person or his or her spouse possessing a manufacturer's permit or a wholesaler dealer's permit.

(6) Issue a permit for the conduct of a business of dealing in beverages of low alcoholic content for any applicant who is delinquent in the paying of any sales taxes owed to the state, as indicated by the secretary of the Department of Revenue.

(7) Issue a permit of any class to any donut shop for the sale of alcoholic beverages. For purposes of this Paragraph, "donut shop" shall be defined as an establishment that meets all of the following:

(a) Sells donuts, pastries, or other confections.

(b) Does not operate a fully equipped kitchen used for the preparation of uncooked foods, other than donuts, pastries, or other confections, for service and consumption of such foods on the premises.

(c) Does not prepare and serve uncooked foods, other than donuts, pastries, or other confections, at least five days a week.

B. The terms “person” and “spouse” as used in this Section include an individual, partnership, unincorporated association of individuals, joint stock company, corporation, limited liability company, or any other business venture or any stockholder, partner, member, or participant thereof.

§ 274. Local permits

A. Parishes and municipalities may issue and require local permits similar to those issued by the commissioner and may charge and collect fees therefor. No parish or municipality shall require permits of any commercial airline which has been issued a Class B retailer permit.

B. Parishes and municipalities of less than four hundred thousand shall not charge more than one hundred dollars per year for a wholesale dealer's permit, seventy-five dollars per year for a Class A retail dealer's permit, and sixty dollars per year for a Class B retail dealer's permit. Municipalities with a population of four hundred thousand or more shall not charge more than one hundred thirty-five dollars per year for a wholesale dealer's or Class A retail dealer's permit.

C. When a person obtains the required local wholesaler's permit to engage in business as a wholesaler of beverages of low alcoholic content, he may do business in other municipalities or parishes and these municipalities and parishes shall not impose a tax or license of any nature on him to do business within their territorial limits unless he maintains a regular branch of his wholesale business within their respective limits.

D. No parish or municipality shall require a person to secure a permit as a dealer in beverages of high alcoholic content as a condition precedent to issuing a permit to engage in the business of wholesale or retail dealer in beverages of low alcoholic content.

E. Those jurisdictions requiring a person to obtain a license in order to sell or handle beverage alcohol shall not require such person to obtain a new permit due to his change of employment until the original permit has expired. This provision shall not apply to those persons employed as bartenders.

§ 275. Operation without permit prohibited

A. No person shall do any act for which a permit is required by this Chapter or by local authorities acting hereunder unless he holds the proper state and local permits. No local permit shall be necessary unless the local governing authority has adopted an ordinance requiring a local permit. Each day's conduct of business by a wholesaler or retailer without such a valid, unsuspended permit constitutes a separate violation of this Chapter. The provision relative to the doubling of penalties, contained in R.S. 26:521, does not apply to the offense prohibited in this Section.

B. (1) Notwithstanding any law to the contrary, beer, wine, or other spirits sampling for the purpose of allowing a consumer to try the taste of a product may be conducted on the premises of a Class A, Class B or Special Event permit holder.

(2) The commissioner shall promulgate rules and regulations for the conducting of beverage alcohol sampling, which shall allow manufacturers and wholesalers to provide and display a limited amount of point of sales materials.

§ 276. Personal nature of permits; return of permits; necessity of display; penalties

A. The following shall apply to permits issued under this Chapter:

(1)(a) Except as otherwise provided in this Subsection, permits are valid for only one year, unless expired, suspended, or revoked.

(b) Notwithstanding Subparagraph (a) of this Paragraph, the commissioner may issue permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control.

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

(2) The permit is not transferrable, assignable or heritable. The permit must be returned to the office of alcohol and tobacco control or surrendered to an agent of the commissioner within five days of closure, when the business ownership is transferred or the business is terminated. When ownership of the business is transferred, the new owner shall be allowed to continue to operate using the transferor's permit until a new permit is issued or denied, if the new owner notifies the office of alcohol and tobacco control of the transfer within five days of the transfer and applies for a new alcoholic beverage permit within fifteen days of the transfer of ownership. If the permit holder is a corporation or limited liability company, the permit holder shall notify the office of alcohol and tobacco control of any changes in the officers, directors, managers, shareholders, members, or persons previously qualified to conduct or manage the business within fifteen days of the date of such changes. The notification shall include the suitability documents and information for each new individual required to possess the qualifications of the applicants. However, in the event of the dissolution of a partnership by death, the surviving partner or partners may operate under the partnership permit. The office of alcohol and tobacco control shall be notified of any changes to the licensed business premises which increase or decrease the previously approved licensed business premises prior to any such changes.

(3) Receivers and trustees in bankruptcy may operate under the permit of the person succeeded.

(4) When the location of a place of business is proposed to be changed, the proposal shall be received and must be approved by the issuing authority before such action is taken. The change of location shall be noted on the permit by the issuing authority and the permit shall be invalid unless the notation is made.

(5) The permit, in addition to any other permit required to be displayed, shall be posted in a conspicuous place on the licensed premises so as to be easily seen and read by the public. No other signs or notices, except those required by state or federal law, shall be required to be displayed by the retail dealer.

(6) A partnership may include a surviving spouse not separate in community and that spouse may operate under the partnership permit for the remainder of the term.

(7) A partnership, corporation, or any other authorized legal entity recognized under the laws of the state of Louisiana may include a spouse who has a regime of separation of property, pursuant to Civil Code Article 2370, and may include a spouse who owns the interest in the partnership, corporation, or legal entity as that spouse's separate property, pursuant to Civil Code Article 2341 and that spouse may operate under the permit of the partnership, corporation, or other legal entity for the

remainder of the term after final conviction of the other spouse for any felony not directly related to the Alcoholic Beverage Control Law permit.

B. The failure of a retail dealer to publicly display his permits, as required by Paragraph (5) above, shall be grounds for the withholding, suspension, or revocation of the dealer's retail permit.

§ 277. Notice of application for retail dealer's permit

A. Prior to making application for a retail dealer's permit, each applicant shall insert an appropriate signed notice similar to the following in a newspaper published in the municipality in which he desires to operate his business or in the newspaper published nearest his place of business, if it is not located in a municipality in which a newspaper is published:

“I am applying for a permit to sell alcoholic beverages at retail at the following address: _____ in the Parish of _____.”

B. The publication of this notice is not required of permittees seeking the renewal of their permits.

C. In addition to publishing the notice required by Subsections A and B of this Section, each new applicant shall pay a notice of intent fee in the amount of fifty dollars to the office of alcohol and tobacco control. The office will furnish a “Notice of Intent” poster to each person who pays a notice of intent fee. Except in East Baton Rouge Parish, no other local or state notice of intent fee shall be required or assessed.

D. The notice of intent poster shall display, at a minimum, the following information: “NOTICE--I am applying to the office of alcohol and tobacco control of the state of Louisiana for a permit to sell beverages of low alcoholic content at retail at this location. Interested persons should contact the office of alcohol and tobacco control.” The notice of intent poster shall also display the current address and telephone number of the office of alcohol and tobacco control.

E. Each notice of intent poster shall be posted conspicuously outside the premises for which application is to be made for no less than fifteen consecutive days prior to the filing of an application for a retailer's permit for the premises. Such display of a notice of intent poster furnished by the office of alcohol and tobacco control shall serve as the only state official public notice required. However, if the application is for premises for which a permit was in effect within the previous six months, the

notice of intent poster shall be posted upon the filing of the application and remain posted for at least fifteen days thereafter.

F. The surviving spouse of a deceased licensee may, at the time of death, apply for a retail permit for the premises within one year from the date of death without complying with the requirements of this Section.

§ 278. Contents of application for permit; commissioner power as ex officio notary

A. Applications for state and local wholesaler or retailer permits shall be in writing and sworn to and shall contain the full name of the applicant, his social security number, his federal employer identification number, if applicable, his Louisiana Department of Revenue business account number, if applicable, his correct home address, and an accurate description and correct address of the premises wherein the business or operation is to be conducted, which address shall be considered the proper address for all notices to the applicant or permittee required by this Chapter, and shall be accompanied by an affidavit of the applicant showing that he meets the qualifications and conditions set out in R.S. 26:280, and that he has no interest in a retail dealer establishment in the case of applicants for wholesaler permits, and that he has no interest in a wholesaler dealer establishment in the case of applicants for retail dealer permits unless such interest was held prior to July 31, 1946.

B. Unless he is seeking a renewal of his permit, the applicant for a retail dealer's permit shall attach to his application, as a part thereof, a sworn affidavit that he has complied with the provisions of R.S. 26:277.

C. In order to comply with the intent of public notice with reference to malt beverage permit matters and the proper payment of taxes, all applications, affidavits, documents relative to importation of malt beverages, and other data relative to retail or wholesale permits, and information pertinent to R.S. 26:741, shall be made available by the secretary or the commissioner, as the authority may lie, to any citizen of the state of Louisiana, municipal authorities and parish governing authorities, and any trade organization consisting of brewers and distributors of beverages of low alcoholic content.

D. (1) The commissioner and his agents shall be ex officio notaries public within their respective territorial jurisdiction to exercise the functions of a notary public only to administer oaths or affirmations and to notarize applications for permits required of the office of alcohol and tobacco control to engage in the business of dealing in

alcoholic beverages as provided for by the provisions in this Title.

(2) All acts performed by such an ex officio notary public authorized by this Subsection shall be performed without charge or other compensation and without the necessity of giving bond.

(3) The commissioner may suspend or terminate the authority of an agent to act as an ex officio notary at any time, and separation from the employ of the office of alcohol and tobacco control shall automatically terminate the powers of such an ex officio notary public.

§ 279. Submission of applications; delay

All applications for state permits shall be mailed or delivered to the commissioner in Baton Rouge at the state capitol, and all applications for local permits shall be mailed or delivered to the respective local authorities. An applicant shall mail or deliver his applications for state and local permits within twenty-four hours of each other. If he fails to do so, his state application may be withheld and the permits denied. Upon receipt of an application, the commissioner or the local authorities, as the case may be, shall stamp the day, month, and year received, and the commissioner shall verify that the applicant does not owe the state or the political subdivision in which the business is located any delinquent sales taxes, penalties, or interest, excluding items under formal appeal pursuant to applicable statutes. The commissioner and officers or employees specifically so authorized by the commissioner and local authorities may issue the permits immediately after proper investigation but, for a period of thirty-five days after receipt of the application, such permits shall operate on a probationary basis subject to final action on opposition to, or withholding of, the permit as hereinafter provided. Notwithstanding any other provision of this Chapter, prior to August 1, 2016, the commissioner may waive all state application fees or provide an equal credit to an applicant's account when a permit is not issued within three business days after receipt of a fully and properly completed application.

§ 280. Qualifications of applicants for permits

A. Applicants for state and local permits of all kinds shall demonstrate that they meet the following qualifications and conditions:

(1) Be a person of good character and reputation and over eighteen years of age. In considering a person's good character or reputation, the commissioner may consider a

person's arrests in determining suitability.

(2) Be a citizen of the United States and of the state of Louisiana and a resident of the state of Louisiana continuously for a period of not less than two years next preceding the date of the filing of the application. However, the requirements as to Louisiana citizenship do not apply to wholesale or retail dealers who have continuously held permits since July 26, 1944.

(3) Be the owner of the premises, have a bona fide written lease therefor, or be a commercial lessor or a noncommercial lessor licensed pursuant to R.S. 4:701 et seq., exclusively for the sole purpose of conducting charitable gaming. In cases where the applicant holds a bona fide written lease, the name and current street address of the lessor shall be shown on the application form filed with the commissioner.

(4) Have not been convicted of distributing or possessing with the intent to distribute any controlled dangerous substance classified in Schedule I of R.S. 40:964, on any premises licensed pursuant to this Title, where the applicant held or holds an interest in the licensed business. The prohibition provided for in this Subsection shall be for the lifetime of the offender.

(5) Have not been convicted of a felony under the laws of the United States, the state of Louisiana, or any other state or country.

(6) Have not been convicted in this or in any other state or by the United States of soliciting for prostitution, pandering, letting premises for prostitution, contributing to the delinquency of juveniles, keeping a disorderly place, letting a disorderly place, or illegally dealing in controlled dangerous substances.

(7) If the applicant is also applying for a video gaming license under the provisions of Chapter 6 of Title 27 of the Louisiana Revised Statutes of 1950, have not been convicted in this or in any other state or by the United States or any other country of theft or any crime involving false statements or declarations, or gambling as defined by the laws and ordinances of any municipality, any parish, any state, or the United States.

(8) Have not had a license or permit to sell or deal in alcoholic beverages, issued by the United States, any state, or by any political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application, or been convicted, or had a judgment of court rendered against the applicant involving the sale or service of alcoholic beverages by this or any other state or by the United States for two years prior to the application.

(9) Have not been convicted of violating any of the provisions of this Chapter.

(10) Have not been convicted of violating any municipal or parish ordinance relating to beverages of low alcoholic content adopted pursuant to the provisions of R.S. 26:493. In such a case, the granting or denial of a permit is within the discretion of the local licensing authorities.

(11) Not owe the state or the local governmental subdivisions in which the application is made any delinquent sales taxes, penalties, or interest excluding items under formal appeal pursuant to applicable statutes.

(12) Not be the spouse of a person who does not meet the requirements of Paragraphs (1) and (3) through (11) of this Subsection; however, in such cases the age of the ineligible spouse shall be immaterial.

B. If the applicant is a partnership recognized by Louisiana law, or anyone in such partnership with or financed by another, all members of such partnership, or all the persons furnishing the money shall also possess the qualifications required of an applicant. The application shall name all partners or financial backers and furnish their social security numbers and proper addresses. If a partner of a partnership applying for retail permits is a corporation or limited liability company, the requirements as to citizenship and residence shall not apply to officers, directors, and stockholders of the corporation or members of the limited liability company. The corporation or limited liability company shall either be organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

C. (1) If the applicant is a corporation or a limited liability company, all officers and directors and all stockholders or members owning in the aggregate more than five percent of the stock or of the membership interest in a limited liability company and the person or persons who shall conduct or manage the business shall possess the qualifications required of an applicant and shall furnish their federal identification number, their Louisiana Department of Revenue business account number, their social security number, and their correct home address. The requirements as to citizenship and residence do not apply to officers, directors, and stockholders of corporations or members of limited liability companies. The corporation or limited liability company shall be either organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

(2) Notwithstanding any other provisions of law to the contrary, the commissioner may accept from a publicly traded or other corporation or entity, other than any gaming entity regulated pursuant to the provisions of R.S. 27:20 et seq., R.S. 27:41 et seq., or R.S. 27:301 et seq., the necessary documentation of those persons described in Subsection D of this Section and three officers of the corporation in full satisfaction of the requirements of this Section.

D. If the applicant's business is to be conducted wholly or partly by one or more managers, agents, servants, employees, or other representatives, those persons shall also possess the qualifications required of the applicant and shall furnish verification of their suitability in accordance with Paragraph (H)(6) of this Section; however, convicted felons may be employed by an applicant if, in the applicant's business, alcoholic beverages are not the principal commodities sold, handled, or given away.

E. If the applicant, or any other person required to have the same qualifications, does not possess the required qualifications, the permit may be denied, suspended, or revoked; however, if a sales tax clearance has not been issued, the permit shall be denied, suspended, or revoked. Nevertheless, if the sales tax clearance request is not processed within the time limitation provided in R.S. 26:278, the permit shall be issued if all other qualifications are met by the applicant.

F. (1)(a) Notwithstanding the provisions of Subsections A and B, a permit may be granted by the commissioner if the applicant has been pardoned, has had any misdemeanor conviction discharged or dismissed, or the applicant's civil rights have been restored, or, if the applicant is a firm, association, partnership, trust, domestic or foreign corporation, or other legal entity, the applicant has terminated its relationship with the person or persons whose action directly contributed to the applicant's conviction.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to any applicant who is also applying for a video gaming license under the provisions of Chapter 6 of Title 27 of the Louisiana Revised Statutes of 1950.

(2) In the granting of a permit, a conviction or plea of guilty or nolo contendere by the applicant shall not constitute an automatic disqualification of the applicant as otherwise required pursuant to the provisions of Paragraphs (A)(5), (6), and (7) of this Section, if all of the following criteria are met:

(a) The felony for which the applicant was convicted is not a crime of violence as defined in R.S. 14:2(B).

(b) Ten years or more have elapsed between the date of application and the successful completion of any sentence, deferred adjudication, or period of probation or parole and the final discharge of the defendant.

G. Notwithstanding the provisions of Subsections A and B, the commissioner may grant or continue a permit with respect to an applicant, even though the applicant's spouse has been convicted of a felony, if the applicant:

(1) Had state and local permits prior to the spouse's felony conviction, and

(2)(a) Has a regime of separation of property, pursuant to Civil Code Article 2370, and is the owner of the premises or has a bona fide written lease therefor, or

(b) Owns the permitted premises as the applicant's separate property, pursuant to Civil Code Article 2341.

H. (1) In order to determine suitability, the applicant, members of a partnership recognized by Louisiana law, officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such corporations and companies shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety and Corrections, public safety services, office of state police, to the Federal Bureau of Investigation (F.B.I.) for a national criminal history record check.

(2) In order to determine the suitability of an applicant, the office of alcohol and tobacco control shall require the members of a partnership recognized by Louisiana law, officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such corporations and companies, to furnish to the office of alcohol and tobacco control a full set of fingerprints to enable a criminal background investigation to be conducted. The office of alcohol and tobacco control shall submit the completed fingerprint card to the office of state police. The office of state police is authorized to submit the fingerprints to the F.B.I. for a national criminal history background check.

(3) The office of alcohol and tobacco control shall require a background investigation by means of fingerprint checks by the office of state police and the F.B.I. of each applicant, members of a partnership recognized by Louisiana law, officers and directors of a corporation, the stockholders of a corporation, and the members of a limited liability company owning more than five percent of such corporations or companies applying for an alcoholic beverage permit.

(4) In addition to the other requirements established by law, the submittal of fingerprints shall be a prerequisite to the issuance of a permanent alcoholic beverage permit by means of fingerprint checks by the office of state police and the F.B.I.

(5) The office of state police shall require each applicant, members of a partnership recognized by Louisiana law, officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such corporations and companies applying for an alcoholic beverage permit pursuant to this Chapter to be fingerprinted. Such fingerprints shall be available for use by the office of state police and for transmittal to the F.B.I. for a

national criminal history record check. The information obtained from the national criminal history record check conducted pursuant to this Section may be used by the office of alcohol and tobacco control to determine the applicant's eligibility for an alcoholic beverage permit.

(6) In order to determine the suitability of the spouses of those persons required to submit fingerprints in accordance with this Section, and all other persons required to possess the same qualifications required of the applicant, except for those persons already provided for by this Section, the office of alcohol and tobacco control shall require such persons to provide verification of suitability in accordance with rules adopted by the commissioner pursuant to the Administrative Procedure Act. Fingerprints shall not be required unless the commissioner requests fingerprints based upon credible information that a person may not meet the qualifications of an applicant.

I. All licensees and persons required to be qualified pursuant to the provision of this Chapter shall have a continuing duty to inform the commissioner of any action which they believe would constitute a violation of this Chapter. No person who so informs the commissioner shall be discriminated against by an applicant or licensee because of supplying such information.

J. All licensees and any other persons who have been found suitable in accordance with the provisions of this Section shall maintain suitability throughout the term of the license.

§ 281. Location of business limited; exception

A. No permit shall be granted under this Chapter in contravention of any municipal ordinance adopted pursuant to the zoning laws of the state.

B. No permit shall be issued by the commissioner or local authorities to authorize the conduct of business in any subdivision of the state wherein that business has been prohibited by referendum vote.

C. (1)(a) When prohibited by municipal or parish ordinance, no permit shall be granted for any premises situated within three hundred feet or less, as fixed by the ordinance, of a public playground, of a building used exclusively as a church or synagogue, public library, school, or full-time day care center as defined in R.S. 17:405(A)(4), or correctional facility housing inmates, including but not limited to a halfway house. In municipalities and in unincorporated areas which are divided into subdivisions with streets, blocks, sidewalks, etc., subject to the adoption of the

alternate method of measurement as provided for in Paragraph (2) of this Subsection, this distance shall be measured as a person walks using the sidewalk from the nearest point of the property line of the church or synagogue, public library, public playground, school, full-time day care center, or a correctional facility housing inmates, including but not limited to a halfway house to the nearest point of the premises to be licensed.

(b) A municipality may adopt an ordinance establishing an alternate method of measurement of the three hundred foot limitation by measuring in a straight line from the nearest point of the property line of the church or synagogue, public library, school, or full-time day care center to the nearest point of the premises to be licensed. Such alternate method of measurement shall only apply prospectively to the issuance of a new alcohol permit issued on or after the date the ordinance has been adopted.

(2) The commissioner shall not deny any applicant located outside a municipality a permit based on the distance requirements of this Subsection, if the parish governing authority and the organization that operates the public playground or owns the building used exclusively as a church or synagogue, public library, school, full-time day care center, or the correctional facility housing inmates, including but not limited to a halfway house waive opposition to the applicant's permit. The provisions of this Paragraph shall not apply in the parishes of Pointe Coupee, West Baton Rouge, East Feliciana, West Feliciana, and St. Bernard.

D. Police juries may enact ordinances extending the distances between licensed premises and the property line of churches, synagogues, public libraries, public playgrounds, schools, full-time day care centers, and correctional facilities housing inmates, including but not limited to halfway houses to five hundred feet.

E. The provisions of this Section shall not apply to registered pharmacists or licensed drug stores, licensed under the laws of the state of Louisiana who are permitted to sell alcoholic beverages by prescription only, either of high or low alcoholic content under Chapter 1 or Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950.

F. Should any premises licensed to deal in beverages of low alcoholic content be located within a distance less than that provided by a municipal or parish ordinance pursuant to this Section from property which is purchased or acquired after the license was obtained for the construction, erection, movement, or development of a public playground or a building used exclusively as a church or synagogue, public library, school, full-time day care center, or correctional facility housing inmates, including but not limited to a halfway house, such subsequent purchase or acquisition shall not be grounds for the revocation, withholding, denial, or refusal to renew the permit on said premises either by state or local authorities.

G. In undeveloped rural areas, the distance shall be measured in a straight line from the nearest point to the nearest point of the respective premises.

H. The provisions of this Subsection shall not apply to municipalities with over four hundred thousand population.

I. Notwithstanding the provisions of this Section or any other law to the contrary, the sale of six percent alcohol by volume shall be allowed in any political subdivision which has approved the sale of three and two-tenths percent alcohol by weight until such time as prohibited by a referendum vote of the qualified electors within that political subdivision.

J. For the purposes of this Section, “public library” shall mean a public library which is located in a permanent structure and is open to the public for three or more days per week.

§ 282. Misstatement or suppression of fact in application

Any misstatement or suppression of fact in an application or accompanying affidavit is a ground for the denial, withholding or suspension of a permit in the manner provided in this Chapter.

§ 283. Authority of commissioner and local authorities to withhold permits

The commissioner with respect to state permits and municipal authorities or parish governing authorities with respect to local permits may withhold the issuance of permits in the manner and under the terms and conditions specified in this Chapter.

§ 284. Procedure for determination to issue or withhold permit

The right to determine what persons shall or shall not be licensed under this Chapter shall be exercised in the following manner:

A. Municipal authorities and parish governing authorities, within their respective jurisdictions, shall investigate all applications filed with them for local permits and shall withhold the issuance of a permit where that action is justified under the provisions of this Chapter. This action may be taken without a prior hearing. The decision to withhold a local permit shall be made within thirty-five calendar days of the filing of an application. Within that period, the withholding authority shall notify

the commissioner in writing that it is withholding the permit and shall give the reasons therefor. Upon receipt of this notice, supported by reasons enumerated in or authorized by this Chapter, the commissioner shall withhold the issuance of the applicant's state permit. Within five calendar days after the receipt of this notice from the local authorities, the commissioner shall notify the applicant in writing of the withholding of the permits and shall assign reasons therefor. Such notice shall be either delivered to the applicant in person or sent to him by registered mail at the address given in his last application for a state permit. When so addressed and mailed, it shall be conclusively presumed to have been received by the applicant.

B. The commissioner shall investigate all applications for state permits and shall withhold the issuance of a permit where that action is justified under the provisions of this Chapter. This action may be taken without a prior hearing except as provided in R.S. 26:80(F) and 280(F). The decision to withhold a state permit shall be made within thirty-five calendar days of the filing of an application. Within that period of time, the commissioner shall notify in writing the municipal authorities or parish governing authority, as the case may be, where the applicant has or was to have his place of business and shall specify the reasons for withholding the issuance of the state permit. Upon receipt of this notice, the municipal authorities or the parish governing authority shall withhold the issuance of the local permit. Within five calendar days of mailing the notice of withholding to the local authorities, the commissioner shall notify the applicant in writing of the withholding of the permit and shall assign reasons therefor. Such notice shall be either delivered to the applicant in person or sent to him by certified mail at the mailing address given in his last application for a state permit. When so addressed and mailed, it shall be conclusively presumed to have been received by the applicant.

C. Any citizen who has, for at least six months prior thereto, resided in the parish wherein the proposed place of business of an applicant for a permit is situated, or any public official or state or local law enforcement officer may oppose the issuance of permits by filing with the proper local authorities or with the commissioner a sworn petition of opposition. If this petition is filed, the local authorities, within thirty-five calendar days of the filing of the application for a local permit, shall withhold the issuance of the local permit and immediately notify the commissioner of the action, enclosing the petition of opposition and any supporting documents. Upon receipt of this notice, the commissioner shall withhold the issuance of the state permit. If the petition is filed with the commissioner, he shall withhold the issuance of the state permit and immediately notify the proper local authority. The local authority thus notified shall withhold issuance of the local permit. The commissioner shall hold a hearing on the petition and determine the issue in the manner provided in this Part.

D. Any trade organization consisting of brewers and distributors of beverages of low alcoholic content, through its authorized representative, may oppose the issuance of permits by filing with the proper local authorities or with the commissioner a sworn petition of opposition. If this petition is filed the local authorities, within thirty-five calendar days of the filing of the application for a local permit, shall withhold the issuance of the local permit and immediately notify the commissioner of the action, enclosing the petition of opposition and any supporting documents. Upon receipt of this notice, the commissioner shall withhold the issuance of the state permit. If the petition is filed with the commissioner, he shall withhold the issuance of the state permit and immediately notify the proper local authority. The local authority thus notified shall withhold issuance of the local permit. The commissioner shall hold a hearing on the petition and determine the issue in the manner provided in this Part.

E. No petition of opposition shall be acted upon by the commissioner or the local authorities unless it is sworn to by the petitioner in an affidavit which also affirms that the petitioner together with witnesses, if any, will appear at the hearing to establish the allegations of the petition and unless the petitioner sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the withholding of a permit.

§ 285. Renewal of permit

A. Except as otherwise provided by law, persons holding permits under this Chapter, whether state or local, shall file applications for renewal thereof for the ensuing year in the manner provided with the commissioner. Anyone filing his renewal application after the date set shall be charged a delinquency penalty of twenty-five percent over and above the regular fee. If a permittee fails to make his application for renewal by the end of the term, his application may be denied and the commissioner may, without notice or hearing, suspend his right to do business.

B. Any applicant who makes his application for renewal before the end of the permit period shall continue business under his old permit unless it has been suspended or revoked or the new permit withheld or denied.

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

§ 286. Acts prohibited on licensed premises; suspension or revocation of permits

A. No person holding a retail dealer's permit and no servant, agent, or employee of the permittee shall do any of the following acts upon the licensed premises:

(1)(a) Sell or serve beverages of low-alcoholic content to any person under the age of twenty-one years, unless such person submits any one of the following:

(i) A valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license.

(ii) A valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license.

(iii) A valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card.

(iv) A valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa.

(v) A valid, current, military or federal identification card issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card.

(vi) A valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card.

(b) Each form of identification listed above must on its face establish the age of the person as twenty-one years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this Paragraph.

(2) Sell or serve beverages of low alcoholic content to any intoxicated person.

(3)(a) Intentionally entice, aid, or permit any person under the age of eighteen years to visit or loiter in or about any place where alcoholic beverages or beer are the principal commodities sold, handled, or given away. However, the provisions of this

Section shall in no way prohibit the presence of any person under the age of eighteen years on or about a licensed premises for any function sponsored by a religious or charitable organization with tax exempt status under Section 501(3) of the Internal Revenue Code of the United States, or by a fraternal beneficiary society with tax exempt status under 501(8) of the said code, and no alcoholic beverages are sold, handled, given away, or accessible during the presence of any such person.

(b) Permit any person under eighteen years of age to work in any capacity unless that person is a musician performing in a band on the premises under written contract for a specified period of time by the permittee, and the musician is under direct supervision of his parent or legal guardian.

(4) Permit any prostitute to frequent the licensed premises, or to solicit patrons for prostitution on the licensed premises.

(5) Sell, offer for sale, possess, or permit the consumption on the licensed premises of any kind or type of alcoholic beverages, the sale, or possession of which is not authorized under his permit, except as provided for in R.S. 26:793(A)(5).

(6) Intentionally conduct illegal gambling, as defined by law, on the premises described in the application for the permit.

(7) Employ or permit persons, commonly known as B drinkers, to solicit patrons for drinks and to accept drinks from patrons and receive therefor any commission or any remuneration in any other way.

(8)(a) Employ anyone under the age of eighteen in any capacity in an establishment where the sale of alcoholic beverages constitutes its main business unless the minor is a musician performing in a band on the premises under written contract with the permittee for a specified time period and is under the direct supervision of his parent or guardian during such time. If the sale of alcoholic beverages does not constitute the main business of the establishment, anyone under the age of eighteen may be employed as long as the minor's employment does not involve the sale, mixing, dispensing, or serving of alcoholic beverages for consumption on the premises.

(b) If the sale or handling of alcoholic beverages does not constitute the main business and alcoholic beverages are not sold for consumption on the premises, an employee under the age of eighteen years may be permitted to participate in the sale of packaged alcoholic beverages to collect the price and taxes and issue receipts therefor, or may be permitted to bag packaged alcoholic beverages, or both, where immediate supervision is provided.

(9) Allow the sale, dispensing, or distribution of beverages of low alcoholic content

in any type of automatic mechanical vending machine activated by the use of a coin, token, or similar instrument, except in Class A establishments in accordance with rules promulgated pursuant to the Administrative Procedure Act. Such rules shall include procedures for the prevention of access to the machines by underage or intoxicated persons. The provisions of this Paragraph shall not apply to establishments exempt from holding permits under this Chapter.

(10) Permit the playing of pool or billiards by any person under eighteen years of age, or permit such a person to frequent the licensed premises operating a pool or billiard hall, except in a structure where the position of the pool or billiards playing area is separate and distinct from the area where alcoholic beverages are dispensed to patrons.

(11) Illegally sell, offer for sale, possess, or permit the consumption on or about the licensed premises of any kind or type of controlled dangerous substances.

(12) Accept Supplemental Nutrition Assistance Program “SNAP” electronic benefit transfer cards as payment for alcoholic beverages in violation of the provisions of 7 U.S.C. 2011 et seq., and any federal regulation issued pursuant thereto.

(13) Permit any disturbance of the peace or obscenity, or any lewd, immoral, or improper entertainment, conduct, or practices on the licensed premises.

(14)(a) Play live or recorded music which is so unreasonably intrusive or offensive as to interfere with the comfortable enjoyment of the property of a person residing within two hundred feet of the premises. This prohibition shall not apply to any licensed premises which are not located within two hundred feet of a residence or which were not located within two hundred feet of a residence on the date that the first permit was granted for the premises or to any licensed premises which are not located in an unzoned unincorporated area. This prohibition shall not apply to any premises which provide an entry area with two separate doors or sets of doors separating the exterior of the entrance from the area where music is played. Any licensed premises which are not, on the effective date of this Paragraph, in compliance with the provisions of this Paragraph, shall have a reasonable time either to modify the premises to comply with this Paragraph or to cease the playing of music as described herein.

(b) Any person residing within two hundred feet of licensed premises on which is played live or recorded music which is so unreasonably intrusive or offensive as to interfere with the comfortable enjoyment of his property shall have a cause of action for damages and may obtain injunctive relief if the premises are not in compliance with the provisions of this Paragraph.

(15) Sell or serve any alcoholic beverages at a price fixed on an “all you can drink” basis after the hour of 10:00 p.m.

(16)(a) Sell, deliver, or give away any alcoholic beverage for dispensation by means of an alcoholic beverage vaporizer.

(b) Purchase, possess, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(c) Allow or permit any customer or person to bring, keep, maintain, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

B. The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of low alcoholic content shall be held at any premises where such conduct or acts are permitted:

(1) Employment or use of any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(2) Employment or use of the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume, or clothing as described in Paragraph (1) of this Subsection.

(3) Encouraging or permitting any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person.

(4) Permitting any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion thereof.

C. Acts or conduct on licensed premises in violation of this Section are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of low alcoholic content shall be held at any premises where such conduct and acts are permitted.

D. Live entertainment is permitted on any licensed premises, except that no permittee shall permit any person to perform acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

(2) The touching, caressing, or fondling of the breast, buttocks, anus, or genitals.

(3) The displaying of the pubic hair, anus, vulva, genitals, or nipple of the female breast.

E. Subject to the provisions of Subparagraph (b)(i) of Subsection D of this Section, entertainers whose breasts or buttocks are exposed to view shall perform only upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest patron.

F. No permittee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

G. The following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by this Section and therefore no on-sale permit for beverages of low alcoholic content shall be held at any premises where such conduct or acts are permitted: including the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(2) Any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals.

(3) Scenes wherein a person displays the vulva or the anus or the genitals.

(4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

H. Violation of this Section by a retail dealer's agent, associate, employee, representative, or servant shall be considered the retail dealer's act for purposes of suspension or revocation of the permit.

I. Violation of this Section is punishable as provided in R.S. 26:521 and is also sufficient cause for the suspension or revocation of a permit.

J. Notwithstanding the issuance of a permit by way of renewal, the commissioner may revoke or suspend such permit, as prescribed by this Chapter, for violations of this Section occurring during the permit period immediately preceding the issuance of such permit.

§ 287. Additional causes for suspension or revocation of permits

A. In addition to any other causes enumerated in this Chapter, the commissioner may suspend or revoke any permit for any of the following causes:

(1)(a) If there was any misstatement or suppression of fact in the application for the permit or if applicant, licensee, or any other person required to meet the qualifications of an applicant, with the intent to misstate or suppress, fails to provide information and documentation, known of at the time of application or learned of at any time after the issuance of a permit, that may reveal any fact material to a suitability determination or knowingly supplies information, during the initial application or following the issuance of a permit, which is untrue or misleading as to a material fact pertaining to the provisions of R.S. 26:280.

(b) If the tap marker misrepresents the brand of low alcoholic beverage being drawn from the container as filled by the manufacturer.

(2) If the permit was granted to any person who is or has been engaged in the business of dealing in beverages of low alcoholic content with a person whose application for a permit has been denied or whose permit has been revoked, in the relationship of spouse, agent, partner, employer, employee, or interposed person.

(3) If the permittee has been found guilty by the mayor, municipal or city court, justice of the peace court, or district court, as the case may be, of any of the following offenses:

(a) Violation of the Sunday closing law.

(b) Violation of any municipal or parish or other ordinance providing for Sunday closing hours.

(c) Violation of any municipal or parish ordinance relating to beverages of low alcoholic content enacted pursuant to R.S. 26:493, if the ordinance provides for revocation of the permit for its violation.

(4) If any retail dealer fails to pay any excise taxes due by any regulated business to any parish or municipality.

(5) If after ten days of being issued a wholesale dealer's permit, the permittee fails to meet all of the qualifications and requirements of a wholesale dealer as defined in R.S. 26:241(16).

- (6) If a wholesale dealer fails to comply with R.S. 26:359.
- (7) If a wholesale dealer sells to a person, firm, or corporation other than a licensed retail dealer or licensed wholesaler, or for delivery beyond the borders of the state to a licensed dealer in that state.
- (8) If the applicant or any of the persons who must possess the same qualifications failed to possess the qualifications required in R.S. 26:280 at the time of application or fails to maintain such qualifications during the licensed year.
- (9) If any person engaged in business as a brewer, manufacturer, or other producer, or as an importer or wholesaler of malt beverages or malt liquors, directly or indirectly or through an affiliate:
- (a) Requires, by agreement or otherwise, that any retail dealer engaged in the sale of malt beverages or malt liquors, purchase any such products from such persons to the exclusion in whole or in part of competing brands of malt beverages or malt liquors sold or offered for sale by other persons; or
 - (b) Induces, through any of the following means, any retail dealer engaged in the sale of malt beverages or malt liquors, to purchase any such products from such person to the exclusion in whole or in part of malt beverages or malt liquors sold or offered for sale by other persons:
 - (i) By acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the premises of the retail dealer;
 - (ii) By acquiring any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business;
 - (iii) By furnishing, giving, renting, lending, or selling to the retail dealer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the commissioner may by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this Subsection;
 - (iv) By paying or crediting the retail dealers for any advertising, display, or distribution service;
 - (v) By guaranteeing any loan or the repayment of any financial obligation of the retail dealer;
 - (vi) By extending to the retail dealer credit; or
 - (vii) By requiring the retail dealer to take and dispose of a certain quota of any of

such products.

(c) Requires, by agreement or otherwise, that any wholesale dealer engaged in the sale of malt beverages or malt liquors sell any such products to the retail dealer to the exclusion in whole or in part of any other retail dealer engaged in the sale of malt beverages or malt liquors.

(d) Induces, through any one of the following means, any wholesale dealer engaged in the sale of malt beverages or malt liquors to sell any such products to the retail dealer to the exclusion in whole or in part of any other retail dealer engaged in the sale of malt beverages or malt liquors:

(i) By acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the operation of the wholesale dealer; or

(ii) By acquiring any interest in real or personal property owned, occupied, or used by the wholesale dealer in the conduct of his business.

(e) Requires a wholesale dealer engaged in the sale of malt beverages or malt liquors to purchase merchandise, supplies, or any other thing of value from the retail dealer as a condition for the retail dealer to purchase malt beverages or malt liquor from the wholesale dealer for sale at retail.

(f) Requires a wholesale dealer to furnish equipment, fixtures, signs, other promotional material, samples, supplies, services, or other things of value as a condition for the retail dealer to purchase malt beverages or malt liquor from the wholesale dealer to offer for sale at retail.

(g) The commissioner may promulgate such rules and regulations as he deems necessary to carry out the provisions contained in Subparagraphs (a) through (f) of this Paragraph, including, but not limited to, the authority to provide for exceptions if determined to be in the public interest and to be necessary to further the purposes provided for in this Chapter.

(10) If any person engaged in business as a retail dealer of malt beverages or malt liquors, directly or indirectly or through an affiliate:

(a) Is involved in or in any way consents to engage in the purchase of malt beverages or malt liquors and sell any such products to the exclusion in whole or in part of malt beverages or malt liquors sold or offered for sale by other persons; or

(b) Accepts or gives any inducement through any of the following means from or to any person engaged in the sale of malt beverages or malt liquors, to purchase or sell any such products from or to such persons to the exclusion in whole or part of malt

beverages or malt liquors sold or offered for sale by other persons by agreeing to allow a brewer, manufacturer, or other producer or importer, or wholesaler of malt beverages or malt liquors, directly or indirectly or through an affiliate:

(i) To acquire or hold, after the expiration of any existing license, any interest in any license with respect to the premises of the retail dealer;

(ii) To acquire any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business;

(iii) To furnish, give, rent, lend, or sell to the retail dealer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the commissioner shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of this Paragraph;

(iv) To pay or credit the retail dealer for any advertising, display, or distribution service;

(v) To guarantee any loan or the repayment of any financial obligation of the retail dealer;

(vi) To extend to the retail dealer credit; or

(vii) To require the retail dealer to take and dispose of a certain quota of any of such products.

(c) Requires, by agreement or otherwise, that any wholesale dealer engaged in the sale of malt beverages or malt liquors sell any such products to the retail dealer to the exclusion in whole or in part of any other retail dealer engaged in the sale of malt beverages or malt liquors.

(d) Induces, through any of the following means, any wholesale dealer engaged in the sale of malt beverages or malt liquors to sell any such products to the retail dealer to the exclusion in whole or in part of any other retail dealer engaged in the sale of malt beverages or malt liquors:

(i) By acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the operation of the wholesale dealer,

(ii) By acquiring any interest in real or personal property owned, occupied, or used by the wholesale dealer in the conduct of his business.

(e) Requires a wholesale dealer engaged in the sale of malt beverages or malt liquors to purchase merchandise, supplies, or any other thing of value from the retail dealer

as a condition for the retail dealer to purchase malt beverages or malt liquor from the wholesale dealer for sale at retail.

(f) Requires a wholesale dealer to furnish equipment, fixtures, signs, other promotional material, samples, supplies, services, or other things of value as a condition for the retail dealer to purchase malt beverages or malt liquor from the wholesale dealer to offer for sale at retail.

(g) The commissioner may promulgate such rules and regulations as he deems necessary to carry out the provisions contained in Subparagraphs (a) through (f) of this Paragraph, including, but not limited to, the authority to provide for exceptions if determined to be in the public interest and to be necessary to further the purposes provided for in this Chapter.

(11) If the permittee, or his agent or employee, allows the placement, operations, or play of a video draw poker device upon the licensed premises in violation of provisions of Part V-B of Chapter 14 of Title 33 of the Louisiana Revised Statutes of 1950.

(12) If any wholesaler participates in any marketing or catalog program offering prizes or credits or anything of value to a retail dealer based on volume of purchases from the wholesale dealer or volume of sales to the public. Nothing in this Paragraph shall be construed to prohibit those marketing or catalog programs sponsored by breweries through retail dealers offering prizes or credits or anything of value to the public nor those price promotional sales conducted as a business incentive.

(13)(a) If any permittee, or his agent, associate, employee, representative, or servant substitutes one brand of alcoholic beverage for a brand that has been specifically requested by a customer without the consent of the customer for the substitution.

(b) For the purposes of this Paragraph “brand” means a kind, grade, make, or class of alcoholic beverage identified as being the product of a single manufacturer by a stamp, trademark, logo, or name.

(c) In addition to the penalties set forth in this Chapter, the permittee may be liable in civil suit to the customer and to the wholesale dealer and manufacturer or brewer of the requested alcoholic beverage for damages which result from the substitution. The court shall award the prevailing party in such an action reasonable attorney fees and costs.

B. In addition to any other causes enumerated in this Chapter, the commissioner shall suspend or revoke any permit if any retail dealer fails to pay any sales taxes due to the state.

C. No retail dealer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates shall require a wholesaler of such beverages to obtain a license or permit, whether or not accompanied by a fee, from a retailer or any person or entity which owns or controls, directly or indirectly, any premises on which a retail dealer operates for the privilege of soliciting for sale or selling alcoholic beverages to the retailer. For purposes of this Subsection, fees shall not mean allowances, incentives, or any other recognized market practices.

§ 288. Withholding or denying of permits; causes

All causes enumerated in this Chapter as sufficient cause for the suspension or revocation of a permit shall also be sufficient cause for the commissioner to withhold or deny a permit.

§ 289. Proper petitioners in action to suspend or revoke permit

The commissioner, secretary of the Department of Revenue, municipal authorities, parish governing authorities, sheriffs, law enforcing authorities, citizens, and any trade organization consisting of brewers and distributors of beverages of low alcoholic content through its authorized representative have the right to have a permittee cited by the commissioner to show cause why his permit should not be suspended or revoked.

§ 290. Procedure for suspending or revoking permit

The suspension or revocation of a permit shall be brought about in the following manner:

A. The commissioner shall have periodic investigations made of the businesses of all persons holding state permits under this Chapter. The secretary of the Department of Revenue, municipal authorities, and sheriffs shall periodically investigate the businesses of all permittees within their respective jurisdictions. When violations of provisions of this Chapter are observed which are sufficient cause for suspension or revocation of the permit, the commissioner, the secretary of the Department of Revenue, or the local authority, as the case may be, shall file an affidavit setting forth the facts and circumstances of the violations. The commissioner shall cite the permittee to appear for a hearing to show cause why his permit should not be suspended or revoked.

B. Any citizen who has for at least six months prior thereto resided in the parish where the licensed premises are located may file with the commissioner, municipal authorities, sheriffs, or parish governing authorities a sworn petition requesting that a permit be suspended or revoked. If the petition is filed with the municipal officers, sheriffs, or parish governing authorities, these officials shall immediately transmit it to the commissioner. When such a petition is received by the commissioner, he shall hold a hearing on the petition.

C. Any trade organization consisting of brewers and distributors of beverages of low alcoholic content, through its authorized representative, may file with the commissioner, municipal authorities, sheriffs, or parish governing authorities a sworn petition requesting that a permit be suspended or revoked. If the petition is filed with the municipal officers, sheriffs, or parish governing authorities, these officials shall immediately transmit it to the commissioner. When such a petition is received by the commissioner, he shall hold a hearing on the petition.

D. No such petition shall be considered by the commissioner unless sworn to by the petitioner in an affidavit which also affirms that the petitioner, together with witnesses, if any, will appear at the hearing to establish the allegations of the petition and unless the petition sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the suspension or revocation of a permit.

E. In accordance with the provisions of R.S. 49:961(C), the commissioner may order a summary suspension of a permit.

§ 291. Cause necessary to withholding, suspending, or revoking of permit

No permit shall be withheld, suspended, or revoked except for causes specified in this Chapter. If a person holds more than one permit and any one of them is suspended or revoked, the commissioner may suspend or revoke all of his permits.

§ 292. Revocations and suspensions not exclusive penalty

A. Notwithstanding any other provision of this Chapter to the contrary, the commissioner may, in lieu of or in addition to revocation or suspension of a permit issued under the authority of this Chapter, impose the following schedule of fines to be paid into the state treasury for:

(1) The first offense, not less than \$50 but not more than \$500.

(2) The second offense, which occurs within three years of first offense, not less than \$250 but not more than \$1,000; and

(3) The third offense, which occurs within three years of the first offense, not less than \$500 but not more than \$2,500.

B. The fines imposed upon any permittee or the revocation or suspension of a permit is in addition to and is not in lieu of or a limitation upon any other penalty imposed by law and not contained in this Chapter.

§ 293. Status of premises after revocation of permit

When a permit is revoked for any legal cause, the commissioner may, at the same time, order that no state or local permit shall be issued covering the same premises until one year after the date of revocation.

§ 294. Enforcement of permit requirements

Municipal authorities and parish governing authorities, within their respective jurisdictions, shall enforce the provisions of this Chapter with respect to the qualifications of applicants for local permits. The commissioner shall enforce the provisions of this Chapter with respect to the qualifications of applicants for state permits. The commissioner, municipal officers, and sheriffs shall enforce the provisions of this Chapter with respect to the operation of retail permittees.

§ 295. Notice of hearing by commissioner

Whenever the commissioner is to hold a hearing pursuant to the provisions of this Part, he shall issue a written summons or notice thereof to the applicant or permittee directing him to show cause why his application should not be refused or why his permit should not be suspended or revoked. The notice or summons shall state the time, place, and hour of the hearing, which shall be not less than ten nor more than thirty calendar days from the date of the notice. The notice or summons shall enumerate the cause or causes alleged for refusing the application or for suspending or revoking the permit. When a petition has been filed opposing the issuance of the permit or asking for its suspension or revocation, a copy of the petition shall

accompany the notice or summons. All notices or summonses shall be either delivered to the applicant or permittee in person or sent by certified mail to the applicant or permittee and directed to him at the mailing address as given in his last application for the permit. When so addressed and mailed, notices or summonses shall be conclusively presumed to have been received by the applicant or permittee.

§ 296. Place of hearing

Hearings by the commissioner shall, at the discretion of the commissioner, be held either at the state capital or in the parish in which the licensed premises in question are located.

§ 296.1. Participation in hearing by video conference

To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing as authorized by this Chapter. Prior to utilizing such technology, the commissioner shall adopt rules pursuant to the provisions of the Administrative Procedure Act to provide for the methods and requirements of utilizing teleconference, video link, or other visual remote communications technology for conducting any hearings authorized by the provisions of this Chapter.

§ 297. By whom conducted; record; briefs

Hearings by the commissioner pursuant to this Part may be held by the commissioner or by any person designated by the commissioner. If the hearing is to be held by a person designated by the commissioner, that person shall take an oath for the faithful performance of his duties. The oath may be administered by anyone qualified by law to administer oaths in this state. The commissioner or the person designated to hold the hearing may administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, and documents, and examine witnesses and receive testimony at the hearing. Whenever a hearing is conducted by a person designated by the commissioner to hold the hearing, the testimony received shall be reduced to writing and a transcript thereof, together with all documentary evidence, if any, and all written arguments or briefs submitted, shall be made and

certified by the hearing examiner to the commissioner for his consideration and decision.

§ 298. Contempt at hearings; penalty

If any person fails to comply with a subpoena issued by the commissioner or by any duly authorized person holding the hearing or if a witness refuses to testify in any matter regarding which he may be lawfully interrogated, the person conducting the hearing shall adjudge him guilty of contempt and may fine him not more than one hundred dollars or imprison him for not more than thirty days, or both. The sheriff of the parish in which the hearing is held shall execute the judgment of contempt.

§ 299. Procedure when permittee or applicant fails to appear at hearing

If a permittee or applicant who has been notified of a hearing does not appear, the hearing may proceed without him and the commissioner shall consider and dispose of the case.

§ 300. Basis for determination by commissioner to suspend or to revoke permit

In determining cases involving the suspension or revocation of permits, if the commissioner finds that the permittee has not previously violated any of the provisions of this Chapter or has not had a permit previously suspended or revoked and if it satisfactorily appears that there are reasonable grounds to expect that the permittee will not again violate any of the provisions of this Chapter, the commissioner may suspend the permit for such time as he thinks proper. If the permittee has previously had his permit suspended or revoked or if the violations are of a very aggravated and serious nature, the commissioner shall order the permit or permits revoked and the commissioner and the local authorities shall execute its order.

§ 301. Costs of hearings

In hearings of the commissioner which finally result in withholding the issuance of a permit or in suspending or revoking a permit, the commissioner shall assess the costs of the hearing to the applicant or permittee. This assessment has the same force and

effect as a judgment for costs of a district court in the trial of a civil case and shall be collected in the same manner.

§ 302. Decisions to withhold, suspend, or revoke permits final unless appealed and reversed

Decisions of the commissioner in withholding, suspending, or revoking permits and of the local authorities in withholding permits are final and binding on all parties unless appealed in the manner provided in R.S. 26:303 and finally reversed by the courts.

§ 303. Appeals to courts

A. Any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit or of the local authorities to withhold a permit may, within ten days of the notification of the decision, take a devolutive appeal to the district court having jurisdiction of the applicant's or permittee's place of business, proposed or actual, as the case may be. Such appeals shall be granted by the clerk of court on written petition together with a bond for costs. The appeals shall be tried de novo. Either party may amend and supplement his pleadings and additional witnesses may be called and heard.

B. Within ten calendar days of the signing of the judgment by the district court in any such appeal cases, any aggrieved party may devolutively appeal the judgment to the appellate court of proper jurisdiction. These appeals shall be perfected in the manner provided for in civil cases but shall be devolutive in their nature and effect.

§ 304. Summary proceedings on appeal

All proceedings in the district and appellate courts arising under this Part are civil in nature and shall be heard summarily by the court, without a jury, shall take precedence over other civil cases, and shall be tried in chambers or in open court, and in or out of term.

§ 305. Interference by courts prohibited

In cases involving the withholding, suspending, or revoking of a permit under the provisions of this Part, the courts of this state have no jurisdiction to interfere in any

manner or to issue restraining orders and writs of injunction restraining the commissioner, the local authorities, or the commissioner from proceeding under the provisions of this Part. The action of the commissioner or the local authorities in such cases shall not be enjoined or superseded by any court nor suspended or stayed during the pendency of appeals to the courts.

§ 306. Sale of malt beverages in keg; tracking; forms

A. As used in this Section, “keg” means any container of malt beverage having a liquid capacity of four or more gallons.

B. Every keg of malt beverage sold for consumption off the premises of the retail dealer shall be marked with a unique identification number.

C. The retail dealer shall maintain the following information on every keg sold for consumption off its premises on forms provided by the office of alcohol and tobacco control:

(1) The name, address, and telephone number of the purchaser.

(2) The number of a photo identification card issued to the purchaser by a local, state, or federal government agency.

(3) The identification number of the keg.

(4) The date and time of purchase.

(5) The manner in which the deposit was paid (if applicable), and the date of return.

(6) The name of the retail dealer selling the keg.

(7) A declaration signed by the retail purchaser which shall be as follows:

“I, _____, am of legal age to purchase and possess this keg of alcoholic beverage identified above and will not knowingly allow any person under the age of 21 years to illegally consume this beverage. I will not obliterate or allow to be removed the identification number required on this keg.

Signature of Purchaser”

D. Prior to the sale of any malt beverage in a keg for consumption off premises, the retail dealer or his employee or agent shall:

(1) Require the purchaser to provide a photo identification card issued to the purchaser by a local, state or federal government agency.

(2) Fill out all the information required in Subsection C of this Section on the form provided by the office of alcohol and tobacco control.

(3) Require the purchaser to sign the declaration as required in Paragraph (C)(7) of this Section.

(4) Provide one copy of the completed form to the purchaser and maintain one copy in his records for not less than six months after the date the keg is returned to the retail dealer.

E. The retail dealer, his employee or agent shall record the date the keg is returned by the purchaser on the form provided by the office of alcohol and tobacco control in the Department of Revenue.

F. The regulation of keg registration is preempted by this Section. The governing authority of a political subdivision of the state shall not adopt any ordinance in any way affecting the registration of a keg or the payment of a fee related to the registration of a keg.

G. The commissioner of the office of alcohol and tobacco control shall adopt such rules and regulations as are necessary to implement the provisions of this Section.

PART IV. GALLONAGE TAX

§ 341. Tax on beverages of high and low alcoholic content; importers of wine

A. The following excise or license taxes are levied on all beverages of high alcoholic content handled in Louisiana:

- (1) Liquors; at the rate of sixty-six cents per liter.
- (2) Sparkling wines; forty-two cents per liter.
- (3) Still wines:
 - (a) Of an alcoholic content of not more than fourteen percent by volume--at the rate of three cents per liter.
 - (b) Of an alcoholic content of more than fourteen percent by volume but no more than twenty-four percent by volume--at the rate of six cents per liter.
 - (c) Of an alcoholic content of more than twenty-four percent by volume--at the rate of forty-two cents per liter.
- (4) Malt beverages; at the rate of ten dollars per barrel containing not more than thirty-one standard gallons and at a like rate for fractional parts of a barrel.

§ 342. Tax on beverages of low alcoholic content

There is levied and imposed on all beverages of low alcoholic content handled in Louisiana an excise tax of ten dollars per barrel containing not more than thirty-one gallons, and at a like rate for fractional parts of a barrel.

§ 343. Taxes on beverages of high alcoholic content in lieu of other state excise taxes

The taxes on beverages of high alcoholic content are in lieu of and exclusive of all other such state excise or license taxes.

§ 344. Taxes collected from dealer

Except as provided for in R.S. 26:341(B) and 359(B)(2), (C), and (D), the taxes levied by R.S. 26:341 and 342 shall be collected, as far as practicable, from the dealer who first handles the alcoholic beverages in Louisiana. If for any reason the dealer who first handled the taxable alcoholic beverages has escaped payment of the taxes,

those taxes shall be collected from any person in whose hands the taxable beverages are found. In no case, however, shall there be a duplication of taxation.

§ 345. Discount on taxes on beverages of low alcoholic content

For accurately reporting and timely remitting the taxes due under the provisions of R.S. 26:342, all taxpayers shall be allowed a discount of two percent of the amount of the tax otherwise due.

§ 346. Wholesale dealers to file returns and pay tax monthly on beverages of low alcoholic content

A. Every wholesale dealer handling beverages of low alcoholic content in Louisiana upon which the tax has not been previously paid shall, within twenty days after the expiration of each calendar month, provide the secretary a signed statement, under oath, of the total amount of such beverages handled and the total amount sold during the preceding calendar month and shall pay the taxes due thereon. This statement shall be made on forms prescribed and furnished by the secretary and shall show such other information as the secretary may require so that the taxes levied in R.S. 26:342 can be reported and computed.

B. Every wholesale dealer handling beverages of low alcoholic content in Louisiana shall provide, within twenty days after the expiration of each calendar month, a statement, on a form provided for this purpose by the secretary, showing the amount of beverages of low alcoholic content sold during the preceding month according to brand, packaging, and size of container. Such information shall be made available by the secretary to any municipal or parish governing authority, or trade organization consisting of wholesale dealers licensed by the state.

§ 347. Refunds

The secretary may make refunds or allow a tax credit to wholesale dealers on account of taxes paid on beverages of high and low alcoholic content which, being damaged and unfit for sale, are destroyed by the dealer or returned to the manufacturer or jobber. No refund or credit shall be allowed for breakage.

§ 348. Manufacturers or wholesalers to furnish a bond; failure

A. (1) Every manufacturer or wholesaler of alcoholic beverages shall furnish to the secretary a bond in the minimum amount of ten thousand dollars for each type of permit held guaranteeing the payment of all taxes and penalties levied by this Chapter. The bond required by this Section for manufacturers or wholesalers of native wines shall be in the amount of five thousand dollars.

(2) This bond shall be executed by a surety company qualified to do business in this state or may be in the form of a certificate of deposit or a letter of credit with a bank located in the state of Louisiana. The certificate of deposit or a letter of credit shall be irrevocably assigned to the secretary and the assignment can only be cancelled by the secretary. Such cancellations shall be evidenced by written notice to the bank or surety company. All interest earned on the certificate of deposit shall be the property of the manufacturer or wholesaler. The tenor, solvency, and maximum amount of the bond shall be satisfactory to the secretary. The maximum amount of the bond will depend upon the volume of business of the dealer and shall be sufficient, in the discretion of the secretary, to guarantee the state against any and all losses of taxes and penalties levied.

B. (1) The failure of a wholesaler of alcoholic beverages to furnish bond shall ipso facto make the taxes, penalties, and costs levied in this Chapter delinquent and shall be construed as an attempt to avoid the payment thereof, which shall be sufficient grounds for the attachment of the beverages wherever found, whether the delinquent dealer is a resident or a nonresident of this state and whether the beverages are in the possession of the delinquent dealer or other persons. It is the intention of this Chapter to make such beverages responsible for the payment of the taxes levied, together with penalties and costs. Authority to attach is specifically granted to the secretary. The procedure prescribed by law for obtaining ordinary attachments shall be followed except that no bond shall be required of the state.

(2) Should the dealer fail to furnish bond as provided herein, the secretary may rule the dealer into court to show cause why he should not be ordered to cease business as a dealer. Such rule may be tried out of term and in chambers and shall always be tried by preference in not less than two nor more than ten days, exclusive of holidays, after the service thereof.

C. (1) The secretary may waive the requirement for a surety bond for any manufacturer or wholesaler who:

(a) Possesses and agrees to maintain fixed assets in Louisiana with a net value not less than one and one-fourth times the amount of the bond which would otherwise be required.

(b) Has had a bond on file with the department for a period of not less than three years.

(c) Furnished the secretary with audited financial statements with his waiver request and at such other times as the secretary may require.

(d) Has not been delinquent in remitting taxes under the provisions of this Part during a three-year period immediately preceding application for waiver of the bond.

(2) If any manufacturer or wholesaler whose bond has been waived by the secretary becomes delinquent in remitting taxes due, the secretary may remove the waiver and require that the manufacturer or wholesaler furnish a bond in the amount required by this Section. Any manufacturer or wholesaler who has had his waiver removed shall not be eligible for another waiver for a period of three years thereafter.

§ 349. Handling beverages of low alcoholic content without furnishing bond; penalty

No person shall import for handling in this state or handle herein any beverages of low alcoholic content without having furnished a bond as provided in R.S. 26:348. Whoever violates this Section shall be fined not more than one thousand dollars or imprisoned for not more than two years, or both.

§ 350. Maximum stock of beverages of high alcoholic content in dealer's bonded stockroom

Every manufacturer or wholesaler may carry in his bonded stockroom or warehouse beverages of high alcoholic content with a taxable value not in excess of his surety bond.

§ 351. Limitation on size of containers of beverages of high alcoholic content; standards of fill

Except for wines, no manufacturer or wholesaler in this state shall have in his possession any beverages of high alcoholic content outside of his bonded stockroom unless they are in containers of no greater capacity than 1.75 liters. The standards of fill shall be the following:

(1)(a) All distilled spirits sold in or shipped into this state shall be in the following containers: One and seventy-five hundredths liters, one liter, seven hundred fifty milliliters, five hundred milliliters, three hundred seventy-five milliliters, and two hundred milliliters.

(b) If any supplier ships a particular brand of a distilled spirit into this state in a three hundred seventy-five milliliter container, he shall thereafter be prohibited from shipping that brand of beverage into the state in a five hundred milliliter container.

(2)(a) All wine, sold in or shipped into this state shall be in the following containers: twenty liters, nineteen and five-tenths liters, eighteen liters, seventeen liters, sixteen liters, fifteen liters, fourteen liters, thirteen liters, twelve liters, eleven liters, ten liters, nine liters, eight liters, seven liters, six liters, five liters, four liters, three liters, one and five-tenths liters, one liter, seven hundred fifty milliliters, five hundred milliliters, three hundred seventy-five milliliters, three hundred fifty-five milliliters, one hundred eighty-seven milliliters.

(b) "Vintage wines"--wines bottled prior to December 31, 1978 may be shipped into the state in containers not less than the equivalent of one hundred eighty-seven milliliters provided the proper proof of bottling dates is furnished in writing to the secretary in advance of the shipment and provided the secretary authorizes in writing that this merchandise may be shipped into the state.

(c) The provisions of this Section shall not apply to the imported alcohol beverage "Sake".

(3)(a) Distilled spirits, whether domestically bottled or imported, subject to the metric standard of fill prescribed in Paragraph (1) above shall be packed with the following number of containers per shipping case or container:

| Containers sizes | Containers per case |
|-------------------------|----------------------------|
| 1.75 liters | 6 |
| 1.00 liters | 12 |
| 750 milliliters | 12 |
| 375 milliliters | 24 |

| | |
|-----------------|----|
| 355 milliliters | 24 |
| 200 milliliters | 48 |
| 100 milliliters | 48 |

(b) For purposes of this Paragraph, “container” shall mean any receptacle produced and manufactured with any substances used to package distilled spirits for delivery to the public.

(4) Wines bottled subject to the standards of fill prescribed in Paragraph (2) of this Subsection shall be packed with the following number of containers per shipping case or shipping container:

| Container sizes | Containers per case |
|------------------------|----------------------------|
| 5 through 20 liters | 1 |
| 4 liters | 4 |
| 3 liters | 4 |
| 1.5 liters | 6 |
| 1 liter | 12 |
| 750 milliliters | 12 |
| 500 milliliters | 12 |
| 375 milliliters | 24 |
| 355 milliliters | 24 |
| 187 milliliters | 48 |

(b) For purposes of this Paragraph, “container” shall mean any receptacle produced and manufactured with any substances used to package wine for delivery to the public.

(5) Upon application, in duplicate, approved by the secretary, the bottles per case requirements set forth in Paragraphs (3) and (4) of this Section may be waived if good cause can be shown by the bottler or importer.

(6) Any standard of fill as to size of containers for beverages of high alcoholic content approved by the United States Treasury Department, Bureau of Alcohol, Tobacco Tax and Firearms may be shipped into the state of Louisiana for the purposes of storage for shipment beyond the borders of the state of Louisiana. Only

those sizes listed in Paragraphs (1), (2), (3), and (4) of this Section may be sold under the provisions of these Paragraphs to licensed retail dealers or to licensed wholesale dealers who are licensed in the state of Louisiana.

(7) Notwithstanding the provisions of Paragraph (6) or any other law to the contrary, in the parishes of Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Orleans, Ouachita, and Rapides, beverages of high alcoholic content may be sold in or shipped into this state in fifty milliliter containers and stored by licensed wholesale dealers only for the purpose of sale to licensed retail dealers who own or operate hotels or motels which consist of sleeping rooms, cottages, or cabins, for purposes of sale at retail in the sleeping rooms, cottages, or cabins only. The sale of fifty milliliter containers from wholesalers to retailers shall be made only in full sealed case lots as delivered from the manufacturer to the wholesaler, and the cases shall remain sealed until such time as the sale and delivery to the retailer are completed.

(8) Notwithstanding the provisions of this Part or any other provisions of law to the contrary, the secretary may, for good cause shown, after proper application by a bottler or importer and an official hearing, waive the container limitations for a period not to exceed seven consecutive days. Only standards of fill as to size of containers for beverages of high alcoholic content approved by the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms may be allowed, provided these fill allowables are not in conflict with this Section.

(9) The container restrictions provided for in this Section shall not apply to cider products.

(10) No container sold in or shipped into this state shall include powdered alcohol.

§ 352. Donated alcoholic beverages of high alcoholic content taxable

Any person or any dealer may donate alcoholic beverages to a licensed Type A special event or to an unlicensed civic, religious, or charitable organization subject to the payment of any applicable excise taxes.

§ 353. Presumption of taxability of beverages of low alcoholic content

For purposes of enforcing the provisions of this Chapter and the collection of the tax levied herein, it is presumed that all beverages of low alcoholic content produced or manufactured or shipped into this state are to be handled in this state and are subject to the tax levied herein. This presumption is prima facie only and subject to proof furnished the secretary.

§ 354. Payment and reporting of taxes; discounts; rules and regulations; enforcement; forfeitures and penalties; redemption of tax stamps

A. (1) Except as provided in Paragraph (2) of this Subsection, every manufacturer or wholesaler of beverages of high alcoholic content shall file with the secretary a monthly report on or before the fifteenth day of the month succeeding the period covered by the report. The report shall show sales or other handling of beverages of high alcoholic content and such other information as the secretary may require by regulation.

(2) Every wine producer, manufacturer, or retailer who sells and ships wine directly to a consumer in Louisiana as provided in R.S. 26:359(B) shall report and pay all applicable taxes as provided in R.S. 26:359(D).

B. The taxes levied in R.S. 26:341 shall be due and paid by the dealer with the liter tax report referred to in Subsection A of this Section and shall be computed upon the basis of the number of liters sold or otherwise disposed of by the dealer during the preceding calendar month. Liters sold or disposed of shall be deemed conclusively to be liters on hand at the beginning of the calendar month plus purchases during the calendar month less liters on hand at the end of the calendar month, less any exempt sales.

C. (1) The monthly liter tax report required by this Section shall be made on forms prescribed and furnished by the secretary and shall include such information as the secretary may by rule require. Reports shall be accompanied by the taxpayer's remittance in full of the correct amount of taxes due and owing for the period covered by the report.

(2) Every wholesale dealer handling beverages of high alcoholic content in Louisiana shall file, within twenty days after the expiration of each calendar month, a statement, on a form provided for this purpose by the Department of Revenue, showing the amount of beverages of high alcoholic content sold during the preceding month according to brand, packaging, and size of container. Such information shall be made available by the Department of Revenue to any municipal or parish governing

authority, or trade organization consisting of wholesale dealers licensed by the state.

D. For accurately reporting and timely remitting the taxes all taxpayers shall be allowed a discount of three and one-third percent of the amount of the tax otherwise due. When a check or other instrument given in payment of taxes is returned unpaid, the discount is forfeited.

E. If the dealer in beverages of high alcoholic content fails to file a return and pay the tax due on the beverages within the time provided in Subsection A of this Section, he shall be subject to a penalty of five percent on the amount of the tax if the period of delinquency is ten days or less or twenty percent on the amount of the tax if the period of delinquency is greater than ten days. If an attorney is called on to assist in collection, there shall be an additional sum due equal to ten percent of both the amount of the penalties and tax due.

F. The secretary is authorized to make, adopt, and publish rules and regulations, which shall have the effect of law, for the administration and enforcement of the provisions of this Section. Notice of such regulations shall be as provided in R.S. 47:1511.

G. The secretary may require every manufacturer and wholesaler to cease business twice each year for the purpose of making physical inventories of all alcoholic beverages on hand. The dates of said inventories shall be fixed by the secretary of the Department of Revenue.

H. Any dealer who fails to file reports and pay the taxes due, in accordance with the provisions of this Section and the rules and regulations of the secretary, shall automatically be suspended from doing business and shall ipso facto forfeit his bond furnished as required in R.S. 26:348. Any bond forfeited under this Chapter may be collected as is provided for the collection of taxes. The secretary may confirm the suspension by serving the dealer with an order to cease business. Enforcement of any suspension by the secretary shall not be dependent upon the service of such an order. The permit of any dealer who conducts business after being suspended under this Section shall be revoked. The secretary may reinstate a suspended dealer upon his payment of the taxes due, and a mandatory penalty of twenty percent of the taxes due, and his furnishing a new bond and complying with such other conditions as the secretary may prescribe to assure compliance in the future. The sanctions, penalty, and forfeiture provided herein shall be in addition to any other fines, forfeitures, and civil or criminal penalties which may be imposed under other provisions of this Section and Chapter, and the failure of the dealer to remove the delinquency within thirty days shall be additional cause for revocation of his permit.

I. With respect to the twenty percent penalty provided in this Section, the wholesale dealer shall have the right to send a signed application for a waiver of the penalty, which application shall be provided in affidavit form setting forth the reasons for the failure to pay the taxes within the specified time. If the failure to pay the tax when due is explained to the satisfaction of the secretary, he may remit or waive payment of the whole or any part of any penalty due under the provisions of this Chapter.

J. The revocation provided for in Subsection H of this Section may be enforced by the secretary in summary proceedings instituted against the dealer in any parish in which he is domiciled or has a place of business.

K. Whoever willfully fails to file any report or to pay timely the tax due, keep any records, furnish any information, or pay any tax provided for in this Part, or willfully falsifies any record, document, or report, or files any false report or furnishes any false information to the secretary with intent to evade or defeat the payment of any tax levied in this Part shall be guilty of a felony and, upon conviction thereof, shall be imprisoned, with or without hard labor, for not less than one year nor more than four years. Corporations may be prosecuted under this Subsection and upon conviction shall be fined not less than one thousand dollars nor more than ten thousand dollars.

§ 355. Invoices and records of dealers in beverages of high alcoholic content

A. Every manufacturer and every wholesaler of beverages of high alcoholic content shall, at the time of shipping or delivering such beverages, make a true duplicate invoice thereof, showing full and complete details of the sale or delivery of the beverages. They shall also keep a record of the manufacture or purchase of such beverages and shall hold all books, records, and memoranda pertaining to the manufacture and purchase of these beverages subject to the inspection of the secretary or his authorized representative. All records and documents required under this Subsection shall be retained for the inspection and use of the secretary or his authorized representative until the taxes to which they relate have prescribed.

B. All purchases of beverages of high alcoholic content by any retail dealer shall be evidenced by an invoice from the vendor correctly showing the date of the purchase and the quantity of each article bought. Retail dealers in beverages of high alcoholic content shall keep a record of all such beverages purchased by them and shall hold all books, records, and memoranda pertaining to the purchase and sale of these beverages open to the inspection of the secretary or his agents. Retail dealers in beverages of high alcoholic content, or their agents or employees, shall produce, on demand of the secretary, all invoices of such beverages bought by them or received at

their places of business within six months prior to the demand, unless he can show, by satisfactory proof, that the non-production of the invoices was due to providential or other causes beyond his control.

C. In lieu of the invoices required herein for manufacturers and wholesalers of beverages of high alcoholic content, a computer-generated record may be used to show the full and complete details of the sale or delivery of the beverages. All records so generated shall be retained for the inspection and use of the secretary or his authorized representative until the taxes to which they relate have prescribed.

D. In lieu of the invoices required herein for retail dealers of beverages of high alcoholic content, a computer-generated record may be used to show the date of purchase and the quantity of each article bought. All records so generated shall be held and shall be produced on demand of the secretary.

§ 356. False invoices of beverages of high alcoholic content

No person shall make or use, present, or exhibit to the secretary or agent of the secretary any invoice of beverages of high alcoholic content that bears an untrue date or falsely states the nature or quantity of the goods involved.

§ 357. Examination of dealers' records; computation and collection of unpaid taxes

A. The secretary may require any person handling beverages of low alcoholic content to furnish any information necessary for the purpose of collecting the tax levied thereon. To determine whether or not the taxes levied in this Part have been paid and to aid him in their collection if they have not been paid, the secretary may examine the books, records, and files of all persons handling such beverages and may examine witnesses and conduct hearings. Specifically, the secretary shall make that examination where any person fails to make a required report of the dealer's transactions within the time and in the manner provided in this Part. If any witnesses fail or refuse to appear at the request of the secretary or if any person refuses the secretary access to the books, records, or files, the secretary shall certify the facts and the names of the persons so refusing to the district court having jurisdiction of the party. The court shall issue a summons to the party to appear before the secretary or his assistant at a place designated within the court's jurisdiction on a day fixed by the court, to be continued as the occasion requires, and give such evidence and open for

inspection such books and papers as necessary to determine whether or not the return made is true and correct.

B. Whenever it appears to the secretary that a dealer has failed to make a return or has unlawfully made an untrue or incorrect return, the secretary shall compute the tax called for and correct the return, if any, and shall certify that amount as being the amount actually due and owing and shall concurrently notify the dealer of that fact. The secretary shall add to the amount due the cost of examination, this cost to be collected, remitted, and credited as if it were part of the tax imposed.

C. If the dealer does not within five days after the above notification, make a correct return and pay the full amount due, the secretary shall, in the name of the state and without deposit or advance costs, enter suit against him for the full amount due, together with such penalties and attorney's fees as are provided in this Chapter. This suit shall be by rule to show cause within five days why payment should not be made. It shall be tried by preference and may be tried out of term time and in chambers.

D. The secretary may inspect any or all books, records, and memoranda of any dealer in beverages of high alcoholic content to determine whether or not the taxes levied on those beverages by this Chapter have been paid. He shall make periodic audits of all such dealers. Collection of unpaid taxes may be made by any means provided in this Chapter, or by any other means allowed by law for the collection of taxes.

§ 358. Civil penalty on dealers in beverages of low alcoholic content for failure to file return and pay tax

If a dealer in beverages of low alcoholic content fails to file a return and pay the tax due on the beverages within the time provided in R.S. 26:346, he shall be subject to a penalty of five percent on the amount of the tax if the period of delinquency is ten days or less or twenty percent on the amount of the tax if the period of delinquency is greater than ten days. If an attorney is called on to assist in collection, there shall be an additional sum due equal to ten percent of both the amount of the penalties and tax due.

§ 359. Distribution of alcoholic beverages through wholesalers only

A. Except as provided in Subsection B of this Section and R.S. 26:271.1, no alcoholic beverages as defined in R.S. 26:241(1) produced or manufactured inside or outside of

this state shall be sold or offered for sale in Louisiana, or shipped or transported into or within the state, except to the holder of a wholesaler's permit. Delivery of alcoholic beverages produced or manufactured inside or outside of this state shall be made at the place of business of the wholesaler shown on the wholesaler's permit, and must be received and warehoused by the wholesaler at that place of business, where such alcoholic beverages shall come to rest before delivery is made to any retailer.

B. (1) Notwithstanding the provisions of Subsection A of this Section, sparkling wine or still wine may be sold and shipped directly to a consumer in Louisiana by the manufacturer or retailer of such beverage domiciled inside or outside of Louisiana, or by a wine producer domiciled inside or outside of Louisiana, provided both that all taxes levied have been paid in full and that all of the following apply:

- (a) The consumer is twenty-one years of age or older.
- (b) The sparkling wine or still wine is for that consumer's personal consumption.
- (c) The total amount of sparkling wine or still wine shipped in seven hundred fifty milliliter bottles does not exceed one hundred forty-four bottles per adult person per household address per calendar year.
- (d) The wine producer, manufacturer, or retailer engaging in such direct sales holds a valid wine producer's, manufacturer's, or retailer's license issued by the state of its domicile.
- (e) The package in which the sparkling wine or still wine is shipped is prominently labeled as containing beverage alcohol.
- (f) The package in which such sparkling wine or still wine is shipped is received by a person twenty-one years of age or older.
- (g) The package contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.
- (h) The wine producer, manufacturer, or retailer domiciled outside of Louisiana has complied with the provisions of Subsections C and D of this Section.
- (i) The seller or shipper who is a wine producer or manufacturer is not a party, directly or indirectly, to any agreement in which a wholesaler licensed by the state of Louisiana has been granted the right to purchase and to sell any sparkling wine or still wine produced by the manufacturer. This does not include any sale of sparkling wine or still wine perfected on the premises of the wine producer or manufacturer and completed by shipment to a consumer in Louisiana otherwise made in accordance

with the provisions of this Subsection.

(2) For all purposes under this Title, the point of sale for transactions made pursuant to this Subsection shall be the place of domicile of the wine producer, manufacturer, or retailer. Delivery to the consumer in Louisiana shall be deemed to have occurred upon the placing of such beverages into the possession of a common carrier for transport into the state of Louisiana.

(3) In addition to the provisions of Paragraph (1) of this Subsection, prior to selling or shipping any sparkling wine or still wine directly to any consumer in Louisiana, a wine producer or manufacturer or retailer domiciled outside of Louisiana shall register with the state office of alcohol and tobacco control on a registration form promulgated by the commissioner. The registration shall be renewed on an annual basis and updated within thirty days of any change of any information contained on the registration form.

C. (1) Any wine producer or manufacturer of sparkling wine or still wine engaging in the direct sale and shipment of such beverages under the provisions of Subsection B of this Section shall make an annual application to the secretary of the Department of Revenue for authority to make such shipments and shall pay an annual fee of one hundred fifty dollars to the Department of Revenue prior to selling or shipping any sparkling wine or still wine to a consumer in the state of Louisiana.

(2) Any retailer, domiciled outside of Louisiana, of sparkling wine or still wine engaging in the direct shipment of such beverages under the provisions of Subsection B of this Section shall make an annual application to the secretary of the Department of Revenue for the authority to make such shipments and shall pay an annual fee of one thousand five hundred dollars to the Department of Revenue prior to selling or shipping any sparkling wine or still wine into the state of Louisiana.

(3) The annual application for authority to make such shipments shall be in a written form specified by the secretary of the Department of Revenue, and shall include the express agreement of the wine producer, manufacturer, or out of state retailer to pay all excise and sales and use taxes assessed by the state of Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection B of this Section. A copy of the current wine producer's, manufacturer's, or out of state retailer's license issued to such wine producer, manufacturer, or out of state retailer by the state in which the wine producer, manufacturer, or out of state retailer is domiciled shall be submitted to the secretary of the Department of Revenue with the application. No other permit or license shall be required of any such wine producer, manufacturer, or out of state retailer in connection with the direct shipment of sparkling wine or still wine pursuant to Subsection B of this Section.

D. (1) Out of state retailer who sells and ships directly to a consumer in Louisiana pursuant to Subsection B of this Section shall file a statement quarterly indicating the amount of sparkling wine or still wine shipped to the state of Louisiana with the secretary of the Department of Revenue. The statement shall be filed by January twentieth, April twentieth, July twentieth, and October twentieth of each calendar year and shall indicate the total number of bottles sold and shipped during the preceding three-month period, the sizes of those bottles, the name brand of each sparkling wine or still wine included in such shipments, the quantities of each sparkling wine or still wine included in such shipments, and the price of each item included in such shipments. All excise and sales and use taxes due to the state of Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection B of this Section shall be remitted by company check drawn on an account in the name of the permit holder or by electronic funds transfer at the time of the filing of the required statement, and copies of all invoices transmitted with each shipment shall be attached to the statement. This statement shall be made on forms prescribed and furnished by the secretary of the Department of Revenue and shall include such other information as the secretary of the Department of Revenue may require.

(2) Upon the request of the commissioner, the secretary of the Department of Revenue may provide copies of the annual application or quarterly statements filed by any wine producer or manufacturer or any out-of-state retailer selling or shipping wine directly to a Louisiana consumer.

(3)(a) Any person who transports sparkling wine or still wine for direct shipment into or out of the state in accordance with this Section shall register with the commissioner of the state office of alcohol and tobacco control.

(b) The commissioner shall promulgate rules in accordance with the Administrative Procedure Act for transport registrants that shall include regular reporting requirements related to size of containers and quantities of sparkling wine and still wine contained in each shipment. The rules shall include requirements that prevent sales and deliveries to underage persons.

(c) Any person who transports sparkling wine or still wine for direct shipment into or out of the state in violation of this Section or the administrative rules shall be subject to a civil penalty of up to twenty-five thousand dollars.

E. The provisions of R.S. 26:85, 142, 143, 348 through 350, 360, 364, and 365 shall not apply to wine producers, manufacturers, and retailers only in connection with direct sales and shipments when authorized to engage in the direct sale and shipment of sparkling wine or still wine under the provisions of Subsection B of this Section.

F. Any retailer domiciled outside of Louisiana or any wine producer or manufacturer who violates any provision of this Section shall be subject to a civil penalty in the amount of twenty-five thousand dollars. Any retailer domiciled outside of Louisiana or any wine producer or manufacturer that sells and ships directly to consumers in Louisiana pursuant to Subsection B of this Section shall, on the application for authority to make such shipments filed with the secretary of the Department of Revenue in accordance with Subsection C of this Section, acknowledge in writing the civil penalty established in this Subsection and shall consent to the imposition thereof upon violation of this Section. The secretary may initiate and maintain a civil action in a court of competent jurisdiction to enjoin any violation of this Section and to recover the civil penalty established in this Subsection, together with all costs and attorney fees incurred by the secretary incidental to any such action.

G. Upon determination by the secretary of the Department of Revenue or by the commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in Louisiana by either a wine producer, manufacturer, or retailer of such alcoholic beverages, the secretary or commissioner shall notify both the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury and the licensing authority for the state in which the wine producer, manufacturer, or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and shall request those agencies to take appropriate action.

§ 360. Report of importers of alcoholic beverages

All persons importing alcoholic beverages from other states shall, within ten days after the close of each calendar month, report to the secretary on forms furnished by him a list of persons, with their post office addresses, from whom shipments were received and, when sold for resale, to whom sold, the dates shipped, the dates received, and the quantity of each of the classes of the beverages received. The reports shall be signed and state whether the alcoholic beverages are to be retained or used in Louisiana or exported to another state or to a foreign country. As an additional means of checking the accuracy of the reports filed, the records, books, and other documents of the persons making them, as well as those of common carriers relative to such shipments, are accessible to the collector.

§ 361. Transportation within state of non tax-paid alcoholic beverages by means other than common carrier prohibited

A. No person shall transport, carry, or move alcoholic beverages in which the tax levied in this Chapter has not been paid from point to point within this state by any means of transportation other than a common carrier. The means of transportation used in violation of this Section is subject to seizure by the secretary and to forfeiture and sale in the manner provided in this Part.

B. The provisions of this Section do not apply to duly licensed wholesale dealers and manufacturers who transport or cause to be transported beverages of high alcoholic content from the floor stock of one duly licensed wholesale dealer or manufacturer in this state to another duly licensed wholesale dealer or manufacturer in this state. The transportation of these beverages shall be accomplished strictly within the provisions of rules and regulations prescribed by the secretary.

§ 362. Importation of non-tax-paid alcoholic beverages to be by common carrier and private carrier under a permit

A. No dealer or person shall import or carry into this state any alcoholic beverages on which the tax levied by this Chapter has not been paid by any means of transportation other than a common carrier, except as provided under a permit issued by the secretary to properly licensed and bonded Louisiana wholesale alcoholic beverage dealers. Such importation without a permit renders the means of transportation used subject to seizure, forfeiture, and sale in the manner provided in this Part.

B. Properly licensed and bonded Louisiana wholesale alcoholic beverage dealers wishing to obtain an alcoholic beverage import permit to use a privately owned or operated vehicle shall apply therefor to the secretary in accordance with rules and regulations issued by the secretary; any importation of alcoholic beverages under the import permit must be in strict accordance with the conditions described upon the issuance of the permit.

C. The secretary shall promulgate rules and regulations governing the application, issuance and conditions whereby an import permit may be issued.

D. Importations of alcoholic beverages by the use of transportation other than a common carrier subjects the alcoholic beverages imported to seizure, forfeiture and sale in the manner provided in this Part.

§ 363. Forfeiture and sale of vehicle improperly hauling non-tax-paid alcoholic beverages

A. The secretary may demand the forfeiture and sale, in a summary proceeding, or by an action against the owner or operator, of any means of transportation used in the illegal transportation of alcoholic beverages in violation of the provisions of R.S. 26:361 and 362.

B. Where it appears by affidavit that the residence of the owner of the means of transportation is out of the state or is unknown to the secretary, the court shall appoint an attorney at law to represent the absent owner, against whom the rule shall be tried contradictorily within ten days after its filing. This affidavit may be made by the secretary or one of his assistants or by the attorney representing the secretary when it is inconvenient to obtain the affidavit from the secretary or one of his assistants. The attorney so appointed may waive service and citation of the petition or rule but shall not waive time nor any legal defense.

C. If, upon trial, it is established that the means of transportation was used to illegally transport alcoholic beverages in violation of the provisions of R.S. 26:361 or 362 the court shall render judgment accordingly, declaring the forfeiture of the means of transportation and ordering the sale thereof after ten days notice by advertisement in the official paper of the parish where the seizure is made, by the sheriff of the parish or the civil sheriff of the Parish of Orleans, as the case may be, at public auction to the highest bidder, for cash, and without appraisal.

D. Payment of the tax due on the alcoholic beverages at the moment of seizure of the means of transportation or thereafter does not prevent, abate, or defeat the forfeiture and sale of the means of transportation.

E. The court shall fix the fee of the attorney appointed by it to represent the owner of the seized property at a nominal sum. In cases involving the transportation of beverages of high alcoholic content, the fee shall not exceed ten percent of the selling price of the means of transportation sold. In cases involving the transportation of beverages of low alcoholic content, the fee shall not exceed ten percent of the total amount of taxes and penalties involved. In either case, this fee shall be taxed as costs and paid out of the proceeds of the sale of property.

F. All funds collected from the sale of property pursuant to this Section shall be paid into the state treasury and credited and disbursed as are taxes on beverages of low alcoholic content.

§ 364. Receipt of alcoholic beverages to avoid tax prohibited; out-of-state manufacturers and wholesalers to obtain written authority to make shipment and furnish notice of shipment; enforcement

A. No person shall receive in this state any shipment of non-tax-paid alcoholic beverages for the purpose and with the intention of avoiding payment of the tax.

B. Before making shipment of any alcoholic beverages into Louisiana, the shipper shall make application to the secretary for authority to ship alcoholic beverages into the state. The application must be in written form as specified by the secretary. Approval must be written and must show the period of time for which the authority is issued and the condition of issuance. The secretary shall not authorize and approve shipments of any alcoholic beverages into Louisiana except shipments from the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any such distiller, producer, bottler or owner.

C. The shipper shall prepare and mail a notice of shipment to the secretary, and a copy to the Louisiana dealer, not later than the date of movement from the point of origin. The notice must show such information concerning the alcoholic beverages and the means of transportation as may be specified in regulations.

D. The secretary may establish by regulation any other procedure for reporting or identifying shipments into the state as he may deem appropriate.

E. Any shipment into this state of any alcoholic beverage in violation of this Subsection shall render the entire shipment contraband, and it may be seized, forfeited, and sold as provided in this Chapter.

F. Failure by any shipper to abide by the provisions of this Subsection shall also render the shipper ineligible to ship its products into the state of Louisiana, and it shall be a violation of this Chapter for any dealer to handle the product of any person prohibited from shipping into the state. The permit of any dealer who continues to handle the product of a prohibited shipper shall be revoked.

G. Any person or company who sells liquor to any Louisiana liquor dealers shall give the same discounts as are given by them to any liquor dealers in any other state so that Louisiana liquor dealers shall pay the same prices as dealers in all other states.

§ 365. Consignee to have permit from secretary to receive imported alcoholic beverages

A. Except as otherwise provided in Subsection B of this Section, no person, dealer, consignee, or other recipient, including public warehouses, shall receive or accept delivery and no carrier, or agent or employee thereof, shall deliver to the consignee or to any person for the consignee any alcoholic beverages when imported into the state until the consignee thereof has received written permission from the secretary to receive or accept delivery thereof and has surrendered this written permission to the deliverer. Any person, dealer, consignee, or other recipient, including public warehouses, who violates any provision of this Section shall be subject to the penalty or penalties provided in R.S. 26:521.

B. Any wholesale dealer that has furnished bond with the secretary under the provisions of R.S. 26:348 and has secured a wholesale permit from the commissioner, is exempt from the provisions of Subsection A of this Section.

§ 366. Exported beverages not subject to tax

A. No tax is levied in this Chapter upon beverages of high alcoholic content handled within Louisiana for immediate transportation and delivery beyond the borders of the state if the handling is done in strict accordance with the rules and regulations adopted and promulgated by the secretary with reference thereto pursuant to R.S. 26:367.

B. No tax is levied in this Chapter upon beverages of low alcoholic content produced or manufactured in or imported into Louisiana for export to a licensed dealer in another state or to a foreign country. Any such beverages sold by a wholesale dealer within this state to a retail permittee herein which are later exported beyond the borders of this state are not liable for the tax levied thereon. If the tax has been collected from the permittee by the dealer at the time of shipment, the permittee may file with the dealer, monthly, a statement showing the quantity exported from the state, properly supported by bills of lading and other authentic evidence satisfactory to the secretary, and the dealer may refund the amount of the tax to the permittee and deduct that amount in making his next monthly returns to the secretary.

§ 367. Handling of exported beverages of high alcoholic content regulated by secretary

A. In order to secure to the state the tax levied under the provisions of this Chapter, the handling of beverages of high alcoholic content for transportation beyond the borders of the state shall be in accordance with rules and regulations of the secretary, the United States Bureau of Alcoholic Beverages, and the United States Customs Office.

B. The secretary may promulgate and publish rules and regulations with respect to the handling and transportation of such beverages for delivery beyond the borders of the state. This authority includes requiring any information in the form of reports and statements that may be required to establish that the beverage of high alcoholic content in question was transported beyond the borders of the state; the designation of the method of transportation; the establishment of a system of permits before permitting sales for delivery beyond the borders of this state; and the fixing of the amount to be transported beyond the state's borders in one shipment, except that this amount cannot be fixed at less than fifteen standard gallons when a mode of transportation other than common carrier is designated.

C. The failure to comply with these rules and regulations of the secretary is cause for the revocation of the permit of the dealer violating them and subjects him to the payment of a specific penalty, in addition to other penalties provided in this Chapter in an amount equal to twice the amount of tax that would have been due if the sale of the beverages had been made for consumption in Louisiana.

§ 368. Highway transporter required to have invoice

A. Any person using the public highways of Louisiana in hauling, transporting, and delivering into or within the state any alcoholic beverage shall have in his possession, during the entire time he is so engaged in hauling or transporting the alcoholic beverages, an invoice or bill of sale showing the true name and address of the seller and of the buyer and the number of gallons or fraction thereof carried.

B. The person so engaged in hauling or transporting the alcoholic beverages shall, at the request of any person authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice or bill of sale. If he fails to produce the invoice or bill of sale, or if, when produced, the document fails to disclose the required information, there is prima facie evidence of a violation of this Chapter and the person is subject to prosecution therefor.

§ 369. Carriers to file report showing alcoholic beverages handled

All common or contract carriers doing business or making deliveries within the state shall file with the secretary monthly, on or before the fifteenth day of the month following the period covered by the statement, reports showing in detail the number of gallons of alcoholic beverages shipped or delivered by them at points of ultimate destination, or otherwise, whether in car lots or otherwise, with the date of the delivery and by whom and to whom shipped and delivered.

§ 370. Examination of records

The secretary may examine, at all reasonable hours, the books, records, and other documents of all manufacturers, distillers, permittees, dealers, transportation companies, agencies, or firms shipping alcoholic beverages into or handling alcoholic beverages in this state. If a manufacturer, distiller, permittee, dealer, transportation company, agency, or firm refuses to permit this examination by the secretary, the secretary may proceed by rule, in or out of term, in open court or in chambers, in any court in the parish where the refusal occurred, requiring the person refusing to show cause why the secretary should not be permitted to examine its books, records and documents. Refusal by a manufacturer, distiller, permittee, dealer, transportation company, agency, or firm to allow the secretary access to its books, records, and documents shall render any alcoholic beverages within this state owned by or in the possession of or in the control of such person or his employer or agent subject to seizure, forfeiture, and sale as provided in this Chapter.

§ 371. Searches and seizures

A. The secretary may search and examine pursuant to the provisions of this Section, all places of storage except private residences, which may be searched only in the manner provided by law, and all means of transportation whenever there is probable cause to believe that the provisions of this Chapter have been or are being therein violated. Any vehicle or other means of transportation, other than a common carrier, caught or detected transporting any alcoholic beverages without the required tax being paid or a bond furnished to guarantee the payment of the tax may be seized by the secretary in order to secure it as evidence in a trial brought under any provisions of this Chapter.

B. No place, other than such as is open to the public, shall be invaded and searched for alcoholic beverages except by an officer named in a search warrant issued by a

competent court having the power of a committing magistrate upon the filing in the court of an affidavit reciting that affiant has reasons to believe and believes that the named place is being utilized as a site for the violation of the provisions of this Chapter together with such additional evidence as the court may require to make out a prima facie case. No house, room, or apartment used as, or which apparently is, a bona fide residence is subject to invasion and search, except by an officer designated in a search warrant issued by a competent court having the powers of a committing magistrate, upon the filing in the court of an affidavit by two reliable persons reciting that they have reasons to believe and do believe that the place of residence is being used as a cloak or cover for a violation of the provisions of this Chapter and setting forth the specific violation being committed therein, together with such additional corroborating evidence as the court may require to establish the probable existence of the alleged violation.

C. The warrant shall be directed to a duly authorized peace officer and the premises described in the warrant shall be searched and all alcoholic beverages, all equipment, and all property used or designed or intended to be used in the keeping for sale or sale, of alcoholic beverages on the premises shall be seized by the peace officer. The keeper of the place or the person to whom the beverages or property belongs shall be apprehended and brought before the court issuing the warrant to abide the further orders of the court. The officer to whom the search warrant is directed shall make proper return thereon of the action taken on it, describing the alcoholic beverages or property seized, if any. The beverages or property so seized shall be held by this officer without anyone having the right to have them released upon writ or claim, except beverages seized in a bona fide dwelling house. These last shall be released to their owner upon his giving bond, with security for their value conditioned upon their return to the peace officer upon order of the court. The court, after the trial of the accused, shall order all property and beverages of high alcoholic content illegally held by the accused at the time of the seizure to be immediately and publicly destroyed by the sheriff or peace officer designated by the court.

D. The court shall preserve in its records, subject to inspection at any time by the public, the affidavits above referred to. If it should appear that the person or persons making the affidavit did so maliciously or without probable cause, and any house, room, or apartment used as a bona fide residence is searched by reason of the issuance of a search warrant based upon that affidavit, the affiant or affiants making it shall be fined not more than five hundred dollars or imprisoned for not less than ten days nor more than sixty days, or both.

§ 372. Seizure and forfeiture of beverages of high or low alcoholic content

A. All beverages of high or low alcoholic content on which taxes are imposed by this Part found in the possession or custody or within the control of any person for the purpose of being handled in any way in violation of the provisions of this Chapter may be seized by the secretary, or his agent, in order to secure them for trial and shall be forfeited to the state in the manner provided in this Section. The secretary, or his agent making the seizure, shall appraise the value of the property seized according to his best judgment at its usual and ordinary retail price and shall deliver to the person found in possession thereof, if any, a receipt showing the fact of seizure, from whom seized, the place of seizure, the description of the goods seized, and the appraised value of such goods. A duplicate of the receipt shall be filed in the secretary's office.

B. The proceeding to enforce this forfeiture shall be in the nature of a proceeding in rem in the court where the seizure is made. It shall be filed on behalf of the state by the secretary or his assistant and shall be summary process, tried in or out of term time, in open court or in chambers, and always by preference. It shall be directed against the owner of the articles seized, demanding the forfeiture and destruction of the property as a penalty for the violation of this Chapter. Service shall be made upon the owner of the seized articles if he is a resident of this state and his residence is known to the plaintiff in rule. Where it appears by affidavit that the residence of the owner of the seized articles is out of the state or is unknown to the secretary or his assistants, an attorney at law shall be appointed by the court to represent the owner, against whom the rule shall be tried contradictorily within ten days after the date of its filing. This affidavit may be made by the secretary or one of his assistants or by the attorney representing the secretary if it is inconvenient to obtain the affidavit from the secretary or one of his assistants. The attorney so appointed to represent the owner of the seized articles may waive service and citation of the petition or rule, but he shall not waive time nor any legal defense.

C. If at any time it is established that, with respect to the articles under seizure, any provision of this Title has been violated in any cause, the court shall render judgment accordingly, maintaining the seizure, declaring the forfeiture of the seized property, and ordering the destruction thereof and shall dispose of any equipment including but not limited to vending machines, in accordance with the provisions thereof:

(1) If the seized property is contraband, the court shall order the property destroyed if the court determines that its destruction is in the public interest; otherwise, Paragraph (2) of this Subsection shall apply.

(2) If the seized property is contraband, and the court determines that it should not be

destroyed, or if the owner of noncontraband property does not claim it within one year after its seizure, the court may order one of the following:

(a) A sale of the property at a nonjudicial public sale or auction if the court concludes that such a sale will probably result in a bid greater than the cost of the sale. The proceeds of the sale shall be placed in the Louisiana Office of Alcoholic Beverage Enforcement Fund (R.S. 26:801) after compliance with the requirement of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund.

(b) A transfer of the property to a public or a nonprofit institution, or may make such other court-ordered disposition as it deems appropriate.

(3) Where the release of seized property is sought by a person claiming to be the owner, it shall be released only upon motion contradictorily with the clerk of the court. In all other cases the court may render an ex parte order for the disposition of the property as herein provided on motion of any interested person, or on its own motion, or the court may require a motion contradictorily with the apparent owner or the person in possession of the property at the time of the seizure.

D. Payment of the tax due on the seized articles at the moment of seizure or thereafter does not prevent, abate, or defeat the forfeiture and destruction of the property.

E. The court shall fix the fee of the attorney appointed by it to represent the owner of the seized articles at a nominal sum, to be taxed as costs and paid out of the proceeds of the sale of the property.

§ 373. Claims to property seized by secretary

Any person who claims ownership of any property seized under the provisions of this Chapter relating to beverages of high alcoholic content or claims to be entitled to any privilege existing thereon prior to the date of seizure and who did not in any respect participate in the violation of this Chapter which resulted in the seizure may file a signed statement with the secretary that he did not in any way participate in the violation of this Chapter. Thereafter, upon his furnishing to the secretary bond with security in a sum not less than double the appraised value of the goods seized but never less than fifty dollars, the property may be released by the secretary and delivered to him. The bond shall be conditioned to pay the secretary the appraised value of the goods and all costs, if the claimant does not prosecute his claim to successful judgment. If it is not practical to make service upon the claimant to the seized property or if the claimant is a non-resident, the procedure outlined in R.S.

26:372 for the appointment of an attorney to represent an owner may be used in order that the issue may be presented to a court and the claimant afforded a fair opportunity to be heard. If bond has been furnished by the claimant and the property released to him, the judgment of the court, if the contention of the secretary is sustained, shall be directed against both the claimant and the surety on the bond and shall include all costs from the beginning of the seizure up to the final disposition of the case.

§ 374. Waiver of forfeiture of beverages of high alcoholic content

The secretary may waive any proceedings for the forfeiture of beverages of high alcoholic content or any part thereof, if he finds that the violation of the law for which the goods were seized was unintentional or without intention to defraud the state of its revenue. However, the offender shall first pay double the amount of tax to which the seized beverages are subject.

§ 375. Interference with inspection by the secretary prohibited

No person shall refuse to allow, on demand, the secretary or his agent to make a full inspection of any place of business where beverages of high alcoholic content are kept or sold, nor shall any person refuse to allow, on demand, the secretary or his agent to audit the books and records of any business dealing in alcoholic beverages, nor shall any person in any way hinder or prevent such inspection or audit.

PART IV. EXEMPTIONS

§ 421. Exempt products

A. The provisions of this Chapter do not apply to the sale of:

- (1) Patent, antiseptic, and toilet preparations.
- (2) Flavoring extracts, syrups, and food products.
- (3) Scientific, chemical, mechanical, and industrial products.

B. Nor does this Chapter apply to the manufacture or sale of alcohol which is for industrial use or purposes, which is not manufactured or sold for beverage purposes, and which is so denatured as to be unfit for human consumption.

C. No one shall knowingly sell any of the above exempt products for beverage purposes or under circumstances from which he may reasonably deduce the intention of the purchaser to use them for beverage purposes.

D. The provisions of this Chapter do apply to alcohol and alcoholic spirits, including distilled or rectified alcoholic spirits, which are used or may be used in the preparation of any proprietary, medicinal, or pharmaceutical preparation. Therefore, such alcohol and alcoholic spirits are subject to the tax levied in this Chapter. Any person who uses such alcohol or alcoholic spirits in the preparation of proprietary, medicinal, or pharmaceutical preparations and who has paid the tax on them, may obtain a refund of the amount of tax paid upon furnishing proof satisfactory to the secretary that they were so used. Refunds shall be made under rules and regulations promulgated by the secretary.

E. No tax levied in this Chapter applies to or is imposed upon any priest, minister, rabbi, or other clergyman possessing or using wines for religious or sacramental purposes in the regular course of his religious duties. No regulatory provision contained in this Chapter affects or in any way applies to such wines. Any tax collected on such wines shall be refunded by the secretary to those persons.

§ 422. Exemption in favor of United States

The taxes levied in this Chapter shall apply to sales to the United States or any agency or department thereof except any sales in which the imposition of the tax is prohibited by any federal law. When any tax is paid by the United States, or any agency or department thereof, which imposition of such tax is prohibited by federal law, it shall be refunded by the secretary upon proper showing and authentic proof satisfactory to him that the purchase was bona fide and the tax was paid. This refund shall be paid from the funds in the hands of the secretary which have been collected under this Chapter and not paid over to the state treasurer.

§ 423. Tax-free withdrawal of alcohol from industrial alcohol plants or bonded warehouse

A. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax-free as provided by law, from the plant or warehouse for transfer to any denaturing plant for denaturation; or may

under regulations, be removed before or after denaturing from the plant or warehouse for any lawful tax-free purpose.

B. Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse, tax-free by the United States or any governmental agency thereof, by the several states and territories or any municipal subdivision thereof, by the District of Columbia, or for the use of any university or college of learning or laboratory exclusively in scientific research, or for use in any hospital or sanitarium.

PART V. ADMINISTRATION

§ 451. Secretary to collect taxes

The secretary shall collect, supervise, and enforce the collection of all taxes, penalties, and interest that may be due under the provisions of this Chapter. To that end, he is vested with all the power and authority conferred by this Chapter.

§ 452. Bond of secretary as to beverages of low alcoholic content

The secretary shall give bond in favor of the governor for ten thousand dollars, conditioned on the faithful performance of his duties under this Chapter pertaining to beverages of low alcoholic content. The premium on this bond shall be paid out of the appropriation made for expenses of his office. The bond shall be approved by the governor and shall be filed in the office of the legislative auditor.

§ 453. Rules and regulations of the secretary

A. The secretary may make and publish reasonable rules and regulations for the enforcement of the provisions of this Chapter and the collection of revenues hereunder. He may not alter, amend, enlarge, or restrict the provisions of this Chapter by such rules or otherwise.

B. A violation of any such rules or regulations pertaining to beverages of high alcoholic content constitutes a violation of this Chapter.

§ 454. Private counsel

The secretary and commissioner may employ private counsel to represent them in any proceedings under this Chapter, either for specific cases or by the year.

§ 455. Collection of delinquency penalties

All money penalties, other than criminal penalties, imposed by this Chapter are payable to the secretary and shall be collected, remitted, and credited, as if they were part of the tax imposed.

§ 456. Concealing violations or hindering enforcement of Chapter

No person shall use any artful device or deceptive practice to conceal any violation of this Chapter or to mislead the secretary or any agent of the secretary in the enforcement of this Chapter or do any other act tending to defraud the state of its revenue.

§ 457. Special agents of secretary and commissioner

The secretary and commissioner shall commission agents in their departments to carry out the provisions of this Chapter and shall provide them with appropriate credentials and badges of authority. These agents have the powers of peace officers in the performance of their duties.

§ 458. Compromises by secretary

The secretary may compromise in any civil case involving beverages of high alcoholic content and arising under this Chapter and any collections made by him on the compromise shall be handled in the same manner as his collections of taxes imposed on such beverages under the provisions of this Chapter. The secretary shall keep a complete record of the transaction involved in a compromise on file in his office.

§ 459. Disposition of proceeds of taxes

A. The secretary shall, within the first ten days of each calendar month after the receipt of the taxes from the taxpayer forward the amount collected by him during the preceding calendar month to the state treasurer. The taxes collected on beverages of low alcoholic content shall be paid to the treasurer.

B. The taxes collected on beverages of high alcoholic content, including sparkling wines and still wines, pursuant to R.S. 26:341, shall be paid to the state treasurer.

C. There is hereby dedicated to the city of New Orleans the sum of \$700,000 per year.

PART VI. LOCAL TAXATION AND REGULATION

§ 491. Local taxes authorized on beverages are exclusive

No tax on the manufacture, distribution, transportation, or importation of alcoholic beverages shall be imposed by way of licenses, excise taxes, or otherwise by any police jury, municipality, or other local taxing authorities despite any special or general law to the contrary, except as expressly authorized by this Chapter.

§ 492. Local gallonage tax on beverages of low alcoholic content

A. Any parish or municipality, through its local governing body, may impose a tax on beverages of low alcoholic content of not more than one dollar and fifty cents per standard barrel of thirty-one gallons. The tax shall be based on the amount of these beverages sold and consumed within the parish or municipality. Parishes and municipalities imposing this tax shall furnish the secretary a certified copy of the ordinance levying it. The secretary shall collect the tax in the same manner as he collects the state tax and shall make such additional rules as are necessary. He shall remit, each quarter, the amount of tax collected less the cost of collection, to the parishes and municipalities levying the tax. If the failure to pay the tax when due is explained to the satisfaction of the secretary, he may remit or waive payment of the whole or any part of any penalty due under the provisions of this Chapter.

B. All records, tax returns, and other information pertaining to the collection of parish and municipal taxes and the amount of such taxes collected in each parish and municipality by each wholesale dealer shall be made available to any parish or municipal governing authority and trade organization consisting of beer wholesale dealers licensed by the state.

C. For accurately reporting and timely remitting the taxes due under the provisions of this Section, all taxpayers shall be allowed a discount of two percent of the amount of the tax otherwise due.

D. Parishes and municipalities are prohibited from imposing any local tax on beverages of high or low alcohol content other than those imposed herein.

§ 493. Local regulatory ordinances

Except as limited by the provisions of this Chapter the various subdivisions of the state may regulate but not prohibit, except by referendum vote as provided by Chapter 3 of this Title or by legally authorized zoning laws of municipalities, the business of wholesaling, retailing, and dealing in alcoholic beverages. No parish or municipality shall, in the exercise of its police power, regulate the business of selling such beverages more than is necessary for the protection of the public health, morals, safety, and peace. Local subdivisions, in adopting these regulatory ordinances, may provide, in addition to the ordinary penalties authorized by law for their violation, provisions which subject the permittee to having his permit suspended or revoked in the manner provided by law for the suspension or revocation of permits.

§ 493.1. Local regulatory ordinances; bar closing in certain municipalities

In addition to the provisions of R.S. 26:493 the governing authority of any municipality within a parish with a population between fifty-three thousand and sixty thousand persons according to the most recent federal decennial census may enact ordinances to regulate the closing times of bars located within the municipality, subject to approval by a majority of the qualified electors of the municipality voting at an election held for the purpose.

§ 494. Sale of beverages of high alcoholic content in violation of local ordinance

No person shall sell any beverages of high alcoholic content in violation of any lawful ordinance or regulation adopted by authority of this Part by any parish or municipality.

§ 495. Copies of pertinent local ordinances to be furnished commissioner

The governing authority of each parish or municipality adopting, under the authority of this Chapter ordinances pertaining to alcoholic beverages shall furnish, in each instance, a certified copy thereof to the commissioner.

PART VII. PENAL PROVISIONS

§ 521. General penalty

Except where a different criminal penalty is specifically provided in this Chapter, whoever violates any provision of this Chapter shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both.

CHAPTER 3. LOCAL OPTION

Section

- 581. Definitions.
- 582. Petition for election; separate elections; frequency limited.
- 583. Effect of merger.
- 584. Form of petition for election.
- 585. Filing of petition with registrar voters; notice of filing.
- 586. Verification of petition by registrar; filing with governing authority.
- 587. Ordering of election; verification of registrar of voters; date of election.
- 588. Ballot; majority determination of issues; separation of results.
- 589. Conduct of election; voting machines or ballot boxes.
- 590. Violation of standards for petition or election; nullity of election.
- 591. Recount of ballots or contest of elections.
- 592. Parish board of supervisors to supervise elections; fees of board.
- 593. Commissioners and clerks for elections.
- 594. Promulgation of election results.

- 595. Local prohibitory ordinances and penalties authorized.
- 596. Illegal transportation or delivery in prohibition area.
- 597. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections.
- 598. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections.
- 599. Alcoholic beverage sales in restaurants; authorization certain municipalities to submit propositions to voters in certain elections
- 600. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections
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CHAPTER 3. LOCAL OPTION

§ 581. Definitions

For purposes of this Chapter, the following words have the following meanings:

(1) “Alcoholic beverages”, “beverages of low alcoholic content”, and “beverages of high alcoholic content” have the meanings ascribed to them in R.S. 26:241.

(2) “Election district” means a district from which a parochial officer is elected but “election district” does not include a district located entirely within an incorporated municipality.

§ 582. Petition for election; separate elections; frequency limited

A. (1) Upon petition of not less than twenty-five percent of the qualified electors residing in any ward, election district, or any incorporated municipality, the governing authority shall order a referendum election to be held to determine whether or not the business of selling alcoholic beverages shall be conducted and licensed therein.

(2) A copy of the petition shall be submitted to the registrar on the date the first signature is affixed on the petition for the purpose of determining the total number of qualified voters residing in each ward, election district, or each incorporated municipality in which such petition will be circulated.

B. In the case of such an election held on a ward, election district, or municipal basis the election shall be separately called and held, and the result separately binding for each incorporated municipality, and for the unincorporated balance of the ward or election district.

C. No such election shall be held for the same subdivision more often than once in every two years.

§ 583. Effect of merger

A. When a portion of a ward, election district, or municipality is annexed or made a part of another ward, election district, municipality, or city-parish government, the

portion annexed or made a part of shall take on the legal sales characteristics, as provided in this Chapter, of the ward, election district, municipality, or city-parish government to which it is annexed or made a part of.

B. The provisions of this Section shall be applicable to any election previously called under this Title or any other local option law and to any territory covered by such election which has subsequently been merged with another ward, election district, incorporated municipality, or portion thereof or whose boundary has been changed, it being the intention of this Chapter that the sale of beverages covered by this Title be permitted or prohibited only in an entire ward, election district, or incorporated municipality and not in any portion thereof.

C. (1) Notwithstanding the provisions of Subsections A and B of this Section, any package house in existence and operating as such on August 15, 1995, in an area that is subsequently annexed into a ward, election district, municipality, or city-parish government that prohibits the sale of alcoholic beverages shall be allowed to continue operation and shall not be subject to the provisions of Subsections A and B of this Section.

(2) Notwithstanding any other provision of law to the contrary, any parish with a population between forty thousand and fifty thousand, based upon the latest federal decennial census, shall not be subject to the provisions of Subsections A and B of this Section and shall retain the legal sales characteristics as provided for by referendum prior to any annexation or reapportionment.

D. (1) Notwithstanding the provisions of Subsections A and B of this Section, Ward Two, Bastrop, Morehouse Parish as described in Paragraph (2) of this Subsection that was annexed, reapportioned into, or merged into another ward, election district, municipality, or city-parish government that authorizes the sale of alcoholic beverages shall not be subject to the provisions of Subsections A and B of this Section and shall not take on the legal sales characteristics of the larger area.

(2) Ward Two, Bastrop, Morehouse Parish. From the intersection of the Louisiana-Arkansas state line with the Ouachita River run east on the Louisiana-Arkansas state line to where said line intersects Bayou Chemin-A-Haut; thence down Bayou Chemin-A-Haut to its mouth in Bayou Bartholomew; thence down Bayou Bartholomew to a point where it intersects the township line between Township 21 North and Township 22 North; thence west on said township line and being the northern boundary line of ward one to where said township line intersects the

Ouachita River; thence in a northerly direction with the Ouachita River to the point of beginning.

§ 584. Form of petition for election

A. Any qualified elector desiring a referendum election shall sign a petition addressed to the governing authority of the subdivision in which he resides, and in substantially the following form:

“PETITION TO:

The undersigned qualified electors respectfully request that you call an election to submit, in the manner provided by law, to the qualified electors of Ward or Election District _____ of _____ Parish, or of the city, town, or village of _____, the following propositions:”

B. The petition shall then list all of the following five propositions:

“(1) Shall the sale of beverages of alcoholic content containing not more than six percent alcohol by volume be permitted by package only and not for consumption on the premises?

“(2) Shall the sale of beverages of alcoholic content containing not more than six percent alcohol by volume for consumption on the premises be permitted?

“(3) Shall the sale of beverage alcohol containing one-half of one percent alcohol by volume and above for consumption on the premises be permitted?

“(4) Shall the sale of beverages of alcoholic content containing one-half of one percent alcohol by volume and above be permitted by package only and not for consumption on the premises?

“(5) Shall the sale of beverages of high and low alcoholic content be permitted only on the premises of restaurant establishments which have been issued an “R” permit as defined by law? ”

C. The petition submitted to a registrar of voters for certification shall be typed, machine printed, or hand printed and shall contain the following information:

(1) The signature of the voter who is signing the petition; however, if a person is unable to write, the incapacitated person shall affix his mark to the petition and the

person circulating the petition shall affix the name of the incapacitated person, provided he does so in the presence of two witnesses who shall also sign their names as witnesses to the mark.

(2) The date the voter signed the petition.

(3) The signer's ward or election district and precinct, typed, machine printed, or hand printed.

(4) The residence address of the signer, including municipal number, apartment number, rural route, and box number, typed, machine printed, or hand printed.

(5) The name of the signer, typed, machine printed, or hand printed.

(6) The name of the person who witnessed or obtained the signature.

(7) The date witnessed by the person who witnessed or obtained the signature.

D. Where signatures are made on more than one sheet, each sheet of the petition shall reproduce above the signatures the same matter as is on the first sheet. Each petitioner shall sign his name in his own handwriting and shall write his address, his ward and precinct, and the date on which he signed; otherwise his signature shall be null and void. Every signature on a petition shall be witnessed at the time of signing, either by the person obtaining the signature or by a registered voter of the state of Louisiana. All information required to be on a petition shall be typed or machine printed or hand printed prior to the time the petition is offered to prospective signees, except for the information in Paragraph C(6) and (7) herein.

§ 585. Filing of petition with registrar of voters; notice of filing

A. The multiple petitions for each ward or portion thereof, for each election district, or for each incorporated municipality shall be bound together as one petition and shall be filed at one time with the registrar of voters within sixty days from the date the first signature was affixed. If the sixtieth day falls on a holiday or on a Saturday or Sunday, the petition shall be filed not later than the following work day. The petition, when so filed, becomes a public record and cannot be returned to the proponents or signers thereof.

B. Within fifteen days, after the petition is filed, the registrar of voters shall have notice of the filing of the petition published in the official journal of the parish or

municipality, as the case may be, at the expense of the governing authority charged with the duty of calling the election. The notice shall contain the preamble of the petition, reproduced only once, and a statement that the entire petition is available for inspection at the office of the registrar of voters during regular business hours. Such inspection shall be permitted until such time as the petition is certified by the registrar.

§ 586. Verification of petition by registrar; filing with governing authority

A. The registrar of voters shall check the petition and attach thereto his sworn verification showing:

- (1) The date the petition was filed.
- (2) Copy of official journal showing publication of the information required in R.S. 26:585(B).
- (3) The date of the first signature of the petition.
- (4) The number of qualified electors of the ward, election district, or of the municipality, as the case may be, on the registration rolls as of the date of the first signature on the petition, which date shall be used by him in ascertaining if the petition contains the required number of signatures.
- (5) That he has checked each signature for its genuineness by comparing the signature on the petition with the signature of the same person on the registration rolls.
- (6) The total number of genuine signatures of qualified electors on the petition.
- (7) The number of signatures not genuine, or not signed and written in the manner required in R.S. 26:584.

B. Within thirty days, excluding Saturdays, Sundays, and holidays, from the date the petition was filed with the registrar of voters, the registrar shall file a true copy of the sworn verification required in Subsection A with the governing authority charged with the duty of calling the election.

C. Any person whose signature appears on a local option petition and who alleges that such signature is not genuine is hereby authorized to execute and file with the registrar of voters, a sworn affidavit, attesting that the affiant did not sign the petition. The registrar of voters, when checking the signatures for genuineness, shall

take the affidavit into consideration, but in no instance shall he certify the signature not to be genuine, unless the comparison of the signatures indicates that the signature is indeed not genuine. Affidavits executed pursuant to this Subsection shall be subject to the perjury provisions of Title 14 of the Louisiana Revised Statutes.

§ 587. Ordering of election; verification of registrar of voters; date of election

A. The governing authority with whom the true copy of the verification is filed by the registrar of voters shall attach to it a sworn statement showing the date, month, and year the verification was filed with the governing authority.

B. If the petition conforms to all the provisions of this Chapter, the governing authority shall order the election. The ordinance or resolution of the governing authority ordering the election shall be adopted at the next meeting held after the verification was filed with the governing authority by the registrar of voters.

C. The date fixed for the election shall be the next date on which such an election may be held, as provided for in R.S. 18:402(F), which falls more than forty-five days after the date verification was filed with the governing authority by the registrar of voters.

§ 588. Ballot; majority determination of issues; separation of results

A. When such election has been ordered the following propositions requested to be submitted on the approved and verified petition required by this Chapter, and no others shall be plainly printed upon a special ballot to be used for the election, otherwise the election shall be null and void:

| | |
|--|---------|
| “1. Shall the sale of beverages of alcoholic content containing not more than six percent alcohol by volume be permitted | YES [] |
| by package only and not for consumption on the premises in | NO [] |

| | |
|---|---------|
| “2. Shall the sale of beverages of alcoholic content containing not more than six percent alcohol by volume for consumption | YES [] |
| on the premises be permitted in | NO [] |

| | |
|--|---------|
| “3. Shall the sale of beverage alcohol containing one-half of one percent alcohol by volume and above for consumption on | YES [] |
| the premises be permitted in | NO [] |

“4. Shall the sale of beverages of alcoholic content containing one-half of one percent alcohol by volume and above by the package only and not for consumption on the premises be permitted in

YES []

NO []

“5. Shall the sale of beverages of high and low alcoholic content be permitted only on the premises of restaurant establishments which have been issued an “R” permit as defined by law in

YES []

NO []

B. If the voter desires to vote “YES” on any or all of these propositions he shall make an “X” mark in the square opposite the word “YES”. To vote “NO” he shall make an “X” mark in the square opposite the word “NO”. The vote of the voter on each proposition shall be valid and shall be counted, and failure to vote on all the five propositions shall not invalidate the ballot as to those propositions on which a vote was cast.

C. In an election a majority vote cast on each proposition shall separately determine that issue for the ward, the election district, or for the incorporated municipality and in such an election when a ward or election district contains an incorporated municipality, the issue shall be separately determined for the municipality and for the unincorporated balance of the ward or election district.

§ 589. Conduct of election; voting machines or ballot boxes

A. The elections shall be by secret ballot and shall be conducted as nearly as possible in accordance with the election laws of the state. Where not otherwise provided by this Chapter, or by any other law, the authority calling the election shall provide in the call for the manner in which the election shall be conducted and the result thereof promulgated.

B. Voting machines may be used in political subdivisions which have adopted them for use in general elections. If machines are used, the propositions stipulated in R.S. 26:588 to be printed on the ballot shall be shown on the mechanism of the machine. Otherwise, ordinary ballot boxes shall be used and suitable ballots printed for use in the election.

§ 590. Violation of standards for petition or election; nullity of election

If the petition fails to substantially comply with the requirements provided in this Chapter or if the other requirements specified in this Chapter for the calling or conduct of the election are not substantially complied with, the election is illegal and ineffective and may be declared null and void by any court of competent jurisdiction at the suit of any elector who was qualified to vote in the election. This suit shall be brought within thirty days of the promulgation of the results of the election.

§ 591. Recount of ballots or contest of elections

Any elector who was qualified to vote in the election may demand a recount of the ballots or contest the election in the same manner and under the same conditions as is provided by law for the recount of ballots or contest of elections under the general and special laws of this state.

§ 592. Parish board of supervisors to supervise elections; fees of board

The elections provided for in this Chapter shall be supervised by the board of supervisors of elections for the parish calling the election or in which the ward, election district, or incorporated municipality calling the election is located. Each member of the board, except the registrar of voters, shall receive twenty-five dollars from the governing authority calling the election for each election duly held under the law.

§ 593. Commissioners and clerks for elections

The parish board of supervisors shall appoint three commissioners and one clerk to preside over the election at each polling precinct. These appointees shall be qualified electors and residents of the precinct in which they serve. In making the appointments the board shall endeavor to give equal representation, as nearly as possible, to the proponents and opponents of the propositions to be voted upon.

§ 594. Promulgation of election results

The governing authority calling the election shall promulgate the result by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the parish.

§ 595. Local prohibitory ordinances and penalties authorized

When the majority of qualified electors voting in an election held under the provisions of this Chapter determine that any or all of the businesses described shall not be licensed, the governing authority calling the election may provide for the prohibition by ordinance, and may provide penalties for the violation of the ordinances. The penalties shall not, however, exceed a fine of one hundred dollars or imprisonment for not more than thirty days, or both.

§ 596. Illegal transportation or delivery in prohibition area

A. When the sale of any alcoholic beverage containing more than one-half of one percent alcohol by volume is prohibited in any subdivision of this state, no wholesale or retail dealer or carrier for either of them shall deliver such beverage or cause such beverage to be transported or delivered in such subdivision to any retail or other dealer who participates or has participated in the purchase, barter, or exchange of such beverage, even though the purchase, barter or exchange be transacted outside of such subdivision. The provisions of this Section shall not apply to the transportation or delivery of alcohol or alcoholic beverages or substances for use solely in the preparation of medicines or for medicinal purposes by prescription departments of drug stores, hospitals, or other business establishments or persons licensed to compound or dispense medicines.

B. Whoever violates the provisions of this Section shall be punished by the same penalties as are fixed for illegal sales of alcoholic beverages by ordinances adopted by the subdivision wherein the offense occurred in accordance with the provisions of R.S. 26:595.

C. Nothing in this Section shall prohibit the transportation from a political subdivision where the sale of alcoholic beverages is legal to another political subdivision where the sale of alcoholic beverages is legal or intrastate transportation of alcoholic beverages in political subdivisions where the sale of alcoholic beverages is prohibited under this Chapter.

§ 597. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections

A. (1) The governing authority of Minden may submit to the voters in any election held in compliance with provisions of either R.S. 18:402(A), (B), or (F) a proposition that would determine whether or not the business of selling alcoholic beverage only in a restaurant may be conducted and licensed therein.

(2) However, any municipality with a population of not less than two thousand five hundred and not more than three thousand five hundred that has issued a license or permit after May 1, 2003, and on or before June 15, 2003, authorizing the sale and service of alcoholic beverages for consumption on the premises shall not be required to conduct an election notwithstanding any other law to contrary.

B. As used in this Section “restaurant” shall mean any business licensed to sell alcoholic beverages under the provisions of R.S. 26:73, R.S. 26:272, or both.

§ 598. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections

A. Notwithstanding any other provision of law to the contrary, in the town of Many, the governing authority may submit to the voters in any election held in compliance with provisions of R.S. 18:402, a proposition to determine whether or not the business of selling alcoholic beverages in a restaurant may be conducted and licensed only within the incorporated limits of the municipality.

B. As used in this Section, the following words shall have the following meanings:

(1) “Alcoholic beverages” means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

(2) “Beverages of high alcoholic content” means alcoholic beverages containing more than six percent alcohol by volume.

(3) “Beverages of low alcoholic content” means alcoholic beverages containing not more than six percent alcohol by volume.

(4) “Restaurant establishment” means an establishment that meets all of these

requirements:

(a) Operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

(b) Serves food on all days of operation.

(c) Maintains separate sales figures for alcoholic beverages.

(d) Operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.

(e) Has a public habitable floor area of no less than five hundred square feet.

C. (1) The governing authority of the municipality may order a referendum election to be held within the municipality after an ordinance or resolution of the governing authority is passed authorizing such an election.

(2) The governing authority shall not have to comply with the other provisions required by the provisions of this Chapter such as but not limited to the requirement of filing a petition of not less than twenty-five percent of the qualified electors residing in the incorporated municipality with the registrar of voters.

(3) When such election has been ordered by the governing authority of the municipality, the following proposition, and no other, shall be submitted to the voters of the municipality:

“Shall the sale of beverages of high and low alcoholic content be permitted only on the premises of restaurant establishments which have been issued an “R” permit as defined by law within the corporation limits of the town of _____.”

(4) In an election, a majority vote cast on the proposition shall determine the issue for the incorporated municipality and only residents of the incorporated municipality shall be allowed to vote.

(5) The governing authority calling the election shall promulgate the result of the election by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the parish.

D. All other statutory provisions and rules and regulations of the office of alcohol and tobacco, such as but not limited to application procedures, qualifications, and all licensing and permit requirements for a restaurant “R” permit shall apply.

§ 599. Alcoholic beverage sales in restaurants; authorization for certain municipalities to submit propositions to voters in certain elections

A. Notwithstanding any other provision of law to the contrary, in a municipality established and governed pursuant to Part I of Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, having a population of not less than thirteen thousand five hundred and not more than sixteen thousand five hundred according to the latest federal decennial census, the governing authority may submit to the voters in any election held in compliance with provisions of R.S. 18:402, a proposition to determine whether or not the business of selling alcoholic beverages in a restaurant may be conducted and licensed only within the incorporated limits of the municipality.

B. As used in this Section, the following words shall have the following meanings:

(1) "Alcoholic beverages" means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

(2) "Beverages of high alcoholic content" means alcoholic beverages containing more than six percent alcohol by volume.

(3) "Beverages of low alcoholic content" means alcoholic beverages containing not more than six percent alcohol by volume.

(4) "Restaurant establishment" means an establishment that meets all of these requirements:

(a) Operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

(b) Serves food on all days of operation.

(c) Maintains separate sales figures for alcoholic beverages.

(d) Operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.

(e) Has a public habitable floor area of no less than five hundred square feet.

C. (1) The governing authority of the municipality may order a referendum election

to be held within the municipality after an ordinance or resolution of the governing authority is passed authorizing such an election.

(2) The governing authority shall not have to comply with the other provisions of this Chapter such as but not limited to the requirement of filing a petition containing the signatures of not less than twenty-five percent of the qualified electors residing in the incorporated municipality with the registrar of voters.

(3) When such election has been ordered by the governing authority of the municipality, the following proposition, and no other, shall be submitted to the voters of the municipality:

“Shall the sale of beverages of high and low alcoholic content be permitted only on the premises of restaurant establishments which have been issued an “R” permit as defined by law within the corporation limits of the city of _____?”

(4) In an election, a majority vote cast on the proposition shall determine the issue for the incorporated municipality and only residents of the incorporated municipality shall be allowed to vote.

(5) The governing authority calling the election shall promulgate the result of the election by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the municipality.

D. All other statutory provisions and rules and regulations of the office of alcohol and tobacco, such as but not limited to application procedures, qualifications, and all licensing and permit requirements for a restaurant “R” permit shall apply.

§ 600. Alcoholic beverage sales in restaurants; authorization for propositions to be submitted to voters in certain elections

A. Notwithstanding any other provision of law to the contrary, in the city of Mansfield, the governing authority may submit to the voters in any election held in compliance with provisions of R.S. 18:402, a proposition to determine whether or not the business of selling alcoholic beverages in a restaurant may be conducted and licensed only within the incorporated limits of the municipality,

B. As used in this Section, the following words shall have the following meanings:

(1) “Alcoholic beverages” means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

(2) “Beverages of high alcoholic content” means alcoholic beverages containing more than six percent alcohol by volume.

(3) “Beverages of low alcoholic content” means alcoholic beverages containing not more than six percent alcohol by volume.

(4) “Restaurant establishment” means an establishment that meets all of these requirements:

(a) Operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

(b) Serves food on all days of operation.

(c) Maintains separate sales figures for alcoholic beverages.

(d) Operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.

(e) Has a public habitable floor areas of no less than that which is required by R.S. 26:73 and 272.

C. (1) The governing authority of the municipality may order a referendum election to be held within the municipality after an ordinance or resolution of the governing authority is passed authorizing such an election.

(2) The governing authority shall not have to comply with the other provisions of this Chapter such as but not limited to the requirement of filing a petition containing the signatures of not less than twenty-five percent of the qualified electors residing in the incorporated municipality with the registrar of voters.

(3) When such election has been ordered by the governing authority of the municipality, the following proposition, and no other, shall be submitted to the voters of the municipality:

“Shall the sale of beverages of high and low alcoholic content be permitted only on the premises of restaurant establishment which have been issued an “R” permit as defined by law within the corporation limits of the city of Mansfield?”

(4) In an election, a majority vote cast on the proposition shall determine the issue for the incorporated municipality and only residents of the incorporated municipality shall be allowed to vote.

(5) The governing authority calling the election shall promulgate the result of the election by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the municipality.

D. All other statutory provisions and rules and regulations of the office of alcohol and tobacco control, such as but not limited to application procedures, qualifications, and all licensing and permit requirements for a restaurant “R” permit shall apply.

CHAPTER 4. MISCELLANEOUS PENAL PROVISIONS

PART I. DEFINITIONS

Section

641. Definitions.
642. to 650. Blank

PART II. POISONOUS BEVERAGES

651. Manufacture or preparation of poisonous beverages;
penalty.
652. Sale of poisonous beverages; penalty.
653. Analysis of beverages in possession of arrested person.
654. to 680. Blank

PART III. DISPENSING ALCOHOLIC BEVERAGES TO PARTICULAR PERSONS

681. Providing alcoholic beverages to convict prohibited;
penalty.
682. to 710. Blank

PART IV. OFFENSES IN PROHIBITION TERRITORY

711. "Blind tiger" defined.
712. Penalty for keeping blind tiger; destruction or sale of
beverages.
713. Searches and seizures.
714. Soliciting sale of alcoholic beverages in prohibition area;
penalty.
715. Prescribing beverages of high alcoholic content as medicine
to evade prohibition law; penalty.
716. to 740. Blank

PART V. CASH SALES OF CERTAIN BEVERAGES

741. Sales of beer and other malt beverages by wholesalers to
retailers.
742. to 790. Blank

PART I. DEFINITIONS

§ 641. Definitions

For purposes of this Chapter, the terms “alcoholic beverages”, “beverages of low alcoholic content”, and “beverages of high alcoholic content” have the same meanings ascribed to them in R.S. 26:241.

PART II. POISONOUS BEVERAGES

§ 651. Manufacture or preparation of poisonous beverages; penalty

A. No person shall manufacture, concoct, or prepare for sale any alcoholic beverage containing lye, nicotine, wood alcohol, india berries, or any other poisonous substance.

B. Whoever violates this Section shall be fined not more than one thousand dollars and imprisoned for not more than five years, with or without hard labor.

§ 652. Sale of poisonous beverages; penalty

A. No person shall sell or offer for sale any alcoholic beverage containing lye, nicotine, wood alcohol, india berries, or any other poisonous substance.

B. Whoever violates this Section shall be fined not more than three hundred dollars or imprisoned, with or without hard labor, for not more than one year, or both.

§ 653. Analysis of beverages in possession of arrested person

Any officer who has made an arrest and found alcoholic beverages in the possession or control of the party arrested may have a sample of the beverages so found analyzed by the state board of health. The board shall make a report of its findings to the officer who furnished the sample.

PART III. DISPENSING ALCOHOLIC BEVERAGES TO PARTICULAR PERSONS

§ 681. Providing alcoholic beverages to convict prohibited; penalty

A. No person shall sell, send, or give any alcoholic beverage to, or procure or purchase any such beverage for any person incarcerated in any state, parish, or city prison within the state.

B. Whoever violates this Section shall be fined not less than ten dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than one hundred days, or both.

PART IV. OFFENSES IN PROHIBITION TERRITORY

§ 711. “Blind tiger” defined

A “blind tiger” is any place in those subdivisions of the state in which the sale of alcoholic beverages is prohibited where such beverages are kept for sale, barter, or exchange or habitual giving away, whether in connection with a business conducted at the place or not.

§ 712. Penalty for keeping blind tiger; destruction or sale of beverages

Whoever keeps a blind tiger shall be fined not less than two hundred dollars nor more than five hundred dollars and imprisoned for not less than thirty days nor more than six months. The court shall order the alcoholic beverages found in the blind tiger destroyed or shall order the sheriff to sell same at public sale in a parish where such sales are not prohibited by law, to the highest bidder after due advertisement for ten days in the official journal of the parish; the net proceeds of such sales shall be turned over by the sheriff to the general fund of the parish in which the beverages were seized and sold.

§ 713. Searches and seizures

Any place suspected of being a blind tiger shall be searched by an officer designated in a search warrant and any alcoholic beverages found therein shall be seized and brought before the court issuing the warrant. The warrant may be issued by any court having power of a committing magistrate upon the filing of an affidavit reciting the

fact that affiant believes a certain designated place to be a blind tiger, together with such additional evidence as the court may require in order to make out a prima facie case. The officer to whom the search warrant is directed shall make his return thereon within twenty-four hours after it is issued and shall bring into court any alcoholic beverages he may have found together with all persons found in the place where the beverages were found.

§ 714. Soliciting sale of alcoholic beverages in prohibition area; penalty

A. No person shall seek, solicit, or receive orders from anyone for the purchase of alcoholic beverages within the limits of any municipality, ward, or parish in which the retailing of such beverages is prohibited.

B. Whoever violates this Section shall be fined not more than one hundred dollars or imprisoned for not more than six months, or both.

§ 715. Prescribing beverages of high alcoholic content as medicine to evade prohibition law; penalty

Any physician or practitioner of medicine who prescribed beverages of high alcoholic content for any person with intent to evade, or with intent to assist others to evade, any state law or local ordinance prohibiting the sale and consumption, or either, of beverages of high alcoholic content shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned for not less than thirty days nor more than four months.

PART V. CASH SALES OF CERTAIN BEVERAGES

§ 741. Sales of beer and other malt beverages by wholesalers to retailers

A. All sales of beer and other malt beverages containing more than one-half of one per cent alcohol by volume made by wholesalers to retailers shall be for cash only.

B. The term “cash” as used in this Section means any consideration consisting of currency, or coin, or check, or certified check, or bank money order, in an amount equalling but not exceeding the purchase price of the beer or other malt beverage delivered. The failure to pay cash upon delivery, or any maneuver, device, or shift of

any kind, whereby credit is extended, shall constitute a violation of this Section and subject the license of any violator of this Section to suspension or revocation by the commissioner.

C. The term “check” as used in this Section is an order in writing by a retail beer permittee drawn on, and in accordance with the rules of any bank licensed under the laws of this State, or of the United States of America, ordering said bank to pay a certain sum of money to the beer wholesale permittee making the sale, which check is honored by the bank upon presentation.

D. The commissioner shall promulgate rules and regulations defining terms, specifying conditions by which checks and other cash, as defined in Subsections A and B hereof, may be accepted in payment of beer and other malt beverages and establishing procedures and making requirements to be followed by wholesale dealers in attending hearings, depositing checks, filing reports of checks returned unpaid by the bank, and maintaining records. The violation of such regulations when duly promulgated and enacted may be cause for suspension or revocation of the violator's license by the commissioner. Any action of the commissioner under this Section providing for suspension or revocation of a permit shall be preceded by a notice to the violator and hearing by the commissioner or his agent.

CHAPTER 5. COMMISSIONER OF ALCOHOL AND TOBACCO CONTROL

Section

- 791. Commissioner of Alcohol and Tobacco Control; establishment, commissioner, term.
- 792. Powers and duties.
- 793. Additional powers of the commissioner.
- 794. Powers and duties; application and renewal procedures.
- 795. Collection of fees and penalties; lists of permittees and establishments; definitions.
- 796. Employees, commissioned officers.
- 797. All legal remedies available for enforcement of law; bond unnecessary for commissioner; summary trial.
- 798. Licenses; exception.
- 799. Microfilm or microfiche records; electronic digitized records.
- 800. Criminal records access

CHAPTER 5. COMMISSIONER OF ALCOHOL AND TOBACCO CONTROL

§ 791. Commissioner of alcohol and tobacco control; establishment, commissioner, term

There is hereby created and established within the Department of Revenue, as an administrative unit thereof, the office of alcohol and tobacco control, the head of which shall be the commissioner who shall also be the assistant secretary of the office of alcohol and tobacco control, appointed by the governor with the advice and consent of the Senate of Louisiana to serve at his pleasure. The commissioner shall be a full-time employee and shall receive an appropriate salary as fixed by the governor.

§ 792. Powers and duties

The commissioner shall have all of the powers and authorities provided in this Title in relation to:

- (1) The issuance and renewal of permits required by law for persons engaging in the business of dealing in beverages of high and low alcoholic content, provided that no wholesale permit shall be issued or renewed without the applicant's first furnishing evidence to the commissioner that the bond required under R.S. 26:348 has been secured;
- (2) The issuance of orders for the suspension or revocation of permits issued to persons engaging in the business of dealing in beverages of high or low alcoholic content, and all hearings thereon shall be conducted by the commissioner in accordance with the provisions of R.S. 26:98 through R.S. 26:108, appeals from his rulings to be made directly to any court of competent jurisdiction;
- (3) All other provisions of law regarding beverages of high or low alcoholic content, except as hereinafter specifically provided.
- (4) Investigating and enforcing the provisions of this Title against unlicensed persons engaged in activities which require a permit pursuant to this Title.

§ 793. Additional powers of the commissioner

- A. (1) The commissioner may provide by regulation for the issuance of three-day retail permits to sell, offer for sale, or serve alcoholic beverages at fairs, festivals,

civic and fraternal and religious events, Mardi Gras events, and nonprofit functions if the applicant, or any agent, member, officer, or representative thereof, has not had a license or permit to sell or deal in alcoholic beverages, issued by the United States, any state or by a political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application date. The permits shall be for a duration of three consecutive days only and no more than twelve such permits may be issued to any one person within a single calendar year. Fees for the permits shall be as provided by regulation.

(a) There shall be three types of temporary alcoholic beverage permits: Type A, Type B, and Type C.

(b) Type A permits shall be issued only to nonprofit organizations with tax exempt status under the United States Internal Revenue Code, Section 501(c)(3), 501(c)(6), and 501(c)(8), where no transaction exist, whether directly or indirectly, between the licensed tax exempt organization and any disqualified person as defined by the United States Internal Revenue Code Section 4958(f) or any similar subsequent provision. To qualify for this permit, applicants shall submit all documentation as required in the regulations promulgated in accordance with the provisions of this Section or upon the request of the commissioner.

(c) Type B permits shall be issued only to nonprofit organizations, which are able to provide written proof of their nonprofit status, but are unable to show written proof of their tax exempt status under the United States Internal Revenue Code Section 501(c)(3), 501(c)(6), and 501(c)(8), and no transaction exist, whether directly or indirectly, between the licensed tax exempt organization and any disqualified person as defined by the United States Internal Revenue Code Section 4958(f) or any similar subsequent provision. To qualify for this permit, applicants shall submit all documentation as required in the regulations promulgated in accordance with the provisions of this Section or upon the request of the commissioner.

(d) Type C permits shall be issued to persons holding events where alcoholic beverages are sold or supplied as part of a general admission or other type fee, but who do not meet the requirements for Type A or Type B temporary permits. To qualify for this permit, applicants shall submit all documentation as required in the regulations or upon the request of the commissioner. Such regulations shall be promulgated in accordance with the Administrative Procedure Act as necessary to implement the provisions of this Subparagraph.

(e) The commissioner shall not issue a three-day temporary retail permit under this

Paragraph to any alcoholic beverage manufacturer, wholesale dealer, homebrewer, or to any association with a membership that is primarily comprised of alcoholic beverage manufacturers, wholesale dealers, and/or homebrewers.

(2) The commissioner may also provide by regulation for special designations on the regular Class A permits of persons who wish to service special events as caterers and serve alcoholic beverages at locations other than their licensed premises.

(3) The commissioner shall also provide by rule and regulation for the definition and issuance of a Class A-Caterers Permit for any person who does not otherwise qualify for a retail dealers permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2. Any person holding a Class A-Caterers Permit shall not be authorized to sell alcoholic beverages to any wholesale or retail dealer licensed in accordance with this Title. The fees for a Class A-Caterers permit shall not exceed the fees for a Class A-Restaurant Permit set forth in R.S. 26:71(A).

(4) The commissioner shall adopt rules and regulations in accordance with the Administrative Procedure Act to effectuate the purpose of this Section. Notwithstanding the provisions of R.S. 26:90(B), (C), (D), (E), (F), and (G) and R.S. 26:286(B), (C), (D), (E), (F), and (G) to the contrary, the commissioner may establish rules and regulations adopted pursuant to the Administrative Procedure Act authorizing the types of entertainment and employment allowed on a licensed premises.

(5)(a) Notwithstanding any other provision of law to the contrary, the commissioner shall issue a three-day homebrew permit to any retail dealer qualified for on premise consumption who applies for such permit at no fee authorizing the retail dealer to allow a person to bring homebrew alcoholic beverages on his licensed premises for the purpose of possessing, consuming, and serving such homebrew on his licensed premises in connection with homebrew club meetings, organized affairs, exhibitions, or competitions such as homebrewer's contests, tastings, or judging where no general admission or other type fee or charge is assessed in connection with the homebrew permit and in accordance with all of the following criteria:

(i) Homebrew shall not be sold or offered for sale and the person who makes the homebrew or any association of persons who make the homebrew shall not receive any compensation or any other thing of value, whether directly or indirectly, other than trophies, plaques, certificates, ribbons, medals, or similar awards of nominal value, from any club meetings, organized affairs, exhibitions, competitions, or other events where the homebrew is sampled in accordance with the sampling provisions promulgated under the authority of R.S. 26:75(C) and 275(B).

(ii) Homebrew shall be served only to those individuals attending the homebrew event and shall not be served to the patrons of the retail establishment or general public.

(iii) All homebrew alcoholic beverages shall be removed from the licensed premises within a reasonable time upon conclusion of the special event.

(iv) The retail dealer shall not be required to obtain a special events permit from the Department of Health and Hospitals and shall be exempt from any additional compliance with the state's Sanitary Code but only with regard to the duration and location of the homebrew event.

(b) For purposes of this Paragraph, "homebrew" shall mean the brewing of beer, mead, and other alcoholic beverages through fermentation in a residence or other authorized facility by a person of the lawful age to purchase alcoholic beverages on a small scale, not to exceed one hundred gallons per calendar year for a household with one resident of the lawful age to purchase alcoholic beverages or two hundred gallons for a household with two or more residents of the lawful age to purchase alcoholic beverages, as a hobby for personal consumption by that person or his family, neighbors, guests, and friends, for use at competition, homebrew club meetings, organized affairs, exhibitions, or competitions on the premise of a licensed Class A retail dealer holding a homebrew permit in accordance with this Paragraph, or for any of the other noncommercial reasons as provided for in Paragraph (1) of this Subsection regarding special event licenses where homebrew is served as an incidental part of the event and in accordance with the sampling provisions promulgated under the authority of R.S. 26:75(C) and 275(B). "Homebrew" shall not include any licensed alcoholic beverages manufactured, distributed, or otherwise served for commercial purposes.

B. The provisions of R.S. 26:281(C), (D), (F), and (G) shall not apply to permits issued pursuant to the provisions of this Section.

C. (1) In order to ensure compliance with laws prohibiting the sale or service of alcoholic beverages, tobacco, alternative nicotine, or vapor products to underage persons, the commissioner shall annually conduct random, unannounced inspections at locations where alcoholic beverages, tobacco, alternative nicotine, or vapor products are sold, served, or distributed. Persons under the age of eighteen or twenty-one may be enlisted by employees of the office of alcohol and tobacco control to test compliance, but such persons may be used only if the testing is conducted under the direct supervision of such employees and written parental consent has been provided if the person is under the age of eighteen. Any person under the age of eighteen or twenty-one shall either carry the person's own identification showing the person's

correct date of birth or shall carry no identification. A person under the age of eighteen or twenty-one who carries identification shall, on request, present it to any seller or server of alcoholic beverage, tobacco, alternative nicotine or vapor products. In addition, any person under the age of eighteen or twenty-one enlisted under this Subsection shall truthfully answer any questions about the person's age. Except where expressly authorized in writing by the commissioner in furtherance of the objectives of this Section, any other use of persons under the age of eighteen or twenty-one to test compliance with the provisions of this Section or any other prohibition of like or similar import shall be unlawful and the person or persons responsible for such use shall be subject to the penalties prescribed in this Title or R.S. 14:91.6, 91.8(H), 92, or 93.11.

(2) The commissioner shall prepare and submit to the governor a report outlining compliance with the "Prevention of Youth Access to Tobacco Law", which the governor shall use to prepare and file annually with the secretary of the United States Department of Health and Human Services the report provided for by 42 U.S.C. § 300x-26.

D.(1) The commissioner shall provide by rule for the registration, including submission and review of the container label, of all alcoholic beverages prior to being sold in this state.

(2) The commissioner may require the use of an electronic submission system by any person submitting an alcoholic beverage for registration and review.

(3) The submission of a Certificate of Label Approval prepared in compliance with the requirements of the Alcohol and Tobacco Tax and Trade Bureau shall constitute satisfactory compliance for the registration of products and labels pursuant to this Subsection, and the registration shall become effective upon submission of a completed application.

§ 794. Powers and duties; application and renewal procedures

A. The commissioner, shall have the authority to implement the following application and renewal procedures by establishing rules and regulations therefor:

B. (1) Applications for original permits or for renewal permits authorized under the provisions of this Title may be made at the same time and on one application form.

(2) Permits authorized under this Title may be issued or renewed once for a period not to exceed eighteen months, in order that a program of staggered renewal of applications may be implemented. The fee charged for permits issued for longer than twelve months shall be increased in a manner so that the permit fee on an annual basis equals the fee charged for the permit under the provisions of this Title.

§ 795. Collection of fees and penalties; lists of permittees and establishments; definitions

A. All fees and penalties authorized by Chapter 1 and Parts I and II of Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950, shall be collected by the commissioner.

B. The commissioner shall prepare and keep current a list or lists, by classes, of all licensed dealers in regulated alcoholic beverages in the state. These lists shall show the name and address of the permittee, the number and class of permits, the name and address of each establishment, and any other information thought pertinent by the commissioner. The lists are public records and shall be made available for public inspection as otherwise provided by law.

C. To assist wholesale dealers in assuring that they sell alcoholic beverages only to retail dealers who possess valid and current permits, the commissioner shall furnish wholesalers with periodic reports of expired retail permits at no charge to the wholesalers.

D. For purposes of this Section, the following terms have the respective meaning ascribed to them in this Subsection, unless a different meaning clearly appears from the context:

(1) "Alcoholic beverages" means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

(2) "Dealer" means any person who, as a business, manufactures, blends, rectifies, distills, processes, imports, stores, uses, handles, holds, sells, offers for sale, distributes, delivers, serves, or transports any alcoholic beverage in the state or engages herein in any business transaction relating to any such beverage.

§ 796. Employees, commissioned officers

A. The commissioner, subject to the limitation of any civil service law in effect, shall establish positions within his office and make appointments thereto; abolish positions; transfer duties between positions; or assign duties to, direct and control the work of, and transfer, promote, demote, remove, and otherwise change the status of employees subject to his jurisdiction.

B. The commissioner shall appoint and commission officers within his office who shall be P.O.S.T.-certified and shall enforce the laws regarding the regulation and control of alcoholic beverages, may carry weapons concealed or exposed while in the performance of these duties, and shall be vested with the same authority and powers conferred by law upon regular law enforcement officers of this state.

§ 797. All legal remedies available for enforcement of law; bond unnecessary for commissioner; summary trial

A. The remedies provided by this Chapter for the accomplishment of its purposes are not intended to be exclusive, but, on the contrary, the commissioner and any other person having any duty to perform in the enforcement thereof, may resort to any other remedies, at law or equity, available to litigants generally.

B. The commissioner shall not be required to furnish any bond or pay any costs in any judicial proceeding in the courts of the state. All actions brought by, for, or in the name of the office of alcohol and tobacco control shall be summary and triable by preference in all such courts.

§ 798. Licenses; exception

Notwithstanding any other law to the contrary, the licenses or permits required by Title 26 to be issued by the commissioner to engage in the business of dealing in alcoholic beverages shall be the only licenses required of a person or entity to conduct any business of dealing in alcoholic beverages except occupational licenses, health permits, fire safety and other safety permits, and permits for dealing in alcoholic beverages required by a parish or municipal governing authority, any fire safety permits required by the state fire marshal, any permit that may be required by

the Riverboat Gaming Enforcement Division, office of state police, and any licenses required by federal law or federal regulations.

§ 799. Microfilm or microfiche records; electronic digitized records

A. The office of alcohol and tobacco control may install and use microfilm or microfiche machinery or electronic digitizing machinery and apparatus in the recordation, filing, and preservation of all records, forms, and documents referred to in this Title, in order to conserve storage space, if the use of such microfilm or microfiche machinery or electronic digitizing machinery and apparatus is not otherwise prohibited by law.

B. Such microfilm, microfiche, or electronic digitized copy shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy thereof shall, for all purposes, be deemed to be a transcript, exemplification, or certified copy of the original.

§ 800. Criminal records access

The commissioner and duly commissioned officers or agents of the office of alcohol and tobacco control are authorized to have direct access by means of computer interfacing to criminal history records maintained by the office of state police for the purpose of granting, denying, or any other action on an application for a permit or for revocation, suspension, or other action on a permit previously issued.

AND SUPPLIERS OF BEER

Section

- 801. Legislative intent and purpose.
- 802. Definitions.
- 803. Prohibited acts by supplier.
- 804. Prohibited acts by wholesaler.
- 805. Conditions of amendment, modification, resignation, cancellation, termination, failure to renew, or refusal to continue agreement.
- 806. Transfer of wholesaler's business; interference prohibited.
- 807. Reasonable compensation upon supplier's violation; arbitration.
- 808. Wholesaler may not waive rights; agreement to waive void.
- 809. Application to future agreements; transferee continues under agreement.
- 810. Civil action for violation; damages; venue.
- 811. Nonwaiver.
- 812. Cumulative.
- 813. to 900. Blank

CHAPTER 6. BUSINESS RELATIONS—WHOLESALE AND SUPPLIERS OF BEER

§ 801. Legislative intent and purpose

The legislative intent and purpose of this Chapter are to provide a structure for the business relations between a wholesaler and a supplier of beer. Regulation in this area is considered necessary for the following reasons:

- (1) To maintain stability and healthy competition in the beer industry in this state.
- (2) To promote and maintain a sound, stable, and viable three-tier system of distribution of beer to the public.
- (3) To promote the public health, safety, and welfare.

§ 802. Definitions

A. The following words or phrases, or the plural thereof, whenever they appear in this Chapter, unless the context clearly requires otherwise, shall have the meanings ascribed to them in this Section:

- (1) “Agreement” means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier.
- (2) “Ancillary business” means a business owned by the wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a substantial stockholder of a wholesaler, or a substantial partner of a wholesaler which recycles empty beverage containers of the supplier.
- (3) “Beer” means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water.
- (4) “Commissioner” means the commissioner of alcoholic beverage control.

(5) “Designated member” means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest, including a controlling interest, in a wholesaler, or any person who inherits under the deceased individual's will, or under the laws of intestate succession of this state; or any person who or entity which has otherwise, through a valid testamentary device by the deceased individual, succeeded the deceased individual in the wholesaler's business, or has succeeded to the deceased individual's ownership interest in the wholesaler pursuant to a written contract or instrument which has been previously approved by the supplier; and also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler. Designated member also includes the person appointed by a court as the curator or conservator of the property of an incapacitated individual owning an ownership interest in a wholesaler.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(7) “Reasonable qualifications” means the standard of the reasonable criteria established and consistently used by the respective supplier for similarly situated wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four months prior to the proposed transfer of the wholesaler's business, or for similarly situated wholesalers who have changed managers or designated managers during a period of twenty-four months prior to the proposed change in the manager or successor manager of the wholesaler's business.

(8) “Retaliatory action” means the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

(9) “Sales territory” means an area of exclusive sales responsibility for the brand or brands of beer sold by a supplier as designated by an agreement.

(10) “Similarly situated wholesalers” means wholesalers of a supplier that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, as well as reasonably similar economic and geographic conditions.

(11) “Substantial stockholder or substantial partner” means a stockholder of or partner in the wholesaler who owns an interest of ten percent or more of the partnership or of the capital stock of a corporate wholesaler.

(12) "Supplier" means a manufacturer or importer of beer and light wine brands as registered with the commissioner.

(13) "Transfer of wholesaler's business" means the voluntary sale, assignment, or other transfer of ten percent or more or control of the business or all or substantially all of the assets of the wholesaler, or ten percent or more or control of the capital stock of the wholesaler, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler.

(14) "Wholesaler" means a wholesaler of beer and light wine as licensed under this Title.

B. Other words and phrases used in this Chapter shall have the meanings ascribed to them in this Title, unless the context clearly requires otherwise.

§ 803. Prohibited acts by supplier

A supplier shall not do the following:

(1) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains in total the supplier's agreement with each wholesaler and designates a specific exclusive sales territory. Any agreement which is in existence on May 26, 1993, shall be renewed consistent with this Chapter, provided that this Chapter may be incorporated by reference in the agreement. However, nothing contained herein shall prevent a supplier from appointing, one time for a period not to exceed ninety days, a wholesaler to temporarily service a sales territory not designated to another wholesaler, until such time as a wholesaler is appointed by the supplier. A wholesaler who is designated to service the sales territory during this period of temporary service shall not be in violation of this Chapter and, with respect to the temporary service territory, shall not have any of the rights provided under R.S. 26:805 and 807.

(2) Fix, maintain, or establish the price at which a wholesaler shall sell any beer.

(3) Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand or brands of beer in the same territory or any portion thereof, or to sell directly to any retailer in this state.

(4) Require any wholesaler to accept delivery of any beer or other commodity which

has not been ordered by the wholesaler. However, a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers who have an agreement with the supplier.

(5) Require any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was properly cancelled by the wholesaler in accordance with the supplier's procedures.

(6) Require any wholesaler to do any illegal act or to violate any law or regulation by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler.

(7) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer of any other supplier unless the acquisition of the brand or brands of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales, or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler. However, the supplier shall have the burden of proving that such acquisition of such other brand or brands would have such effect.

(8) Require a wholesaler to purchase one or more brands of beer products in order for the wholesaler to purchase another brand or brands of beer for any reason. However, a wholesaler that has agreed to distribute a brand or brands before May 26, 1993, shall continue to distribute the brand or brands in conformance with this Chapter.

(9) Require a wholesaler to submit audited profit and loss statements, balance sheets, or financial records as a condition of renewal or continuation of an agreement.

(10) Withhold delivery of beer ordered by wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith.

(11) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier.

(12) Take any retaliatory action against a wholesaler that files a complaint in good faith regarding an alleged violation by the supplier of federal, state, or local law or an administrative rule as a result of that complaint.

(13) Require or prohibit any change in the manager or successor of any wholesaler who has been approved by the supplier as of or subsequent to May 26, 1993, unless the supplier acts in good faith. Should a wholesaler change an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material, and

reasonable standards and qualifications for managers consistently applied to similarly situated wholesalers by the supplier. However, the supplier shall have the burden of proving that such person fails to meet such standards and qualifications.

(14) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent, or unreasonably delay, not to exceed thirty days, the transfer of the wholesaler's business if the proposed transferee is a designated member.

(15) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay, not to exceed thirty days after receipt of all material information reasonably requested, a response to a request by the wholesaler for any transfer of a wholesaler's business if the proposed transferee meets the nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for similarly situated wholesalers.

(16) Restrict or inhibit the right of free association among wholesalers for any lawful purpose.

§ 804. Prohibited acts by wholesaler

A wholesaler shall not do any of the following:

(1) Fail to devote such efforts and resources to the sale and distribution of all the supplier's brands of beer which the wholesaler has been granted the right to sell or distribute as are required in the wholesaler's agreement with the supplier.

(2) Sell or deliver beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of beer. However, during periods of temporary service interruptions impacting a particular sales territory, a supplier may appoint another wholesaler to service the sales territory during the period of temporary service interruption. A wholesaler who is designated to service the impacted sales territory during the period of temporary service interruption shall not be in violation of this Chapter, and shall not have any of the rights provided under R.S. 26:805 and 807 with respect to the temporary service territory.

(3) Transfer the wholesaler's business without giving the supplier written notice of intent to transfer the wholesaler's business and, when required by this Chapter, receiving the supplier's approval for the proposed transfer. Consent or approval of the supplier shall not be required of any transfer of the wholesaler's business to a designated member, or of any transfer of less than ten percent of the wholesaler's

business unless such transfer results in a change in control. However, the wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

§ 805. Conditions of amendment, modification, resignation, cancellation, termination, failure to renew, or refusal to continue agreement

A. Notwithstanding any agreement and except as otherwise provided for in this Chapter, a supplier shall not: amend or modify an agreement; cause a wholesaler to resign from an agreement; or cancel, terminate, fail to renew, or refuse to continue under an agreement, unless the supplier has complied with all of the following:

(1) Has satisfied the applicable notice requirements of this Section.

(2) Has acted in good faith.

(3) Has good cause for the amendment, modification, cancellation, termination, nonrenewal, discontinuance, or forced resignation.

B. For each amendment, modification, termination, cancellation, nonrenewal, or discontinuance, the supplier shall have the burden of proving that it has acted in good faith, that the notice requirements under this Section have been complied with, and that there was good cause for the amendment, modification, termination, cancellation, nonrenewal, or discontinuance.

C. Notwithstanding any agreement and except as otherwise provided in this Section, and in addition to the time limits set forth in Paragraph D(4) of this Section, the supplier shall furnish written notice of the amendment, modification, termination, cancellation, nonrenewal, or discontinuance of an agreement to the wholesaler not less than thirty days before the effective date of the amendment, modification, termination, cancellation, nonrenewal, or discontinuance. The notice shall be by certified mail and shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, not renew, or discontinue the agreement.

(2) A statement of the reason for the amendment, modification, termination, cancellation, nonrenewal, or discontinuance.

(3) The date on which the amendment, modification, termination, cancellation, nonrenewal, or discontinuance takes effect.

D. Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under Paragraph A(3) of this Section when all of the following occur:

(1) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier.

(2) The supplier first acquired knowledge of the failure described in Paragraph (1) not more than twenty-four months before the date notification was given pursuant to Subsection C of this Section.

(3) The wholesaler was given notice by the supplier of failure to comply with the agreement.

(4) The wholesaler has been afforded thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure such noncompliance in accordance with the plan.

E. Notwithstanding Subsections A and C of this Section, a supplier may terminate, cancel, fail to renew, or discontinue an agreement immediately upon written notice given in the manner and containing the information required by Subsection C of this Section if any of the following occurs:

(1) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the assignment for the benefit of creditors or dissolution or liquidation of the wholesaler which materially affects the wholesaler's ability to remain in business.

(2) Revocation or suspension of the wholesaler's state or federal license by the appropriate regulatory agency whereby the wholesaler cannot service the wholesaler's sales territory for more than thirty-one days.

(3) The wholesaler, or a partner or an individual who owns ten percent or more of the partnership or stock of a corporate wholesaler, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier. However, an existing stockholder or stockholders, or partner or partners, or a designated member or members, shall have, subject to the provisions of this Chapter, the right to purchase the partnership interest or the stock of the offending partner or stockholder prior to

the conviction of the offending partner or stockholder, and if the sale is completed prior to conviction the provisions of this Paragraph shall not apply.

(4) There was fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its product. However, the supplier shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging such termination.

(5) The wholesaler failed to confine to the designated sales territory its sales of a brand or brands to retailers, provided this Paragraph does not apply if there is a dispute between two or more wholesalers as to the boundaries of the assigned territory, and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers.

(6) A wholesaler has failed to pay for beer ordered and delivered in accordance with established terms and the wholesaler fails to make full payment within two business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(7) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member, without prior written notice to the supplier, and has failed, within thirty days from the receipt of written notice from the supplier of its intent to terminate on the ground of such transfer, to reverse the transfer of wholesaler's business.

(8) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member, although the wholesaler has prior to the transfer received from the supplier a timely notice of disapproval of the transfer in accordance with this Chapter.

(9) The wholesaler intentionally ceases to carry on business with respect to any of the supplier's brand or brands previously serviced by the wholesaler in its territory designated by the supplier, unless such cessation is due to force majeure or to labor dispute and the wholesaler has made good faith efforts to overcome such events. However, this shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

F. Notwithstanding Subsections A, C, and E of this Section, a supplier may terminate, cancel, not renew, or discontinue an agreement upon not less than thirty days prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler, provided the supplier does not resume production or distribution of one or more of such

brands in this state within twenty-four months of the date production or distribution was discontinued. However, nothing in this Section shall prohibit a supplier from:

(1) Upon not less than thirty days notice, discontinuing the distribution of any particular brand or package of beer, provided the supplier does not resume distribution of the particular brand or package of beer in this state within twenty-four months of the date distribution was discontinued.

(2) Conducting test marketing of a new brand of beer which is not currently being sold in this state, provided that the supplier has notified the commissioner in writing of its plans to test market, which notice shall describe:

(a) The market area in which the test shall be conducted.

(b) The name or names of the wholesaler or wholesalers who will be selling the beer.

(c) The name or names of the brand of beer being tested.

(d) The period of time, not to exceed eighteen months, during which the testing will take place.

§ 806. Transfer of wholesaler's business; interference prohibited

A. Upon written notice of intent to transfer the wholesaler's business, any individual owning or deceased individual who owned an interest in a wholesaler may transfer the wholesaler's business to a designated member, or to any other person who meets the nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for similarly situated wholesalers. The consent or approval of the supplier shall not be required for any transfer of the wholesaler's business, including the assignment of the wholesaler's rights under the agreement, to a designated member or shall not be withheld or unreasonably delayed to a proposed transferee who meets such nondiscriminatory, material, and reasonable qualifications and standards. A designated member or transferee shall in no event be qualified as a transferee, without the written approval or consent of the supplier, when such proposed transferee has been involved in any of the following:

(1) Insolvency, filing of any voluntary or involuntary petition under any bankruptcy or receivership law, or execution of an assignment for the benefit of creditors.

(2) Revocation or suspension of an alcoholic beverage license by the regulatory agency of the United States or any state, whereby service was interrupted for more than thirty-one days.

(3) Conviction of the proposed transferee or any owner thereof of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier.

(4) Had an agreement involuntarily terminated, cancelled, not renewed, or discontinued by a supplier for good cause.

B. The supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member or if the transferee other than a designated member meets such nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for similarly situated wholesalers. If the transferee is other than a designated member, the supplier may in good faith and for good cause related to the reasonable qualifications refuse to accept the transfer of the wholesaler's business or the assignment of the wholesaler's rights under the agreement.

§ 807. Reasonable compensation upon supplier's violation; arbitration

A. Except as provided for in this Chapter, a supplier that has amended, modified, cancelled, terminated, or refused to renew any agreement; or has caused a wholesaler to resign from an agreement; or has interfered with, prevented, or unreasonably delayed, or, when required by this Chapter, withheld or unreasonably delayed consent to or approval of any assignment or transfer of a wholesaler's business, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include but not be limited to its goodwill. However, nothing contained in this Chapter shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of the wholesaler's business.

B. Should either party at any time determine that mutual agreement on the amount of reasonable compensation cannot be reached, the supplier or the wholesaler may send by certified mail, return receipt requested, written notice to the other party declaring its intention to proceed with arbitration. Arbitration shall proceed only by mutual agreement of both parties.

C. Not more than ten business days after the notice to enter into arbitration has been delivered, the other party shall send written notice to the requesting party declaring its intention either to proceed or not to proceed with arbitration. Should the other party fail to respond within ten business days, it shall be conclusively presumed that said party shall have agreed to arbitration.

D. The matter of determining the amount of compensation may, by agreement of the parties, be submitted to a three-member arbitration panel consisting of one representative selected by the supplier but unassociated with the affected supplier; one wholesaler representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator.

E. Not more than ten business days after mutual agreement of both parties has been reached to arbitrate, each party shall designate in writing its one arbitrator representative, and the party initiating arbitration shall request in writing a list of five arbitrators from the American Arbitration Association or its successor and request that the list be mailed to each party by certified mail, return receipt requested. Not more than ten business days after the receipt of the list of five choices, the wholesaler arbitrator and the supplier arbitrator shall strike and disqualify up to two names each from the list. Should either party fail to respond within the ten business days or should more than one name remain after the strikes, the American Arbitration Association shall make the selection of the impartial arbitrator from the names not stricken from the list.

F. Not more than thirty days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute. The panel shall conclude the arbitration within twenty days after it convenes and shall render a decision by majority vote of the arbitrators within twenty days from the conclusion of the arbitration. The award of the arbitration panel shall be final and binding on the parties as to the amount of compensation for the diminished value.

G. The cost of the impartial arbitrator, the stenographer, and the meeting site shall be equally divided between the wholesaler and the supplier. All other costs shall be paid by the party incurring them.

H. After both parties have agreed to arbitrate, should either party, except by mutual agreement, fail to abide by the time limitations as prescribed in Subsections C, E, and F of this Section, or fail or refuse to make the selection of any arbitrators, or fail to participate in the arbitration hearings, the other party shall make the selection of its arbitrators and proceed to arbitration. The party who has failed or refused to comply

as prescribed in this Section shall be considered to be in default. Any party considered to be in default pursuant to this Subsection waives thereby any and all rights the party would have had in the arbitration and shall be considered to have consented to the determination of the arbitration panel.

§ 808. Wholesaler may not waive rights; agreement to waive void

A wholesaler may not waive any of the rights granted in any provision of this Chapter and the provisions of any agreement which would have such an effect shall be null and void. Nothing in this Chapter shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

§ 809. Application to future agreements; transferee continues under agreement

A. This Chapter shall apply to agreements entered into or renewed after May 26, 1993.

B. A transferee of a wholesaler that continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer. However, a transfer of a wholesaler's business which requires the supplier's consent or approval but is disapproved by the supplier shall be null and void.

§ 810. Civil action for violations; damages; venue

A. If a supplier or wholesaler engages in conduct prohibited under this Chapter, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct.

B. A supplier or wholesaler that violates any provision of this Chapter shall be liable for all actual damages and all court costs and, in the court's discretion, reasonable attorney fees incurred by a wholesaler as a result of that violation.

C. A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this Chapter.

D. Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this Chapter.

E. Any legal action taken under this Chapter or in a dispute over the provisions of an agreement shall be filed in a court, state or federal, located in Louisiana, which state court is located in, or which federal court has jurisdiction and venue of, the parish in which the wholesaler maintains its principal place of business in this state.

§ 811. Nonwaiver

No right or cause of action authorized by Louisiana law shall be waived by the supplier or wholesaler unless specifically waived in this agreement.

§ 812. Cumulative

This Chapter is cumulative and supplements and is in addition to other laws of this state.

CHAPTER 7. TOBACCO PRODUCTS

Section

- 901. Definitions.
- 902. Permits.
- 903. Permit fees.
- 904. Permit terms.
- 905. Renewal of a permit.
- 906. General requirements.
- 907. *repealed*
- 907.1 Commissioner's examination of records; permit suspension or revocation.
- 908. Issuance of permit.
- 909. General requirements of eligibility.
- 909.1 Cash or short-term sales only; notification; penalty for violation
- 910. Vending machines.
- 911. Acts prohibited.
- 912. Permits; necessity of display; penalties.
- 913. Violation.
- 914. Exceptions.
- 915. *repealed*
- 916. Suspensions or revocations.
- 917. Violations by employee; employer liability.
- 918. Civil penalties.
- 919. Administrative hearings.
- 919.1 Participation in hearing by video conference
- 920. Appeal.
- 921. Public records.
- 922. Powers of commissioner.
- 923. Additional powers of the commissioner.
- 924. Issuance of minimum price cigarettes.
- 925. to 930. Blank

CHAPTER 7. TOBACCO PRODUCTS

§ 901. Definitions

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

(1) “Alternative nicotine product” means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. “Alternative nicotine product” does not include any of the following:

(a) Tobacco product.

(b) Vapor product.

(c) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).

(d) Device pursuant to 21 U.S.C. 321(h).

(e) Combination product described in 21 U.S.C. 353(g).

(2) “Brand family” has the meaning as set forth in R.S. 13:5072(1).

(3) “Cigar” includes any roll of tobacco for smoking, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.

(4) “Cigarette” includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper, or any other material except where such wrapper is wholly or in greater part made of tobacco.

(5) “Commissioner” means the commissioner of alcohol and tobacco control.

(6) “Dealer” includes every person who manufactures or purchases cigars, cigarettes, or other tobacco products for distribution or resale in this state. The term also means any person who imports cigars, cigarettes, or other tobacco products from any state or foreign country for distribution, sale, or consumption in this state.

(7) “Exporter license” means the stamping agent designation as set forth in R.S. 26:902(2)(a).

(8) “Facility” means a part or portion of an establishment which is designed so as to

impede a minor's access to a vending machine by walls or other separation in combination with signs designed to notify the public that persons under the age of eighteen are prohibited from the area.

(9) A “knowing violation or failure” is a knowing or intentional engaging in conduct without a good faith belief that the conduct was consistent with the provisions of this Chapter.

(10) “Manufacturer” means anyone engaged in the manufacture, production, or foreign importation of tobacco products who sells to wholesalers.

(11) “Person” means any natural person, trustee, company, partnership, corporation, or other legal entity.

(12) “Place of business” means the place where the tobacco orders, alternative nicotine product orders, or vapor products orders are received, or where the taxable tobacco articles are sold, or if sold by a retail dealer upon a railroad train or on or from any other vehicle, the vehicle on which or from which the taxable articles or alternative nicotine products or vapor products are sold by the retail dealer. It also includes the establishment where vending machines are located.

(13) “Purchase” means acquisition in any manner, for any consideration. The term shall include transporting or receiving product in connection with a purchase.

(14) “Rebate or coupon” means any value-added promotion, preferred customer promotion, periodic promotion, off-invoice allowance, specially marked one-packed deals, special price promotions, market leader promotions, value leader promotions, or any other program or incentive whereby a wholesaler or retailer is required, either directly or indirectly, to pass an incentive on to a consumer and is reimbursed, either directly or indirectly, by a manufacturer, importer, or sales entity affiliate.

(15) “Replacement cost” means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity as the seller’s last purchase of the merchandise.

(16) “Retail dealer” includes every dealer other than a wholesale dealer, or manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products, alternative nicotine products, or vapor products, irrespective of quantity or the number of sales.

(17) “Sale” or “sell” means any transfer, exchange, or barter in any manner or by any means for any consideration. The term shall include distributing or shipping product in connection with a sale. References to a sale “in” or “into” a state refer to the state

of the destination point of the product in the sale, without regard to where title was transferred. References to sale “from” a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

(18) “Sales entity affiliate” means an entity that sells cigarettes that it acquires directly from a manufacturer or importer and is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(19) “Secretary” means the secretary of the Department of Revenue and includes any of his duly authorized assistants.

(20) “Self-service display” means any display that contains tobacco products, alternative nicotine products, or vapor products, and is located in an area openly accessible to the retail dealer's customers and from which such customers can readily access tobacco products, alternative nicotine products, or vapor products without the assistance of a salesperson. A display case that holds tobacco products, alternative nicotine products, or vapor products behind locked doors does not constitute a self-service display for purposes of this Chapter.

(21) “Sell at retail”, “sales at retail”, and “retail sale” means any transfer for valuable consideration, made in the ordinary course of trade or in the usual conduct of the seller’s business, of title to tangible movable property to the purchaser.

(22) “Sell at wholesale”, “sales at wholesale”, and “wholesale sales” mean any transfer for valuable consideration, made in the ordinary course of trade or the usual conduct of the seller’s business, of title to tangible movable property to the purchaser for the purposes of resale.

(23) “Smokeless tobacco” means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity.

(24) “Smoking tobacco” includes granulated, plug cut, crimp cut, ready rubbed, and any other kind and form of tobacco prepared in such manner as to be suitable for smoking in pipe or cigarette.

(25) “Stamp” means the impression, device, stamp, label, or print manufactured or printed as prescribed by the secretary by the use of which the tax levied hereunder is paid. By way of extension, and not limitation, the term “stamp” means any impression or character affixed to or which shall be stamped upon commodities by

metered stamping machine or device by use of which the tax levied hereunder is paid.

(26) “Stamping agent” means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(27) “State directory” or “directory” means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

(28) “Tobacconist” means any bona fide tobacco retailer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where fifty percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

(29) “Tobacco product” means any cigar, cigarette, smokeless tobacco, or smoking tobacco.

(30) “Trade discount” means any discount immediately recognized by a wholesale dealer from the manufacturer, importer, or sales entity affiliate or by a retail dealer from a manufacturer, importer, sales entity affiliate, or wholesale dealer. Trade discount does not include any off-invoice allowances that a wholesale dealer is required, either directly or indirectly, to pass on to a retailer dealer or any rebates or coupons as defined in this Chapter that a wholesale or retail dealer is required to offer to the end consumer, but is reimbursed for, either directly or indirectly, by either the manufacturer, importer, sales entity affiliate, or wholesale dealer.

(31) “Vapor product” means any non-combustible product containing nicotine or other substances that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. “Vapor product” includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Vapor product” does not include any of the following:

(a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).

(b) Device pursuant to 21 U.S.C. 321(h).

(c) Combination product described in 21 U.S.C. 353(g).

(32) "Vending machine" means any mechanical, electric, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products, alternative nicotine products, or vapor products.

(33) "Vending machine operator" means any person who controls the use of one or more vending machines as to the supply of cigarettes or any tobacco products in the machine or the receipts from cigarettes vended through such machines.

(34) "Wholesale dealer" means 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 fifty percent of whose total tobacco sales are to retail stores other than its own or its subsidiaries within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services fifty or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January 1, 1974. If any person is engaged in the business of making sales at both wholesale and retail, "wholesaler" shall apply only to the wholesale portion of the business.

§ 902. Permits

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

(1) 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, other tobacco products, alternative nicotine products, or vapor products are offered for sale either over the counter or by vending machine.

(2)(a) Stamping Agent Designation. A stamping agent designation shall be issued to a dealer that engages in the business of purchasing unstamped or non-tax paid cigarettes that meets all requirements of a wholesale dealer as defined by this Chapter, the provision of R.S. 26:906(H), and any rules or regulations issued in connection therewith.

(b) The holder of a valid stamping agent designation that engages in interstate business or affixes tax stamps of another state shall first apply for an exporter license allowing it to purchase or possess unstamped or non- tax paid cigarettes.

(3) Vending Machine Operator Permit. A vending machine operator permit shall be issued to a vending machine operator operating one or more vending machines.

Licensed wholesale dealers who operate vending machines shall not be required to obtain a vending machine operator permit.

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

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

§ 903. Permit fees

The fees for each permit shall not exceed amounts provided for in the following schedule and in accordance with regulations promulgated pursuant to the provisions of the Administrative Procedure Act:

(1) Retail dealer permit--\$ 25.00 per year or any portion thereof.

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

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

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

(5) Tobacconist--The commissioner of alcohol and tobacco control shall promulgate rules to issue a single permit for bona fide Louisiana tobacconists. Such single permit shall allow any bona fide Louisiana tobacconist to operate as a retail tobacco dealer and as a wholesale tobacco dealer. Any fee assessed for such single tobacconist permit shall be one hundred dollars.

§ 904. Permit terms

A. Except as otherwise provided in this Section, each permit shall be valid for the designated time period unless suspended or revoked. The commissioner may issue permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control.

B. To provide for the even distribution of the expiration and renewal of tobacco

product permits, the commissioner may establish by administrative rule a system by which the expiration dates of the permits are staggered throughout the year. Permits issued may vary in length from six months to twenty-four months. The fee for the permits shall be apportioned to comply with the yearly fee established in this Chapter.

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

D. An exporter license issued pursuant to R.S. 26:902(5)(b) shall remain in effect for a period of one year.

§ 905. Renewal of a permit

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

B. If a dealer fails to file an application and pay the permit fees by the date established by the commissioner, there shall be added to the fee, in addition to other penalties provided in this Chapter, a delinquency penalty of twenty-five percent if the failure is not more than thirty days, with an additional twenty-five percent for each additional thirty days or fraction thereof during which the failure continues. If the dealer fails to make his application by the date established by the commissioner, the commissioner may, without notice or hearing, suspend his right to possess or sell tobacco products, alternative nicotine products, and vapor products.

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

§ 906. General requirements

A. Every person who sells or is about to engage in the business of selling at retail, at wholesale, or by vending machine, or is about to engage in the business of receiving unstamped and/or non-tax paid cigarettes, cigars, or other tobacco products, or who is

engaged in the business of receiving stamped cigarettes at wholesale or any or all of the articles taxed in accordance with Title 47 of the Louisiana Revised Statutes of 1950, shall first apply to and obtain from the office a permit for each place of business and each vending machine.

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

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

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

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

F. The provisions of this Chapter shall not apply to commissaries, canteens, or snack bars located in a correctional facility owned and operated by the state, or a parish, or municipality.

G. In the implementation and enforcement of this Chapter the commissioner shall not require an applicant, registrant, or permittee to make public any trade negotiated contract information or business information otherwise protected by law.

H. Applicants for a stamping agent designation shall certify on a form provided by the commissioner that they will do the following:

- (1) Affix stamps as set forth in R.S. 47:843(D).
- (2) Pay to the state all taxes applicable under R.S. 47:841 et seq. on cigarettes it sells or present documentation demonstrating that such taxes were paid prior to the sale.
- (3) Provide complete and accurate reports as required by this Chapter, R.S. 13:5071 et seq., or R.S. 47:841 et seq. and certify monthly that it has complied with all requirements therein.
- (4) Comply generally with all other provisions set forth in R.S. 47:841 et seq.
- (5) Consent to the jurisdiction of the state to enforce the requirements of this Chapter and waive any claim of sovereign immunity to the contrary.
- (6) Waive all confidentiality laws as necessary to permit the commissioner to create and make available the list described in R.S. 26:921(B) and to share information reported under this Chapter with the taxing or law enforcement authorities of other states.

I. Applicants for a stamping agent designation located outside of the state shall appoint an agent in the state for service of process in connection with enforcement of the provisions of this Chapter and the provisions of R.S. 13:5061 et seq., and R.S. 47:841 et seq.

J. An exporter license shall be issued upon the applicant's meeting the following requirements:

- (1) Demonstrates that it holds a valid stamping agent designation.
- (2) Certifies on a form provided by the commissioner that any cigarettes of a manufacturer or brand family not listed on the state directory will be purchased or possessed solely for sale or transfer into another state as permitted by R.S. 47:849.
- (3) Maintains such cigarette inventory pursuant to Paragraph (2) of this Subsection, in a separate and distinct area within its warehouse.
- (4) Waives any confidentiality laws as necessary to permit the commissioner to create and make available a list as provided in R.S. 26:921(C).

§ 907.1. Commissioner's examination of records

The commissioner shall have the authority to examine invoices and sales and tax records of the holder of any permit issued under this Chapter. Such examination shall be conducted for the purpose of determining whether the permittee is a bona fide

wholesale dealer or retail dealer who is operating in compliance with the requirements of this Chapter. The invoices and records examined shall be held confidential and shall not be made public by the commissioner unless it is necessary for them to be used in a judicial or administrative action to determine such matter.

§ 908. Issuance of permit

A. The commissioner may issue the permits immediately upon receipt of the application unless the application fails to comply with R.S. 26:906. For a period of thirty-five days after issuance, during which time the commissioner shall conduct a proper investigation, the permittee shall operate on a probationary basis subject to final action on or withholding of the permits as hereinafter provided.

B. The commissioner shall investigate all applications for permits and shall withhold the issuance of the permit where that action is justified under this Chapter. The decision to withhold the permit shall be made within thirty-five calendar days of the filing of the application. Any intentional misstatement or suppression of a material fact in an application shall constitute grounds for denial of the permit.

C. Within five calendar days of the decision to withhold the permit, the commissioner shall notify the applicant in writing of the withholding of the permit and shall assign the reasons therefor. Such notice shall be either delivered to the applicant in person or sent to him by registered mail at the business address given in his last application. When so addressed and mailed, the notice shall be presumed to have been received by the applicant.

D. No exporter license may be issued to a person that violated a certification it previously made under R.S. 26:906(J)(2).

§ 909. General requirements of eligibility

A. The commissioner may suspend a permit previously issued or may refuse to grant a permit if, after a hearing and by a preponderance of the evidence, it is proven that the permittee, or an employee or agent thereof, or applicant either:

(1) Is not a bona fide dealer as defined in R.S. 26:901.

(2) Has violated the terms and provisions of R.S. 14:91.6 relative to the unlawful distribution of tobacco products, alternative nicotine products, or vapor products.

(3) Has violated the terms and provisions of the "Prevention of Youth Access to Tobacco Law" under R.S. 14:91.8.

(4) Has violated the provisions of this Chapter or any rules or regulations issued in connection therewith.

(5) Has violated any provision of R.S. 47:841 et seq.

(6) Has failed to pay any sales taxes due to the state.

B. (1) The commissioner may refuse to grant or shall suspend any permit previously granted until such time as the applicant may supply evidence to the contrary, in any of the following circumstances:

(a) Where there is prima facie evidence that the applicant is not a bona fide dealer.

(b) When the applicant has violated the terms and provisions of the Unfair Sales Law as it applies to tobacco products as provided in R.S. 26:924, or has violated the provisions of this Chapter or Chapter 8 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, or any rules, regulations, or instructions issued in connection therewith.

(2) Information concerning the Unfair Sales Law as it pertains to tobacco products shall be governed by R.S. 26:924.

C. Except as provided in Subsection D of this Section, no permit shall be granted when the applicant or anyone connected with the applicant's business has been previously convicted of any violation of Chapter 8 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 or of any felony under the laws of this state or the United States.

D. Conviction of a felony. Where the applicant is an individual, partnership, or domestic or foreign corporation or other business organization and that applicant or a partner, officer, director, or stockholder of that applicant has been convicted of a felony, the commissioner shall determine whether the conviction is related to the applicant's business in Louisiana. If the commissioner finds that the conviction is unrelated to the applicant's business in Louisiana, the permit may be issued. If the commissioner determines that there is reason to believe that the conviction is related to the applicant's business in Louisiana or if he refuses to issue a finding, the applicant shall be entitled to a hearing with the commissioner. If after the hearing the commissioner finds that the conviction is reasonably related to the applicant's business in Louisiana, the commissioner shall deny the permit, suspend the use of the permit for a specified period, or revoke a permit previously granted.

E. (1) Notwithstanding any other provision of law to the contrary, nothing shall prohibit any tobacconist at a particular retail outlet as defined in this Subsection from purchasing tobacco products for such retail outlet from any manufacturer, wholesale dealer, or other supplier, if such dealer has a valid, unsuspended certificate or permit.

(2) “Tobacconist at a particular retail outlet” for purposes of this Subsection means a bona fide retail dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where fifty percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

§ 909.1. Cash or short-term sales only; notification; penalty for violation

A. No manufacturer or wholesale dealer shall sell, or deliver any tobacco products to any retail dealer in this state, and no retail dealer in tobacco products shall buy or accept delivery for any such product for any consideration other than cash terms. If payment is not received when due or payment is returned for insufficient funds, the vendor shall within five business days, notify the commissioner thereof and the commissioner shall promptly notify all manufacturers and wholesale dealers in the state of the default in payment and thereafter no person shall sell any tobacco products to the retailer in default on any other terms than cash delivery, until otherwise authorized by the commissioner. Under penalty of suspension of the permit, the retailer who is in default shall pay his obligation in full within thirty days from the date it became due.

B. Whoever violates the provisions of this Section may have his permit suspended for not more than five days for the first offense and not more than thirty days for any subsequent offense. Each failure of a retail dealer to make payment for any default before the expiration period of suspension constitutes a subsequent offense. In addition, the retail dealer may be required to make payment in cash for all tobacco products subsequently sold or delivered to him.

C. The commissioner shall promulgate rules and regulations for the enforcement of this Section.

§ 910. Vending machines

In order to prevent persons under eighteen years of age from purchasing or receiving tobacco products, alternative nicotine products, or vapor products from vending

machines, the sale or delivery of such products through a vending machine is prohibited unless either:

- (1) The machine is located in an establishment to which persons under the age of eighteen are denied access.
- (2) The machine is located in facilities where the dealer ensures that no person younger than eighteen years of age is present or permitted to enter at any time and the machine is located within the unobstructed line of sight of a dealer or a dealer's agent or employee who is responsible for preventing persons younger than eighteen years of age from purchasing tobacco products, alternative nicotine products, or vapor products through that machine.

§ 910.1. Self-service displays

A. In order to prevent persons under eighteen years of age from purchasing or receiving tobacco products, alternative nicotine products, or vapor products from self-service displays, the sale or delivery of such products through a self-service display is prohibited unless the machine is a vending machine as defined in R.S. 26:910 that complies with the terms and provisions of that Section.

B. (1) The provisions of this Section shall not apply to a tobacconist at a particular outlet or a retail tobacco business.

(2) "Retail tobacco business" for purposes of this Section means a bona fide retail dealer engaged in the sale of tobacco products and accessories for retail sale where fifty percent or more of the total sales for the preceding twelve months, excluding fuel sales, were tobacco products, including cigarettes, alternative nicotine products, or vapor products.

(3) "Tobacconist at a particular outlet" for purposes of this Section means a bona fide retail dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where fifty percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

§ 911. Acts prohibited

A. No person, agent, associate, employee, representative, or servant of any person shall permit any of the following acts to be done on or about any premises which sells or offers for sale tobacco products, alternative nicotine products, or vapor products:

(1) Sell or serve tobacco products, alternative nicotine products, or vapor products over-the-counter in a retail establishment to any person under the age of eighteen unless such person submits a driver's license, selective service card, or other lawful identification which on its face establishes the age of the person as eighteen years or older and there is no reason to doubt the authenticity or correctness of the identification.

(2) Violate the terms and provisions of R.S. 14:91.6 relative to the unlawful distribution of tobacco products, alternative nicotine products, or vapor products.

(3) Violate the terms and provisions of the "Prevention of Youth Access to Tobacco Law" under R.S. 14:91.8.

(4) Violate the terms and provisions of this Chapter or any rules or regulations promulgated by the office pursuant to this Chapter.

(5) Accept Supplemental Nutrition Assistance Program "SNAP" electronic benefit transfer cards as payment for tobacco products in violation of the provisions of 7 U.S.C. 2011 et seq., and any federal regulation issued pursuant thereto.

(6) Illegally sell, offer for sale, possess, or permit the consumption on or about the licensee's premises of any kind or type of controlled dangerous substance.

B. (1) No retail dealer shall purchase tobacco products for resale except from a wholesale dealer operating with a valid unsuspended wholesale dealer permit, except as provided for in this Chapter.

(2) No wholesale dealer shall sell tobacco products for resale except to a retail dealer operating with either a valid registration certificate or a valid unsuspended permit.

(3)(a) Notwithstanding Paragraphs (B)(1) and (2), any tobacconist at a particular retail outlet as defined in Subparagraph (B)(3)(b) may purchase tobacco products for such retail outlet from any manufacturer, wholesale dealer, if such dealer has a valid, unsuspended certificate or permit, or other supplier.

(b) "Tobacconist at a particular outlet" for purposes of this Paragraph means a retail dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where fifty percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

C. No wholesale dealer shall sell to a retail dealer and no retail dealer shall sell to the public single cigarettes. No individual package of cigarettes shall be sold or distributed in individual packages containing fewer than twenty cigarettes. No smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes shall be sold or distributed in individual packages containing less than six-tenths of one ounce of smoking tobacco. No cigarette or smokeless tobacco product shall be sold to the public except in an unopened package originating with the manufacturer, bearing the health warning required by federal law, and evidencing that the applicable tax under Chapter 8 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 has been paid.

§ 912. Permits; necessity of display; penalties

A. A permit issued under this Chapter is a personal privilege and cannot be transferred, assigned, or inherited. The permit must be returned to the office of alcohol and tobacco control or surrendered to an agent of the commissioner within five days of permanently ceasing business operations or when there is a change in ownership. If the permit holder is a corporation or limited liability company, the permit holder shall notify the office of alcohol and tobacco control of any changes in the officers, directors, managers, shareholders, or members within fifteen days of the date of such changes. The notification shall include the suitability documents and information for each new individual required to possess the qualifications of the applicants. If the business is physically relocated during the permit period, the permit holder must notify the commissioner in writing prior to relocating.

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

C. Each permit shall include a unique number assigned by the commissioner.

D. Nothing herein shall prohibit an individual, partnership, or corporation otherwise qualified from obtaining multiple permits.

§ 913. Violation

No person shall perform any action for which a permit is required by this Chapter unless he holds the proper permit. Each day of business which is conducted without such a valid, unsuspended permit shall constitute a separate violation of this Chapter.

§ 914. Exceptions

Any person not otherwise a dealer coming into possession of any cigar, cigarette, or tobacco product as executor, administrator, trustee, or other fiduciary, as security for or in payment of a debt, or as an insurer, or its transferee or assignee for the salvage or liquidation of an insured casualty or damage or loss, or as an administrator or executor of a succession, may sell the tobacco product in one lot or parcel to a duly licensed wholesale or retail dealer without qualifying as a dealer. Immediately after taking possession of the cigar, cigarette, or smoking tobacco, the person shall register with the secretary and furnish to him a detailed list of the tobacco products and post with the secretary a bond in such amount as the secretary deems sufficient to protect the state from any taxes due on the cigar, cigarette, or tobacco product. The person shall pay to the secretary a registration fee of ten dollars, which fee shall permit the sale of only the cigar, cigarette, or tobacco product detailed in the registration request.

§ 916. Suspensions or revocations

A. The commissioner, the secretary, governing authorities of municipalities or parishes, sheriffs, law enforcement authorities, and citizens, in accordance with the procedure below, have the right to have a permittee cited by the commissioner to show cause why his permit or permits should not be suspended or revoked.

B. The commissioner shall have periodic examinations made of the businesses of all persons holding permits under this Chapter. If a violation of the Chapter or of any rule or regulation of the commissioner or the secretary is observed, the commissioner may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the commissioner may instruct any agent or employee of the commissioner to prepare and file, upon information and belief based upon the facts in hand, a petition for assessing a fine, or suspension or revocation of the permit, setting forth the facts and circumstances of the violation, and shall thereupon summon the permittee to appear and show cause why the permit should not be suspended or revoked or the fine not assessed.

C. The secretary, parish or municipal governing authorities, sheriffs, and other law enforcement officers may have periodic investigations made of the businesses of all permittees within their respective jurisdictions. If any violation of any provision of this Chapter or of any rule or regulation adopted by the commissioner is observed, such authorities may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the authority shall file an affidavit with the commissioner, setting forth the facts and circumstances of the violation. Thereupon, the commissioner shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

D. Any person may file with the commissioner a sworn petition requesting that a permit be suspended or revoked. When such a petition is received by the commissioner, he shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

E. (1) No such petition shall be considered by the commissioner unless submitted together with supporting affidavits made on personal knowledge, which shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The commissioner may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits.

(2) If it appears from the affidavits of the permittee opposing the petition that he cannot present by affidavit facts essential to justify his opposition, the commissioner may suspend or revoke a permit or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(3) If it appears to the satisfaction of the commissioner at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purposes of harassment of a dealer and are without merit, the commissioner may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees. Any offending party or attorney may be adjudged guilty of contempt.

F. No permit shall be withheld, suspended, or revoked except for cause as specified in this Chapter. If a person holds more than one permit and only one is suspended or revoked, the commissioner may not suspend or revoke any of his other permits, except for cause as specified in this Chapter.

G. Conviction by a court of competent jurisdiction of any violation of this Chapter is not a condition precedent to the refusal, suspension, or revocation of a permit under

this Chapter for a violation of any provision of this Chapter or of any administrative rule. If there has been a previous criminal prosecution for the same or a similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of an acquittal in a court of competent jurisdiction is admissible in a proceeding before the commissioner. The commissioner may withhold, suspend, or revoke permits for violations of this Chapter, regardless of any prosecution in the court or as the result of any such prosecution.

H. The designation of a stamping agent shall be subject to termination if a permittee does any of the following:

(1) Fails to provide a report or certification as required by this Chapter, R.S. 13:5061 et seq., or R.S. 47:841 et seq.

(2) Knowingly files an incomplete or inaccurate report or certification.

(3) Fails to pay taxes as provided in R.S. 47:841 et seq.

(4) Fails to sell cigarettes in or into the state pursuant to R.S. 47:843 or sells unstamped cigarettes of a manufacturer or brand family that is not at the time listed on the state directory, or sells, offers or possesses for sale in this state, or imports for personal consumption in this state, cigarettes received, imported, or stamped after receiving notice that the manufacturer or brand family is not on the state directory, except as expressly permitted in R.S. 47:841 et seq.

(5) Purchases or sells cigarettes in violation of the provisions of this Chapter or R.S. 47:841 et seq.

I. In the case of a first violation under Paragraphs (1) or (3) of Subsection H of this Section that was not knowing or intentional, the stamping agent may be entitled to cure the failure within thirty days of being notified of the violation. The designation of a stamping agent that fully cures the failure during the prescribed period shall not be terminated on account of that failure.

J. The designation of a stamping agent may be subject to termination if its similar designation is terminated in any other state based on acts or omissions that would be grounds for designation termination under this Section, unless the stamping agent demonstrates that its designation termination in the other state was terminated without due process. A stamping agent whose designation is terminated under this Subsection shall be eligible for reinstatement upon the earlier date specified by Subsection M of this Section for the omission in question or reinstatement of its license by the other state.

K. The commissioner shall promptly remove any stamping agent whose designation

is terminated from the list required by R.S. 26:921(B) and shall publish a notice of the termination on its website and send notice of the termination to all wholesale dealers, the attorney general, and the secretary. The attorney general shall send notice of the termination to all persons listed on the state directory.

(1) Beginning five days following the publication and sending of such notice, no person may sell cigarettes nor purchase cigarettes from the stamping agent whose designation has been terminated.

(2) A stamping agent whose designation has been terminated may, within thirty days from the date of the publication, return any unaffixed stamps to the secretary for a refund equal to the current value of each stamp returned. No refunds shall be issued after thirty days from the date of the publication of the termination.

L. (1) A stamping agent whose designation is terminated shall be removed from the list required by R.S. 26:921(B). (2) Any person that sells cigarettes to or purchases cigarettes from a terminated stamping agent after the stamping agent has been removed from the directory by R.S. 26:921(B), shall be jointly and severally liable for any taxes applicable to such cigarettes under R.S. 47:841 and for any escrow due on such cigarettes under R.S. 13:5063 during the period of the termination.

M. A stamping agent whose designation is terminated shall be eligible for reinstatement no less than ninety days and no more than three years following date of termination.

N. In addition to any other causes enumerated in this Chapter, the commissioner shall suspend or revoke any permit of any dealer that fails to pay taxes due to the state.

§ 917. Violations by employee; employer liability

A. Sale of tobacco products, alternative nicotine products, or vapor products to a minor by a retail dealer's agent, associate, employee, representative, or servant shall be considered an act of the retail dealer for purposes of suspension, revocation, or assessment of civil penalties unless all of the following conditions exist:

(1) The employer requires employees to attend a commissioner-approved seller training program.

(2) The employee actually attends the training program.

(3) The employer does not directly or indirectly encourage the employee to violate the prohibited sales provisions of this Chapter.

B. The commissioner shall establish by administrative rule the minimum requirements for an approved seller training program. Upon submission of an application which establishes the course curriculum the commissioner may approve seller training programs with the minimum requirements. Training courses may be approved which are offered through private seminars or by accredited colleges or universities. The commissioner may charge an application fee in such amount as is necessary to defray the expense of processing the application.

C. The provisions of Subsection A of this Section shall not apply if a retail dealer, or lawful retailer of alternative nicotine products or vapor products, as applicable, within one hundred eighty days from the hiring of an agent, associate, employee, representative, or servant can prove that he has made application to have the employee attend a training program or the retail dealer or lawful retailer, as applicable, has received an extension of time in which to comply from the commissioner because of unavailability of a training program.

§ 918. Civil penalties

A. Notwithstanding any other provision of this Chapter to the contrary, the commissioner may, in lieu of or in addition to revocation or suspension of a permit issued under the authority of this Chapter, impose the following schedule of fines to be paid into the state treasury:

(1) For a first offense, not less than fifty dollars but not more than five hundred dollars.

(2) For a second offense, which occurs within two years of the first offense, not less than two hundred fifty dollars but not more than one thousand dollars.

(3) For a third offense, which occurs within two years of the first offense, not less than five hundred dollars but not more than two thousand five hundred dollars.

B. In the case of a knowing or intentional first violation of R.S. 26:916(H)(1) through (5), the stamping agent shall be subject to a civil penalty of up to one thousand dollars.

C. In the case of a second or subsequent violation of R.S. 26:916(H)(1) through (5), the stamping agent shall be subject to a civil penalty of up to five thousand dollars per violation. In the case of a violation of R.S. 26:916(H)(4) or (5), each sale shall constitute a separate offense.

D. Any fine imposed upon any permittee or the revocation or suspension of a permit is in addition to and is not in lieu of or a limitation upon any other penalty imposed by law and not contained in this Chapter.

§ 919. Administrative hearings

When the commissioner holds a hearing pursuant to this Chapter, he shall issue a written summons or notice to the applicant or permittee directing him to show cause why his application should not be refused or why he should not be assessed a penalty or why his permit should not be suspended or revoked. The notice or summons shall state the time, place, and hour of the hearing, which shall be not less than ten nor more than thirty calendar days from the day of the notice. The notice or summons shall enumerate the cause or causes alleged for refusing the application or for assessing the penalty or suspending or revoking the permit. If a petition has been filed opposing the issuance of the permit or asking for its suspension or revocation, a copy of the petition shall accompany the notice or summons. All notices or summonses shall be either delivered to the applicant or permittee in person or sent by certified mail to the applicant or permittee and directed to him at the mailing address as given in his last application for the permit. When so addressed and mailed, notices or summonses shall be presumed to have been received by the applicant or permittee.

B. Hearings by the commissioner shall, in his discretion, be held either in the state capitol or in the parish in which the licensed premises in question is located.

C. Hearings may be held by the commissioner or by any person designated and authorized by the commissioner. If the hearing is to be held by a person designated by the commissioner, that person shall take an oath for the faithful performance of his duties. The oath may be administered by anyone qualified by law to administer oaths in this state. The commissioner, or the persons designated to hold a hearing, may administer oaths, issue subpoenas for the attendance of witnesses and the production of books, papers, accounts, and documents, and examine witnesses and receive testimony at the hearing. Whenever a hearing is conducted by a person designated by the commissioner to hold the hearing, the testimony received shall be reduced to writing and a transcript thereof, together with all documentary evidence, if any, and all written arguments or briefs submitted shall be made and certified by the hearing examiner to the commissioner for his consideration and decision.

D. If a person fails to comply with a subpoena issued by the commissioner or by any duly authorized person holding the hearing or if a witness refuses to testify in any

matter regarding which he may be lawfully interrogated, the person conducting the hearing shall adjudge him guilty of contempt and may fine him not more than one hundred dollars or imprison him for not more than thirty days, or both. The criminal sheriff of the parish in which the hearing is held shall execute the judgment of contempt.

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

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

§ 919.1. Participation in hearing by video conference

To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing as authorized by this Chapter. Prior to utilizing such technology, the commissioner shall adopt rules pursuant to the provisions of the Administrative Procedure Act to provide for the methods and requirements of utilizing teleconference, video link, or other visual remote communications technology for conducting any hearings authorized by the provisions of this Chapter.

§ 920. Appeal

A. Decisions of the commissioner in withholding, suspending, or revoking permits are final and binding on all parties unless appealed in the manner provided by this Section and finally reversed by the courts.

B. Any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit may, within thirty days of the notification of the decision, take a devolutive or suspensive appeal to the district court having jurisdiction of the

applicant's or permittee's place of business, proposed or actual as the case may be. Such appeals shall be filed in the district courts in the same manner as original suits are instituted therein. The appeals shall be tried de novo. Either party may amend and supplement his pleadings and additional witnesses may be called and heard. When there has been a previous criminal prosecution for the same or a similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of an acquittal, dismissal, or plea of nolo contendere in a court of competent jurisdiction is admissible in the trial of the appeal.

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

D. All proceedings in the district and appellate courts arising under this Chapter are civil in nature and shall be heard summarily by the court, without a jury, shall take precedence over other civil cases, and shall be tried in chambers or in open court, in or out of term.

E. The courts of this state shall have jurisdiction to issue restraining orders and writs of injunction restraining the commissioner as provided in the constitution, but no writ or order shall issue before a decision has been made by the commissioner either withholding the application for a permit, or suspending or revoking a permit under this Chapter.

§ 921. Public records

A. The commissioner shall maintain a list of all wholesale and retail dealers who hold a permit in this state. Nothing contained in this Chapter shall be construed to prevent the commissioner from disclosing to any person upon request the name and address of any dealer who holds a permit, but the commissioner shall not disclose any tax information the disclosure of which is otherwise prohibited by law.

B. The commissioner shall provide on its website the list of all persons licensed as stamping agents pursuant to R.S. 26:902(2)(a).

C. The commissioner shall provide on its website the list of all persons holding an exporter license pursuant to R.S. 26:902(2)(b).

§ 922. Powers of commissioner

The commissioner shall only make, alter, amend, and promulgate rules and regulations as authorized by this Chapter necessary to comply with the provisions of this Chapter.

§ 923. Additional powers of the commissioner

The commissioner may provide by regulation for the issuance of three-day permits to sell tobacco products at fairs, festivals, civic and fraternal and religious events, Mardi Gras events, and nonprofit functions. The permits shall be for a duration of three consecutive days only and no more than twelve such permits may be issued to any one person within a single calendar year. Fees for the permits shall be as provided by regulation. The commissioner shall adopt rules and regulations in accordance with the Administrative Procedure Act to effectuate the purpose of this Section.

§ 924. Issuance of minimum price of cigarettes

A. The commissioner shall post on the website maintained by the office of alcohol and tobacco control the minimum wholesale and retail price schedule of each cigarette brand within five business days of the effective date of the manufacturer's, importer's, or sales entity affiliate's price change.

B. Every manufacturer, importer, or sales entity affiliate of cigarettes sold within Louisiana shall notify the commissioner, in writing, of any price change to any cigarette brand resulting from trade discounts, rebates, or coupons by the twenty-eighth day of the month preceding the effective date of the price changes resulting from trade discounts, rebates, or coupons and any such price change shall be valid for at least thirty days. Any price change not provided to the commissioner as required herein shall not be included in the commissioner's price schedule and shall not be computed in determining in the minimum retail prices for the product. No wholesale or retail dealer shall sell any cigarette brand at any price less than allowed in the minimum pricing schedule provided by the commissioner.

C. The minimum wholesale and retail price of all cigarettes sold within Louisiana

shall be computed as follows:

- (1) "Cost to the wholesaler" means the invoice cost or the replacement cost of the merchandise to the wholesaler, whichever is lower:
 - (a) Less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes;
 - (b) Plus the cost of doing business by the wholesaler, including freight charges and cartage costs presumed to be one percent of the invoice cost of cigarettes, and any fraction of cent shall be rounded to the next highest cent;
 - (c) Plus any existing tobacco stamp excise tax;
 - (d) Plus a markup of three percent; and
 - (e) Less any coupons or rebates, as defined in this Chapter, which are required, either directly or indirectly, to be passed on to the retail dealer.
- (2) "Cost to the retailer" means the invoice cost or the replacement cost of the merchandise to the retailer, whichever is lower:
 - (a) Less all trade discounts;
 - (b) Plus the cost of doing business by the retailer including freight charges and cartage, presumed to be one percent of the invoice cost of cigarettes, and any fraction of cent shall be rounded to the next highest cent;
 - (c) Plus a markup of six percent; and
 - (d) Less any coupons, rebates, or other incentives, as defined in this Chapter, which are required, either directly or indirectly, to be passed on the retail dealer and are ultimately refunded to the retailer by the manufacturer, importer, sales entity affiliate, or wholesale dealer.
- (3) In determining "cost to the retailer" in those cases where the retailer buys at wholesale and receives the wholesalers' profits and discounts on merchandise to be sold at retail, both the wholesale markup of three percent and the retail markup of six percent, in the absence of proof of a lesser cost, shall be added to cover a proportionate part of the cost of doing business.
- (4) When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, each and all of the items shall for the purposes of this Subsection be considered, advertised offered for sale, or sold, and the price of each item shall be governed by the provisions set forth herein.
- (5) "Cost to the retailer" and "cost to the wholesaler" as defined by this Chapter means bona fide costs. Purchases made by retailers and wholesalers at prices which cannot be justified by prevailing market conditions with this state shall not be used in determining "cost to the retailer" and "cost to the wholesaler".
- (6) Failure to comply with these provisions may result in penalties up to and including the suspension or revocation of the wholesale or retail dealer's permit.

CHAPTER 8. RESPONSIBLE VENDOR PROGRAM

Section

- 931. Short title.
- 932. Definitions.
- 933. Establishment of responsible vendor program.
- 934. Requirements for certification.
- 935. Server liability; penalties, fines, suspension or revocation of server permit, vendor's defenses.
- 936. Fees.
- 937. Preexisting server training programs.
- 938. Reports to the commissioner.
- 939. Applicability.

CHAPTER 8. RESPONSIBLE VENDOR PROGRAM

§ 931. Short title

This Chapter shall be known and may be cited as the “Louisiana Responsible Vendor Program”.

§ 932. Definitions

For purposes of this Chapter, the following terms have the respective meanings ascribed to them in this Chapter, unless a different meaning clearly appears from the context:

(1) “Approved provider” means an individual, unincorporated association, partnership, or corporation approved by the program administrator to provide server or security personnel training courses.

(2) “Commissioner” means the commissioner of alcohol and tobacco control.

(3) “Program administrator” means a committee of seven persons provided for in R.S. 26:933.

(4) “Responsible vendor” means any vendor as defined in Paragraph (10) of this Section who qualifies and maintains certification in accordance with the provisions of this Chapter.

(5) “Security Personnel” includes any person, other than a server, who monitors the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons, enforcing establishment rules and regulations and otherwise providing security for the establishment and its customers where alcoholic beverages are the principal commodity sold for consumption on the premises. “Security personnel” shall not include persons employed by hotels or motels which consist of sleeping rooms, cottages or cabins unless the person works primarily in an area on the licensed premises of a hotel or motel where the principal commodity sold is alcoholic

beverages for consumption on the licensed premises.

(6) “Server” means any employee of a vendor, other than security personnel, who is authorized to sell or serve alcoholic beverages, tobacco products, alternative nicotine products, or vapor products in the normal course of his or her employment or deals with customers who purchase or consume alcoholic beverages or tobacco products. “Server” shall not include individuals employed on a temporary or casual basis by a bona fide hotel or motel for banquets, catering, or other special events.

(7) “Server permit” means the permit issued to a server or security personnel upon completion of all required server or security personnel training courses and all required refresher courses provided for in this Chapter.

(8) “Tobacco wholesale dealer” means 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 fifty percent or more of whose total tobacco sales are to retail stores other than its own or its subsidiaries within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services fifty or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January 1, 1974.

(9) “Tobacconist” means any bona fide tobacco retailer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where fifty percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

(10) “Vendor” means any holder of a Class “A” General, Class “A” Restaurant, or Class “B” retail permit issued pursuant to R.S. 26:71 or R.S. 26:271 or any holder of Retail Dealer Registration Certificate or Retail Dealer Permit defined by R.S. 26:902. “Vendor” shall not include any holder of a Type A or Type B temporary alcoholic beverage permit issued pursuant to R.S. 26:793(A)(1).

§ 933. Establishment of responsible vendor program

A. (1) The program administrator shall be a committee of nine persons, one of whom shall be appointed by the commissioner or his designee. Of the other eight, each of the following groups or associations shall select one person, subject to approval by the commissioner:

- (a) Louisiana Restaurant Association.
- (b) Louisiana Retailer's Association.
- (c) Louisiana Association of Alcoholic Beverage Licensees, Inc.
- (d) Louisiana Oil Marketers Association.
- (e) Council on Alcohol and Drug Abuse (C.A.D.A.).
- (f) Louisiana Hotel/Motel Association.
- (g) Highway Safety Council.
- (h) Mothers Against Drunk Driving.

(2) Approval by the commissioner shall not be unreasonably withheld and shall be provided within thirty days of receipt of each one of the nominations selected by the respective groups or associations.

B. The program administrator shall approve a Louisiana Responsible Vendor Program, hereafter referred to as “the program”, designed to educate vendors and their employees and customers about selling, serving, and consuming alcoholic beverages in a responsible manner and selling and serving tobacco products. The program shall include all of the following:

- (1) Enrollment and certification of the vendor in the program.
- (2) Server or security personnel training courses for servers or security personnel.
- (3) Review of the requirements for the issuance and renewal of server permits. Such permits shall be the property of the server and, if not expired, suspended, or revoked, valid in connection with his employment by any vendor in the state of Louisiana.

C. The server training courses shall include but not be limited to the following subject areas:

- (1) Classification of alcohol as a depressant and its effect on the human body, particularly on the ability to drive a motor vehicle.

(2) Effects of alcohol when taken with commonly used prescription and nonprescription drugs.

(3) Absorption rate, as well as the rate at which the human body can dispose of alcohol and how food affects the absorption rate.

(4) Methods of identifying and dealing with underage and intoxicated persons, including strategies for delaying and denying sales and service to intoxicated and underage persons.

(5) State laws and regulations regarding the sale and service of alcoholic beverages for consumption on and off premises.

(6) Parish and municipal ordinances and regulations, including but not limited to the hours of operation, noise, litter, and other ordinances that affect the sale and service of alcoholic beverages for consumption on or off premises.

(7) State and federal laws and regulations related to the lawful age to purchase tobacco products and age verification procedures and requirements.

(8) The health risks and consequences associated with the consumption of tobacco products including but not limited to their addictive nature.

D. Security personnel training courses shall include training on the subject matter as required by the provisions of Subsection C of this Section as well as specific curriculum approved by the program administrator including but not limited to handling disruptive customers and customer altercations.

E. The commissioner, upon recommendation of the program administrator, may promulgate rules and regulations to effectuate the program in accordance with the Administrative Procedure Act, including but not limited to rules and regulations related to the development, establishment, and maintenance of the entire program.

F. The commissioner shall provide a system for vendors to verify the validity of individual server permits.

§ 934. Requirements for certification

In order to qualify for and maintain certification as a responsible vendor, the vendor shall comply with all of the following:

(1) Enrollment in the program and written verification to the commissioner that the vendor has read and understands a responsible vendor handbook, and any periodic amendments thereto, which handbook shall be developed, published, and distributed by the program administrator and approved by the commissioner.

(2) Successful completion of all required server or security personnel training courses offered by an approved provider by each server or security personnel within forty-five days after commencing employment and the securing and maintaining of a valid server permit. Server permits shall be valid for a period of four years and shall be issued and renewed in accordance with rules and regulations promulgated by the commissioner.

(3) Attendance at a refresher course by each server or security personnel at least once every four years as scheduled by any approved provider, which course shall include the dissemination of new information relating to the program subject areas as set forth in R.S. 26:933.

(4) Maintenance of training verification records of its employees.

(5) The posting of signs on the vendor's premises informing customers of the vendor's policy against selling alcoholic beverages to underage or intoxicated persons if required by law or selling tobacco products to underage persons.

§ 935. Server liability; penalties, fines, suspension or revocation of server permit; vendor's defenses

A. The commissioner may suspend or revoke a server's or security personnel's permit or impose a fine on the server or security personnel for noncompliance with this Chapter or for any violation, attributable to the server or security personnel, of the provisions of R.S. 26:90, 91, 286, 287, or 911 or related tobacco product laws, rules, and regulations. The procedure for the suspension or revocation of a server's or security personnel's permit or for the imposition of fines shall be the same as are otherwise set forth in this Title for the suspension or revocation of permits of, or imposition of fines against, holders of Class "A" General, Class "A" Restaurant, Class "B" permits, or Retail Dealer Registration Certificates or Retail Dealer Permits.

B. (1) The alcoholic beverage or tobacco products permit of a vendor certified as a responsible vendor in accordance with the provisions of this Chapter shall not be suspended or revoked on the following grounds:

(a) The first illegal sale or service of an alcoholic beverage by any server or security

personnel to an underage or intoxicated person or the first illegal sale or service of a tobacco product by any server or security personnel to an underage person in any twelve-month period.

(b) The first citation for consumption by a customer of alcoholic beverages on the premises of a Class “B” vendor in any twelve-month period, unless the vendor had knowledge of the violation, should have known about such violation, or participated in or committed such violation.

(2) No vendor may use as a defense to suspension or revocation the fact that he was absent from the licensed premises at the time a violation of the Alcoholic Beverage Control Law or tobacco products law occurred if the violations are flagrant, persistent, repeated, or recurring.

C. Certification under this Chapter as a responsible vendor shall be considered in mitigation of a vendor's administrative penalties or fines for a server's or security personnel's illegal sale or service of an alcoholic beverage to an underage or intoxicated person, or consumption of alcoholic beverages by a customer on the premises of a Class “B” vendor or for a server's illegal sale or service of a tobacco product to an underage person.

§ 936. Fees

A. The commissioner may promulgate rules and regulations regarding fees, which fees shall not exceed fifty dollars per licensed establishment, for the costs of developing and administering the program. In no event shall the fees exceed administrative costs of the program.

B. Approved providers may charge fees for the cost of conducting the server or security personnel training courses provided for in this Chapter. Such fees shall be approved by the program administrator and the commissioner. The fee for each server or security personnel training course provided for by this Section shall not exceed fifty dollars.

§ 937. Preexisting server training programs

Any vendor or server subject to a local ordinance requiring participation by the vendor or its employees in a server or security personnel training or licensing program shall be exempt from local server or security personnel training and licensing regulation if the vendor is certified as a responsible vendor under the

provisions of this Chapter. Nothing in this Chapter shall be construed to apply to any local seller or server licensing requirements in effect on June 1, 1997.

§ 938. Reports to the commissioner

Beginning January 1, 1999, the program administrator shall provide the commissioner and the legislature with annual reports regarding the program.

§ 939. Applicability

A. Any vendor may become certified in accordance with the provisions of this Chapter after January 1, 1998. Effective January 1, 2000, all vendors shall participate in the program.

B. The provisions of this Chapter shall not apply to any tobacco wholesale dealer or tobacconist.

TITLE 40 PUBLIC HEALTH AND SAFETY

Chapter 1. Division of Health and Health Officers

Part I. DIVISION OF HEALTH AND HEALTH OFFICERS

Section

4. Sanitary Code.

Chapter 5. Miscellaneous Health Provisions

Part LXIII. LOUISIANA SMOKEFREE AIR ACT

Section

1300.251. Short title.

1300.252. Purpose

1300.253. Definitions.

Subpart B. PROHIBITIONS AND EXCEPTIONS

1300.256. General prohibitions; exemptions.

Subpart C. PENALTIES AND RULES AND REGULATIONS

1300.261. Notice of prohibition of smoking.

1300.262. Enforcement; penalties.

CHAPTER 1. DIVISION OF HEALTH AND HEALTH OFFICERS

PART I. DIVISION OF HEALTH AND HEALTH OFFICERS

§ 4. Sanitary Code

A. The state health officer acting through the office of public health of the Department of Health and Hospitals shall prepare, promulgate, and enforce rules and regulations embodied within the state's Sanitary Code covering all matters within his jurisdiction as defined and set forth in R.S. 40:5. The promulgation of this Sanitary Code shall be accomplished in strict accordance with the provisions of the Administrative Procedure Act¹, and further, in conformity with the following guidelines and directives:

(1)(a) In order to protect the consuming public against food-borne disease, the rules and regulations contained in the Sanitary Code shall be designed so as to provide and require that all food products, including milk and milk products, ice, bottled water, marine and freshwater seafood, animal products, frozen desserts and toppings, and related similar foods, are produced from a safe and sanitary source, and are prepared, processed, packaged, handled, stored, and transported in a sanitary manner which will prevent contamination, spoilage, or adulteration. These food product rules and regulations shall be further designed so as to provide that all facilities, material, and equipment that may come into direct contact with any food or food product must be of nontoxic content to insure a sanitary, wholesome, and nutritious product.

(b)(i) Pending the availability of federal funds to implement this Subparagraph, the inspection of seafood conducted pursuant to the Sanitary Code and pursuant to the Department of Agriculture and Forestry's Seafood Inspection Program shall include a recommendation for testing of the environment, including the water source, to the appropriate agency, only when evidence of contamination, adulteration, or spoilage or of any other condition or substance which is or may be injurious to health of humans or animals is indicated. The department shall adopt rules as part of the Sanitary Code and the Department of Agriculture and Forestry shall adopt rules as part of the Seafood Inspection Program.

(ii) Subject to the appropriation of funds by the legislature, the state health officer in conjunction with the Louisiana Department of Agriculture and Forestry shall institute a public safety marketing campaign to warn the public about the risks of consuming seafood from the People's Republic of China deemed to be safe by the Seafood Inspection Program but which nevertheless contains hazardous substances. The

campaign shall include a warning label program as more specifically provided for in R.S. 40:5.5.2. The state health officer shall enter into a memorandum of understanding with the Louisiana Department of Agriculture and Forestry to implement this marketing campaign.

(iii) The Louisiana Retailers Association shall work with the Louisiana Department of Agriculture and Forestry, the Louisiana Crawfish Promotion and Research Board, and other respective agencies to develop a voluntary assessment for the implementation of the public safety marketing campaign.

(c) In order to protect the public health, the state health officer shall promulgate rules and regulations relative to retail food establishments. Such rules and regulations shall not require a retail food establishment which serves alcoholic beverages and consists of five hundred square feet or less of usable floor area which is accessible to customers to have more than one restroom facility consisting of one water closet and one lavatory. Such limit of the required number of restroom facilities and fixtures shall not apply to retail food establishments which contain wet bars. For the purposes of this Section, "wet bar" shall be defined as a bar within a food service establishment at which patrons may walk up to, order, and receive an alcoholic beverage directly from a bartender.

(2) In order to prevent the occurrence or spread of communicable diseases, the rules and regulations of the Sanitary Code shall provide for an immunization program and provide for and require the reporting, investigation, and application and implementation of appropriate control measures to expressly include isolation and/or quarantine proceedings and measures, for all communicable diseases of public health significance. However, no rule or regulation of the Sanitary Code shall impose or create any general duty to warn third parties upon any healthcare provider who has complied with the applicable reporting requirements for communicable diseases as set forth in the Sanitary Code. These rules and regulations shall also be designed to:

(a) Control rabies in dogs and to prevent rabies from occurring in humans. However, nothing in the immunization programs shall authorize the state health officer or the department to overrule the limitations in either R.S. 40:5.2, or in R.S. 17:170(E).

(b)(i) Regulate the packaging, storage, treatment, and transportation of infectious waste generated by health care providers and noncommercial generators including but not limited to private households. "Infectious waste" means waste which contains pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. In addition, the rules and regulations shall provide for the certification and testing of all equipment used to treat infectious waste to assure safety, effectiveness of the equipment, and compliance

with regulatory and statutory health regulations. At a minimum the rules shall provide that the testing shall be conducted annually.

(ii) Regulate the packaging, storage, treatment, disposal, and transportation of home-generated sharps waste. "Home-generated sharps waste" means needles, syringes, and other medical instruments that are capable of puncturing the skin for the delivery of medications derived from a household, including a multifamily residence or household. Rules and regulations pertaining to the packaging, storage, treatment, disposal, and transportation of home-generated sharps waste shall be promulgated prior to January 1, 2009. Such rules and regulations shall provide for public education programs and community outreach programs which shall ensure the proper handling and disposal of such sharps waste.

(iii) Regulate the issuance of permits for the commercial transportation, packaging, storage, and treatment of infectious waste. The state health officer shall establish a reasonable fee schedule for issuance of permits to entities in the business of transporting, packaging, storing, or treating infectious waste for commercial purposes. In addition, the rules and regulations shall provide for the certification and testing of all equipment used to treat infectious waste to assure safety, effectiveness of the equipment, and compliance with regulatory and statutory health regulations. At a minimum the rules shall provide that the testing shall be conducted annually. The provisions of Items (i) and (iii) of this Subparagraph, relative to the certification and testing of all equipment used to treat infectious waste, shall not apply to an office of a physician licensed to practice medicine by the Louisiana State Board of Medical Examiners, a veterinarian, or a dentist.

(iv) Require that any generator of infectious medical wastes shall only transport such waste with a transporter permitted by the department.

(v) Facilitate the filing and removal of required notices by landowners, lessees, and occupants, pursuant to R.S. 40:4.10.

(vi) Require the state health officer to establish a reasonable fee for the certification and testing of all equipment used to treat infectious waste. Such fee shall be established by rule, in accordance with the Administrative Procedure Act.

(c) Control the spread of tuberculosis by:

(i) Requiring that persons who are students in the health care professions, or volunteers helping in the caring of patients in health care institutions be free of tuberculosis in a communicable state as evidenced by a negative tuberculin skin test, a normal chest X-ray if the skin test is positive, or a statement from a Louisiana licensed physician that the person is noninfectious to others if the chest X-ray is other

than normal. If the student or volunteer has a positive tuberculin skin test, or a chest X-ray other than normal, the student or volunteer shall complete a course of chemotherapy for tuberculosis prescribed by a Louisiana licensed physician, or present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated. If the student or volunteer is known to be infected with the human immunodeficiency virus (HIV) or has acquired immunodeficiency syndrome (AIDS), he or she shall be required to have a chest X-ray in addition to a skin test for tuberculosis. If the chest X-ray is interpreted as showing any disease, then the student or volunteer will complete a course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician or present a signed statement from a Louisiana licensed physician that a course of chemotherapy for tuberculosis is not indicated. In any case, the student or volunteer shall not be denied access to an institutional learning experience or work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

(ii) Requiring the use of isolation rooms for persons with tuberculosis in a communicable state who are cared for in hospitals or nursing homes, proper air handling in those rooms, and the use of proper masks for all applicable persons, patients, and staff to prevent the spread of infectious respiratory droplets.

(iii) Requiring proper air handling and the use of proper masks to prevent the spread of infectious respiratory droplets in and from aerosol therapy rooms in any institution.

(iv) Requiring any person entering any Louisiana prison as an inmate for forty-eight hours or more to be screened for tuberculosis in a communicable state.

(v) Requiring any person entering any Louisiana jail as an inmate for fourteen days or more to be screened for tuberculosis in a communicable state, where funding is available.

(vi) Requiring all persons with acquired immunodeficiency syndrome (AIDS) or known to be infected with human immunodeficiency virus (HIV), in the process of receiving medical treatment related to such condition, be screened for tuberculosis in a communicable state.

(vii)(aa) Requiring the isolation and/or quarantine for directly observed therapy (medication taken in the presence of a health care provider) of any person with tuberculosis in a communicable state who has failed to comply with a daily self-administered course of chemotherapy for tuberculosis prescribed by a Louisiana licensed physician.

(bb) Requiring a more restrictive isolation and/or quarantine environment specified by the state health officer or by court order for any person who fails to comply with

directly observed therapy under isolation and/or quarantine as provided in Subitem (aa) of this Item.

(cc) Requiring that any person who fails to comply with the more restrictive isolation and/or quarantine environment as provided in Subitem (bb) of this Item shall be considered to have violated the provisions of the state Sanitary Code and be subject to the provisions of R.S. 40:6(B).

(3)(a) The sanitary code shall provide rules and regulations governing burial, transportation, disinterment, or other permitted disposition of dead human remains, to include regulations defining approved methodology that will insure sanitary and dignified disposal.

(b) In order to protect the public from disease associated with the handling of dead human remains, the state health officer, acting through the office of public health, shall prepare and promulgate all rules necessary to ensure that all hospitals will identify corpses that are infected with a contagious disease, when there is actual knowledge of such infection, and report such to embalmers and funeral directors who handle the corpses for interment or cremation. The state health officer shall prepare a list of contagious diseases and such list shall be added to or deleted from as circumstances warrant.

(4) The state's sanitary code shall include rules governing the construction, operation, and maintenance of camps and campsites or parks used for house courts, tent camps, trailer camps, and similar premises used for living and recreational purposes.

(5) The state's sanitary code shall contain rules and regulations governing facilities and premises used for lodging for hire such as hotels, motels, lodging, and boarding houses.

(6) In order to protect the public against disease and nuisance resulting from the improper disposal of sanitary sewage, the state health officer shall prepare and promulgate all rules and regulations necessary to insure that adequate conveyance and disposal facilities are provided for all sanitary sewage, private or public, and in such a manner that will prevent the contamination of surroundings which would have an adverse impact on drinking water supplies, recreational waters, aquatic life, and other mechanisms of human exposure to disease. Standards for the quality of sanitary sewage discharged to the ground surface (ditches, streams, water pools, or other drainage courses), construction of sewerage works, operation of sanitary sewage conveyance, and treatment and disposal facilities shall be included. Such rules and regulations shall not include the licensing of persons engaged in the business or practice of hauling the contents of septic tanks, cesspools, vaults, or similar facilities. Plans and specifications for sewerage works shall be submitted for review and

approval to the state health officer or his designee.

(7) In order to protect the public from disease and safety hazards associated with public and private building plumbing systems, including sewer gas intrusion into buildings with the potential of asphyxiation, and other health hazards and contamination of water supplies by sewage, toxic chemicals, or other similar matter, via “cross connections” and “back siphonage”, the state health officer shall prepare and promulgate all rules and regulations necessary to assure safe building plumbing systems. These rules and regulations shall include, but not be limited to, the building water supply piping system, the building drain system, and the building mechanical piping system. Under this authority, a building refers to any structure built, erected, and framed of component structural parts designed for the housing, shelter, enclosure, or support of persons, animals, or property of any kind.

(8)(a) In order to protect the public against disease from water supplied for drinking, culinary, and ablutionary purposes, the state health officer shall prepare and promulgate all rules and regulations necessary to insure that water supplied to the public by public water supplies is obtained from safe and sanitary sources and that such sources are properly protected; is treated, stored, and conveyed in a safe and sanitary manner; and is safe and potable for human use. Standards for drinking water quality (chemical, radiological, and microbiological); water works construction; and water works operations shall be included. In order to assure compliance with promulgated regulations, plans, and specifications for public water works facilities shall be submitted to the state health officer or his designee for review and approval.

(b) The state health officer shall additionally prepare and promulgate rules and regulations necessary to develop and implement a capacity development strategy to assist public water systems to acquire and maintain technical, managerial, and financial capacity to comply with state drinking water regulations which are no less stringent than the national primary drinking water regulations. Such rules and regulations shall include a requirement that all new community water systems and new nontransient noncommunity water systems commencing operation after January 1, 1999, demonstrate technical, managerial, and financial capacity, as defined in such rules and regulations, to comply with state drinking water regulations which are no less stringent than the national primary drinking water regulations in effect on the date of commencement of operations.

(9) In order to protect the public against vectorborne diseases, the state health officer shall prepare and promulgate rules and regulations necessary to insure that disease vectors, including but not limited to mosquitoes and other biting and nonbiting flies, ticks, mites, lice, fleas, true bugs, and rodents are monitored and controlled at levels sufficient to prevent or abate outbreaks of diseases.

(10) In order to protect the public health and health-safety, the state health officer shall prepare and promulgate rules and regulations relative to public and private schools, jails and lockups, public and private buildings, including public and private hospitals and nursing homes and similar buildings where people congregate. In order to assure compliance with promulgated regulations, plans and specifications for such public and private building structures and facilities shall be submitted to the state health officer or his designee for review and approval. These rules and regulations shall apply to new buildings, structures, and facilities, as well as modifications to existing ones, and shall include space requirements, ventilation, heating and air conditioning, lighting, waste storage and disposal, and other similar factors affecting public health.

(11) In order to protect the public from disease and injuries associated with water contact recreation (swimming), the state health officer shall prepare and promulgate rules and regulations necessary to insure that public swimming pools and recreational bathing places (natural and artificial) are constructed, operated, and maintained in a safe and sanitary manner. These rules may require the submittal of appropriate plans and specifications for review and approval. These rules and regulations shall insure that the design, construction, and operation of these facilities is such that the public is protected against the transmission of disease or injury by the establishment of water quality standards (chemical, physical, and bacterial); by proper arrangement of the physical features of the site or facility; and by proper procedures for supervision and maintenance of such premises.

(12) In order to protect the public health, the state health officer shall prepare and promulgate rules and regulations relative to new rendering facilities and modifications to existing facilities. These rules and regulations shall relate to, but not be limited to, procedures for the review and approval of plans, requirements for approval by the state health officer or his designee prior to contracting for the construction of rendering plants, requirements for obtaining a permit to operate a rendering plant before operation begins, requirements for closing down a rendering plant already in operation if any condition occurs which might adversely affect the health of the community. Factors that shall be regulated include operation, containment of solid, liquid, or gaseous animal materials and byproducts during processing, storage, or transportation, odors, cleanliness, utilization of products and byproducts, and identification marking of products and byproducts.

(13) The state health officer, through the office of health services and environmental quality, shall be expressly empowered and authorized to issue emergency rules and orders when necessary and for the purposes of controlling nuisances dangerous to the public health and communicable, contagious, and infectious diseases, and any other danger to the public life and health and health-safety.

B. (1) All sanitary and food and drug inspections to monitor compliance with the provisions of the state sanitary code shall be conducted by licensed sanitarians in the employ of the Department of Health and Hospitals, or by similarly licensed sanitarians in the employ of a local parish or municipal governing authority.

(2) In instances where such an inspection discloses a violation of the state Sanitary Code, the business entity or person deemed to be responsible shall be given an opportunity to correct the noted deficiency, and, if upon reinspection the premises are found to be still in need of correction of the previously cited violation, the district attorney or, in cases involving pollution of streams, rivers, lakes, bayous, or ditches located in public rights of way, the attorney general, at the request of the Department of Health and Hospitals, may, in his sole discretion, seek an injunction from the district court to enforce the provisions of the state Sanitary Code. The district attorney or the attorney general shall have the power to appoint an attorney of the Department of Health and Hospitals as a special assistant district attorney or a special assistant attorney general to prosecute the case. The proceeding before the district court shall be an adversary proceeding and each party shall have the power to call witnesses and subpoena documents and records. In any such proceeding, no district court shall issue an injunction to enforce any provision which it determines to be physically beyond the control of the person or business entity to comply with, or in conflict with, other provisions of state or federal law or regulations.

(3) In instances where such an inspection discloses a violation of the state Sanitary Code involving pollution of streams, rivers, lakes, bayous, or ditches located in public rights of way, the business entity or person deemed to be responsible shall be given an opportunity to correct the noted deficiency, and, if upon reinspection the previously cited violation is found to still exist, the state health officer is hereby authorized, after due process in accordance with the Administrative Procedure Act, to impose sanctions as follows:

(a) In the case of establishments which operate under license or permit issued by the office of public health of the Department of Health and Hospitals, the state health officer may suspend or revoke the existing license or permit.

(b) In the case of establishments which operate without license or permit issued by the office of public health or where establishments continue to operate after the license or permit has been suspended or revoked, the state health officer may issue a civil compliance order directing the business entity or person deemed responsible for the establishment to correct the violation noted and impose a fine of one hundred dollars per day for each day the violation has not been corrected up to a maximum of ten thousand dollars. The fine shall commence on the day following the date of permit revocation or suspension, or the day following the date specified for

compliance in the civil compliance order issued by the state health officer.

(c) All fines imposed under this Section shall be payable to the office of public health of the Department of Health and Hospitals which shall be deposited into the state general fund.

(d) If civil action is necessary to recover fines imposed under this Section, the offender shall be liable for the amount of the fine, legal interest from the date of assessment, and all costs of recovery, including legal fees and court costs.

(e) The state health officer with the approval of the secretary of the Department of Health and Hospitals may settle or resolve out of court any suit for recovery of fines if deemed in the best interest of the state.

(4) Nothing herein shall prohibit the state health officer acting through the office of public health, with the concurrence of the secretary of the Department of Health and Hospitals, from seeking civil injunctive relief from a district court to assist in enforcing emergency orders, when there exists serious and imminent danger to the public health. The proceeding before the district court shall be an adversary proceeding, and each party shall have the power to call witnesses and subpoena documents and records. In any such proceeding, no district court shall issue an injunction to enforce any provision which it determines to be physically beyond the control of the person or business entity to comply with, or in conflict with other provisions of state or federal law or regulations.

(5) Paragraphs (B)(2) and (3) of this Subsection shall not apply to waste waters and wastes in discharges from industrial facilities which are subject to permitting under the Louisiana Water Control Law (R.S. 30:2071 et seq.) or the federal Clean Water Act (42 USC § 1251 et seq., as amended), nor to waste waters from industrial facilities in ditches upstream of state or federal waste water discharge points.

CHAPTER 5. MISCELLANEOUS HEALTH PROVISIONS

PART LXIII. LOUISIANA SMOKEFREE AIR ACT

§ 1300.251. Short title

This Part shall be known and may be cited as the “Louisiana Smokefree Air Act.”

§ 1300.252. Purpose

The legislature finds and determines that it is in the best interest of the people of this state to protect nonsmokers from involuntary exposure to secondhand smoke in most indoor areas open to the public, public meetings, restaurants, and places of employment. The legislature further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the legislature hereby declares that the purpose of this Part is to preserve and improve the health, comfort, and environment of the people of this state by limiting exposure to tobacco smoke.

§ 1300.253. Definitions

For the purposes of this Part, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) “Bar” means a business that holds a Class A-General retail permit and the primary purpose of such business is to serve alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) “Business” means any corporation, sole proprietorship, partnership, limited partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity.

(3) “Department” means the Department of Health and Hospitals.

(4) “Employer” means an individual or a business that employs one or more individuals.

(5) “Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

(6) “Local governing authority” means a municipal or parish governing authority.

(7) “Place of employment” means an area under the control of an employer that employees normally frequent during the course of employment, including, but not

limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

(8) “Public building” means any building owned or operated by any of the following:

(a) The state, including the legislative, executive, and judicial branches of state government.

(b) Any parish, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency.

(c) Any other separate corporate instrumentality or entity of state or local government.

(9) “Public place” means an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including but not limited to banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.

(10) “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar located within a restaurant.

(11) “Retail tobacco business” means a business utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

(12) “School” means any elementary or secondary school building, the campus of any school, any buildings on the campus, and all school buses.

(13) “Secondhand smoke” means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the smoker.

(14) “Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted combustible plant material.

SUBPART B. PROHIBITIONS AND EXEMPTIONS

§ 1300.256. General smoking prohibitions; exemptions

A. Except as permitted by Subsection B of this Section, no person shall:

- (1) Smoke in any public building.
- (2) Smoke in any school.
- (3) Smoke in any public place and in any enclosed area within a place of employment.
- (4) As an employer, knowingly permit smoking in any enclosed area within a place of employment.

B. Nothing in this Part shall prohibit smoking in any of the following places:

- (1) Private homes, private residences, and private automobiles; except that this Subsection shall not apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation in which case smoking is prohibited.
- (2) Limousines under private hire.
- (3) A hotel or motel room designated as a smoking room and rented to a guest; provided that a maximum of fifty percent of the hotel rooms, at the discretion of the hotel owner or general manager, available for rent to guests in a hotel or motel may be designated as smoking rooms.
- (4) Any retail tobacco business.
- (5) Any bar.
- (6) The outdoor area of places of employment; except that the owner or manager of such business may post signs prohibiting smoking in any such outdoor area, which shall have the effect of making that outdoor area an area in which smoking is prohibited under the provisions of this Part.

(7) Private and semiprivate rooms or apartments in assisted living residences, and other long-term care facilities that are occupied by one or more persons, who are all smokers and who have requested in writing to be placed in a room where smoking is permitted; provided that smoke from such rooms or apartments does not infiltrate into areas where smoking is prohibited under the provisions of this Part.

(8) Designated smoking areas in which gaming operations are permitted to occur upon a riverboat, at the official gaming establishment, at a facility licensed for the operation of electronic video draw poker devices, at an eligible facility licensed for the operation of slot machines, by a licensed charitable organization, or at a pari-mutuel wagering facility or off-track wagering facility which is licensed for operation and regulated under the provisions of Chapters 4 and 11 of Title 4¹ and Chapters 4, 5, 6, and 7 of Title 27² of the Louisiana Revised Statutes of 1950, or any other gaming operations authorized by law, except that smoking shall be prohibited in all restaurants, including snack bars and any other type of eating area whether or not such area is separated from the gaming area, that are located within the facilities where gaming operations are conducted regardless of any type of license issued relevant to the operation of the restaurant.

(9) All workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

(10) Convention facilities during the time such facilities are being used for professional meetings and trade shows which are not open to the public that are produced or organized by tobacco businesses or convenience store associations where tobacco products are displayed and limited to the location of such meetings or shows and during the time such facilities are used by a carnival organization, traditionally known as a krewe or a courir de Mardi Gras for the purpose of the conduct of a Mardi Gras ball and limited to the location of such ball.

(11) Designated and well-ventilated smoking rooms in nursing homes which permit smoking, provided that the designated smoking room is not the reception area, lobby, waiting room, dining room, or any other room or area defined as a public place under the provisions of this Part.

(12) A hotel or motel room operated by a casino or gaming operation which is rented to a guest.

(13) An outdoor patio, whether or not food is served.

(14) Any state, local, or private correctional facility prior to August 15, 2009. After August 15, 2009, smoking shall be prohibited in any state, local, or private

correctional facility.

C. An individual, person, entity, or business subject to the smoking prohibitions of this Section shall not discriminate or retaliate in any manner against a person for making a complaint regarding a violation of this Section or for furnishing information concerning a violation to an enforcement authority.

D. Nothing in this Part shall be construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places as set forth in this Part.

SUBPART C. PROHIBITIONS AND EXEMPTIONS

§ 1300.261. Notice of prohibition of smoking

A. “No smoking” signs or the international “No smoking” symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public building, public place, and place of employment where smoking is prohibited by this Part.

B. The owner, operator, manager, or other person in control shall remove all ashtrays from any area where smoking is prohibited by this Part.

C. The Department of Health and Hospitals may treat a violation of this Section as a deficiency to be assessed against any licensee or facility over which it has statutory jurisdiction.

§ 1300.262. Enforcement; penalties

A. (1) Any violation of any prohibition in R.S. 40:1300.256(A) may be cited by any law enforcement officer by the issuance of a citation and summons to appear before a court of proper jurisdiction.

(2) Such citations shall be in a form such that there shall be retained in each book of citations a receipt and each shall have a copy to be deposited by the law enforcement officer with a court having jurisdiction over the alleged offense.

(3) Upon the deposit of the copy, the court shall notify the alleged violator of the time

and place of his hearing or of his opportunity to plead guilty by the payment of his specified fine. Failure to appear, unless the fine is paid, may be punished within the discretion of the court as contempt of court.

B. (1)(a) Any person who is guilty of a violation of the prohibition in R.S. 40:1300.256(A)(1), (2), and (3) shall, upon a first offense, be fined twenty-five dollars.

(b) Any person who is guilty of violating such prohibition a second time shall be fined fifty dollars.

(c) Any person who is guilty of violating such prohibition a third or subsequent time shall be fined one hundred dollars.

(2)(a) Any employer who is guilty of a violation of the prohibition in R.S. 40:1300.256(A)(4) shall, upon a first offense, be fined one hundred dollars.

(b) Any employer who is guilty of violating such prohibition a second time shall be fined two hundred fifty dollars.

(c) Any employer who is guilty of violating such prohibition a third or subsequent time shall be fined five hundred dollars.

TITLE 47 REVENUE AND TAXATION

Chapter 8. Tobacco Tax

Section

- 841. Imposition of tax.
- 842. Definitions.
- 843. Use of stamps or meter impression required and limitations.
- 844. Dealer permits.
- 846. Secretary's authority to revoke license or permits.
- 847. Dealers required affixing stamps.
- 848. Tobacco dealers required to furnish bond; waiver.
- 849. Interstate business of tobacco dealers.
- 850. Repealed.
- 851. Dealers receiving unstamped and/or nontaxpaid cigarettes, cigars, and smoking tobaccos required to file monthly reports and maintain records; vending machine restrictions.
- 852. Dealers required to furnish duplicate invoices.
- 853. Examination of invoices and determination of tax by secretary.
- 854. Declaration of intent and purpose of Chapter.
- 855. Exemption from tax.
- 856. Enforcement by collector.
- 857. Refunds.
- 858. Certain acts declared felonies.
- 859. Certain acts declared misdemeanors.
- 860. Collector authorized to search and seize.
- 861. Intrastate transportation of unstamped articles prohibited.
- 862. Importation of unstamped articles, except by common carrier, without permit prohibited.
- 863. Procedure for seizure, forfeiture, and sale of vehicles used in illegal transportation of taxable articles.
- 864. Affixing stamps; penalty; compromises.
- 865. Seizure and forfeiture of unstamped taxable articles.
- 866. Release of seized property in certain cases.
- 867. Collector authorized to waive forfeiture proceedings in certain cases.
- 868. Regulations of metered machines or devices.
- 869. Disposition of collections.
- 870. Blank

Chapter 8-A. Delivery Sales of Cigarettes

Section

- 871. Definitions.
- 872. Requirements for delivery sales.
- 873. Age verification requirements.
- 874. Shipping requirements.
- 875. Registration and reporting requirements.
- 876. Collection of taxes.
- 877. Penalties.
- 878. Enforcement.

CHAPTER 8. TOBACCO TAX

§ 841. Imposition of tax

There is hereby levied a tax upon the sale, use, consumption, handling, or distribution of all cigars, cigarettes, smoking and smokeless tobacco, and vapor products and electronic cigarettes as defined herein, within the state of Louisiana, according to the classification and rates hereinafter set forth:

A. Cigars.

(1) Upon cigars invoiced by the manufacturer at one hundred twenty dollars per thousand or less a tax of eight percent of the invoice price as defined in this Chapter.

(2) Upon cigars invoiced by the manufacturer at more than one hundred twenty dollars per thousand a tax of twenty percent of the invoice price as defined in this Chapter.

B. Cigarettes.

(1) Upon cigarettes, a tax of sixteen twentieths of one cent per cigarette as defined in this Chapter.

(2) In addition to the tax levied in Paragraph (1) of this Subsection there is hereby levied an additional tax of four twentieths of one cent per cigarette.

<Text of paragraph (3) effective until June 30, 2012. See Termination Note following this section. See also, Const. Art. VII, §4.1 as added by Acts 2011, No. 423>

(3) In addition to the tax levied in Paragraphs (1) and (2) of this Subsection, there is hereby levied an additional tax of four-twentieths of one cent per cigarette.

(4) In addition to the tax levied in Paragraphs (1), (2), and (3) of this Subsection, there is hereby levied an additional tax of seven-twentieths of one cent per cigarette.

(5) In addition to the tax levied in Paragraphs (1), (2), (3), and (4) of this Subsection, there is hereby levied an additional tax of five-twentieths of one cent per cigarette.

(6) In addition to the tax levied in Paragraphs (1), (2), (4), and (5) of this Subsection and in Paragraph (3) of this Subsection as continued in effect by Article VII, Section 4.1 of the Constitution of Louisiana, there is hereby levied an additional tax of two and ten-twentieths of one cent per cigarette.

C. Smoking Tobacco. Upon smoking tobacco, a tax of thirty-three percent of the invoice price as defined in this Chapter.

D. Rules and regulations. The collector shall adopt and promulgate rules and regulations, which shall have the effect of law, for the administration and enforcement of the provisions of this section, with specific authority as to the filing of inventory report and payment of additional taxes due. He also may adopt and promulgate rules and regulations establishing or requiring the establishing of an inventory where the dealer fails to timely declare and file the inventory with the collector on the specified date, and for the revaluation of tax stamps in possession of the dealer.

E. Smokeless tobacco. Upon smokeless tobacco, a tax of twenty percent of the invoice price as defined in this Chapter.

F. Vapor products and electronic cigarettes. Upon vapor products and electronic cigarettes, a tax of five cents per milliliter of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

G. (1) The Tobacco Regulation Enforcement Fund, hereinafter referred to as the “fund”, is hereby established in the state treasury as a special fund to provide support for enforcement activities of the office of alcohol and tobacco control. The source of monies for the fund shall be a portion of the avails of the state tax on cigarettes as provided herein.

(2) After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the state treasurer shall annually deposit into the fund an amount equal to the avails of one-quarter of one-twentieth of one cent per cigarette from the tax on cigarettes imposed pursuant to this Section. Monies in the fund shall be subject to appropriation by the legislature and then only to the office of alcohol and tobacco control for purposes of tobacco regulation enforcement. All unexpended and unencumbered monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and all earnings on investment of the fund shall be deposited into the fund.

§ 841.1. Tobacco Tax Health Care Fund

A. There is hereby created as a special fund in the state treasury the “Tobacco Tax Health Care Fund”, hereinafter referred to as the “fund”. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the

state which become due and payable within any fiscal year, the state treasurer shall annually deposit to the fund an amount equal to the avails of the tax imposed under the provisions of R.S. 47:841(B)(4) and (5). The monies in this fund shall be used solely as provided by this Section and only in the amounts appropriated by the legislature.

B. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and all earnings on investment of the fund shall be deposited into the fund.

C. (1) Subject to an annual appropriation by the legislature, forty-two and eight-tenths percent of the monies collected under authority of R.S. 47:841(B)(4) in the fund shall be used solely for the purpose of providing funding for the Louisiana Cancer Research Center of L.S.U. Health Sciences Center in New Orleans/Tulane Health Sciences Center, and twenty-nine and two-tenths percent of monies collected under authority of R.S. 47:841(B)(4) shall be used solely for the purposes of funding for the creation of smoking prevention mass media programs and evidence-based tobacco control programs within the public hospital system and the public school system and community development programs directed at cessation among children and pregnant women and the screening, prevention, and treatment of tobacco use and dependence among individuals with diseases caused or exacerbated by tobacco use. The Southern University Board of Supervisors shall participate in the planning and expenditure of funds for the creation of smoking prevention mass media programs and evidence-based tobacco control programs as specified in this Paragraph. Any financial benefit to be derived from any intellectual property or other ownership interest resulting from research or other activities conducted by, or in conjunction with, the Louisiana Cancer Research Center of L.S.U. Health Sciences Center in New Orleans/Tulane Health Sciences Center, or its successor, shall be shared with the state pursuant to a written agreement executed between the parties and approved by the Joint Legislative Committee on the Budget.

(2) Subject to an annual appropriation by the legislature, twenty-eight percent of the monies collected under authority of R.S. 47:841(B)(4) in the fund shall be used solely to provide funding for the Cancer Center of Louisiana State University Health Sciences Center in Shreveport. Any financial benefit to be derived from any intellectual property or other ownership interest resulting from research or other activities conducted by, or in conjunction with, the Cancer Center of Louisiana State University Health Sciences Center in Shreveport, or its successor, shall be shared with the state pursuant to a written agreement executed between the parties and approved by the Joint Legislative Committee on the Budget.

(3) Subject to an annual appropriation by the legislature, twenty percent of the monies collected under authority of R.S. 47:841(B)(5) in the fund shall be used solely to provide funding for the office of behavioral health, Department of Health and Hospitals.

(4) Subject to an annual appropriation by the legislature, twenty percent of the monies collected under authority of R.S. 47:841(B)(5) in the fund shall be used solely to provide funding for the Louisiana State University Agricultural Center and the Southern University Agricultural Research and Extension Center, provided that the annual appropriation to Southern University Agricultural Research and Extension Center from this source shall be one million dollars per year.

(5) Subject to an annual appropriation by the legislature, twenty percent of the monies collected under authority of R.S. 47:841(B)(5) in the fund shall be used solely to provide funding for the administration and operation of Drug Abuse Resistance Education (D.A.R.E.) programs.

(6) Subject to an annual appropriation by the legislature, forty percent of the monies collected under authority of R.S. 47:841(B)(5) in the fund shall be used solely to provide funding for the office of state police, Department of Public Safety and Corrections.

§ 841.2. Tobacco Tax Medicaid Match Fund

A. There is hereby created as a special fund within the state treasury the “Tobacco Tax Medicaid Match Fund”, hereinafter referred to as the “fund”. After satisfying the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which becomes due and payable within any fiscal year, the state treasury shall annually deposit into the fund an amount equal to the avails of the tax imposed under the provisions of R.S. 47:841(B)(6).

B. All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and all earnings on investment of the fund shall be deposited into the fund. Monies appropriated from the fund shall be used solely as provided in Subsection C of this Section.

C. Monies in the fund shall be appropriated to the Department of Health and Hospitals for the medical assistance program administered by the state in accordance

with Title XIX of the Social Security Act, also known as Medicaid.

D. No amount appropriated as required in this Section shall displace, replace, or supplant appropriations from the state general fund for the Department of Health and Hospitals. This shall mean that no appropriation for any fiscal year from the Tobacco Tax Medicaid Match Fund shall be made for any purpose for which a general fund appropriation was made in the previous year unless the total appropriations for the fiscal year from the state general fund for such purpose exceed general fund appropriations for the previous year.

§ 842. Definitions

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

- (1) “Brand family” has the meaning as set forth in R.S. 13:5072(1).
- (2) “Cigarette” includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper, or any other material except where such wrapper is wholly or in greater part made of tobacco.
- (3) “Cigars” includes any roll of tobacco for smoking, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.
- (4) “Collector” means the collector of revenue for the State of Louisiana or his duly authorized representatives.
- (5) “Dealer” includes every person who manufactures or purchases cigars, cigarettes or smoking tobacco for distribution, sale, use or consumption in the State of Louisiana. The term also means any person who imports cigars, cigarettes, or smoking tobacco from any state or foreign country for distribution, sale, or consumption in the State of Louisiana.
- (6) “Invoice price” the manufacturers net invoiced price as invoiced to the Louisiana tobacco dealer, by the manufacturer, jobber, or other persons engaged in selling tobacco products in accordance with the tax levied by this chapter.
- (7) “Manufacturer” means anyone engaged in the manufacture, production, or foreign importation of tobacco products.
- (8) “Person” means any natural person, trustee, company, partnership, corporation or

other legal entity.

(9) “Place of business” as used in this Chapter means the place where the orders are received, or where the taxable articles are sold, or if sold upon a railroad train or on or from any other vehicle, the vehicle on which or from which the taxable articles are sold by the retail dealer. It also includes the establishment where vending machines are located.

(10) “Purchase” means acquisition in any manner, for any consideration. The term includes transporting or receiving product in connection with a purchase.

(11) “Registered tobacco dealer” as used in this Chapter refers to wholesale dealers as defined in this Section.

(12) “Retail dealer” includes every dealer other than a wholesale dealer who sells or offers for sale cigars, cigarettes or smoking tobacco irrespective of quantity or the number of sales.

(13) “Sales” or “sell” means any transfer, exchange, or barter in any manner or by any means for any consideration. The term includes distributing or shipping product in connection with a sale. References to a sale “in” or “into” a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale “from” a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

(14) “Sales entity affiliate” means an entity that sells cigarettes that it acquires directly from a manufacturer or importer and is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(15) “Smokeless tobacco” means all smokeless tobacco including but not limited to fine cut, long cut, packed in pouches, snuff, snuff flower, chewing tobacco, cavendish, plugs, twists, shorts, refuse and other scraps, clippings and sweepings of tobacco, and other forms of loose tobacco, articles and products made of tobacco, or a tobacco substitute.

(16) “Smoking tobacco” includes granulated, plug cut, crimp cut, ready rubbed and any other kind and form of tobacco prepared in such manner as to be suitable for smoking in pipe or cigarette.

(17) “Stamp” means the impression, device, stamp, label, or print manufactured or printed as prescribed by the collector by the use of which the tax levied hereunder is

paid. By way of extension, and not limitation, the term “stamp” means any impression or character affixed to or which shall be stamped upon commodities by metered stamping machine or device by use of which the tax levied hereunder is paid.

(18) “Stamping agent” means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(19) “State directory” or “directory” means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

(20) “Vapor products” shall mean any noncombustible product containing nicotine or other substances that employ a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, used to produce vapor from nicotine in a solution or other form. “Vapor products” include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(21) “Vending machine” means any receptacle used to store taxable articles which vend such articles automatically.

(22) “Vending machine operator” means any person who controls the use of one or more vending machines as to the supply of cigarettes or any tobacco products in the machine or the receipts from cigarettes vended through such machines.

(23) “Wholesale dealers” are those dealers whose principal business is that of a wholesaler, and who sells cigarettes, cigars, and smoking tobacco to retail dealers for purpose of resale; and who is a bona fide wholesaler and fifty percent of whose total tobacco sales are to retail stores other than their own or their subsidiaries within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services fifty or more cigarette vending machines on selling locations in Louisiana other than their own. Wholesale dealers shall include those dealers engaged in receiving bulk smoking tobacco for purposes of blending and including those Louisiana dealers who were affixing cigarette and tobacco stamps as of January 1, 1974.

§ 843. Use of stamps or meter impression required; limitations

A. Cigarette tax stamps. (1) In order to enforce the collection of the tax levied by this Chapter, the secretary shall design and have printed or manufactured stamps of such size and denomination as may be determined by him and so prepared as to permit them to be easily affixed to or stamped on containers of cigarettes subject to the tax according to this Chapter. As an alternative method to enforce the collection of the tax levied by this Chapter, the secretary may permit dealers, as defined in this Chapter, to use metered stamping machines or devices by which each container or package may be clearly and legibly stamped with an impression showing the character and amount of the tax.

(2) No individual package of cigarettes shall be sold or distributed in, into, or from the state in individual packages containing fewer than twenty cigarettes. No smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes shall be sold or distributed in individual packages containing less than six-tenths of one ounce of smoking tobacco.

(3) Except as otherwise provided in this Chapter, all packages of cigarettes sold in or into the state shall bear a stamp as required by this Chapter and no person may sell, transport, or cause to be transported unstamped cigarettes in, into, or from, or possess unstamped cigarettes in the state.

B. Discounts. The secretary of the Department of Revenue shall allow wholesale tobacco dealers of other states who have a direct purchasing contract with a manufacturer and serving a trade area of retail dealers in this state to purchase Louisiana stamps with benefit of discount; provided however, in no instance shall the discount be greater than that which is received by such wholesale tobacco dealers in their state of domicile and further provided that regardless of the discount extended by other states, the discount shall not exceed six percent.

C. Purchase of stamps.

(1) All cigarette stamps shall be purchased from and sold by the secretary of the Department of Revenue.

(2) Any person other than the secretary of the Department of Revenue who sells or traffics in cigarette tax stamps not affixed to cigarettes, whether the stamps are genuine or counterfeit, shall be guilty of a felony and punishable as set out in R.S. 47:858.

(3) Cigarette tax stamps shall be sold by the secretary of the Department of Revenue to bonded registered Louisiana tobacco dealers in the state of Louisiana who hold a valid stamping agent designation in accordance with R.S. 26:902(2)(a) and who have a direct purchasing contract with a manufacturer at a discount of six percent from the

face value, when purchased in quantities of not less than one hundred dollars face value, and the same provisions and discount shall apply where the metered stamping machine or device is used.

(4) Except as otherwise provided in this Section, the stamps shall be sold by the secretary of the Department of Revenue in less quantity at face value to any and all persons, firms, partnerships, corporations, and associations of person who hold a valid stamping agent designation in accordance with R.S. 26:902(2)(a) and are qualified to purchase stamps hereunder.

(5) Every dealer registered with the state of Louisiana shall be entitled to receive every month cigarette tax stamps in an amount equal to the amount of his bond furnished pursuant to R.S. 47:848, without the necessity of paying for the stamps at the time of purchase. All stamps so advanced shall be paid for not later than thirty days after the date on which they were advanced.

(6) Any wholesale dealer who fails to timely file the reports and pay the taxes due on an open account shall forfeit the discount allowed at the time of purchase of such tax stamps and meter impressions and shall be subject to a penalty of five percent on the amount of the tax due if the period of delinquency is ten days or less, or twenty percent on the amount of the tax due if the period of delinquency is greater than ten days, plus any interest due.

(7) Should any dealer fail to timely pay the tax due on any purchase of tax stamps or meters as provided in R.S. 47:843(C)(5), all outstanding credit sales of tobacco stamps, whether delinquent or not, shall become due and payable if the delinquent tax due on the purchase is not paid within two days after the receipt by the taxpayer of a written demand sent by the secretary by certified mail. Payment must be made with a cashier's check, certified check, or cash. If payment is not received within ten days after the mailing of written demand, the secretary may proceed to effect collection through the taxpayer's bonding company, or as otherwise provided by Chapter 18, Subtitle II of this Title.¹

(8) Should any wholesale dealer fail to pay the taxes due as described above, the secretary of the Department of Revenue may require such dealers to remit the tax due on purchases of tax stamps and meter impressions upon receipt of such stamps.

(9) The transfer or disposal by a qualified dealer of any benefit herein conferred is prohibited.

(10) As an additional method of refunding the cost of stamps affixed to damaged goods as provided in R.S. 47:857, the secretary shall allow a wholesale dealer to present affidavits evidencing the cost of stamps, less previous discount allowed, affixed to goods returned to the manufacturer as payment for all or a portion of the

price of tax stamps purchased under this Section. The credit must be in an amount less than or equal to the cost of stamps or meters purchased per individual invoice.

D. Affixing stamps. (1) No person other than a dealer holding a valid stamping agent designation under R.S. 26:902(2) may affix a stamp to any package of cigarettes. Stamps shall be affixed by the dealer, on the smallest container or package of cigarettes that is subject to the tax, to permit the secretary to readily ascertain by an inspection of any dealer's stock on hand, whether or not the tax has been paid. The dealer shall cause to be affixed on every package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any person, firm, partnership, corporation, or association of persons sells, offers for sale, handles, removes, or otherwise disturbs or distributes the same. The stamps shall be affixed in such a manner that their removal will require continued application of steam or water and shall be canceled by placing thereon the license number of the dealer.

(2) A dealer shall not affix a stamp to a package of cigarettes if the package:

(a) Does not comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.) for the placement of labels, warnings, or any other information for a package of cigarettes to be sold within the United States.

(b) Is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or other wording indicating that the manufacturer did not intend that the product be sold in the United States.

(c) Has been altered by adding or deleting wording, labels, or warnings described in Subparagraphs (a) and (b) of this Paragraph.

(d) Has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. 5754.

(e) In any way violates federal trademark or copyright laws.

(f)(i) Is manufactured by a tobacco product manufacturer, pursuant to Part XIII of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, who:

(aa) Is not a participating manufacturer in the Master Settlement Agreement as defined in R.S. 13:5062; and

(bb) Failed to create a qualified escrow account in accordance with R.S. 13:5063, as certified by the attorney general's office, for any cigarettes the dealer sold or distributed for that tobacco product manufacturer.

(ii) For purposes of this Subparagraph, "tobacco product manufacturer" shall have the meaning ascribed to that phrase by R.S. 13:5062.

(3) Selling a package of cigarettes described in Paragraph (2) of this Subsection, with or without a stamp, shall be an unfair or deceptive act or practice under the Unfair Trade Practices and Consumer Protection Law (R.S. 51:1401 et seq.).

(4) It shall be unlawful for any person to sell or distribute in this state, to acquire, hold, own, possess, or transport, for sale or distribution in this state, or to import or cause to be imported, into this state for sale or distribution in this state, any cigarettes that do not comply with all applicable requirements imposed by or pursuant to federal law and federal implementing regulations.

E. Disposition of funds. After all lawful revenues are paid over to the municipalities as their portion of the tobacco tax, as provided by R.S. 47:869, and after deduction of the costs of collection as provided by R.S. 47:868, the remainder of the avails of the tax, increased by Act No. 252 of the 1970 Regular Session² of the Legislature of Louisiana, shall be transmitted by the collector to the state treasurer for credit to the state general fund and, notwithstanding any other provisions of law to the contrary, the amount so credited to the state general fund shall be utilized for the implementation of the express purposes listed and specifically enumerated in the provisions of House Bill No. 1643 adopted as Act No. 211 of the 1970 Regular Session³ of the Legislature of Louisiana.

F. Authority to issue rules and regulations. The secretary is hereby authorized to issue rules and regulations not in conflict herewith in order to make effective the provisions of this Section.

§ 844. Dealer permits

Every person who sells or is about to engage in the business of selling at retail, at wholesale, or by vending machine, or is about to engage in the business of receiving unstamped or non-tax paid cigarettes, cigars or other tobacco products, or who is engaged in the business of receiving stamped cigarettes at wholesale shall first apply for and obtain a permit for each place of business and each vending machine from the office of alcohol and tobacco control in accordance with R.S. 26:901 et seq.

§ 846. Secretary's authority to revoke license or permits

The secretary, after notice and opportunity to be heard under regulations to be made by him, shall have jurisdiction, power, and authority to revoke or suspend any existing license or permit of any tobacco dealer and to fine a permittee as provided in R.S. 47:859 and 864 for violation of this law or for willful or persistent violation of regulations made under this law, such fine to be assessed and collected by the

secretary as other taxes levied by this Chapter. No new license or permit shall be issued to any one whose license or permit has been revoked.

§ 847. Dealers required to affix stamps

A. Every registered tobacco dealer holding a valid stamping agent designation pursuant to R.S. 26:902(2)(a) shall immediately after receipt of any unstamped cigarettes unless sooner offered for sale and prior to selling the cigarettes in or into the state, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein. The stamping of the unstamped cigarettes shall actually begin as soon as practicable after receipt of the cigarettes in the premises of the tobacco dealer and shall be continued with reasonable diligence by the dealer until all of the unstamped cigarettes have been stamped as provided by law.

B. Stamping agents may sell cigarettes in or into the state, may purchase cigarettes for resale in or into the state and may affix a stamp required by this Chapter only if the manufacturer and brand family of the cigarettes are listed on the state directory at the time of stamping.

C. Notwithstanding the provisions of Subsection A of this Section, unless prior written approval is obtained from the attorney general in accordance with regulations promulgated by the secretary pursuant to the Administrative Procedure Act, stamping agents may sell cigarettes in or into the state, may purchase cigarettes for resale in or into the state, and may affix a stamp required by this Chapter only if the stamping agent purchased the cigarettes directly from the manufacturer or importer of the cigarettes, who holds a valid permit issued pursuant to 26 U.S.C. 5713, or from a sales entity affiliate whose name and address has been provided to the attorney general pursuant to R.S. 13:5073(A)(7).

D. (1) If and whenever any of the cigarettes taxed in this Chapter are found in the place of business of any tobacco dealer or any other person, except bonded interstate tobacco dealers, without the stamps affixed as herein provided, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this Chapter.

(2) A manufacturer or importer may, in accordance with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes in or into the state to a stamping agent under either of the following circumstances:

(a) The manufacturer and brand family of the cigarettes are at the time of sale listed on the state directory.

(b) The manufacturer and brand family of cigarettes are not at the time of sale listed on the state directory, but all of following conditions apply:

(i) The stamping agent is authorized to affix the stamp or, when permitted by R.S. 47:849, pays the taxes imposed by another state on whose directory the manufacturer and brand family of the cigarettes are listed at the time of the sale.

(ii) The stamping agent would be permitted to resell the cigarettes from this state into that other state as provided in R.S. 47:849.

(iii) The stamping agent receiving the cigarettes holds an exporter license pursuant to R.S. 26:902(5)(b) and submits a report pursuant to R.S. 47:851(E).

(3) A manufacturer or importer may sell unstamped cigarettes as permitted under Paragraph (2) of this Subsection through its sales entity affiliate whose status as a sales entity affiliate has been provided by the manufacturer or importer to the satisfaction of the attorney general in accordance with R.S. 13:5073(A)(7) and prior to the sales entity affiliate selling any cigarettes in or into the state. If the manufacturer or importer does so:

(a) It may sell or otherwise transfer the unstamped cigarettes to its sales entity affiliate in connection with the sale.

(b) The sales entity affiliate may possess, transport, or cause to be transported the unstamped cigarettes in connection with the sale to the same extent the manufacturer or importer could under this Section if it were making the sale directly.

(c) In the case of sales permitted under Paragraph (2) of this Subsection, the stamping agent will be deemed to have purchased the cigarettes directly from the manufacturer or importer.

§ 848. Tobacco dealers required to furnish bond; waiver

A. Each and every registered tobacco dealer in cigars, cigarettes, and smoking tobacco shall furnish to the secretary, who is charged with the duty of collecting the tax levied by this Chapter, a bond in the minimum amount of two thousand five hundred dollars, guaranteeing the payment of all taxes and penalties levied by this Chapter. The bond shall be executed by a surety company duly qualified to do business in this state. The tenor, solvency, and maximum amount of the bond shall be satisfactory to the secretary, the minimum amount thereof to depend upon the volume

of business of the dealer and must be in an amount sufficient in the discretion of the secretary to guarantee the state against any and all losses for taxes and penalties levied by the provisions of this Chapter.

B. However, the secretary is authorized to waive the furnishing of this surety bond by any dealer who has and agrees to maintain fixed assets in Louisiana of a net value of not less than one and one-fourth times the amount of the bond which would otherwise be required, who has had a bond on file with the department for a period of not less than three years, and who has not been delinquent in remitting taxes accrued or accruing under this Part during the three-year period immediately preceding application by the dealer for waiver of the bond. If any dealer whose bond has been waived by the secretary becomes delinquent in remitting taxes due under this Part, the secretary may require that such dealer furnish a bond in the amount required in this Section, and such dealer shall not be eligible for a waiver of a bond for a period of three years thereafter. In addition, the dealer must furnish audited financial statements with his waiver request and at such other times as the secretary may require.

§ 849. Interstate business of tobacco dealers

A. A registered tobacco dealer holding a valid stamping agent designation as provided in R.S. 26:902(2)(a) may sell its cigarettes from this state into another state only if it first affixes the stamp required by the other state to the package containing the cigarettes. If the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp, the dealer may sell cigarettes into the other state without a stamp only if it first pays an excise, use, or similar tax imposed on the cigarettes by the other state.

B. A dealer may not purchase or possess unstamped cigarettes in this state for sale into another state where the manufacturer and brand family of the cigarettes are not at the time of sale listed on this state's directory unless it holds an exporter license pursuant to R.S. 26:902(2)(b).

C. Any registered tobacco dealer desiring to engage in interstate business shall furnish a bond for that purpose. This bond shall be in addition to the bond provided for in R.S. 47:848, in an amount and of tenor and solvency satisfactory to the collector. He shall then be permitted to set aside such part of his stock as may be absolutely necessary for the conduct of such interstate business, without affixing the stamps required by this Chapter. Such interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock, and the interstate business shall be conducted by the dealer in accordance with rules and regulations to

be promulgated by the collector.

D. Notwithstanding Subsections A, B, or C of this Section, a person may not sell cigarettes from this state into another state if the sale would violate the law of the other state, or affix the stamp required by the other state or pay the excise, use, or similar tax imposed by the other state if doing so would violate the law of the other state.

§ 851. Dealers receiving unstamped and/or nontax paid cigarettes, cigars, and smoking tobaccos required to file monthly reports and maintain records; vending machine restrictions

A. General requirements. All purchases of cigars, cigarettes, and smoking tobaccos by any tobacco dealer shall be evidenced by an invoice from the seller correctly showing the date of the purchase and the quantity of each of said articles purchased by said dealer. Every tobacco dealer shall, at the time of shipping or delivering any cigars, cigarettes, or smoking tobaccos, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article and shall retain the same subject to the use and inspection of the secretary of revenue and taxation or his authorized representative until the taxes to which they relate have prescribed. Tobacco dealers shall also keep a record of all cigarettes, cigars, and smoking tobaccos purchased by them, and hold all books, records, and memoranda pertaining to the purchase and sale of such cigars, cigarettes, and smoking tobaccos open to the inspection of the secretary of revenue and taxation or his authorized representative.

B. Registered tobacco dealers and stamping agents.

(1) Each and every designated stamping agent in accordance with R.S. 26:902(2)(a) receiving unstamped cigarettes shall file a report with the secretary of the Department of Revenue on forms prescribed and furnished by the secretary showing the purchase, receipt and sale of unstamped taxable cigarettes, and the purchase and use of cigarette tax stamps. The report shall be submitted to cover the calendar month and shall be filed with the secretary not later than the twentieth day of the month following the end of the previous calendar month. The report shall certify that the report is complete and accurate and shall contain, in addition to any further information that the secretary or the attorney general may reasonably require, the following:

(a) The total number of cigarettes acquired by the stamping agent during that month for sale into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month, and held in inventory in the state or for the sale into the state by the stamping agent pursuant to this Chapter and R.S.

13:5075, in each case identifying by name and number of cigarettes the manufacturer and brand families of those cigarettes.

(b) The total number of stamps it affixed during that month, and identifying (i) how many of each type of stamp it affixed by number and dollar amount of tax paid; (ii) the total number of cigarettes contained in the packages to which it affixed each respective type of tax stamp; and (iii) by name and number of cigarettes, the manufacturers and brand families of the packages to which it affixed each respective type of tax stamp.

(c) In the case of a stamping agent that is an importer, reports under Subparagraph (a) of this Paragraph shall not include cigarettes it sold to a stamping agent as permitted under R.S. 26:902(2)(a) and that it separately reports pursuant to R.S. 13:5075.

(2) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into the state cigarettes of a manufacturer or brand family that were not on the state directory at the time shall file, not later than the twentieth day of the month following the end of the previous calendar month, a report on a form provided by the secretary and certify that the report is complete and accurate. The report shall contain, in addition to any further information that the secretary or the attorney general may reasonably require, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturer of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the state in which the recipient of those cigarettes is located, and (iv) in the case of an acquisition or purchase, the state of the seller or sender of those cigarettes.

(b) The following shall be provided to the attorney general or secretary upon request: in the case of acquisition, purchase, or possession, the detail of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed respective other state's stamp, (vi) by name and number of cigarettes that manufacturers and brand families of the packages to which it affixed each respective other state's stamp and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state not later than the twentieth day of the month following the end of the previous calendar month.

(3) The secretary may share the information reported under this Section with any

federal, state, or local taxing agency or law enforcement authorities of this state or other states.

(4)(a) Every registered tobacco dealer receiving and handling cigars and smoking tobaccos in Louisiana upon which the tax has not been previously paid shall, within twenty days after the expiration of each calendar month, file with the secretary a report, under oath, of the total amount of such cigars and smoking tobaccos received and handled during the preceding month, and shall pay the taxes due thereon, and all out-of-state Louisiana registered tobacco dealers shall file a report, under oath, disclosing all sales of cigars and smoking tobaccos in Louisiana during the preceding calendar month, and shall pay the taxes due thereon. This report shall be made on forms prescribed and furnished by the secretary and shall show such other information as the secretary may require so that the taxes levied in R.S. 47:841 can be reported and computed.

(b) A six percent discount is allowable for timely and accurately filing such report only on those purchases made by registered tobacco dealers in Louisiana who have a direct purchasing contract with a manufacturer. The secretary shall allow wholesale tobacco dealers of other states serving a trade area of retail dealers in this state who have a direct purchasing contract with a manufacturer to sell in this state with the benefit of the discount provided, however, in no instance shall the discount be greater than that which is received by such wholesale tobacco dealers in their state of domicile and further provided that regardless of the discount extended by other states, such discount shall not exceed six percent, provided said dealers meet the requirements of a wholesale dealer as set forth in R.S. 47:842(5). The transfer or disposal by a qualified dealer of any benefit herein conferred is prohibited except in the case of the original recipient.

(5) Failure to file the monthly report on or before the twentieth day of the following month will subject the dealer to forfeiture of the discounts as authorized in R.S. 47:843 and 851 and all other penalties as provided in the administrative provisions in Chapter 18, Title 47, however, the collector can upon timely application extend this date in his discretion upon cause shown.

C. Vending machine operators. (1) Every tobacco product vending machine operator shall keep a detailed record, including the purchase invoice, of each vending machine showing the date the machine was purchased or acquired, the source from which the machine was acquired, the correct make, model, and serial number, and capacity as to the number of cartons of cigarettes. Detailed records shall be kept showing the location of each machine and the date of placing the machine on location. Vending machine operators shall keep a record of the purchase and receipt of all cigars, cigarettes, and smoking tobacco purchased by them and hold all books, records, and memoranda pertaining to the sale of such cigars, cigarettes, and smoking tobaccos

open to the inspection of the collector or his duly authorized agent.

(2) In accordance with R.S. 14:91.8(D), vending machine operators shall affix a sign or sticker in not less than 22-point type on the front of each machine stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO PERSONS UNDER AGE 18."

D. Nonresident tobacco dealers. All purchases of cigars, cigarettes, and smoking tobaccos for distribution within the state of Louisiana by any nonresident tobacco dealer shall be evidenced by a separate invoice from the seller correctly showing the date of purchase and the quantity of each of said articles purchased by said dealer for distribution within the state of Louisiana. Such stock purchased for distribution within the state of Louisiana shall be kept in an entirely separate part of the building, separate and apart from stock purchased for sale or distribution, or both, in another state. Every nonresident tobacco dealer shall, at the time of shipping or delivering any cigars, cigarettes, or smoking tobaccos into the state of Louisiana, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article and shall retain the same subject to the use and inspection of the collector for the period of two years. Nonresident tobacco dealers shall also keep a record of all cigarettes, cigars and smoking tobaccos purchased by them for distribution within the state of Louisiana, and hold all books, records and memoranda pertaining to the purchase and sale of such cigars, cigarettes, and smoking tobaccos open to the inspection of the collector.

E. Out-of-state sales reports. Any person that sells cigarettes from this state into another state shall, by the twentieth day of the month following the month in which the sales were made, file a report on a form to be prescribed by the secretary and shall provide a duplicate report to the attorney general and certify that the report is complete and accurate.

(1) The report shall contain the following information:

(a) The total number of cigarettes sold from this state into another state by the dealer during that month, identifying by name and number of cigarettes; (i) the manufacturer of those cigarettes; (ii) the brand families of those cigarettes; and, (iii) the name and address of each recipient of those cigarettes.

(b) The number of stamps of each other state the dealer affixed to the packages containing those cigarettes during that month, the total number of cigarettes contained in packages to which it affixed each respective other state's stamp and, by name and number of cigarettes, the manufacturers and brand families of the packages to which it affixed each respective other state's stamp.

(c) If the dealer sold cigarettes during that month from this state into another state in packages not bearing a stamp of the other state, (i) the total number of cigarettes contained in such packages, identifying by names and number of cigarettes, the manufacturers of those cigarettes, the brand families of those cigarettes, and the name and address of each recipient of those cigarettes; (ii) the dealer's basis for belief that such state permits the sale of the cigarettes to consumers in a package not bearing a stamp; and, (iii) the amount of excise, use or similar tax imposed on the cigarettes and paid by the dealer to such state.

F. Information sharing. The secretary may share the information provided in Subsection E of this Section, upon request, with any federal, state, or local taxing agency or law enforcement authorities of this state or other states.

§ 852. Dealers required to furnish duplicate invoices

A. After due notice by the secretary every dealer in taxable articles as set out in this Chapter purchasing or receiving any cigars, cigarettes, or smoking tobacco from without this state, whether the same shall have been ordered through a dealer or jobber within this state or by drop shipment, or otherwise, shall furnish a duplicate invoice of all such purchases, or receipts to the secretary. Failure to furnish this duplicate invoice as required shall constitute a misdemeanor and be punishable as set out in R.S. 47:859.

B. In lieu of the invoices required herein, a computer-generated record may be used by every dealer in taxable articles as set out in this Chapter, purchasing or receiving any cigars, cigarettes, or smoking tobacco from without this state, whether the same shall have been ordered through a dealer or jobber within this state or by drop shipment, or otherwise. The computer-generated record shall contain the same information as is required of the invoices.

§ 853. Examination of invoices and determination of tax by secretary

A. After and upon examination of invoices of the dealer, if the secretary finds that cigars, cigarettes, and smoking tobacco have been sold, used, consumed, handled, or distributed without stamps affixed as required in this Chapter, he shall have the power to require such person to pay into the state treasury through him, a sum equal to not less than twice the amount of the stamp tax due. If upon examination of invoices, the dealer is unable to furnish evidence to the secretary of sufficient stamp purchases to cover unstamped cigars, cigarettes, and smoking tobacco, purchased by him, the prima facie presumption shall arise that such cigarettes, cigars, and smoking

tobacco were sold, used, consumed, handled, or distributed without the proper stamps affixed thereto.

B. In lieu of the invoices required herein, a computer-generated record may be used by the dealer. These computer-generated records shall contain the same information as would appear on the invoice for which it is being substituted and the dealer shall be held to the same requirements for presentation of records for verification of purchases and taxes paid.

§ 854. Declaration of intent and purpose of Chapter

A. It is the intent and purpose of this Chapter to levy an excise tax on all cigars, cigarettes and smoking tobacco, as defined in this Chapter, sold, used, consumed, handled or distributed in this state, except as provided in R.S. 47:855 and to collect same from the dealer who first sells, uses, consumes, handles or distributes the same in the state of Louisiana.

B. It is further the intent and purpose of this Chapter that where a dealer gives away cigars, cigarettes or smoking tobacco for advertising or any other purpose whatsoever the same shall be taxed in the same manner as if they were sold, used, consumed, handled or distributed in this state; however, for the taxable periods beginning on and after January 1, 2013 through December 31, 2016 this shall not be construed to include cigars or pipe tobacco, as defined and appropriately labeled in accordance with the Federal Food, Drug, and Cosmetic Act, the Family Smoking Prevention and Tobacco Control Act, also known as the Tobacco Control Act, and all applicable state laws, federal laws, and regulations, sampled on the premises of convention facilities during the Convention of the International Premium Cigar and Pipe Retailers Association.

C. At no time shall there be any distribution of free samples of cigarettes, as defined in the Federal Food, Drug, and Cosmetic Act, and the Tobacco Control Act, consistent with 21 CFR 1140.16, and all applicable federal laws and regulations. Furthermore, distribution of free samples of smokeless tobacco, as defined in the Federal Food, Drug, and Cosmetic Act, and the Tobacco Control Act, shall be permitted only pursuant to all applicable federal laws and regulations.

§ 855. Exemption from tax

Smoking and chewing tobacco purchased by or for state institutions for issue to the inmates of the same is hereby exempted from the taxes levied by this Chapter,

provided, nothing in this Section shall be construed to exempt the tax on manufactured cigarettes and cigars.

§ 856. Enforcement by collector

The collector shall collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter, and to that end he is vested with all of the powers and authority conferred by this Chapter.

§ 857. Refunds

A. The collector may promulgate rules and regulations providing for the refund to dealer for the cost of stamps affixed to goods which by reason of damage become unfit for sale and are destroyed by dealer or returned to manufacturer or jobber.

B. The collector may refund a dealer for the cost of stamps affixed to goods, that were listed on the state directory at the time the stamps were affixed but have been subsequently removed from the state directory, upon proof that the goods have been destroyed, the date and location of the destruction, and a verification must be signed by the individuals who witnessed the destruction. The collector may promulgate rules and regulations related to the destruction of the goods and the procedures for refund.

§ 858. Certain acts declared felonies

Each of the following acts is declared to be a felony and punishable by imprisonment in the penitentiary for not less than one nor more than four years:

- (1) To forge or counterfeit any stamp of the kind herein provided for.
- (2) To use knowingly and intentionally any such forged or counterfeited stamp.
- (3) To have in possession knowingly and intentionally any such forged or counterfeit stamp.
- (4) For any person or persons other than the collector to sell tobacco tax stamps not affixed to tobacco, whether the said stamps be genuine or counterfeit.

§ 859. Certain acts declared misdemeanors

A. Each of the following acts is declared to be a misdemeanor punishable by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not longer than six months, or by both such fine and imprisonment at the discretion of the court, provided that in the event of a third conviction under this Section, a jail sentence of not less than six months shall be mandatory:

(1) To sell or offer for sale any of the articles herein taxed without first having procured a permit as a tobacco dealer pursuant to R.S. 26:908, in those cases where necessary; provided, nevertheless, that in the case of purchases of stocks in bulk, the purchaser may operate under the permit of the seller for ten days, pending the application for and the grant of a permit to such buyer, and that in case of the dissolution of a partnership by death, the surviving partner may operate under the permit of the partnership until the time of its expiration, and the heirs, legal representatives of deceased persons, receivers, or trustees in bankruptcy appointed by any competent authority may operate under the permit of the person, firm, corporation, or association of persons so succeeded in possession by such heirs, representatives, receivers, or trustees in bankruptcy.

(2) To sell, except as a registered tobacco dealer engaged in and selling in interstate commerce, any of the articles taxed herein without the stamp herein provided for first being affixed and cancelled as herein provided.

(3) To refuse or fail to keep any records, furnish any report, or furnish any bond required in this Chapter.

(4) To violate any lawful rule or regulation made and published by the collector hereunder.

(5) To use any stamp more than once, or to have in possession tobacco tax stamps that have been used.

(6) To remove, erase, alter or deface the cancellation mark or marks on any stamp, or to have in possession any stamp on which the cancellation mark has been removed, erased, altered or defaced.

(7) To refuse to allow, on demand, the collector or any officer or agent of the said collector to make a full inspection of any place of business where any of the articles herein taxed are sold or in any other wise to hinder or prevent such inspection.

(8) To use any artful device or deceptive practice to conceal any violation of this Chapter or to mislead the said collector or any agent of said collector in the enforcement of this Chapter, or to defraud this state of its revenue.

(9) For any dealer to have in possession in any place of business any of the articles herein taxed, unless the same shall have the proper stamps attached where required.

(10) For any retail dealer or his agents or employees to fail to produce on demand of the said collector all invoices of all cigars, cigarettes and smoking tobacco bought by him or received in his place of business within six months prior to said demand unless he can show by satisfactory proof that the nonproduction of said invoices was due to providential or other causes beyond his control.

(11) For any person to make, use, present or exhibit to the collector or any agent of the said collector any invoice of cigars, cigarettes and smoking tobacco which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced.

(12) To receive in this state any shipment of taxable articles when the same are not stamped for the purpose and intention of violating the provisions of this Chapter and to avoid payment of the taxes.

(13) To violate any provision of this Chapter, in cases not specifically declared to be a felony by any other section of this chapter.

B. All agents, employees and others who aid, abet or otherwise participate in any wise in the violation of this Chapter or in any of the offenses hereunder punishable shall be guilty and punishable as principals to the same extent as any wholesale dealer or retail dealer violating the Chapter might be.

§ 860. Collector authorized to search and seize

The collector is given the power and authority to search and examine any warehouse, boat, store, storeroom, automobile, truck, conveyance, vehicle or any and all places of storage, or any and all means of transportation, wherein there is probable cause to believe that the terms of this Chapter have been or are being violated. Provided, that any automobile, truck, boat, conveyance, vehicle or other means of transportation, other than a common carrier, caught or detected transporting any of the articles taxed by this Chapter, without the tax herein provided for being paid as herein provided, or a bond furnished to guarantee the payment of the tax, may be seized by the collector in order to secure the same as evidence in a trial brought under this section.

No place, other than such as is open to the public, shall be invaded and searched for articles taxed by this Chapter except by an officer named in a search warrant issued by a competent court having the power of a committing magistrate upon the filing in the court of an affidavit reciting that affiant has reasons to believe and believes that

the named place is being utilized as a site for the violation of the provisions of this Chapter together with such additional evidence as the court may require to make out a prima facie case. No house, room, or apartment used as, or which apparently is, a bona fide residence is subject to invasion and search, except by an officer designated in a search warrant issued by a competent court having the powers of a committing magistrate, upon the filing in the court of an affidavit by two reliable persons reciting that they have reasons to believe and do believe that the place of residence is being used as a cloak or cover for a violation of the provisions of this Chapter and setting forth the specific violation being committed therein, together with such additional corroborating evidence as the court may require to establish the probable existence of the alleged violation.

The warrant shall be directed to a duly authorized peace officer and the premises described in the warrant shall be searched and all articles taxed by this Chapter, all equipment, and all property used or designed or intended to be used in the keeping for sale or sale, of articles taxed by this Chapter on the premises shall be seized by the peace officer. The keeper of the place or the person to whom the property belongs shall be apprehended and brought before the court issuing the warrant to abide the further orders of the court. The officer to whom the search warrant is directed shall make proper return thereon of the action taken on it, describing the commodities or property seized, if any. The commodities or property so seized shall be held by this officer without anyone having the right to have them released upon writ or claim, except commodities seized in a bona fide dwelling house. These last shall be released to their owner upon his giving bond, with security for their value conditioned upon their return to the peace officer upon order of the court.

§ 861. Intrastate transportation of unstamped articles prohibited

The transportation, carriage, or movement from point to point in this state by any automobile, truck, boat, conveyance, vehicle or other means of transportation of any article on which the tax is levied by this Chapter, upon which article the tax as levied by this Chapter has not been paid, is prohibited, and the automobile, truck, boat, conveyance, vehicle or other means of transportation so transporting any such article shall be subject to seizure by the collector and forfeiture and sale in the manner hereinafter provided.

§ 862. Importation of unstamped articles, except by common carrier, without permit prohibited

A. (1) It is unlawful for any person to ship or transport or cause to be shipped or transported into this state by any automobile, truck, boat, conveyance, vehicle, or any means of transportation other than a common carrier of any article or articles on which the tax is levied by this Chapter upon which article or articles the tax as levied by this Chapter has not been paid, without first obtaining a permit from the collector, authorizing the transportation, carriage or movement in this state of the article or articles taxed under this Chapter.

(2) A common carrier may possess and transport unstamped cigarettes in connection with a sale or other transfer permitted under this Chapter if the common carrier has in its possession documents establishing that title to the unstamped cigarettes remains with the manufacturer, importer, or stamping agent or bills of lading or other shipping documents establishing that it is delivering the cigarettes on behalf of a person authorized by this Chapter to sell or transfer the unstamped cigarettes and, in each case, such documents shall list the name and address of the person to whom the cigarettes are being delivered.

B. (1) The person or dealer who desires to import tobacco into this state, upon which a tax has not been paid, by vehicles other than a common carrier, must apply to the collector for a permit, stating the name of the driver, the make and number of the vehicle, the date, name, and address of the consignee, and any other information the collector may deem necessary; provided that, failure to obtain a permit as provided in this Section shall render the automobile, truck, boat, conveyance, vehicle, or other means of transportation so transporting any said article or articles subject to seizure and forfeiture and sale in the manner hereinafter provided.

(2) Any person or dealer transporting tobacco pursuant to this Subsection shall report the quantity and brand of the cigarettes to the collector and to the attorney general and the taxing authority of the other state by the twentieth day of the month following the month in which the transfer was made.

§ 863. Procedure for seizure, forfeiture, and sale of vehicles used in illegal transportation of taxable articles

A. The secretary of the Department of Revenue is authorized in a summary proceeding, or by an action against the owner or operator of any automobile, truck, boat, conveyance, vehicle or other means of transportation other than a common carrier, used in the transportation of any article on which a tax is levied by this Chapter and on which the tax has not been paid in the manner provided in this Chapter, to demand the forfeiture and sale of the said automobile, truck, boat, conveyance, vehicle or other means of transportation used in the said illegal transportation and in violation of this Chapter.

B. In all cases where it is made to appear by affidavit, that the residence of the owner of the automobile, truck, boat, conveyance, vehicle or other means of transportation is out of the state, or is unknown to the secretary, the court having jurisdiction of the proceeding shall appoint an attorney at law to represent the said absent owner, against whom the said rule shall be tried contradictorily within ten days after the filing of the same. The affidavit may be made by the secretary, an assistant to the secretary, or by the attorney representing the secretary. The attorney appointed to represent the absent owner may waive service and citation of the petition or rule, but shall not waive time nor any legal defense. If upon the trial of the proceeding it is established by satisfactory proof that the automobile, truck, boat, conveyance, vehicle, or other means of transportation has been used to transport any article on which a tax is levied by this Chapter and upon which said tax has not been paid, that the owner of the automobile, truck, boat, conveyance, vehicle, or other means of transportation knew or should have known of the illegal transportation, and that the seizure was constitutional or that the seizure was made upon reasonable grounds to believe the seizure was constitutional, then the court shall render judgment accordingly, declaring the forfeiture of the automobile, truck, boat, conveyance, vehicle or other means of transportation, and ordering the sale thereof after ten days' notice by advertisement in the official parish paper where the seizure is made. The sale shall be made by the civil sheriff of the parish of Orleans, or by the sheriff of the parish in which the seizure is made, at public auction at the courthouse to the highest bidder for cash and without appraisal; it being the intent and purpose of these proceedings to afford the owner of said automobile, truck, boat, conveyance, vehicle or other means of transportation a fair opportunity for hearing in a court of competent jurisdiction. It is further the intent and purpose of these proceedings that the forfeiture and sale of the said automobile, truck, boat, conveyance, vehicle or other means of transportation shall be and operate as a penalty for the violation of this Chapter by illegal transportation; and the payment of the tax due on the article upon which a tax is levied by this Chapter at the moment of seizure or thereafter shall not operate to prevent, abate, discontinue, or defeat the forfeiture and sale of the property.

C. No mortgage, lien, privilege, or other security interest recognized under the laws of the state of Louisiana shall be affected by a forfeiture hereunder when the owner of such mortgage, lien, privilege, or other security interest is a financial institution regulated by an agency of the state or of the federal government, or is a bona fide holder of a repairman's privilege under R.S. 9:4501. No property shall be forfeited hereunder to the extent of the interest of an owner or security interest holder by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

D. All funds collected from the seized and forfeited property shall be paid into the

state treasury and credited to the general fund in the same manner as provided for the tax herein levied.

E. The court shall fix the fee of the attorney representing the owner when appointed by the court, at a nominal sum not to exceed ten per centum, to be taxed as costs and to be paid out of the proceeds of the sale of said property.

§ 864. Affixing stamps; penalty; compromises

A. Penalty.

(1) Any dealer, required by this Chapter to affix the stamps, who fails to properly affix or cancel such stamps within the time limit prescribed by law, shall in addition to the taxable articles being subject to seizure, be required to pay as a part of the tax imposed hereunder a penalty for a first offense of one dollar per article; for a second offense, five dollars per article; and a third offense, ten dollars per article. For any offenses in excess of three the fine will be not less than twenty dollars per article nor more than one hundred dollars per article to be assessed and collected by the secretary as other taxes levied by this Chapter are collected.

(2) Any dealer who affixes stamps to cigarettes in violation of R.S. 47:843(D)(2) shall be subject to the same penalties as provided in Paragraph (1) of this Subsection.

B. Subsequent offenses. For purposes of determining second and third or more offenses, any offenses occurring within a five year period of each other will be considered additional offenses for purposes of this Chapter.

C. Compromises. The collector may compromise in a civil case arising under the provisions of this Chapter and any collections made by him on such compromises shall be handled in the same manner as the collections of the tax are handled. When any case is compromised, the collector shall keep a complete record of the transaction on file in his office.

§ 865. Seizure and forfeiture of unstamped taxable articles

A. All cigars, cigarettes, and smoking tobacco, on which taxes are imposed by this Chapter, found in possession or custody or within the control of any person for the purpose of being sold, or removed by him, in violation of the provisions of this Chapter, or with the design to avoid payment of the taxes, may be seized by the secretary, or his agent, in order to secure the same for trial, and the same shall be

forfeited to the state of Louisiana. The secretary or his agent making the seizure shall appraise the value of the same according to his best judgment at the usual and ordinary retail price of the article seized and shall deliver to the person, found in possession of the same, a receipt showing the fact of seizure, stating from whom seized, the place of seizure, and description of the goods, and appraised value. A duplicate of this receipt shall be filed in the office of the secretary and shall be open to public inspection.

B. The proceeding to enforce this forfeiture shall be by rule and be in the nature of a proceeding in rem in a court of competent jurisdiction where such seizure is made. The proceeding shall be filed by the secretary, or his assistant on behalf of the state of Louisiana, and the same shall be summary, and it may be tried out of term time and in chambers and shall always be tried by preference.

C. (1) Whenever the petition for rule shall be sworn to by the secretary, or an assistant, that the facts contained are true, and accompanied with a duplicate copy of the notice of seizure, the same shall constitute a prima facie case, but may be rebutted by the defendant.

(2) The proceeding shall be directed against the owner of the articles seized, demanding the forfeiture and sale of said property, as a penalty for the violation of this Chapter. Service of the proceeding shall be made upon the owner of the seized articles if he is a resident of this state, or his residence is known to the plaintiff in rule. In all cases where it is made to appear by affidavit that the residence of the owner of the seized articles is out of the state or is unknown to the secretary or his assistants, an attorney at law shall be appointed by the court, which has jurisdiction of the proceedings, to represent the owner, against whom the rule shall be tried contradictorily within ten days from the date of the filing of same. The affidavit may be made by the secretary, or one of his assistants, or by the attorney representing the secretary, if it is not convenient to obtain the affidavit of the secretary or one of his assistants. The attorney appointed to represent the owner of the seized articles may waive service and citation of the petition or rule, but he shall not waive time nor any legal defense.

(3)(a) Upon the trial of said proceedings if it is established by satisfactory proof that with respect to the articles under seizure that this Chapter has been violated in any respect, then the court shall render judgment accordingly, maintaining the seizure, declaring the forfeiture of said seized property, and ordering the sale thereof after ten days notice of advertisement at least twice in the official parish paper where seizure is made. The sale shall be made in the parish of Orleans by the civil sheriff and in the several parishes in the state of Louisiana by the sheriff at public auction. The intent and purpose of this proceeding is to afford the owner of said seized articles a fair

opportunity of hearing in a court of competent jurisdiction.

(b) If cigarettes are seized and such cigarettes are in packages described in R.S. 47:843(D)(2) or are stamped in violation of R.S. 47:843(D)(2), the secretary may not sell the cigarettes, but shall destroy such cigarettes or dedicate them to be used for law enforcement purposes and then destroyed.

(c)(i) Any cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of this Chapter or R.S. 13:5061 et seq. shall be deemed contraband and are subject to seizure and forfeiture as provided in this Chapter.

(ii) Any cigarettes so seized and forfeited shall be destroyed or used by law enforcement and then destroyed. Such cigarettes shall be deemed contraband whether the violations of this Chapter or R.S. 13:5061 et seq. are knowing or otherwise.

(iii) Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this Chapter, may bring an appropriate action for injunctive relief against the violator in accordance with the provisions of the Code of Civil Procedure.

(4) It is further the intent and purpose of this proceeding that the forfeiture and sale of the seized property shall be and operate as a penalty for the violation of this Chapter as aforesaid, and payment of the tax due on said seized articles at the moment of seizure or thereafter, shall not operate to prevent, abate, or discontinue, or defeat the said forfeiture and sale of the said property.

D. The court may fix the fee of the attorney appointed by the court to represent the owner of the seized articles at a nominal sum to be taxed as costs and to be paid out of the proceeds of the sale of the property.

E. In cases where in the opinion of the trial judge the value of the seized cigars, cigarettes, or smoking tobacco is so small as not to justify the expense of advertising and selling at public auction the seized commodities as hereinabove provided, the court may in any such case, in rendering judgment maintaining the seizure and declaring the forfeiture of the seized property, direct that the seized property be sold by the secretary at private sale, without advertisement, but shall direct that the seized property be not thus sold for a price less than a minimum figure to be fixed by the court in its judgment.

§ 866. Release of seized property in certain cases

Any person who claims title to the seized property or any lien existing thereon prior to the date of seizure, and who did not in any respect participate in the violation of this Chapter, may file with the collector, under oath, a detailed statement of his claim, and the further fact that the claimant did not in any way participate in the violation of this Chapter, and thereafter the said property may be released by the collector and delivered to him; provided that the said claimant shall furnish to the collector a good and solvent surety bond, in a penal sum not less than double the appraised value of the goods seized, and in no event less than fifty dollars (\$50.00), which said bond shall be conditioned to pay to the collector the appraised value of the goods, and all costs in the event the claimant does not prosecute his claim to successful judgment. If it is not practical to make service upon the claimant to the seized property, or in case the claimant is a non-resident, the proceeding outlined in R.S. 47:865 may be used in order that the issue may be presented in a court of competent jurisdiction, thereby affording the claimant a fair opportunity to be heard. In the event bond has been furnished by the claimant and the property has been released to him, the judgment of the court if the contention of the collector is sustained, shall be directed against both the claimant and the surety on the bond together with all costs from the beginning of the seizure up to the final disposition and settlement of the case.

If the claimant does not furnish bond as above provided, then the collector or his agent may proceed contradictorily against the claimant as set forth in R.S. 47:865. In no event shall the property be seized and sold without first affording the claimant a fair opportunity of being heard in a court of competent jurisdiction.

§ 867. Collector authorized to waive forfeiture proceedings in certain cases

Jurisdiction is conferred upon the collector to waive any proceedings for the forfeiture of the seized taxable articles or any part thereof when he finds that the violation of the law, for which the goods were seized, was unintentional or without intention to defraud the state of its revenue, provided that the offender first affixes to all of the seized taxable articles twice the amount and value of the stamps necessary to represent the tax, and cancels the same. The collector may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the collector and shall be open to public inspection.

§ 868. Regulations of metered machines or devices

A. Repealed by Acts 1998, No. 4, § 1, eff. June 4, 1998.

B. When the dealer affixes stamps to containers of taxable commodities by use of the metered stamping machine or device, the cost of purchase, rental and maintenance thereof shall be borne by the dealer. The collector shall prescribe regulations governing the use of metered stamping machines or devices and the right is reserved to the collector to prohibit the use of the metered machine or device where the collector shall find any party violating the terms and provisions of this Chapter, his regulations, or of the Unfair Sales Law, R.S. 51:421-51:427.

§ 869. Disposition of collections

All monies collected under the provisions of this Chapter, less such commissions and discounts as may be allowed as authorized in this Chapter and the amount to be withheld by the collector under R.S. 47:868, shall be paid on or before the tenth day of each month to the state treasurer, who shall credit and disburse said funds as follows:

First: The sum of one million dollars annually shall be credited to Louisiana State University and Agricultural and Mechanical College to be withdrawn and used by the university for its endowment, maintenance and support, or for the purpose of paying construction cost of buildings, the cost of equipment, furniture or fixtures, or for the repair or remodeling of present buildings.

Second: To the municipalities of Louisiana which are now or which hereafter are incorporated as municipal corporations functioning as such with a duly constituted governing body as authorized by the laws of the state, the respective amounts shown below. These funds shall be allocated, distributed and paid to such municipalities on the basis of the population of each as shown by the 1960 federal census or subsequent federal census or special census taken by a municipality as authorized by law, and such allocation, distribution and payment shall be made in accordance with the following schedule:

(1) Where the population is 1,000 or less, the municipality shall receive \$4.65 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

(2) Where the population is 1,001 to 2,500, inclusive, the municipality shall receive \$4.40 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

(3) Where the population is from 2,501 to 10,000, inclusive, the municipality shall receive \$4.25 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

(4) Where the population is from 10,001 to 25,000, inclusive, the municipality shall

receive \$4.00 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

(5) Where the population is from 25,001 to 100,000, inclusive, the municipality shall receive \$3.50 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

(6) Where the population is above 100,000, the municipality shall receive \$2.50 for each inhabitant, plus 9 percent of the amount so allocated to such municipality on said per capita basis.

Third: In the event that 37.5% of the avails of eight-twentieths of one cent per cigarette tax imposed under this Chapter, less that amount allocated to Louisiana State University and Agricultural and Mechanical college and less that amount retained by the collector under this Chapter, should exceed the amount allocated to the several municipalities under the distribution formula as established in subsection second hereof, such surplus shall be allocated, distributed, and paid as follows:

(1) To the following named parishes, in which there are no incorporated municipalities, namely, the parishes of Cameron, Plaquemines, St. Bernard, St. Charles and St. John the Baptist, the sum of \$1.50 for each inhabitant of each such parish as shown by the 1960 federal census or subsequent federal census or special census taken by such a parish.

(2) The balance of such surplus shall constitute a fund to be used exclusively for the purpose of increasing the per capita allocation, distribution, and payment to the municipalities in the various categories, beginning with those receiving the smallest per capita allocation, until the same are receiving a per capita allocation equal to that of the municipalities in the next highest category, such procedure to be continued until all municipalities are receiving an equal per capita allocation, distribution and payment.

(3) In addition to the amount, percentages, and allocations above set forth, which completely allocates 37.5% of the avails of eight-twentieth of one cent per cigarette tax, cities of over 100,000 population shall receive the further sum of \$.50 for each inhabitant, which amount shall be paid out of the remaining 62.5% of the avails of eight-twentieths of one cent per cigarette tax imposed under this Chapter, and any remaining avails of eight-twentieths of one cent per cigarette tax shall be deposited by the state treasurer into the state general fund.

Fourth: Where any qualified municipality was not incorporated at the time the federal census of 1960 was taken, the state treasurer is authorized to provide for the taking of the census of said municipality under appropriate rules and regulations, the cost of said census to be borne by such municipality.

Fifth: Where any state hospital or state institution is located within any of the above named parishes, or within the corporate limits of a municipality, the patients or inmates of such institution shall not be included in the population of such parish or municipality for the purpose of the distribution of funds under this Chapter.

Sixth: The state treasurer is authorized to adopt appropriate rules and regulations necessary or proper to carry out the distribution of such funds as hereinabove and hereinafter set forth and shall allocate and distribute same quarterly to the above named parishes and to the municipalities. Beginning July 1, 1971, any balance which remains after making the distribution out of the 37.5% of the total collections as hereinabove provided shall be retained in a special escrow fund specially dedicated hereby to the municipalities and parishes without municipalities. The moneys in this special escrow fund shall be distributed annually to the municipalities and said parishes having no municipalities on an equal per capita basis at such times and under such rules and regulations as may be deemed appropriate. Any balance which remains after making the distribution of the total collections as hereinabove provided shall be paid into the state general fund to be disbursed by the state treasurer as directed by law.

Seventh: A sum equal to one million dollars annually of the avails of the tax levied as provided in R.S. 47:841(B), after being credited to the Bond Security and Redemption Fund, shall be deposited for subsequent appropriation in the Louisiana Cancer and Lung Trust Fund established in R.S. 40:1299.88

Eighth: After first being credited to the Bond Security and Redemption Fund in accordance with Article VII, Section 9(B) of the Louisiana Constitution, the avails of the tax levied in R.S. 47:841(B) shall be disbursed as follows:

- (1) The avails of eight-twentieths of one cent per cigarette as provided in R.S. 47:869 (First) through (Sixth).
- (2) The avails of three-twentieths of one cent per cigarette as provided in R.S. 47:843(E).
- (3) After being disbursed as provided in R.S. 47:869 (Seventh), the remaining avails of five-twentieths of one cent per cigarette shall be deposited by the state treasurer into the state general fund.

CHAPTER 8-A. DELIVERY SALES OF CIGARETTES

§ 871. Definitions

For purposes of this Chapter:

(1) “Cigarettes” shall have the meaning as set forth in R.S. 13: 5062(4)(a) through (d).

(2) “Consumer” means an individual who is not licensed as a cigarette wholesale dealer or cigarette retail dealer as defined in R.S. 47:842.

(3) “Delivery sale” means any sale of cigarettes to a consumer in this state where either (a) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service, or (b) the cigarettes are delivered by use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a cigarette wholesale dealer or a cigarette retail dealer shall not be a delivery sale.

(4) “Delivery service” means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(5) “Mails” or “mailing” means the shipment of cigarettes through the United States Postal Office.

(6) “Person” means any natural person, trustee, company, partnership, corporation, or other legal entity.

(7) “Secretary” means the secretary of the Department of Revenue for the state of Louisiana or his duly authorized representatives.

§ 872. Prohibition against delivery sales

No person who is engaged in the business of selling or distributing cigarettes may ship or transport, or cause to be shipped or transported, cigarettes to any consumer in the state. The provisions of this Section shall apply regardless of whether the person engaged in the business of selling or distributing cigarettes is located within or outside of the state.

§ 876. Collection of taxes

A. Each person placing a purchase order for a delivery sale shall remit to the secretary all taxes imposed by this state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has

obtained proof, in the form of the presence of applicable tax stamps or otherwise, that such taxes already have been paid to the state.

B. In addition to the obligations to pay any taxes, as provided in Subsection A of this Section, the person placing a purchase order for delivery sale shall also be obligated to pay any interest, costs, and attorney fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed under this Chapter.

§ 877. Penalties

A. Except as otherwise provided in this Section, a first violation of any provision of R.S. 47:872 shall be punishable by a fine of one thousand dollars or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of R.S. 47:872 shall be punishable by a fine of five thousand dollars or five times the retail value of the cigarettes involved, whichever is greater.

B. Any person who knowingly violates any provision of R.S. 47:872, shall for each such offense be fined ten thousand dollars or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five years, or both.

C. Any cigarettes sold or attempted to be sold in a delivery sale shall be forfeited to the state and destroyed.

§ 878. Enforcement

The attorney general or the commissioner of the Louisiana Office of Alcohol and Tobacco Control, or either agency's designee, or any person who holds a valid permit under 26 U.S.C. 5712, may bring an action in the appropriate court in this state to prevent or restrain violations of this Chapter by any person or any person controlling such person.

TITLE 51 TRADE AND COMMERCE

Subpart E. Unfair Sales Law

Section

- 421. Definitions.
- 422. Sales at less than cost unlawful
- 426. Exemptions

SUBPART E. UNFAIR TRADE

§ 421. Definitions

As used in this Subpart:

A. “Retailer” means any person engaged in the business of making sales at retail within this state, or if any person is engaged in the business of making sales both at retail and at wholesale, “retailer” shall apply only to the retail portion of the business.

B. “Wholesaler” means any person engaged in the business of making sales at wholesale within this state, or if any person is engaged in the business of making sales both at wholesale and at retail, “wholesaler” shall apply only to the wholesale portion of the business.

C. “Replacement cost” means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity as the seller's last purchase of the merchandise.

D. “Sell at retail,” “sales at retail,” and “retail sale” mean any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible movable property to the purchaser for consumption or use other than resale, further processing or manufacturing.

E. “Sell at wholesale,” “sales at wholesale,” and “wholesale sales” mean any transfer for a valuable consideration, made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible movable property to the purchaser for purposes of resale, further processing or manufacturing.

F. “Cost to the retailer” means the invoice cost, or the replacement cost, of the merchandise to the retailer, whichever is lower;

(1) Less all trade discounts except customary discounts for cash;

(2) Plus; in the following order:

(a) Freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise;

(b) Cartage to the retail outlet if done or paid by the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be three-fourths of one per cent of the cost to the retailer after adding freight charges but before adding cartage and markup; and,

(c) A markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six per cent of the cost to the retailer after adding freight charges and cartage.

G. "Cost to the wholesaler" means the invoice cost, or the replacement cost, of the merchandise to the wholesaler, whichever is lower;

(1) Less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes;

(2) Plus; in the following order:

(a) Freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise;

(b) Cartage cost which shall be three-fourths of one per cent of the cost to the wholesaler after adding freight charges but before adding cartage, any existing tobacco stamp excise tax and markup, and any motor fuels excise tax;

(c) Any existing tobacco stamp excise tax; and,

(d) A markup to cover a proportionate part of the cost of doing business which markup, in the absence of proof of a lesser cost, shall be two percent of the cost to the wholesaler after adding freight charges, cartage, any existing tobacco stamp excise tax, and any motor fuels excise tax; and,

(e) Any motor fuels excise tax.

H. In determining "cost to the retailer" in those cases where the retailer buys at wholesale and receives the wholesalers' profits and discounts on merchandise to be sold at retail, both the wholesale markup of two per cent and the retail markup of six percent, in the absence of proof of a lesser cost, shall be added to cover a proportionate part of the cost of doing business.

I. When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, each and all of the items shall for the purposes of this Sub-part be considered, advertised, offered for sale, or sold, and the price of each item shall be governed by the provisions of Sub-sections F, G, and H of this Section.

J. "Cost to the retailer" and "cost to the wholesaler" as defined by Sub-sections F, G, and H of this Section means bona fide costs. Purchases made by retailers and wholesalers at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining "cost to the retailer" and "cost to the wholesaler."

§ 422. Sales at less than cost unlawful

A. Any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined by this Sub-part plus any state, county or municipal sales tax that is then payable under any existing law or ordinance, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or impairing fair competition and thus injuring public welfare, is unfair competition and contrary to and violative of public policy as expressed in this Sub-part, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create monopoly in any line of commerce.

B. Any sale, transfer or exchange between wholesale outlets or between retail outlets or between wholesale and retail outlets operating a separate business or under a separate name at a price less than the minimum herein prescribed, either through the allowance of a discount or by the payment of a commission or through any other device used to reduce the minimum price shall constitute a violation of this Sub-part.

C. Any wholesaler or retailer who furnishes labor or services to a purchaser to aid or assist in the conduct of the purchaser's business shall be deemed to be in violation of this Sub-part where the value of the services reduces the selling price of any given commodity below the minimum price as herein established, and this provision shall be effective irrespective of whether or not the person or persons performing such services be in the employ of the seller.

§ 422.1. Unfair sales of motor fuel; impairment of competition; exemptions; records to support exemptions

A. The provisions of this Section shall govern retail sales of motor fuel to the exclusion of R.S. 51:422 and 426. For purposes of this Section, the terms set forth below shall have the following meanings:

- (1) "Competition" means the vying for motor fuel sales between any sellers in the same relevant geographic market.
- (2) "Cost" means the retailer's cost of acquiring the product.
- (3) "Cost of acquiring the product" means the actual price paid for the product as reflected in the invoice or other sales documents or, in the case of a refiner, the cost of manufacturing the product and transporting the product to the relevant terminal facility.
- (4) "Motor fuels" means gasoline and diesel fuel.
- (5) "Terminal facility" means any inland, waterfront, or offshore appurtenance used for the purpose of storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned and/or operated by a wholesaler.

B. (1) Notwithstanding any other provision of this Subpart, it is an unfair trade practice and unlawful for any person who is a retailer to sell, at retail, motor fuel at a price which is below the retailer's cost plus taxes, applicable fees, and transportation charges, when the intent or effect is to impair or injure competition.

(2) For purposes of this Section, rebates provided to customers that purchase motor fuels through the use of a credit, debit, or shopping card not issued by or affiliated with the retailer shall not be considered in determining whether the sale is below the retailer's cost.

C. The provisions of Subsection B shall not apply in any of the following situations:

- (1) When motor fuel is sold upon the final liquidation of a business.
- (2) When motor fuel is advertised, offered for sale, or sold by any fiduciary or other officer under the order or direction of any court.
- (3) When motor fuel is sold for promotional purposes limited to a grand opening, an annual anniversary, or an annual customer appreciation day sale, each of which does not exceed three consecutive days.

(4) When motor fuel is sold in a good faith effort to meet the legal price of a competitor. No retailer shall be in violation of Paragraph (B)(1) of this Section if the retailer makes a bona fide effort to determine the legality of the price of a competitor and determines in good faith that the competitor's price is a legal price.

(5) When gasoline or diesel fuel of any grade or formula is sold or offered for sale at retail or wholesale for ultimate use in the operation of motor vehicles, generators, power tools, or small engines during a time period and in the specific geographic area in which R.S. 29:732 applies.

D. Any person who is in the retail business of selling motor fuel claiming any exemption from Subsection B pursuant to the exceptions provided for in Subsection C must keep and maintain records substantiating the claim for exemption.

E. Notwithstanding any other provision of law to the contrary, the provisions of this Section shall be enforced by the attorney general and the district attorneys, in their respective districts, in order to prevent and restrain violations of this Section.

§ 423. Violation; penalty; prima facie evidence; revocation of license or permit

A. (1) No retailer or wholesaler shall advertise, offer to sell, or sell at retail any item of merchandise at less than cost to the retailer or less than cost to the wholesaler respectively.

(2) No retail or wholesale seller of groceries that issues identification, customer discount, membership, or other similar cards shall sell or otherwise transfer or make available to any person for any purpose, other than law enforcement agents for official law enforcement purposes pursuant to a subpoena or court order or agents of the seller for purposes directly related to the use of such cards, any information obtained or derived from the issuance or use of such cards.

B. Whoever violates this Subpart shall be fined not less than five hundred dollars nor more than one thousand dollars for each offense and each offense shall constitute a separate violation. Proof of any advertising, offer to sell, or sale by any retailer or wholesaler in contravention of the policy of this Subpart shall be prima facie evidence of a violation.

C. In addition, the collector of revenue may suspend or revoke any existing license or permit granted to any wholesale or retail dealer after notice and opportunity to be

heard and in conformity with the rules and regulations made by the collector of revenue to carry out the provisions of this Subpart.

§ 424. Injunctions

In addition, the courts of this state may prevent and restrain violations of this Subpart, and district attorneys, in the respective districts, shall institute proceedings to prevent and restrain violations. Any person damaged, or who is threatened with loss or injury by reason of a violation of this Subpart may sue for and have injunctive relief against any damage, or threatened loss or injury. Any person, successful in a suit for injunctive relief under this Section, shall be allowed a reasonable attorney's fee; and further, the right as herein established shall exist in favor of any duly organized and existing trade organization and there shall exist damages and injury to such organization where it is shown that any one or more individual members thereof has been damaged by a violation of this Subpart.

§ 425. Incrimination not to bar evidence in civil action; defendant or witness not to be prosecuted

Any defendant, or any witness, in any civil action brought under the provisions of this Subpart may be required to testify, and the books, records, invoices and all other documents of any defendant, may be brought into court and introduced as evidence, but no defendant, or any witness in any civil action shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, and no testimony given or produced shall be received against him upon any criminal proceeding or investigation.

§ 426. Exemptions

The provisions of this Subpart shall not apply to sales at retail or sales at wholesale:

- (1) Where merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such;
- (2) Where perishable merchandise must be sold promptly in order to forestall loss;

(3) Where merchandise is imperfect or damaged, or is being discontinued and is advertised, marked and sold as such;

(4) Where merchandise is sold upon the final liquidation of any business;

(5) Where merchandise is sold for charitable purposes or to relief agencies;

(6) Where merchandise is sold on contract to departments of the government or governmental institutions;

(7) Where merchandise is sold in good faith to meet that competition which permits a competitor to sell at a lesser price where such competitor is able to do so without violating the terms and conditions of this Sub-part;

(8) Where merchandise is sold by any officer acting under the order or direction of any court;

(9) Where the merchandise is sold by the manufacturer or producer thereof.

§ 427. Name of Sub-part

This Sub-part may be cited as the Unfair Sales Law.

TITLE 55
LOUISIANA ADMINISTRATIVE CODE
PUBLIC SAFETY

PART VII. ALCOHOL AND TOBACCO CONTROL

SUBPART 1. BEER AND LIQUOR

Chapter 1. Beer Cash Regulations

Section

- 101. Definitions.
- 103. Credit Sales of Beer Prohibited – Retail Dealer Checks.
- 105. Wholesalers to Deposit Retailer Checks Currently – Records.
- 107. Reports by Wholesalers.
- 109. Wholesale Dealer Violations – Notices, Hearings and Findings
- 111. Retail Dealer Violations – Notices, Hearings and Findings.
- 113. Notice of Violations and Hearings – Retailers and Wholesalers.
- 115. Attendance at Hearings – Retailers and Wholesalers.
- 117. Effect of Suspension of License and Cash Rule.
- 119. Commissioner's Assertion of Intention of These Regulations.
- 120. to 300. Blank

Chapter 3. Liquor Credit Regulations

Section

- 301. Regulation I — Liquor Credit Law.
- 303. Regulation II — Adulterated Beverages.
- 305. Regulation III — Prohibitive Acts.
- 307. Regulation IV— Definitions and Explanations.
- 309. Regulation V — Solicitors.
- 311. Regulation VI — Fingerprints Required.
- 313. Regulation VII — Records.
- 315. Regulation VIII — Procedures Determined for Issuing Permits

- 317. Regulation IX — Prohibition of Certain Unfair Business Practices.
- 319. Regulation X — High Alcoholic Content Beverages — Stocking, Pricing, and Rotating.
- 321. Staggering of Expiration Dates.
- 323. Regulation XI — Fairs, Festivals, and Special Events.
- 323.1 Wine producers; fairs, festivals, farmer’s markets and similar venues
- 325. Caterer’s Permits.
- 327. Class C—Package Stores Retail Alcoholic Beverage Permits
- 329. Regulation XII - Participation in Hearing by Video Conference
- 330. to 500. Blank

Chapter 5. Responsible Vendor Program

Section

- 501. Purpose.
- 503. Definitions.
- 505. Vendors.
- 507. Servers.
- 509. Training: Providers and Trainers.
- 511. Responsible Vendor Minimum Course Standards
- 512. to 700. Blank

Chapter 7. Live Entertainment

Section

- 701. Prohibited Acts.
- 702. to 3100. Blank

SUBPART 2. TOBACCO

Chapter 31. Tobacco Permits

Section

- 3101. Definitions.
- 3103. Identifying Information for Licenses.
- 3105. Additional Information for Licenses: Partnership, Corporation, Limited Liability Company (LLC).
- 3107. Expiration of Licenses.
- 3109. Initial Application and Related Fees.
- 3111. Renewal Deadline: Penalties.
- 3113. Special Event Permits and Related Fees.
- 3115. Age Verification Requirements
- 3117. Importation of Cigarettes by Wholesaler Only
- 3119. Participation in hearing by Video Conference

CHAPTER 1. BEER CASH REGULATIONS

§ 101. Definitions

A. For use in these regulations, the following terms are defined.

Beer—(as used in these regulations) beer, porter, ale, or any malt beverage obtained by alcoholic fermentation of an infusion, or concoction of barley, or other grain, malt and hops in water.

Cash Basis Order—the order issued by the commissioner after considering violations of the Beer Cash Law, which requires that a specified retailer must pay cash (currency and/or coin) for beer.

Cash Payment Basis—a retail dealer is required to pay for beer with currency and/or coin.

Cash Sale—(as used in R.S. 26:741 and in this regulation) the sale of beer for a consideration passing simultaneously upon delivery of merchandise, which consideration shall be currency or coin, or check as provided herein, or, bank certified items of cashier's check, certified check, or bank money order.

Cash Sales of Beer Law or *Beer Cash Law*—the provisions of Act No. 466 of 1948, the current reference being 1950 Louisiana R.S. 26:741.

Certified Payment Basis—bank certified items which a retail dealer may use in payment for beer, as, cashier's check, certified check, or bank money order.

Check—an order in writing by a beer permittee, written in accordance with the rules of the bank on which it is drawn, ordering the bank to pay a certain sum of money from the account of said permittee and to the order of a payee wholesaler.

Commissioner—the Commissioner of Alcoholic Beverage Control for the State of Louisiana, or his agent.

Documentary Permit—the document issued by the collector of revenue to show that the application to engage in business as a beer dealer is approved, which document will show to whom the permit was issued (the permittee), the address location of the business, kind of permit, the year for which issued and date of issuance.

Hearing—the procedural matter of the commissioner setting and conducting a hearing to determine findings on violations of the Beer Cash Law by retailers and wholesalers.

Hearing Officer—the person in charge of the hearing on violations of the Beer Cash Law for the commissioner.

Notice of Hearing—the commissioner's written notice sent to dealers containing information of a hearing to be held on violations, which notice shall specify place, date and time.

Permit Suspension Order—the order issued by the commissioner suspending the privilege license of doing business as a beer dealer after a hearing.

Retail Dealer or Retailer—every person who sells, offers for sale, exposes for sale, or has in possession for sale and distribution, beer or malt beverages in any quantity to person other than to wholesaler or other retailers.

Uncollected Funds—bank terminology where items are accepted by the bank as a deposit for collection to be credited to the account of the depositor after collection, and which collection has not cleared by the bank.

Wholesale Dealer or Wholesaler—every person who sells, or offers for sale beer to other wholesale dealers, or to retail dealers for resale within the state, or to any person for delivery beyond the borders of the state.

§ 103. Credit Sale of Beer Prohibited—Retail Dealer Checks

A. The sale of beer by a wholesale dealer to a retail dealer shall be made only for cash. Any maneuver, device, or shift of any kind by either wholesaler or retailer, whereby credit is extended or obtained, is a violation of the Beer Cash Law.

B. Only retail beer dealers operating under a documentary permit, issued to them by the collector of revenue, may give a check for the payment of beer, and then only when such check is given and accepted in accordance with these regulations.

C. A check given by a retail dealer in payment for beer shall be considered a cash consideration only when the following conditions are met.

1. The check is drawn on the account of the retail dealer making the purchase.
2. The check is given not later than simultaneously upon delivery of the beer.
3. The check is dated not later than the date of delivery of beer.

4. The check is for an amount not exceeding the total invoice price.
5. The check is paid by the drawee bank when first presented for payment.
- D. Retail dealer checks accepted by a wholesale dealer may not be surrendered back to the retail dealer for cash before first presenting the check to the bank for payment in accordance with these regulations.
- E. An applicant for a retail beer permit commencing a new business, or taking over a going business, may not give a check in payment for beer until the documentary permit has been issued by the Collector of Revenue; the applicant must meet payment with cash, or, with certified payment.
- F. A check returned unpaid because of being drawn against uncollected funds is a violation of the Beer Cash Law; the dealer issuing the check may not claim the reason for the check being unpaid as a defense for the violation.

§ 105. Wholesalers to Deposit Retailer Checks Currently—Records

- A. All checks accepted by the wholesale dealers from retail beer dealers shall be deposited or presented for payment by the wholesale dealer not later than the next banking day following the receipt of the check from the retail dealer.
- B. Failure to timely deposit or present for payment any check shall be considered a violation of R.S. 26:741 by the wholesaler. The wholesale dealer shall record the date and the manner in which he presents the check to the bank for payment, whether by a listed deposit, or at the paying teller's window for cash.
- C. 1. Wholesale beer dealers shall maintain all records pertaining to checks accepted from retail dealers and bank deposits of such checks for a period of two years, and shall hold all books, records and memoranda pertaining to those checks returned unpaid by the bank; such records shall be held for examination and review by the commissioner.
2. Wholesale beer records of collections and banking for the sale of beer shall be designed to show the wholesale beer distributive business separate from any other lines of business.

§ 107. Reports by Wholesalers

A. Whenever a check accepted by a wholesaler from a retailer is not honored by the drawee bank for any reason whatsoever, the wholesaler shall furnish the commissioner a written notice of this failure on a form prescribed by the commissioner, which notice shall be mailed to the commissioner not later than the next day after receipt of notice that payment of check has been refused (Form BCL-3).

B. All wholesale dealers shall file with the commissioner a monthly report on forms prescribed by the commissioner of all checks accepted from retailers which were returned unpaid by the drawee bank for any reason; the report is to cover transactions on beer sold during the calendar month, and shall be filed not later than the twentieth day following the close of each month (Form BCL-4).

C. The reports required in §107.A and B shall contain the information on each item as specified in the form supplied by the commissioner, as well as any additional information requested of the wholesaler by the commissioner.

D. Wholesale dealers shall report to the commissioner any incident where a retail dealer defers payment for beer by a means other than the issuance of an insufficient check, such incident shall be submitted to the commissioner as a written report setting out all information to describe the transaction and the means used by the retail dealer to defer payment for beer.

§ 109. Wholesale Dealer Violations—Notices, Hearings and Findings

A. Any of the following when committed by a wholesale dealer shall be considered a violation of R.S. 26:741, the Cash Sales of Beer Law:

1. to use any maneuver, device or shift of any kind whereby credit is extended or payment is delayed for beer sold to a retailer;
2. failure to exact the full cash consideration on the sale of beer not later than at the time of delivery of beer to the retail dealer;
3. the acceptance of a check other than a check of a retail dealer operating under a documentary permit issued by the collector of revenue;
4. failure to exact cash payment or certified payment for beer from an applicant for a

retail beer permit whose documentary permit has not been issued;

5. failure to deposit checks of retail dealers as required by §105 of these regulations;
6. failure to file with the commissioner within the prescribed time and in the proper form any reports or notices provided in these regulations;
7. selling of beer other than for cash to a retail dealer who is operating under the commissioner's cash basis order;
8. making a sale of beer to a retail dealer during the period the retail dealer is under the commissioner's permit suspension order;
9. failure to satisfactorily answer notice to appear at hearings on violations, or, failure to furnish requested information at hearing.

B. Whenever the commissioner has reason to believe a violation of R.S. 26:741 or these regulations has been committed by a wholesale dealer, he shall determine, according to the available records, if it is the first violation, or if prior violations have occurred, and proceed according to the following.

1. First Violation. The commissioner shall send a warning notice to the wholesale dealer.

2. Second Violation

a. The commissioner shall send a notice to the wholesale dealer that the records show that since the first violation was found, the wholesaler has committed another violation and that a hearing will be held at a specified time and place.

b. If, at the hearing on the second violation, the commissioner is satisfied that the violation did occur within one year of the first violation, then the permit of the violator may be suspended for a period of two days exclusive of Sundays, election days and legal holidays and the violator may be fined not less than \$50 but not more than \$500.

3. Third Violation

a. The commissioner shall send a notice to the wholesale dealer that the records show that since the second violation was found, the wholesaler has committed another violation and that a hearing will be held at a specified time and place.

b. If, at the hearing on the third violation, the commissioner is satisfied that the violation did occur within one year of the first violation, then the violator may be suspended for a period of five days, exclusive of Sundays, election days and legal

holidays and the violator may be fined not less than \$250 but not more than \$1,000.

4. Fourth Violation

a. The commissioner shall send a notice to the wholesale dealer that the records show that since the third violation was found, the wholesaler has committed another violation and that a hearing will be held at a specified time and place.

b. If, at the hearing on the fourth violation, the commissioner is satisfied that the violation did occur within one year of the first violation, then the violator may be suspended for a period of 10 days, exclusive of Sundays, election days and legal holidays and the violator may be fined not less than \$500 but not more than \$2,500.

c. When there are violations found subsequent to the fourth violation, the commissioner will likewise set hearing as in the third and fourth violations, and if, after the hearing, the commissioner is satisfied that the violation did occur within one year of the first violation, then the violator may be suspended for a period of 90 days, or the revocation of the permit holder may be ordered, and, in addition to either, the violator may be fined not less than \$3,000 but not more than \$10,000.

§ 111. Retail Dealer Violations—Notices, Hearings and Findings

A. Any of the following, when committed by a retail dealer, shall be considered a violation of R.S. 26:741, the Beer Cash Law:

1. failure to pay the full cash consideration for the purchase of beer not later than at the time of delivery of said beer, or, to use any maneuver, device, or shift of any kind whereby credit is obtained;

2. making payment to a wholesaler for beer with a check which does not comply with the requirements of §103 of these regulations;

3. to buy, borrow or otherwise obtain beer by any means while under a permit suspension order;

4. to sell, loan, give or otherwise supply beer on any basis to a retail dealer who is under a permit suspension order;

5. to violate the conditions of a cash basis order, or, to violate conditions of a permit suspension order.

B. Whenever the commissioner has reason to believe that a violation of R.S. 26:741 or these regulations has been committed by a retail dealer, he shall determine,

according to available records, if it is the first violation, or, if prior violations have occurred, and, proceed according to the following.

1. First Violation. The commissioner shall send a warning notice to the retailer.

2. Second Violation

a. On the second recorded instance of a violation, after the notice of the first violation to a retail dealer, the commissioner shall review the file and records of violations of the retail dealer to determine a finding.

b. If, after such review, the commissioner is satisfied that the violation did occur within one year of the first violation, then, he shall rule that the retail dealer must pay cash for beer for a period of three months, to begin the date so specified in the cash basis order.

c. If the cash basis order is issued on the retailer, the commissioner shall rule to require wholesale dealers to accept only cash from the retailer for the payment of beer sold during the period of the cash basis order.

3. Third Violation

a. The commissioner shall send a notice to the retail dealer that the records show that since the second violation was found, the retailer has committed another violation and that a hearing will be held at a specified time and place.

b. If, at the hearing on the third violation, the commissioner is satisfied that the violation did occur within one year of the first violation, then the permit of the violator shall be suspended for a three-day period, exclusive of Sundays, election days and holidays.

c. In addition to the suspension of the permit, the commissioner shall rule that the retail dealer must pay cash for beer for a period of six months, which rule, shall require wholesale dealers to accept only cash from the retailer during the period of the cash basis order.

4. Fourth Violation

a. The commissioner shall send a notice to the retail dealer that the records show that since the third violation was found, the retail dealer has committed another violation and that a hearing will be held at a specified time and place.

b. If at the hearing on the fourth violation the commissioner is satisfied that the violation did occur within two years of the first violation, then the permit of the violator shall be suspended for a period of not less than 10 days nor more than 30

days.

c. In addition to the suspension of the permit, the commissioner shall rule that the retail dealer must pay cash for beer for a period of one year, which rule shall become effective on the finding of the violation; and the commissioner shall rule to require wholesale dealers to accept only cash from retail dealer during the period of the cash basis order.

C. When violators found subsequent to the fourth violation, the commissioner likewise set hearings as in the third and fourth violations, and if after the hearing the commissioner is satisfied that the violation did occur within one year of the last previous violation, then the permit of the retail violator shall be suspended for a period of not less than 10 days nor more than 30 days, and shall be required to pay cash for the purchase of beer for one year.

D. If the commissioner determines at the hearing on the fourth violation, or, any subsequent hearing, that an aggravated condition occurred with that violation, an alternative penalty may be invoked by the commissioner to include permit suspension for a period of 90 days, or the revocation of the permit of the violator.

§ 113. Notice of Violations and Hearings—Retailers and Wholesalers

A. The commissioner's notice to dealers of violations and/or hearings will be directed to the dealer at the address shown on the dealer's permit and may be sent by mail, or, in writing to be delivered to the dealer by the commissioner's agent.

B. The notice shall be marked to show whether it is the first violation, second violation, third violation, or subsequent violation, as the case may be and if there is a hearing, the notice shall contain information pertinent to the hearing, as, place, date and time.

§ 115. Attendance at Hearings—Retailers and Wholesalers

A. Dealers shall be sent a notice of hearings on violations which involve the suspension of his permit so as to afford the dealer an opportunity to be present and to offer any evidence or argument on his behalf in connection with those violations.

B. If the dealers do not attend the hearing, then the hearing officer shall proceed with the hearing; if his findings affect the status of the permit of the dealer, the hearing officer shall send a written notice of such findings to the dealer.

§ 117. Effect of Suspension of License and Cash Rule

A. The license of any wholesale beer dealer, who continues to engage in the business subject of his beer license while under suspension for violation of the Cash Sales of Beer Law, shall be suspended for a period of 30 days, or may be revoked as a violation of the Beer Cash Law after notice and hearing.

B. The license of any retail beer dealer, who continues to engage in the business subject of his beer license to any extent while under suspension for a violation of the Cash Sales of Beer Law, shall be suspended for a period of 90 days, or, may be revoked as a violation of the Beer Cash Law after notice and hearing.

C. When a retail dealer is a multiple holder of retail beer permits, and said retailer is found to have committed a violation of the Beer Cash Law, and the hearing officer issues the cash payment order, such rule shall apply to all separate places of business operated by the retail dealer as of the date of the cash rule.

§ 119. Commissioner's Assertion of Intention of These Regulations

A. These regulations are issued to implement R.S. 26:741, the Beer Cash Law, to provide an administrative vehicle by which effective administration may be accomplished so as to give clarity and understanding to those provisions.

B. It is the intention of these regulations to give consideration to the desired effect in the conduct of the beer distributive industry so as to contribute to the orderliness of that industry; to give force and clarity to the necessity of submitting applications for the privilege license as a beer dealer; to further point out the necessity of the documentary permit.

C. Special attention is directed to wholesale dealers from whom state and local beer taxes are collected, to point to their responsibility under these regulations, and that such responsibility may not be disregarded; to point out that where the facts show an apparent disregard for the spirit and purpose of these regulations, that even though is not a specific violation, the dealer will be cited by the commissioner for such

condition.

CHAPTER 2. LIQUOR CREDIT REGULATIONS

§ 301. Regulation I—Liquor Credit Law

A. Every delivery of liquor to retail dealers shall be accompanied by an invoice of sale showing the name of the retail dealer, his trade name and permit number, and the date of the invoice which shall be the date of actual delivery.

B. Manufacturers and wholesale dealers shall on each Monday morning mail to the commissioner, on a form prescribed by him, delinquent reports containing all of the information called for on said report.

C. The dealers required to be reported as delinquent are those whose accounts were delinquent as of 7 p.m. Sunday preceding the date of the report.

D. Delinquent retail dealers who pay their deficiency in full by Monday mornings are not to be included on the delinquent reports of that day.

E. Delinquents are to be reported each Monday morning until their accounts have been paid in full.

F. When collections are made from delinquent retail dealers before the expiration of their credit period, but too late to be processed on the wholesaler's or manufacturer's books and included on their delinquent report, provided an affidavit, on a sample form to be furnished by the commissioners, is executed by the person receiving the payment, which affidavit is to be retained by the wholesaler or manufacturer.

G. Delinquent reports shall name all outlets and package houses owned or operated by the delinquent retail dealer.

H. When manufacturers and wholesale dealers are not open for business on Mondays, reports shall be submitted on the last working day prior thereto, unless notified to the contrary by the commissioner.

I. Triplicate copies of delinquent reports are to be made by manufacturers and wholesale dealers, the original of which is to be sent to the commissioner at Baton Rouge, one to the delinquent retail dealer and one to be retained by the wholesale dealer or manufacturer.

J. No sale of liquor, except for cash (currency or silver), shall be made to a delinquent

retail dealer on or after the date a list containing his name has been published by the commissioner.

K. A retail dealer shall remain in default of credit until a list on which his name does not appear has been published by the commissioner, or manufacturers and wholesale dealers are notified to the contrary by the commissioner.

L. Any liquor salesman and/or any wholesale liquor dealer who, either individually or collectively, coerces, or conspires with, any retail liquor dealer to purchase alcoholic beverages on any terms other than those permitted under R.S. 26:159 and these regulations shall subject said liquor salesman, and/or said retail or wholesale liquor dealer to a hearing with possible suspension of permit or permits for violation of Title 26 of the Revised Statutes of 1950, as amended, and these regulations.

M. Any permittee who remains in default over a period of 30 days, may be called to a hearing by the commissioner to either suspend his permit or be placed on a permanent cash basis, or both; and in the event the commissioner places any permittee on a cash basis, all wholesale dealers shall be notified thereof in writing, and after the receipt of such notice, no dealer shall sell, offer to sell, or deliver any alcoholic beverages for any consideration other than cash until otherwise advised in writing by the commissioner.

N. Any permittee placed on a permanent cash basis by order of the commissioner may request rescission of the order by petitioning the commissioner in writing for a rehearing and the commissioner may rescind his order upon the permittee satisfying the commissioner of his financial responsibility to carry on his business on a credit basis.

§ 303. Regulation II—Adulterated Beverages

A. As set forth in R.S. 26:150(B)(3), no dealer shall adulterate, water, or in any manner change the original contents of any container of regulated beverages nor possess any so adulterated, watered or changed. The provisions of this rule shall not apply to duly licensed manufacturers engaged in the blending or rectifying of regulated beverages under existing regulations or laws.

B. As set forth in R.S. 26:150(B)(4), no dealer shall do any act or thing which, by the laws of this state, is defined or prohibited as an unfair practice. Unfair sales as defined and prohibited in R.S. 51:421 et seq., are hereby deemed to be unfair practices.

C. 1. To provide for the Truth in Labeling and Consumer Information Law, the following are required.

a. Any alcoholic beverage, concoction, or premixed alcohol mixed drink sold in a frozen drink machine, slush machine, or other type of dispensing system or device where the identity of the trademarked alcohol brands are lost in preparation, shall have affixed to such machine, dispensing system or device a sign clearly visible to the consumer showing the trademarked alcohol brands contained in such mixture.

b. In casinos, riverboats, and establishments holding Class AG(6) Exception permits, that cannot be accommodated with a back bar, due to their confined space and their method of service for alcoholic beverages, the owner shall prominently display all trademarked alcohol brands and types of alcohol available for consumption on the premises. The display of trademarked alcohol brands and types of alcohol must be obvious and clearly visible to consumers.

2. Any distributor of such alcoholic beverages may provide the signs or displays that are required to be posted by the retail dealer, pursuant to the cost limitations set forth in LAC 55:VII.317.

D. Any violation of these regulations are deemed unfair practices and shall subject the permittee to revocation, suspension, or withholding of his alcoholic beverage permits after a second or subsequent conviction and /or fines after any conviction.

§ 305. Regulation III—Prohibitive Acts

A. Every dealer engaged in the business of dealing in alcoholic beverages shall, upon receipt of the document listing prohibitive acts on licensed premises mailed with all permits, post the same in the premises licensed in a place conspicuous, in full public view, subject to inspection at all times.

B. In connection with R.S. 26:88(5), the following terms are thus defined:

Disturbance of the Peace—those acts as now defined or as may hereafter be defined as such in the criminal laws of this state;

Lewd, Immoral, or Improper Entertainment, Conduct, or Practices—includes, by way of illustration and not limitation, any of the following:

a. lustful, lascivious, or sexually indecent dances;

b. offering one's self for sexual intercourse for hire;

c. crimes against nature as now defined or as may hereafter be defined as such in the criminal laws of this state.

Obscenity—those acts as now defined or as may hereafter be defined as such in the criminal laws of this state.

C. Contest and Game Promotions. Except as otherwise provided by law, contest and game promotions are allowed in accordance with the following restrictions.

1. No manufacturer, wholesaler, or retailer may allow, encourage, or otherwise entice any patron to risk the loss of anything of value or require any purchase payment or proof of purchase as a condition of entering or participating in any contest or game promotion or receiving any prize. Each patron allowed, encouraged, enticed, or required to make any purchase as a condition of entering any contest or game prohibited by this Subsection will constitute a separate violation.

2. No manufacturer, wholesaler, or retailer may collect an entry fee or cover charge as a condition of entering or participating in any contest or game promotion or receiving any prize. Each patron from whom an entry fee or cover charge is collected in violation of this Subsection will constitute a separate violation.

3. No manufacturer, wholesaler, or retailer may collect, hold, redistribute, possess or otherwise handle any prize money on behalf of players in any contest or game. Each patron for or from whom any such prize money is collected, held, or otherwise handled will constitute a separate violation of this Subsection.

4. No manufacturer, wholesaler, or retailer may encourage or otherwise entice any patron to participate in poker, blackjack, craps, or any other gambling game conducted on the licensed premises. Encouragement and enticement includes, but is not limited to, advertising in any form, including broadcast, print, indoor or outdoor signage, and word-of-mouth advertising. Advertising in any form will constitute prima facie evidence of a violation of this Subsection. Each patron responding to any such encouragement or enticement will constitute a separate violation of this Subsection.

5. No manufacturer, wholesaler, or retailer may allow any patron or other third party to conduct, manage, direct, or otherwise organize games, tournaments, or leagues involving multiple tables on their licensed premises. Each patron or other third party conducting, managing, directing, or otherwise organizing such games will constitute a separate violation of this Subsection. Each patron participating in games, tournaments, or leagues played on multiple tables will constitute a separate violation of this Subsection.

6. No manufacturer, wholesaler, or retailer may maintain or furnish any gambling paraphernalia to any patron for purposes of engaging in a contest prohibited by this Subsection. Gambling paraphernalia includes, but is not limited to, playing cards,

poker chips, tokens, markers, buttons, card tables, dice, seating cards, and containers or other means of storage of wagers for safekeeping during any prohibited game. Pool or billiard tables, cues, chalk, racks, and balls; darts, dart boards, and score boards; bowling balls and shoes are not subject to provisions of this Subsection.

7. All prizes awarded must be furnished by the retailer hosting, or the sponsor of, any such contest or game promotion. Any and all prizes awarded in violation of this Subsection will constitute a separate violation.

8. Athletic competitions and games, including but not limited to pool or billiards, darts, golf, bowling, and softball, are not subject to provisions of this Section.

9. Legalized gaming, as provided for in R.S. 27:1 et seq., and charitable gaming, as provided for in R.S. 4:701 et seq., are not subject to provisions of this Section

10. Except as otherwise provided by law, contests based on the score of athletic competitions, or the outcomes or scores of a series of athletic competitions, commonly known as "football boards," "basketball pools," and other similar contests, are not subject to provisions of this Section.

D. No retailer may sell or deliver beer, spirits, wine or any other alcoholic beverage, whether high or low alcoholic content, in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless the purchaser submits to a clerk a valid driver's license, selective service card, or other lawful identification which on its face establishes the age of the person as 21 years or older and there is no reason to doubt the authenticity and correctness of the identification prior to approaching the self-checkout counter.

1. Violation of Subsection D by a retail dealer's agent, associate, employee, representative, or servant will be considered the retail dealer's act for purposes of suspension or revocation of a permit.

2. Violation of Subsection D subjects the retail dealer to penalties provided in R.S. 26:96 and/or R.S. 26:292, including but not limited to suspension or revocation of his permit and penalty provisions in R.S. 26:171.

E. No retailer may allow the sale, dispensing, or distribution of beverages of high or low alcoholic content in any type of automatic mechanical vending machine activated by the use of a coin, token, or similar instrument except in class A establishments and subject to the following.

1. All state laws regulating retail establishments, including but not limited to, the legal drinking age, service to intoxicated persons, etc. apply and it is the responsibility of the retail dealer to ensure that his business is at all times compliant

with all applicable laws and regulations. Violation of any such laws or regulations on the licensed premises will subject the retail dealer to penalties provided in R.S. 26:96 and/or R.S. 26:292, including but not limited to suspension or revocation of his permit and penalty provisions in R.S. 171.

2. All automatic mechanical vending machines are located in a facility where at least one employee is on duty during all hours of operation.

3. All automatic mechanical vending machines are located such that they are within the unobstructed line of sight and within 25 feet of at least one employee during all hours of operation.

4. All patrons must submit to an employee of the retail dealer a valid driver's licenses, selective service card, or other lawful identification which on its face establishes the age of the person as 21 years or older and there is no reason to doubt the authenticity and correctness of the identification prior to approaching any automatic mechanical vending machine containing alcoholic beverages of high or low alcoholic content.

5. All automatic vending machines must be under functioning video surveillance during all hours of operation.

§ 307. Regulation IV—Definitions and Explanations

A. Definitions

Alcoholic Beverages—[as used in R.S. 26:80(E), (F), (G), and (H)] interpreted as defined in R.S. 26:2(1).

Bona Fide Wholesaler—a dealer who in good faith truly and openly conducts the business of wholesaling alcoholic beverages to retailers in an immediate trade area without any simulation or pretense as to his true classification as a wholesaler.

Immediate Trade Area—(as used in R.S. 26:80) that geographical area in which a wholesale permittee in good faith actually carries on and intends to carry on a bona fide wholesale business by regular sales and deliveries of alcoholic beverages on hand to at least 20 percent of the retail permittees carrying on business in such area with separate sales to said retailers accounting for at least 50 percent of the gallonage handled by said wholesale permittee.

Liquor—[as used in R.S. 26:80(D)] interpreted as defined in R.S. 26:2(2).

B. Every bona fide wholesale dealer must necessarily have an immediate trade area

the size of which depends upon the scope and extent of his operation.

C. Every applicant for a wholesale license must define his immediate trade area, as defined above, at the time of application. An applicant's designation must be reasonable and must not contain artificial or unrealistic areas, or areas amounting to a pretense or simulation.

D. No wholesale permit shall be issued to any applicant, or, if issued no wholesale permit shall be held by any permittee unless such applicant or permittee, at all times throughout the license year, meets and maintains, in addition to all other qualifications and requirements provided by law, the applicable standards set forth in R.S. 26:80, and in these regulations.

E. A Schedule B is required by the board of every wholesale permit applicant. This schedule must be filed prior to the issuance or renewal of any wholesale permit and must be answered in anticipation of the coming year's operation.

F. At any time during the license year, the board may require any wholesale dealer to file with the board any pertinent information requested in connection with his classification as a wholesale dealer.

G. At any time during the license year, the board may order an inspection and audit of any wholesale dealer in connection with his classification as a wholesale dealer.

H. All inspections and audits made and all Schedule B's on file shall remain confidential in the board's files, unless and until the same are used in connection with enforcement purposes or any denial, suspension or revocation preceding based upon R.S. 26:80(D), (E), (F), (G), and (H).

§ 309. Regulation Number V—Solicitors

A. Applicants for state permits as solicitors shall meet the following qualifications in addition to those provided in R.S. 26:79:

1. is not the owner or manager required to file a Schedule A as the decision maker of a business having Class A, Class B or Class C Retail Liquor Permit;
2. if the spouse of a person who is the owner or manager of a business having a Class A, Class B or Class C Retail Liquor Permit, the solicitor-spouse cannot be the solicitor who calls on the spouse's business, and whatever supplier or wholesale license the solicitor's license is representing must not maintain any tied house or fair trade issues with the permittee;

3. these restrictions shall not apply to persons lawfully holding both retail and wholesale permits under the provisions of R.S. 26:83 (1950).

§ 311. Regulation VI—Fingerprints Required

A. Except as provided in §311.B, every applicant, or if the applicant is a partnership or corporation, every person listed in §311.B or R.S. 26:79, shall furnish a set of fingerprints to the Department of Public Safety, Division of State Police, Box 66614, Baton Rouge, LA 70896, together with the identification sheet furnished by the board, prior to the filing of the application.

B. Applicants who are not seeking a new permit but only the annual renewal of a current one need not be fingerprinted if sets of fingerprints have been filed within the previous five year period in accordance with §311.A.

C. Every permittee who holds a permit for the year 1972 and who has not been fingerprinted previously shall furnish a set of fingerprints as required by §311.A within 30 days after notification by the board.

§ 313. Regulation VII—Records

A. The holders of wholesale liquor permits shall maintain records to reflect clearly information as follows:

1. the dollar value of liquor inventory on hand on the last day of each month;
2. total number of gallons of liquor sold each month;
3. total number of gallons of liquor sold each month to retail outlets in the immediate trade area other than to himself, if he also is a retail dealer;
4. total number of gallons of liquor sold each month to retail outlets owned by himself as the wholesale dealer;
5. a listing of the different retail dealers to whom sales were made each month showing name, address and permit number.

§ 315. Regulation VII -- Procedures Determined for Issuing Permits

A. Except as otherwise provided for by law and these regulations, all alcoholic beverage permits shall be issued for a period of no more than one year.

B. Notwithstanding Subsection A of this Section, the commissioner may issue alcoholic beverage permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control. Obtaining a two year permit shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year permit shall make application under the provisions of Subsection B of this Section.

C. For purposes of this Section, good standing shall mean any original or renewal applicant for a retail, wholesale, or manufacturer/brewer alcoholic beverage permit who has not been issued a warning, pled or been found guilty of any violations of Title 26 of the Louisiana Revised Statutes and/or the regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

D. Permit fees for the entire permit period shall be due upon submission of an original or renewal application.

§ 317. Regulation IX—Prohibition of Certain Unfair Business Practices

A. Definitions

Advertisement—includes any written or verbal statement, illustrations, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the bottle, representations made on cases or in any billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

- a. any label affixed to any bottle of distilled spirits or container or wine or malt beverages; or any individual covering carton, or other container of the bottle or container which constitute a part of the labeling under federal law and regulations; or
- b. any editorial or other reading material (*i.e.* news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

Alcoholic Beverages—any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than 1/2 of 1 percent alcohol by volume, including malt, vinous, spiritous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

Beverages of High Alcoholic Content—alcoholic beverages containing more than 6 percent alcohol by volume.

Beverages of Low Alcoholic Content—alcoholic beverages containing not more than 6 percent alcohol by volume.

Brewer—any person who, directly or indirectly, personally or through any agency, engages in the making or production of malt beverages.

Bureau—the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department.

Commissioner—the Louisiana Commissioner of Alcohol and Tobacco Control.

Cost to Industry Members—the invoice cost, or the replacement cost, of the merchandise to the industry member, whichever is lower:

a. less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes;

b. plus, in the following order:

i. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise;

ii. cartage cost which shall be 3/4 of 1 percent of the cost to the industry member after adding freight charges but before adding cartage, any existing tobacco stamp excise tax, and markup;

iii. any existing tobacco stamp excise tax;

iv. a markup to cover a proportionate part of the cost of doing business which markup, in the absence of proof of a lesser cost, shall be 2 percent of the cost to the industry member after adding freight charges, cartage, and any existing tobacco stamp excise tax.

Enhancer—an item used as part of a display and which may be awarded to a customer who shops in a retail outlet voluntarily participating in a contest, offer, promotion, sweepstakes, or advertising or marketing campaign, the object of which is to award the enhancer to a winner thereof.

Exclusive Outlet—the requirement, by agreement or otherwise, that any retail dealer engaged in the sale of distilled spirits, wine, malt beverages, or malt liquors purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, malt beverages, or malt liquors sold or offered for sale by other persons.

Handle—sell, use, distribute, store, consume, or otherwise handle.

Importer—any dealer who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana.

Industry Member—any person engaged in business as a distiller, brewer, rectifier, blender or other producer, or as an importer or wholesaler, of distilled spirits, wine, malt beverages, or malt liquors, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

Malt Beverages or *Malt Liquors*—beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Manufacturer—any person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of alcoholic beverages in Louisiana or outside the state for shipments to licensed wholesale dealers within the state.

Person—any individual, municipality, industry, public or private corporation, partnership, firm, or any other entity.

Retail Dealer or *Retailer*—any person who offers for sale, exposes for sale, has in his possession for sale or distribution, or sells alcoholic beverages in any quantity to persons other than licensed wholesale or retail dealers.

Retailer Trade Association—an association or similar designation with a majority of its members holding a state retail alcoholic beverage permit that is registered and in good standing with the Louisiana secretary of state as a non-profit entity who has applied with and received approval from the Internal Revenue Service as a 501(c)(6) tax exempt organization in good standing.

Social Media Advertisement—any advertisement disseminated by social network services, video sharing sites, blogs, microblogs, links and quick response codes.

Sweepstakes—any program which employs any enhancer(s) that exceed \$155 in value as part of a retail display for any contest, offer, promotion, or advertising or marketing campaign.

Tied House—when any retail dealer engaged in the sale of distilled spirits, wine, malt beverages, or malt liquors is induced to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, malt beverages, or malt liquors sold or offered for sale by other persons through any of the following means:

- a. by acquiring or holding after the expiration of any existing license any interest in any license with respect to the premises of the retail dealer;
- b. by acquiring any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business;
- c. by furnishing, giving, renting, lending, or selling to the retail dealer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the commissioner of alcohol and tobacco control shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this Section;
- d. by paying or crediting the retail dealer for any advertising, display, or distribution service;
- e. by guaranteeing any loan or the repayment of any financial obligation of the retail dealer;
- f. by extending to the retail credit; or
- g. by requiring the retail dealer to take and dispose of a certain quota of any of such products.

Wholesale Dealer or *Wholesaler*—any person who sells alcoholic beverages to licensed wholesale dealers or licensed retail dealers exclusively within the state or to any person for delivery beyond the borders of the state and who conducts a bona fide wholesale business and maintains a warehouse or warehouses for the storage and warehousing of alcoholic beverages in the area where domiciled and licensed by the state, and conducts and maintains systematic and regular solicitations, distribution, deliveries, and sales of the alcoholic beverages to licensed retail dealers located within the boundary of each parish and municipality in which the wholesale dealer makes any sale or delivery.

B. Prohibition against Certain Business Practices in the Alcoholic Beverage Industry

1. The Bureau of Alcohol, Tobacco and Firearms of the United States Treasury prohibits exclusive outlet and tied house arrangements with respect to the marketing and sale of beverages of both high and low alcoholic content as authorized by the Federal Alcohol Administration Act (FAA Act), 27 U.S.C., §205.
2. The bureau's enforcement of this federal law requires Louisiana to have a similar law that imposes similar requirements for similar transactions.
3. The bureau enforces the provisions of the FAA Act prohibiting exclusive outlets and tied house arrangements in the marketing and sale of alcoholic beverages in Louisiana under the authority of R.S. 51:422, the Louisiana Unfair Sales Law, and R.S. 26:287.A(9) and (10), which provide for additional causes for suspension and revocation of permits.
4. Prohibitions against exclusive outlets and tied house arrangements with respect to the marketing and sale of alcoholic beverages in Louisiana has stabilized the industry and prevented unlawful and unfair inducements for the retail purchase of alcohol and unlawful coercion, bribery, kickback demands, and other unfair and unlawful business practices.
5. It is in the best interest of the state's citizens that fair business dealings and unfettered competition govern the alcohol beverage industry in Louisiana, that it remain an industry dominated by fairness and integrity, and that it be safeguarded against the threat of corrupt and unfair business practices.

C. Marketing and Sale of Alcoholic Beverages in Louisiana

1. Exclusive outlet and tied house arrangements are unfair inducements to purchase goods or services by wholesalers or retailers, and it is unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, manufacturer, or other producer, or as an importer or wholesaler of distilled spirits, wine, malt beverages or malt liquors, directly or indirectly or through an affiliate, to have exclusive outlet or tied house arrangements.

2. Exceptions

a. Equipment

i. In order to provide proper dispensing of alcoholic beverages by retail dealers, industry members may provide, without charge, coil cleaning service, tap markers which show brand, and tapping equipment such as rods, vents, taps, hoses, washers, couplings, vent tongues, and check valves.

ii. Accessories such as carbon dioxide gas tanks, regulators, and other draught

equipment accessories with a reasonable open market price of more than \$5 but less than \$200 per item must be sold to retailers at a price no less than the cost to the industry member as defined herein. Such sales shall be made for cash only.

iii. Draught equipment accessories with a reasonable open market value of \$200 or more per item are not included under this exception.

b. Inside Signs

i. An industry member may furnish, give, rent, loan, or sell to a retailer inside signs that bear advertising matter. Inside signs include such things as mechanical devices, illuminated devices, clocks, neon signs, and other devices that are designed for permanent use in a retail account. These items may be furnished to an industry member if the total value of each sign in use at any one time does not exceed \$350 to any one retail establishment, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, and assembly of such items and accessories. The industry member shall not directly or indirectly pay or credit the retailer for displaying such material or any expense incidental to their operation. In determining the value of these items for purposes of the limitation, value shall be the cost attributable to them at the time of their installation in the retail establishment. No retail establishment shall exclusively display inside signs from the same industry member.

ii. Display stackers, pricing cards, shelf talkers, rail strips, posters, and other such items constructed of paper, cardboard, and similar materials and which are designed and installed as point-of-sale material for temporary use in a retail account are not included under this Section and may be provided without limitation. Prior approval of point-of-sale material is not required and will not be given.

iii. Product displays may be furnished by an industry member to a retailer, provided that the total value of all product displays furnished by an industry member may not exceed \$155 per brand in use at any one time in any one retail establishment. Product display are racks, bins, barrels, casks, shelving, and the like from which alcoholic beverages are displayed or sold. Product displays shall bear conspicuous and substantial advertising matter.

c. Outside Signs. The furnishing of outside signs by an industry member to licensed retail dealers is prohibited. It is unlawful for an industry member to, directly or indirectly, give, rent, loan, sell or in any other manner provide a retail dealer with any form of outside signage except as expressly allowed by the alcoholic beverage control laws and regulations.

i. This prohibition shall not be construed to apply to any advertising, branding

or labeling artwork that is smaller than, proportionate in size and affixed to any equipment supplied to the holder of a type A, B, or C special event permit holder in accordance with Subsection F of Section 323 of this Chapter.

d. Advertising Specialties, Utility Items, Merchandise, and Supplies

i. Trays, coasters, paper napkins, clothing, groceries, snack foods, paper and plastic bags, cups, pitchers, glasses, menu covers, menu sheets, meal checks, match books, ash trays, ice, and other items that are primarily of utility value to a retailer cannot be given away but may be sold to retailers by industry members and the price charged for such items must be no less than the cost to the industry member as defined herein.

ii. Other retailer advertising specialties and novelty items, such as foam scrapers, thermometers, litter bags, pencils, bottle openers, balloons, lapel pins, and key rings that bear advertising matter, and are primarily valuable to the retailer as point-of-sale advertising media but have no utility value to the retailer, may be furnished, given, or sold to a retailer if the total cost to any industry member of the retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed \$50.

iii. After the delivery of the retailer advertising specialties with a total cost to an industry member of \$50 has been made by the industry member to a retail establishment during any one calendar year, any future deliveries of such items to that particular retail establishment by such respective industry member during the remainder of the calendar year must be effected only by the sale of the items at their reasonable open market price in the locality where sold. Any items sold, furnished, or given away under this Section must be itemized separately on the industry member's invoice and other records.

iv. Carbon dioxide gas or ice may be sold to a retailer only if sold at a reasonable open market price in the locality where sold.

e. Sponsorships

i. Wholesalers and manufacturers may sponsor events relating to or on the premises of retail dealers if nothing of value is given to retail dealers except as allowed elsewhere in this Section.

ii. T-shirts, caps, and similar items may be given to event contestants or patrons of the retail establishment but the total cost of these items may not exceed \$250 per event.

iii. An industry member shall not sponsor an event on the premises of a retail dealer within 60 days of their last sponsored event.

- iv. Alcoholic beverage sales must be incidental to the event being sponsored.
- v. Industry members shall not directly or indirectly require that the sponsor's product be the exclusive product offered for sale at the event.
- vi. A manufacturer or wholesaler may donate alcohol and trophies of nominal value to unlicensed civic, religious, or charitable organizations.
- vii. In conjunction with events held on regular licensed retail premises, all restrictions on advertising and signage will remain in full force and effect, except that temporary paper signs and posters may be used inside the premises to advertise the event for not more than 31 days prior to the event. A wholesaler or manufacturer may list the name and address of one or more retail dealers and the date and time of one or more events in a social media advertisement for not more than 31 days prior to the event provided that:
 - (a). the social media advertisement does not also contain the retail price for any product;
 - (b). the retail dealer shall not provide the industry member with anything of value as a condition to having its business listed in the social media advertisement; and
 - (c). the wholesaler or manufacturer does not directly or indirectly, incur any cost or expend anything of value in connection with the social media advertisement.

f. Trade Calls

- i. Bar spending during trade calls, where the alcohol purchased by a manufacturer or wholesaler for a consumer is consumed on retail licensed premises in the presence of the giver, shall be lawful so long as the state's laws regulating retail establishments such as the legal drinking age, etc., are observed and not more than \$250 is expended during the trade call.
- ii. No trade calls may occur on college campuses.
- iii. Manufacturers and wholesalers may be accompanied by entertainers, sports figures, and other personalities during trade calls.
- iv. The trade calls may be pre-announced to consumers in the retail account through table tents, posters, and other inside signs.
- v. No outside advertising of such events through signs or any media is allowed.
- g. Except as otherwise provided by law, the gift of beer, wine or beverage alcohol as a purely social courtesy to unlicensed persons by a manufacturer or wholesaler is not prohibited.

h. Sampling. Beer, wine, or beverage alcohol sampling for the purpose of allowing a customer to taste a brand of beverage alcohol must be conducted on any premises holding a permit as designated in R.S. 26:75.C.(1) and 275.B.(1) in accordance with the following restrictions.

i. A retail dealer, wholesaler or manufacturer may furnish the beer, wine, or beverage alcohol to be sampled and the cups to hold the beverages. The wholesaler or manufacturer may also provide and display point-of-sale material in an amount not to exceed \$150 in value. The display materials shall only be placed inside of the facility and shall not block the aisles or other entrances or exits.

ii. No retail dealer, wholesaler, or manufacturer shall furnish a sampling of beverage alcohol in a greater quantity than two ounces per brand of beverage alcohol to each individual and no individual shall consume more than two ounces of each brand of beverage alcohol provided at the sampling. The sampling of a beverage alcohol having an alcoholic content of more than 23 percent by volume shall be limited to one-half ounce per serving per individual.

iii. All samplings shall be limited in duration to one day.

iv. No more than two samplings per brand of beverage alcohol shall be conducted on the same licensed premises in any month.

v. The retail dealer, wholesaler, or manufacturer shall provide the Office of Alcohol and Tobacco Control with written notice of the date, time, place, permit number and brand of beverage alcohol to be sampled at least one week prior to the date of the sampling.

vi. A wholesaler or manufacturer may promote a sampling event by listing the name and address of one or more retail dealers and the date and time of one or more sampling events in a social media advertisement for not more than 31 days prior to the sampling provided that:

(a). the social media advertisement does not also contain the retail price for any product;

(b). the retail dealer shall not provide the industry member with anything of value as a condition to having its business listed in the social media advertisement; and

(c). the wholesaler or manufacturer does not directly or indirectly, incur any cost or expend anything of value in connection with the social media advertisement.

vii. Industry members may use a third-party promotional company to conduct product samplings under the following conditions:

(a). the industry member has a written contractual agreement with the third-party promotional company that clearly defines the scope of the activities to be conducted by the promotional company on behalf of the industry member and the contractual agreement is provided to the office of alcohol and tobacco control prior to any representation by the third-party promotional company on behalf of the licensed industry member;

(b). the third-party promotional company shall comply with all provisions of the alcoholic beverage control laws and regulations including, but not limited to, the provisions of this Section;

(c). violations of the alcoholic beverage control laws or regulations by a third-party promotional company or any of its representatives shall be considered the industry member's act for purposes of penalties or suspension or revocation of the industry member's alcoholic beverage permit;

(d). the third-party promotional company shall not be directly or indirectly owned, created, operated, inappropriately influenced, or controlled by an alcoholic beverage retail dealer licensed by the state of Louisiana or any person holding an interest therein;

(e). the industry member or third-party promotional company shall not give the retail dealer anything of value, unless otherwise allowed in the alcoholic beverage control laws and regulations;

(f). the name and permit number of the industry member and the name of the third-party promotional company shall be provided on all documents required to be submitted to the office of alcohol and tobacco control by this Section;

(g). the industry member shall ensure that all agents of the third-party promotional company possess valid Louisiana responsible vendor certifications prior to conducting any samplings of alcoholic beverages on the industry member's behalf;

(h). the third-party promotional company shall not offer for sale or solicit any orders for the sale of any alcoholic beverages produced or supplied by the industry member; and

(i). any sampling conducted by a third-party promotional company on behalf of an industry member shall count as a sampling conducted by the industry member.

i. Tubs and Other Single Containers. Tubs, ice chests, and other containers designed to hold single units of product and display them for sale in retail establishments may be furnished by manufacturers and wholesalers, provided that no more than two containers per retail location may be furnished by an industry member and the value of the items furnished shall not exceed \$155.

j. Consignment Sales and Returns

i. It is unlawful for an industry member to sell, offer for sale, or contract to sell to any retailer, or for any retailer to purchase or contract to purchase any products under the

following circumstances:

- (a). on consignment;
- (b). under conditional sale;
- (c). with the privilege of return;
- (d). on any basis other than a bona fide sale;
- (e). if any part of the sale involves, directly or indirectly, the acquisition of other products from the trade buyer or the agreement to acquire other products from the trade buyer; or
- (f). if the return or exchange of a product is solely because it overstocked or slow-moving.

ii. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product had been sold are not prohibited, but the industry member is under no obligation to accept such returns. "Ordinary and usual commercial reasons" include:

- (a). the exchange of product for products that are unmarketable because of product deterioration, leaking containers or damaged labels;
- (b). the correction of any discrepancy between products ordered and products delivered within a one-week period; or
- (c). products on hand at the time a retail dealer closes a business or terminates business operations, in which case the return may be for cash or credit against outstanding indebtedness. This also includes a temporary seasonal event or temporary shutdown or slowdown where the industry member is able to show that the products are likely to spoil during the off season.

iii. Out-dated product or product that is within 30 days of date code expiration may be exchanged for other products. Products for which there is only a limited seasonal demand, such as holiday decanters and distinctive containers, may only be exchanged for non-distinctive like products.

k. Coupons and Rebates. Alcoholic Beverages of High Alcoholic Content, excluding Malt Beverages. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaign of alcoholic beverages of high alcoholic content, excluding malt beverages, are allowed in accordance with the following restrictions.

- i. Any coupon or rebate offer, promotion, or marketing campaign must be redeemable

directly by the manufacturer or a third-party, including but not limited to, a clearinghouse retained by the manufacturer at its sole expense.

ii. No retailer can be required to participate in any offer, promotion, or marketing campaign.

iii. No retailer can be required to bear any of the costs associated with any offer, promotion, or marketing campaign.

iv. No one under the legal drinking age during the time of the offer, promotion or marketing campaign may participate in any offer, promotion, or marketing campaign.

v. All coupon or rebate offers, promotions, and marketing campaigns must be for a specified time not to exceed 90 days from the first date on which such offers may be redeemable.

vi. No coupon or rebate offer, promotion, or marketing campaign may result in any sale of alcoholic beverages for a price of less than 6 percent above the invoice cost.

l. Coupons and Rebates: Malt Beverages of Not More than or More than 6 Percent Alcohol by Volume. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaigns of malt beverages of not more than or more than 6 percent alcohol by volume are allowed with the following restrictions.

i. Instantly Redeemable Coupons (IRCs) shall be prohibited. Coupons and rebates shall only be redeemable by mail.

ii. When marketing more than one product, “cross-merchandising” or “cross-promotion”, mail-in rebates (“MIRs”) shall only be redeemable upon the providing of proof of purchase of all products involved in the coupon or rebate marketing, “cross-merchandising” or “cross-promotion” offer.

iii. Coupon and rebate values shall be equal to or less than the following:

(a). packages containing no less than 6 and no more than 11 single units, \$1;

(b). packages containing no less than 12 and no more than 17 single units, \$2;

(c). packages containing no less than 18 and no more than 23 single units, \$3;

(d). packages containing no less than 24 or more single units, \$4.

iv. Wholesale or retail dealers of malt beverages shall not incur any cost in connection with any coupon or rebate offers, promotions or marketing campaigns.

m. Enhancers, as defined in this Chapter, may be used as part of a contest, offer,

promotion, sweepstakes, or advertising or marketing campaign.

i. Items may include ice chests, grills, rafts, and other items not to exceed \$155 in value.

ii. Industry members utilizing enhancers must provide either entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where entries may be accepted, and post the date of the official prize drawing.

n. Sweepstakes. Sweepstakes, as defined in this Chapter, may be used as part of a contest, promotion, or advertising or marketing campaign with the following restrictions.

i. Enhancers that exceed \$155 in value, such as four-wheel all-terrain vehicles, trips, etc., may be utilized as part of a sweepstakes.

ii. Industry members and wholesalers must offer the opportunity to participate in any sweepstakes conducted to the entire retail base which the participating wholesalers serve.

iii. Participation by retailers must be voluntary.

iv. Enhancers cannot be displayed within any retail outlet.

v. Photographs or models of enhancers may only be displayed, provided the photographs or models do not exceed \$155 in value.

vi. Industry members conducting sweepstakes must provide entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where electronic entries may be accepted, and post a date on which the official prize drawing will occur.

vii. Industry members are prohibited from purchasing enhancers from any retail outlet participating in the display or sweepstakes.

viii. Retail owners, industry members, and their employees and family members are not eligible to participate in any display or sweepstakes drawing allowed under provisions of this Section.

o. Retail Trade Associations. Industry members may participate in the activities of a retailer-affiliated trade association, as defined in this Section, only in the following ways:

i. by advertising in convention publications and/or programs, if the advertising fees are the same rate offered to all other participants at the event;

- ii. by being an associate member;
 - iii. by renting display booth space if the rental fee is the same as paid by all exhibitors at the event;
 - iv. by purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants or exhibitors at the event;
 - v. by exhibiting their products and offering single serve portions of their products at no cost for immediate consumption on the premises of the exhibition without having to obtain a special event permit;
 - vi. all state and parish or municipal excise taxes due shall be paid prior to the provision of any products for consumption at exhibition events;
 - vii. the industry member shall provide the Office of Alcohol and Tobacco Control with written notice of the location, date(s) and time(s) it intends to exhibit any product no less than five business days prior to the exhibition; and
 - viii. the industry member's participation with a retailer trade association shall not benefit one or more of the trade association's members to the exclusion, in whole or in part, of the other retail members.
- p. Reasonable Retail Entertainment. The furnishing of food and beverages, entertainment and recreation by an industry member to a retail dealer or its owners, officers, members, directors, stockholders, employees, agents, managers, or subsidiaries is prohibited except under all of the following conditions:
- i. the value of food, beverages, entertainment and recreation shall not exceed \$500 per person on only one occasion per week;
 - ii. the providing industry member must accompany the receiving retail member to the event at which the food, beverages, entertainment and/or recreation are provided;
 - iii. in the course of providing food, beverages, entertainment or recreation under this Rule, upper tier industry members may only furnish local transportation;
 - iv. food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this regulation; and
 - v. each industry member shall keep complete and accurate business records and/or other documents reflecting all expenses incurred for retailer entertainment for two years.
- q. Events at Unlicensed Venues. The provisions of R.S. 26:287 and this Section shall not be construed to prohibit an alcoholic beverage manufacturer, wholesale dealer or retail dealer from sponsoring, providing sponsorship signs, promoting or advertising an alcoholic beverage brand or product, or purchasing, displaying, and/or transmitting

indoor or outdoor signs or other advertising and marketing products at a premises that does not hold a retail alcoholic beverage permit, or for any event at such premises, by agreement with the owner, operator, promoter, lessee, a party with a right of use, or management company of the unlicensed venue if all alcoholic beverages are sold and/or served at the premises by a person holding a class A-caterer's permit issued in accordance with these regulations and all of the following conditions apply:

- i. the caterer is engaged to provide food and beverage concession services pursuant to a written agreement with the owner, operator, promoter, lessee or management company of the premises where alcoholic beverages are sold and/or served;
- ii. the caterer receives no monetary benefit, directly or indirectly by any scheme or device or in any form or degree from the manufacturer, wholesaler, or retailer in connection with the provision or purchase of sponsorship, signs, advertising or marketing products from the owner, operator, promoter, lessee, party with a right of use, or management company of the premises. The provision of indoor or outdoor signs or other advertising or marketing products, including mobile dispensing equipment which display the name, logo, or other branding of an alcoholic beverage manufacturer, or wholesaler pursuant to an advertising or sponsorship agreement with the owner, operator promoter, lessee, a party with a right of use or management company of the premises, and the use of proceeds of a manufacturer's, or wholesaler's, purchase of indoor or outdoor signs or other advertising and marketing products from the owner, operator, promoter, lessee, a party with a right of use or management company of the premises conducting events to enhance or otherwise benefit an event or the venue conducting events shall not be construed to be a direct or indirect monetary benefit to the caterer or any retail dealer located on or around the premises of the event or venue;
- iii. the caterer is not owned, in whole or in part, by the owner, operator, promoter, lessee or management company of the premises, or a subsidiary, agent or manager of the event or premises that is a direct recipient of such monetary benefit as defined in this Subparagraph;
- iv. the owner, operator, promoter, lessee or management company of the premises shall not directly or indirectly control or otherwise influence the quantity or brand of alcoholic beverages bought or sold by the caterer unless the caterer is owned, in whole or in part, by the owner of the premises who is not the direct recipient of such monetary benefit as defined in this Subparagraph; and
- v. no part of the cost of an advertisement, sponsorship or promotion authorized by this subparagraph may be charged to or paid by a wholesale dealer unless the wholesaler either contracts directly with the owner, operator, promoter, lessee or management company of the unlicensed premises for the advertisement, sponsorship, or promotion or the wholesaler is a party to the advertising, sponsorship or promotion agreement between the manufacturer and the owner, operator, promoter, lessee or management company of the unlicensed premises.

D. As part of an original and each permit renewal application, every manufacturer, wholesaler and retailer shall certify in writing that the applicant and all persons acting on behalf of the applicant understands and agrees to comply with the market practices regulations provided for by law and these regulations. Specifically, every manufacturer, wholesaler and retailer shall certify in writing that:

1. the applicant understands that manufacturers and/or wholesalers are prohibited from providing a retailer with anything of value unless explicitly enumerated as an exception in the Alcoholic Beverage Control Law or these regulations;

2. manufacturers and wholesalers are prohibited from inducing or otherwise influencing, directly or indirectly, a retailer from selling and/or serving its products to the exclusion, in whole or in part, of products of other manufacturers and/or wholesalers including but not limited to illegally influencing the retailer in any way regarding the quantity or brand of alcoholic beverages bought or sold by a retailer; and retailers are prohibited from accepting or requiring any such inducement or other influence; and

3. If anyone violates the market practices laws and regulations of the state of Louisiana, the United States or any other state, their permit(s) is subject to suspension, revocation and/or assessment of a fine or other penalty provided for by law.

E. Penalty. The commissioner of the Office of Alcohol and Tobacco Control may seek suspension or revocation of the permit or permits of a violator and may impose such other penalties or administrative remedies against violators as are prescribed by law for violations of the Alcoholic Beverage Code.

§ 319. High Alcoholic Content Beverages—Stocking, Pricing, and Rotating

A. Persons holding valid Louisiana wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers and brokers may price, stock and rotate merchandise at retail premises only to the following extent.

1. Dealers in beverages of more than 6 percent alcohol by volume and in wine coolers containing more than 6 percent alcohol by volume and pre-mixed beverages of any alcoholic content may build and stock displays of their product on the premises of retail dealers. Displays can in no way be part of the dealer's regular shelving. They may restock displays for a maximum period of one month after the initial display has been installed. They may not price the displays. They are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags.

Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of 6 percent alcohol by volume for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.

2. No wholesale dealer of beverages that are more than 6 percent alcohol by volume shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer, nor shall a wholesale dealer engage in the initial setting of products into a new store, unless the retail dealer sends notice, by certified mail to the Commissioner of Alcohol and Tobacco Control, stating the date, time, and location permit number of the contemplated movement, reset, or initial setting of alcoholic beverages. The addition of new products into the alcoholic beverage section shall not constitute a reset under the provisions of §319. Not less than one week prior to the approved date of such activity, the retail dealer shall mail copies both of the notice and commissioner's written approval, to all wholesale dealers whose products are situated on their premises. The retail dealer shall maintain a list of the names and addresses of the wholesale dealers receiving such notice, and a copy of that list shall be filed with the Commissioner of Alcohol and Tobacco Control.

3. A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of those products, and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the beverage alcohol situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.

4. The spotting of shelves by a wholesale dealer in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.

5. Except as authorized under §319, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Commissioner of the Office of Alcohol and Tobacco Control may seek a suspension or revocation of the permit or permits of a violator and may impose such

other penalties or administrative remedies as are prescribed by law for violators of the Alcoholic Beverage Control Law.

§ 321. Staggering of Expiration Dates

A. In accordance with the authority of R.S. 26:794(B), the expiration dates of retail permits issued by the Office of Alcohol and Tobacco Control shall be staggered in accordance with the provisions of this Section.

B. Purpose. The purpose of this staggering process is to provide for the even distribution of expiration dates of new and existing permits based upon the parish in which the licensed establishment is located. This will allow the Office of Alcohol and Tobacco Control to concentrate its limited resource to the particular region of the state in which all retail permits are scheduled to expire. The expiration date of retail permits will be easy to determine and thereby assist both state and local enforcement agents, retail and wholesaler dealers in the enforcement of the licensing requirements contained in Title 26. This in turn will reduce the ever-increasing number of delinquent renewal applications filed with this office and eliminate the purchase and resale of alcoholic beverages by unlicensed establishments.

C. New Business Application and Related Fees

1. Beginning February 18, 1998, the expiration date of all retail permits issued pursuant to new-business applications shall have an expiration date to be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for all such new business permits shall be as set forth in Sections 71 and 271 of Title 26.

D. Renewal of Existing Permits and Related Fees

1. The renewal of an existing permit during this staggering process shall be for a period of not less than seven months nor more than 18 months, which period shall be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for such a permit shall be determined by a proration of the annual fee as established by Title 26 over the appropriate number of months.

E. Renewal Deadline: Penalties

1. Applications for the renewal of permits issued pursuant to this regulation shall be

due in the Office of Alcohol and Tobacco Control on or before the date of expiration on current permit.

2. The monetary penalties established in Sections 88 and 285 of Title 26 for those permittees who fail to timely file their renewal application shall remain in effect. The permittee shall be charged the delinquency penalty over and above the prorated fee.

F. Gross Sales. The payment of an additional permit fee by retailers based on the amount of their gross liquor sales as provided in Section 71 of Title 26 shall continue and shall be assessed on the gross sales made during the preceding calendar year. In renewal permits issued pursuant to this regulation, the additional fee shall be prorated over the appropriate number of months.

G. Expiration Date of Retail Permit. All retail permits issued after February 18, 1998, by the Office of Alcohol and Tobacco Control shall expire in accordance with the following schedule.

| Parish Code | Parish Name | Expire Month |
|--------------------|--------------------|---------------------|
| 1 | Acadia | October |
| 2 | Allen | March |
| 3 | Ascension | January |
| 4 | Assumption | November |
| 5 | Avoyelles | July |
| 6 | Beauregard | March |
| 7 | Bienville | September |
| 8 | Bossier | September |
| 9 | Caddo | September |
| 10 | Calcasieu | March |
| 11 | Caldwell | December |
| 12 | Cameron | March |

| | | |
|----|------------------|-----------|
| 13 | Catahoula | December |
| 14 | Claiborne | September |
| 15 | Concordia | December |
| 16 | DeSoto | September |
| 17 | East Baton Rouge | January |
| 18 | East Carroll | December |
| 19 | East Feliciana | August |
| 20 | Evangeline | July |
| 21 | Franklin | December |
| 22 | Grant | December |
| 23 | Iberia | October |
| 24 | Iberville | July |
| 25 | Jackson | December |
| 26 | Jefferson | February |
| 27 | Jefferson Davis | March |
| 28 | Lafayette | October |
| 29 | Lafourche | November |
| 30 | LaSalle | December |
| 31 | Lincoln | September |
| 32 | Livingston | August |
| 33 | Madison | December |
| 34 | Morehouse | December |
| 35 | Natchitoches | December |
| 36 | Orleans | May |

| | | |
|----|---------------|-----------|
| 37 | Ouachita | December |
| 38 | Plaquemines | April |
| 39 | Pointe Coupee | July |
| 40 | Rapides | July |
| 41 | Red River | September |
| 42 | Richland | December |
| 43 | Sabine | September |
| 44 | St. Bernard | April |
| 45 | St. Charles | April |
| 46 | St. Helena | August |
| 47 | St. James | April |
| 48 | St. John | April |
| 49 | St. Landry | July |
| 50 | St. Martin | October |
| 51 | St. Mary | November |
| 52 | St. Tammany | August |
| 53 | Tangipahoa | August |
| 54 | Tensas | December |
| 55 | Terrebonne | November |
| 56 | Union | December |
| 57 | Vermillion | March |
| 58 | Vernon | March |
| 59 | Washington | August |
| 60 | Webster | September |

| | | |
|----|------------------|----------|
| 61 | West Baton Rouge | July |
| 62 | West Carroll | December |
| 63 | West Feliciana | August |
| 64 | Winn | December |

§ 323. Regulation XI—Fairs, Festivals and Special Events

A. For purposes of this regulation, special events are defined as events, held at any location, where alcoholic beverages are served as an incidental part of the event for payment rendered or are supplied as a part of a general admission or other type fee.

B. For such events, this office will issue a special temporary retail alcoholic beverage permit. These permits authorize alcoholic beverages to be sold, served and/or supplied at the special event for a maximum duration of three consecutive days only, but wholesalers may deliver alcoholic beverages to the event location up to 2 days prior to the effective date of the permit. No more than 12 such permits shall be issued to any one person, organization or entity within a single calendar year.

1. There shall be three types of temporary alcoholic beverage permits—Type A, Type B and Type C.

a. Type A permits will be issued only to non-profit organizations with tax exempt status under the United States Internal Revenue Code, Sections 501(c)(3) and 501(c)(8). To qualify for this permit, applicants must submit written proof of their tax exempt status, a copy of a local permit or letter from the local governing authority granting their permission to sell alcoholic beverages, a valid lease, contract or written permission of the owner of the property upon which the event is to be held if the property is not owned by the applicant and a completed, notarized application form. Type A permits shall be issued without charge by the Office of Alcohol and Tobacco Control.

b. Type B permits will be issued only to non-profit organizations which are able to

provide some type of written proof of their non-profit status, but are unable to show written proof of their tax exempt status under the Internal Revenue Code sections cited above. To qualify for this permit, applicants must submit the same documentation as for Type A permits, substituting the written proof of non-profit status for the written proof of tax exempt status. Applicants for Type B permits will be assessed a \$10 handling fee to cover the cost of processing the application.

c. Type C permits will be issued to persons holding limited events where alcoholic beverages are sold or supplied as part of a general admission or other type fee, but who do not meet the requirements for Type A or Type B temporary permits. To qualify for a Type C temporary permit, applicants must meet the qualifications required of permit holders under R.S. 26:80 and R.S. 26:280 and must submit a copy of a local permit or letter from the local governing authority granting their permission to sell alcoholic beverages, a valid lease or contract with the owner of the property on which the event is to be held if it is not owned by the applicant and a completed, notarized application form. A \$100 fee will be assessed to cover the cost of handling the Type C permit application.

2. Class A—Caterer's permits shall not be utilized in lieu of Special Event permits.

C. The holders of temporary special event permits may return unused product at the conclusion of the event for cash or credit refund.

D. The provisions of R.S. 26:90 and 26:286 shall apply to all special events for which temporary permits are issued under this regulation, and violations are punishable as provided for under the provisions of Title 26 of the Revised Statutes. The provisions of R.S. 26:81 and 26:281 shall not apply to special event permits.

E. The provisions of R.S. 26:287(9) and Regulation IX dealing with unfair business practices shall not apply to the holders of Type A and Type B special event permits, except as provided in Subsection F below, but shall fully apply to the holders of Type C special event permits.

1. Type A special events held on the premises of a Class A, B or C retail alcoholic beverage permit holder shall comply with all of the following conditions:

a. the special event permit is applied for and obtained in the name of the non-profit organization;

b. the non-profit organization is not affiliated, either directly or indirectly, with an alcoholic beverage manufacturer or wholesale dealer;

c. the non-profit organization holding the Type A special event permit must return or remove all unused alcoholic beverage products at the conclusion of the event. No alcoholic beverage product purchased or otherwise obtained in the name of the non-

profit organization or for the purpose of servicing the special event shall be left on the licensed premises at the conclusion of the event;

d. subject to inspection by the commissioner or his agents, the non-profit organization shall document and maintain record of:

i. the total amount of alcoholic beverages purchased for the event;

ii. the total amount of alcoholic beverages sold or served during the event; and

iii. the total amount of alcoholic beverages removed or returned at the conclusion of the event;

e. any and all signage, equipment or other items provided by an alcoholic beverage manufacturer or wholesale dealer in relation to the non-profit special event shall be removed from the premises of the retail dealer immediately upon conclusion of the special event;

f. the premise's Class A, B, or C alcoholic beverage permit was not issued pursuant to R.S. 26:85.1 and R.S. 26:273C;

g. all proceeds generated by or in connection with the event shall be paid to the holder of the Type A special event permit;

h. the holder of the Class A, B or C retail alcoholic beverage permit shall receive no proceeds, alcoholic beverage products, sponsorship dollars, promotional items or other items of value other than a reasonable rental fee at fair market value; and

i. The provisions of R.S. 26:287(9) and Regulation IX dealing with unfair business practices shall apply with respect to the holder of the Class A, B or C retail alcoholic beverage permit holder.

F. 1. When the holder of a special event permit of any type calls upon an industry member to service an event, the industry member must charge the permit holder for all equipment used and services rendered in an amount at least equal to that listed as follows:

a. labor—at a rate equal to that required as a minimum wage under the Federal Wage and Hour Law;

b. self contained electric units in which the beer container is refrigerated within the unit—\$25 per day;

c. electric unit in which the beer container sits outside the cooling unit—\$25 per day;

d. picnic pumps—\$10 per day or may be sold to the permit holder in accordance with

Subsection j below;

e. tubs—\$10 per day or may be sold to the permit holder in accordance with subsection j. below;

f. cold plates—\$25 per day;

g. trucks designed to handle packaged beer without refrigeration—\$30 per day;

h. refrigerated trucks or mobile units such as trailers or other vehicles designed to handle package or draught beer—\$100 per day;

i. cups, ice, additional CO₂ gas, gas picnic pumps, tubs and similar supplies and equipment—cost to industry member;

j. alcoholic beverages—at the price available to all other retail dealers in alcoholic beverage;

k. stages, including labor to erect—\$200 per day; and

l. tents, including labor to erect:

i. 12' x 12' or smaller—\$30 per day;

ii. larger than 12' x' 12'—\$50 per day.

2. Equipment such as that listed above may not be furnished to regular licensed retail dealers unless the dealer acquires a temporary special event permit. Equipment may not be provided by a wholesaler for functions where no permit is issued but beer is acquired from a retail dealer, such as private parties or receptions.

§ 324. Wine Producers; Fairs, Festivals, Farmer's Markets and Similar Venues

A. For purposes of this Section, the following definitions shall apply.

1. *Fair, Festival, Farmer's Market or Other Similar Venue*—any non-profit, state or local governmental organizational event being held in a limited duration capacity.

2. *Wine Producer*—the holder of a valid unsuspended wine producers permit, as defined in R.S. 26:2(21).

B. Wine producers may, with local authority, offer for sale and sell directly to consumers at fairs, festivals, farmer's markets and other similar venues under the following terms and/or conditions.

1. Any and all sales at fairs, festivals, farmer's markets and similar venues shall be limited in duration as provided in LAC 55:VII.323.
2. Notwithstanding Paragraph 1 of Subsection B above, if the site of the fair, festival, farmer's market or similar venue is utilized by a state or local governmental entity for purpose of promoting tourism and/or agribusiness, durational limitations provided in LAC 55:VII.323 shall not apply.

§ 325. Caterer's Permits

A. The Office of Alcohol and Tobacco Control may issue a Class A—Caterer's permit to persons who meet the qualifications and criteria of either Paragraph 1 or 2 below.

1. Holders of any Class A, B or C liquor or beer retail permit will be allowed to sell and serve alcoholic beverages, on a temporary basis, limited to three days in duration, at events other than on the premises for which the holder's regular permit is issued.

- a. This holder of a Class A—Caterer's permit must use the permit in conjunction with their A, B or C liquor and/or beer permit and shall expire at the same time as the regular A, B or C permit.

- b. If the regular Class A, B or C permit ceases to be valid for cause, the caterer's permit ceases to be valid.

2. Class B liquor or beer retail permit holders shall be subject to the following terms and/or conditions.

- a. Class A—Caterer's permits shall only be issued to holders of a Class B liquor and/or beer retail permit whose primary purpose is the sale of alcoholic beverages.

- b. Class B liquor or beer retail permit holders who applied for and obtained a Class A—Caterer's permit prior to August 20, 2008, shall not be subject to Subparagraph a above.

3. Persons who do not otherwise qualify for a retail dealer permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2, but who operate a facility with a fully equipped kitchen where food is prepared for the purpose of catering functions, will be allowed to obtain a Class A—Caterer's permit under the following conditions.

- a. This holder of a Class A—Caterer's permit must derive 70 percent of their gross annual revenue from the sale of food or food-related product, and 40 percent of the

gross revenue per event must be derived from the sale of food or food-related product.

b. This holder of a Class A—Caterer's permit must maintain separate sales figures for alcoholic beverages.

c. Class A—Caterer's permits shall not be used in lieu of Special Event permits.

4. Persons who do not otherwise qualify for a retail dealer permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2, but who hold a written concessions agreement to provide food and beverage concession services at any arena, stadium, race track, amphitheater, auditorium, theater, civic center, convention center, or similar facility that is primarily designed and used for live artistic, theatrical, cultural, educational, charitable, musical, sporting, nationally sanctioned automobile or horse racing or entertainment events will be allowed to obtain a class A-caterer's permit for the premises under all of the following conditions.

a. The permit holder must have a written concession agreement to provide food and beverages concession services from the owner, operator or lessee of the premises. The written concession agreement shall contain an affirmative provision disavowing the right of any party to engage in conduct prohibited by the alcoholic beverage control laws and regulations.

b. The permit holder must not be owned, in whole or in part, by the owner, operator, lessee, subsidiary, agent, or company managing the premises.

c. The permit holder must not own, in whole or part, or manage the premises.

d. The permit holder shall receive no monetary benefit, directly or indirectly, by any scheme or device or in any form or degree from the alcoholic beverage industry including a benefit in the form of capital improvements, furniture, fixtures, equipment or supplies except as provided in Subsection C of this Section, unless otherwise allowed in the alcoholic beverage control laws and regulations. The provision and use of indoor or outdoor signs, or other advertising or marketing products, including mobile dispensing equipment, logo or other branding of an alcoholic beverage manufacturer or wholesaler pursuant to an advertising or sponsorship agreement with the owner, operator, promoter, lessee party with a right of use or management company of the premises, and the use of proceeds of a manufacturer's or wholesaler's purchase of indoor or outdoor signs or other advertising and marketing products or rights from the owner, operator, promoter, lessee, party with a right of use or management company of the premises, shall not be construed to be a direct or indirect monetary benefit to the permit holder.

e. The permit holder shall not receive any direct monetary benefit from advertising, promotional or sponsorship revenues generated by operation of the premises.

f. The owner, operator, lessee, subsidiary, agent or company managing the premises nor any alcoholic beverage manufacturer or wholesaler or agent thereof

shall not, directly or indirectly, control the quantity or brand of alcoholic beverages bought, sold or served by the holder of the class A-caterer permit.

g. This class A-caterer's permit shall not be utilized to sell, serve or otherwise engage in business as an alcoholic beverage dealer at any premises where the primary purpose is the sale of food or alcoholic beverages, including, but not limited to, a bar, nightclub, restaurant, hotel, bowling alley, pool hall, or dance hall, or any premises that derives 75 percent or more of its gross revenue from the on-premise sale of alcoholic beverages.

B. 1. An application for a Class A—Caterer's permit shall be made on forms prescribed by the Commissioner of the Office of Alcohol and Tobacco Control.

2. A Class A—Caterer must display the permit on the premises of the event being catered.

3. A Class A—Caterer must only cater events in an area in which the sale of alcoholic beverages has been authorized by local option election and with permission from the local governing authority.

4. A Class A—Caterer issued under Paragraphs 1, 2 and 3 of Subsection A of this Section must provide the Office of Alcohol and Tobacco Control with written notice of the date, time, and place of each catered event at least one week prior to the date of the event.

5. All alcoholic beverages at a catered event must be dispensed by the holder of the Class A—Caterer's permit or his employee, agent, or servant.

6. Class A—Caterers must comply with the provisions of the Responsible Vendor Program of R.S. 26:931 et seq.

7. The cost of the Class A—Caterer's permit is \$200 per year or any portion thereof; costs shall not be prorated.

8. Class A—Caterer permits shall be renewed annually in accordance with the provisions relative to all other retail permits, specifically R.S. 26:88 and 285 and LAC 55:VII.321.

C. Holders of a caterer's permit must specifically comply with provisions of R.S. 26:90, 26:91, 26:286 and 26:287 in addition to other provisions not exempted; however, exceptions are: when the holder of caterer's permit calls upon an industry member to serve an event; at events other than upon the premises for which the holder's regular permit is issued, the industry member must charge the holder of the caterer's permit for all equipment used and services rendered in an amount at least equal to that listed as follows:

1. labor—at a rate equal to that required as a minimum wage under the Federal Wage and Hour Act;
2. self contained electric units in which the beer container is refrigerated with the unit—\$25 per day;
3. electric unit in which the beer container sits outside the cooling unit—\$25 per day;
4. picnic pumps—\$10 per day or may be sold to the permit holder in accordance with Paragraph 9 below;
5. tubs—\$10 per day or may be sold to the permit holder in accordance with Paragraph 9 below;
6. cold plates—\$25 per day;
7. trucks designed to handle packaged beer without refrigeration—\$30 per day;
8. refrigerated trucks designed to handle packaged or draught beer or mobile units such as trailers or other vehicles designed to handle package or draught beer—\$100 per day;
9. cups, ice, additional CO2 gas, gas picnic pumps, tubs and similar supplies and equipment—cost to industry member;
10. alcoholic beverages—at the price available to all other retail dealers in alcoholic beverages;
11. stages, including labor to erect—\$200 per day; and
12. tents, including labor to erect:
 - a. 12' x 12' or smaller—\$30 per day;
 - b. larger than 12' x 12'—\$50 per day.

D. Any violation of these regulations or causes enumerated in Title 26 of the Louisiana Revised Statutes shall subject the retailer to revocation, suspension, or withholding of his alcoholic beverage permits.

§ 327. Class C-Package Store Retail Alcoholic Beverage Permits

A. Definitions

Batch—any mixture of ingredients or concoction prepared, blended, mixed, or otherwise combined in the preparation of a regulated or alcoholic beverage, as defined by R.S. 26:2 and 241, to be served to patrons in the form of specialty frozen drinks, commonly known as frozen daiquiris.

Batch Freezer—any refrigeration or cooling unit, machine, device or processor of any kind in which a *batch*, as defined in this Section, of specialty frozen drinks, commonly known as frozen daiquiris, is placed for purposes of transforming the batch into frozen specialty drinks for service to patrons, regardless of whether the refrigeration or cooling unit, machine, device or processor includes a spigot or other mechanism for pouring the specialty frozen drink into single serving closed containers for service to patrons.

B. In order to qualify for a Class C-package store retail alcoholic beverage permit, the applicant must:

1. operate a place of business where the sale and service of alcoholic beverages represents more than 50 percent of the business' total annual retail sales revenue;
2. not offer to sell, sell, or otherwise distribute motor fuel anywhere on or about the licensed premises;
3. sell and serve alcoholic beverages, including frozen specialty alcoholic beverages, in closed containers prepared for transportation and consumption off the licensed premises only;
4. maintain a public habitable floor area of no less than 1,000 square feet;
5. not allow any person under the age of 18 years to enter, visit, or loiter in or about the licensed premises;
6. not employ anyone under the age of 18 years;
7. not allow the consumption of any alcoholic beverage for any purpose or reason on or about the licensed premises;
8. not permit the mixing, sale, or service of mixed alcoholic beverages on the licensed premises;
9. notwithstanding Paragraph 8 above, a Class C-package store license holder may combine non-alcoholic frozen specialty mixes with factory sealed and packaged alcoholic beverages on the licensed premises for the sole purpose of preparing a *batch*, as defined in Subsection A of this Section, which batch is placed in a *batch freezer*, as defined in Subsection A of this Section designed for the dispensing of

frozen specialty alcoholic beverages, provided the license holder complies with the following at all times:

- a. the mixing of a *batch*, as defined in Subsection A above, shall at all times be conducted out of the view of the public;
- b. open bottles of manufacturer-packaged alcoholic beverage or any other open alcoholic beverage shall be kept out of view of the public;
- c. all frozen specialty drinks shall be dispensed from batch freezer machines into containers affixed with a lid for transportation and consumption by the customer off of the licensed establishment's premises. The use of blenders or similar devices is prohibited;
- d. no additional alcoholic beverage shall be added to the batch after the batch is placed into the batch freezer machine. The sale and service of additional "shots" or any other portion of any alcoholic beverage or the introduction of any additional alcohol into a container used for the sale or service of frozen specialty drinks to the public is prohibited;
- e. the preparation and/or sale of one or more drinks commonly known as "highballs," "cocktails," or any type of "mixed drink" other than frozen specialty alcoholic beverages, as described and/or defined in this Section, is expressly prohibited on or about the licensed premises.

§ 329. Regulation XII -- Participation in Hearing by Video Conference

A. To the extent practicable and if the parties do not object, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any hearing authorized by the provisions of Title 26 of the Louisiana Revised Statutes and the regulations promulgated thereunder; unless prohibited by law.

B. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than ten nor more than thirty calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

C. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

D. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

§ 329. Regulation XIII – Posting of the National Human Trafficking Resource Center Hotline

A. All establishments listed in R.S. 15:541.1(A) shall prominently display a poster furnished by the office of alcohol and tobacco control containing information regarding the National Human Trafficking Resource Center hotline in all male and female public restrooms located within the premises.

CHAPTER 5. RESPONSIBLE VENDOR PROGRAM

§ 501. Purpose

A. The Responsible Vendor Program is intended to educate vendors and their employees and customers about selling, serving, and consuming beverage alcohol, tobacco, and tobacco products. Chapter 5 relates to the development, establishment, and maintenance of the program.

§ 503. Definitions

A. For purposes of this Chapter, the following terms are defined.

Approved Provider—an individual, unincorporated association, partnership, or corporation approved by the program administrator to provide server or security personnel training courses.

Commissioner—the commissioner of the state Office of Alcohol and Tobacco Control.

Program Administrator—a committee or board of nine persons that shall develop and administer the Responsible Vendor Program.

Responsible Vendor—any vendor who qualifies and maintains certification in the Responsible Vendor Program.

Responsible Vendor Handbook—the handbook that is developed, published, and distributed by the program administrator and approved by the commissioner.

Server—any employee of a vendor, other than security personnel, who is authorized to sell or serve beverage alcohol, tobacco, and tobacco products in the normal course of his or her employment or deals with customers who purchase or consume beverage alcohol, tobacco or tobacco products.

Server Permit—the permit issued to a server or security personnel upon completion of all required server or security personnel training and all refresher courses.

Security Personnel - any person other than a server who monitors the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons, enforcing establishment rules and regulations and otherwise providing security for the establishment and its customers where alcoholic beverages are the principle commodity sold for consumption on the premises. “Security Personnel” shall not include persons employed by hotels or motels which consist of sleeping rooms, cottages, or cabins unless the person works primarily in an area on the licensed premises of a hotel or motel where the principle commodity sold is alcoholic beverages for consumption on the licensed premises.

Trainer—an individual employed or authorized by an approved training provider to conduct an alcohol server education course wherein the successful completion of the course by the student will result in the issuance of a server permit.

Vendor—any holder of a state Class A—General, Class A—Restaurant, or Class B—Retail permit.

§ 505. Vendors

A. Certification and Enrollment as a Responsible Vendor

1. The vendor shall review and understand the vendor handbook.
2. The vendor shall provide the Office of Alcohol and Tobacco Control with a completed “vendor affidavit” for enrollment in the program.
3. The vendor shall require all “servers” and “security personnel” to attend an approved server or security personnel training course within 45 days of the first day of employment.
4. The vendor shall pay an annual fee of \$50 per licensed establishment holding a Class A-General, Class A-Restaurant, or Class B-Retail permit for the purpose of funding development and administration of the Responsible Vendor Program.
 - a. The fee shall be assessed on all new and renewal applications for retail permits to engage in the business of dealing in alcoholic beverages and/or tobacco and tobacco products.
 - b. The fee shall not be assessed to those parties seeking a Special Event Permit under the provisions of R.S. 26:793(A).

B. Maintaining Certification

1. The vendor shall keep the vendor handbook current with all updates and periodic amendments distributed by the program administrator.
2. The vendor shall provide new employees already licensed under the Responsible Vendor Program with the rules and regulations applicable in the parish or municipality of the establishment's location.
3. The vendor shall maintain server and security personnel training records, which include the name, date of birth, last four digits of Social Security Number, and date of hire for all servers and security personnel. The records shall be kept on the licensed premises at all times for inspection by agents of the Office of Alcohol and Tobacco Control or other peace officers.
4. The vendor shall post signs on the licensed premises informing customers of the vendor's policy against selling alcoholic beverages or tobacco products to underage persons if required by law.

§ 507. Servers and Security Personnel

A. Server and security personnel applicants with special needs, such as an inability to read or write in English, hearing impairment, etc., shall contact the approved training provider at least one week before the alcohol server or security personnel training course to request specific assistance in completing the course. Notwithstanding any other provisions of Chapter 5, the approved provider and the program administrator shall attempt to provide reasonable accommodation when requested in compliance with the state and federal law.

B. Server and Security Personnel Permit

1. Server and security personnel permits shall be valid for four years from the completion of an approved responsible vendor training course.
2. Whenever a server or security personnel is employed in the service of alcohol, their permit and one legal form of picture identification shall be available on the premises for inspection by agents of the Office of Alcohol and Tobacco Control or other peace officers.
3. A server's or security personnel's refusal or failure to make their permit available on the premises for immediate inspection by authorized agents or peace officers shall be evidence of a violation of this Section.

C. Server or Security Personnel Permit Verification. The Office of Alcohol and Tobacco Control shall maintain a list of currently certified servers and security personnel by name, permit number, and date of birth, so that vendors can verify the validity of the servers' and security personnel's permits.

D. Permit Expiration, Renewal and Lost Permits

1. Every server and security personnel permit shall expire on the last day of the month, four years after the month that the server or security personnel successfully completed the applicable responsible vendor server or security personnel course.
2. To be eligible for renewal of a server or security personnel permit, the server or security personnel shall attend and successfully pass an approved abbreviated renewal responsible vendor course and examination given by an approved provider.

3. Lost permits shall be canceled and a replacement issued by the Office of Alcohol and Tobacco Control after the server or security personnel submits an affidavit of lost permit and a \$5 fee.

E. Illegal Possession of a Permit. Any person who falsifies, keeps, or possesses a server permit contrary to the provisions of this Chapter shall be guilty of a violation of this Chapter.

F. Server and Security Personnel Liability: Penalties, Fines, Suspension, or Revocation of Server or Security Personnel Permit. Notwithstanding any criminal actions taken, the commissioner may issue administrative violations notices to any holder of a server permit for noncompliance with this Chapter or for any violations, attributable to the server or security personnel, of Title 26 of the Louisiana Revised Statutes.

§ 509. Training: Providers and Trainers

A. Trainer Certification. Approved providers shall only contract with trainers that have any combination of a minimum of two years of:

1. verified full-time employment in the fields of training, education, law, law enforcement, certified security services, substance abuse rehabilitation, the hospitality, retail industry that involved the sale or service of alcohol or tobacco products; or
2. post-secondary education in the fields of training, education, law, law enforcement, certified security services, substance abuse rehabilitation, the hospitality or retail industry that involved the sale or service of alcohol or tobacco products.

B. Provider Certification

1. Classroom Training Provider: A person or business entity that applies to become an approved provider for alcohol and tobacco server or security personnel classroom training shall submit the following to the program administrator:

- a. a completed application form provided by the program administrator;
- b. a copy of the lesson plans, audio, visual, and printed materials provided as part of

the alcohol server training course;

c. a copy of the examinations;

d. the names, dates of birth, last four digits of Social Security numbers, addresses and phone numbers, and educational and employment backgrounds of all trainers to be used in teaching the course; and

e. notification of any changes within 30 days of hiring, contracting with, or termination of any trainers.

2. Computer-Based Training Provider. A person or business entity that applies to become an approved provider for alcohol and tobacco server computer based education shall submit the following to the program administrator:

a. a completed application forms provided by the program administrator;

b. the names, dates of birth, last four digits of Social Security numbers addresses and phone numbers, and educational and employment backgrounds of all persons engaged in the development/creation of the online (computer-based) training course;

c. a copy of the complete online (computer-based) alcohol and/or tobacco server training course;

i. the presentation and course progress platform used by a computer-based provider must be reviewed and approved by the program administrator to ensure that the course of instruction contains all topics required by the mandatory curriculum;

d. a copy of the examination and item bank;

e. verification that the security measures implemented and maintained by the provider meet state and federal standards for the transmission and protection of personal identification information and financial information of individuals accessing the website;

f. a detailed description of the provider's system to verify a student's identity;

g. approved providers for computer-based training shall make a representative available to provide information and/or technical support during standard business hours via the internet, telephone, or other method as approved by the program administrator;

h. approved providers for computer-based training must submit to audits by the Office of Alcohol and Tobacco Control for the purpose of ensuring compliance and to review and examine the following:

- i. number of server courses that have been issued by the provider;
 - ii. security measures taken in relation to the course examination;
 - iii. procedures used to score the course examination;
 - iv. size of the examination bank to generate examination questions;
 - v. methodology used to translate the course and examination in multiple languages and the name and qualifications of the translator service provider;
 - vi. integrity of the program data generated and stored by the approved provider;
 - vii. program's data handling, reporting and archiving capacities, policies and procedures;
 - viii. approved provider's anti-discrimination policy and procedures;
 - i. access to the provider's web address and secured portal must be made available to the Office of Alcohol and Tobacco Control and the entire course of instruction offered to servers must be provided free of charge to the Office of Alcohol and Tobacco Control;
 - j. notification within 30 days of any changes in the provider's ownership or system operations;
 - k. approved classroom training providers shall obtain approval to become a computer-based provider by submitting a separate application and all additional information required in this section;
 - l. computer-based training providers are exempt from the provisions of LAC55:VII.511.K requiring seven days notice of scheduling courses;
 - m. computer-based training providers shall adhere to the provisions of LAC55:VII.509.E.1 requiring submission of class rosters within 10 days of any training course.
3. After the program content or method of presentation has been approved by the program administrator, the provider shall notify and obtain approval of any changes from the program administrator.
- C. the alcohol and tobacco server and security personnel permits issued to students who successfully complete the server and security personnel training programs shall be obtained from the Office of Alcohol and Tobacco Control or its designee.

D. Denial or Rescission of Program Approval

1. The program administrator may deny or rescind approval of any program if any of the following is found:

- a. the program does not meet the minimum course standards set out in Chapter 5;
- b. the Application for Program Certification is not correct or complete;
- c. any trainer has been convicted of a felony or of a misdemeanor related to theft, fraud, or misrepresentation and it has been less than three years since the discharge of the sentence imposed as a result of the conviction; or
- d. any trainer has been convicted of operating a vehicle while intoxicated at the time they were employed as a trainer and it has been less than one year since the discharge of the sentence imposed as a result of the conviction.

2. Within 10 days after receipt of the notice that the program approval has been denied or rescinded, the applicant has the right to request a hearing before the program administrator.

3. If the applicant fails to request a hearing, the right to a hearing is waived and the program administrator's decision is final.

4. The notice that the program approval has been denied or rescinded shall be served by either certified mail or personal service at the applicant's main office to any adult agent or employee or to its registered agent.

E. Provider and Trainer Records -- Rights of Inspection

1. Within 10 days of any training course, the approved provider shall submit to the Office of Alcohol and Tobacco Control a report of the server or security personnel training that includes the following:

- a. the name, last four digits of Social Security number, permit number, address, telephone number, and date of birth of each student that completed the training course and passed the required examination;
- b. the name of the trainer or training provider that provided the course and the trainer's signature and verification that each student listed has successfully completed the approved course on the date indicated and any other facts as the program administrator or agents or employees of the Office of Alcohol and Tobacco Control may require.

2. Copies of the examinations and permits shall be kept for four years from the date of issue at the approved provider's place of business available for inspection and copying by agents or employees of the Office of Alcohol and Tobacco Control.

3. The approved provider shall maintain for four years from the date the class was conducted, the course information, which includes the class location, date, and time; trainer's name; and the student's names, last four digits of Social Security number and permit number. These records shall be maintained at the approved provider's place of business available for inspection and copying by agents or employees of the Office of Alcohol and Tobacco Control.

F. Approved Provider Minimum Course Standards. To be certified to issue a server or security personnel permit, the provider's course of instruction must include the subject areas specified in R.S. 26:933(C) in accordance with LAC 55:VII.511.

G. Approved Server and Security Personnel Training Course Fees. Approved providers may charge fees for the cost of conducting the approved server or security personnel training courses. The fees for classroom or computer-based instruction and examination shall be approved by the program administrator and the commissioner and may not exceed \$25.

H. Sanctions against Approved Providers and Trainers. Any approved provider or trainer who violates any of the provisions of Title 26 of the Louisiana Revised Statutes or any of the requirements of Chapter 5 shall:

1. for a first offense receive a notice of intended suspension or revocation of the program administrator's certification or authorization, with 30 days allowed to correct any violations. If the violation is rectified no further action will be taken;
2. if the violation is not rectified or a second violation by the provider or their trainer occurs, the program administrator or their designee shall suspend approval and certification of the provider or trainer for a period not to exceed six months. Before the suspension will be lifted, the provider or trainer shall correct all violations;
3. the program administrator or their designee may increase sanctions based on successive violations within a two-year period. Numerous violations within a two-year period may indicate disregard for the law or failure to provide an acceptable responsible vendor server or security personnel program so as to warrant cancellation of the certification of either the provider or their trainer.

I. Approved Provider Responsible for Acts of Trainers. The program administrator may hold a provider responsible for any act or omission of the provider's program, personnel, trainers, or representatives that violate any law or administrative rule pertaining to approved providers' privileges.

J. Prohibited Conduct. No approved provider or authorized trainer shall:

1. make any false or misleading statement to induce or prevent the program

administrator's actions;

2. falsify, alter or otherwise tamper with responsible vendor server or security personnel permits or records;
3. permit a student to refer to any written material or have a discussion with another person during the exam unless the instructor authorizes the student to use an interpreter;
4. permit any student to drink alcoholic beverages or to be under the influence of intoxicants during the course presentation or examination, including breaks;
5. drink alcoholic beverages or be under the influence of intoxicants during the course presentation or examination, including breaks;
6. prohibit, interfere, or fail to assist the program administrator or their designee with scheduling or attendance of on-site observations.

K. Approved Provider and Trainer Advertising and Promotion Standards

1. Approved provider and trainer advertising related to the responsible vendor server and security personnel training courses shall include:
 - a. the approved provider's or trainer's telephone number and cancellation policy;
 - b. the total amount of course time that includes instruction, examination and breaks;
 - c. a statement that students shall attend the entire course before taking the examination.
2. Advertising shall not suggest that the state of Louisiana, the program administrator, or any state agency endorses or recommends the approved provider's program to the exclusion of any other program.
3. Upon request, the approved provider or trainer shall give the program administrator copies of the program publications, brochures, pamphlets, scripts, etc. or any other representation of advertising materials related to the program.
4. An approved training provider or trainer must have records available to support all advertising claims or representations.

§ 511. Responsible Vendor Program Minimum Course Standards

A. Classroom Instruction

1. Alcoholic Beverage and Tobacco Products Classroom Training—must include at least two hours of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction. Classes shall be limited to no more than one 10-minute break per hour.

2. Tobacco Products—must include at least one hour of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction.

B. Computer Based Instruction

1. Alcoholic Beverage and Tobacco Products Online Training—must include:

a. A secure log in and data transfer process to ensure security:

i. a unique log in is required for each server or security personnel that only allows that server or security personnel to access course and exam;

ii. server or security personnel shall not be able to modify first name and last name on user profile;

iii. server or security personnel provides data required by the ATC to issue permits;

iv. encryption, secure socket layer (SSL) or like, for personal information data transfer between website forms and database;

b. course and exam access information is provided to server or security personnel via email and/or directly after point of purchase;

c. online course shall automatically log users out after a minimum of 30 minutes of inactivity. Server or security personnel must be able to start where they left off;

d. online course shall provide a minimum of two hours of course instruction;

e. linear navigation requires participant to view all modules in course. Each the screen or module must be completed before proceeding to the next;

f. servers or security personnel cannot take the exam until the course has been fully completed;

g. a provider shall take extra measures to ensure to deter fraud and verify the identity of each student. Ways to prevent fraudulent course and test taking shall include, but are not limited to:

i. obtaining the log-in and log-off times;

ii. discontinuing an examination if it stays idle after a minimum period of 10 minutes of inactivity;

iii. asking each student personal identifying questions:

a). the server or security personnel must be asked a minimum of ten personal identifying questions before starting the exam;

b). server or security personnel must answer correctly a minimum of 5 randomly selected personal validation questions throughout the exam;

h. exam must be completed in one sitting. If Server or security personnel logs out, server must start over at the beginning of the exam;

i. the time allotted to take the examination shall not exceed 90 minutes;

j. if the time limit is exceeded or personal validation questions are answered incorrectly, the exam shall be reset and server must start over at the beginning of the exam;

k. server or security personnel must enter same exam access information to restart exam after exit;

l. server or security personnel will be allowed two exits from the exam before being locked out. The provider shall take sufficient measures to allow a student to re-access a previously started exam in the case of inadvertent logout;

m. approved providers must rotate the exam questions on a regularly scheduled basis to ensure exam security and validity;

n. the exam must include the 10 required Louisiana responsible vendor questions and then a minimum of 15 questions developed by the provider. The exam provider shall provide a bank from which the provider questions are taken which shall have a minimum of three times the number of items as the number of questions on the exam;

o. a server or security personnel must have adequate access to help desk/customer service during standard business hours to resolve technical issues without delaying the flow of instruction or examination;

p. no provider-based advertisements shall appear during the course of instruction and examination.

C. The approved server or security personnel training course shall be presented in its entirety to each student in a language approved by the program administrator.

D. Each server or security personnel training course must include an examination approved by the program administrator, which is administered by the trainer immediately following the course presentation. Students shall take the examination in writing, unless special circumstances require an oral examination. With the approval of the program administrator, the test may be offered in a language best understood by the student, or bilingual trainers may, in response to direct inquiries, clarify test questions using another language. Each student shall correctly answer at least 70 percent of the examination questions. Students who receive failing scores may be retested once at a time and place to be determined by the trainer. Otherwise, students must repeat the full course for an additional fee.

E. All training facilities shall meet the requirements of the Americans with Disabilities Act (ADA) and shall have adequate lighting, seating, easily accessible restrooms, and comfortable room temperature.

F. At the beginning of each server or security personnel training course, the trainer shall give each student:

1. an enrollment agreement that clearly states the obligations of the trainer and student, refund policies, and procedures to terminate enrollment;
2. a notice that a student must complete the course in order to take the examination;
3. a server training and/or a security personnel training workbook, approved by the program administrator, that is current, complete, and accurate. The workbook shall include an outline of the minimum course curriculum, table of contents, titles, subheadings, and page numbers. Physical specifications must meet the following minimum standards:
 - a. minimum dimensions of paper size must be 8 1/2 by 11 inches;
 - b. paper stock, excluding front and back cover, shall be white or near white, and of a quality and weight suitable for reproduction and note-taking with no ink bleed through;
 - c. type must be a minimum of 11-point in a type style commonly used for textbooks and periodicals;
 - d. binding must firmly hold the pages together in correct order and be sufficient for use during the course and as a reference;
 - e. professional printing and typesetting are not required, but reproductions must be clear, readable, and letter quality;

f. for ease of reading and adequate room for note-taking, white space must be a minimum of 30 percent per page with the print or copy to be no more than 70 percent of the page.

g. each student must be provided a copy of the applicable training workbook(s), in either paper or electronic format, that the student retains upon completion of sever and/or security personnel training course.

G. No server or security personnel training class shall include more than 100 students and students that arrive more than 15 minutes after the class begins shall not be admitted.

H. The classroom presentation must be consistent with the approved program.

I. Discussions must be pertinent to responsible beverage alcohol or tobacco sales, service, and consumption.

J. The program administrator or their designee may attend any class or computer-based course to evaluate conformance with the program certified by the program administrator.

K. At least seven days in advance, the approved provider or their authorized trainers shall give written notice to the Office of Alcohol and Tobacco Control of the date, time, and location of all courses scheduled. The Office of Alcohol and Tobacco Control shall be notified by phone or fax of course cancellations prior to the course date except when cancellation cannot be anticipated, in which case notification shall be within three business days of the scheduled course date.

L. Minimum Course Standards for Alcoholic Beverage and Tobacco Product Server Training Courses. To be certified to issue a server permit, the provider's course of instruction shall include the subject areas specified in R.S. 26:933(C), as well as the following.

1. Introduction:

a. brief review of the law creating the Louisiana Responsible Vendor Program, which shall include when the program was enacted, who is required to participate and how, when it becomes mandatory, nature of permits issued to server, when server permits expire, obligation of server to attend a course every two years, and server renewal procedures;

b. objectives of the Responsible Vendor Program, which shall include education of vendors, servers, and their customers about responsible sales, service, and consumption of alcohol and tobacco; and prevention of the misuse, illegal use, and

abuse of alcohol.

2. Alcoholic beverage and tobacco products course:

a. classification of alcohol as a depressant and its effect on the human body, particularly on the ability to drive a motor vehicle:

- i. alcohol is a depressant not a stimulant;
- ii. how alcohol travels through the body, including how quickly it enters the bloodstream and reaches the brain;
- iii. alcohol's effect on a person's ability to drive a motor vehicle, specifically reviewing alcohol's effect on a person's behavior, self-control, and judgment;
- iv. outline of Louisiana's driving while intoxicated laws and penalties for violations;

b. effects of alcohol when taken with commonly used prescription and nonprescription drugs:

- i. mixing alcohol with other drugs can produce dangerous side effects. It is especially dangerous to drive under the influence of alcohol and other drugs because of the increased impairment due to both;
- ii. alcohol and other depressant drugs. Mixing alcohol with other depressants dangerously increases the depressant effect on the body;
- iii. alcohol and stimulants. Stimulants do not cancel the intoxication and impairment due to alcohol;
- iv. alone, many prescription and nonprescription drugs impair the ability to drive a motor vehicle;
- v. the effects of commonly used prescription and nonprescription drugs;
- vi. review of the effects of contemporary designer drugs such as GHB and Rohypnol;

c. absorption rate, as well as the rate at which the human body can dispose of alcohol and how food affects the absorption rate:

- i. rate at which the human body absorbs alcohol;
- ii. blood alcohol concentration (BAC) and how to estimate a person's BAC. Include drink equivalency guidelines;
- iii. how the human body disposes of alcohol;

- iv. the effect of food on the absorption rate;
- v. time is the only real factor that reduces intoxication;
- d. methods of identifying and dealing with underage and intoxicated persons, including strategies for delaying and denying sales and service to intoxicated and underage persons:
 - i. procedures and methods for detecting false identification;
 - ii. procedures and methods for denying service or entry to underage persons;
 - iii. procedures and methods for identifying intoxicated persons including behavioral warning signs and other signs of impairment;
 - iv. procedures and methods for preventing over intoxication;
 - v. procedures and methods for terminating service to intoxicated persons;
- e. state laws and regulations regarding the sales and service of alcoholic beverages for consumption on or off premises:
 - i. legal forms of identification in Louisiana;
 - ii. legal age to purchase, possess, and consume alcohol and penalties for violation;
 - iii. legal age to enter licensed premises and penalties for violation;
 - iv. legal age to be employed by a vendor and penalties for violation;
 - v. acts prohibited on licensed premises and penalties for violation;
- f. parish and municipal ordinances and regulations that affect the sale and service of alcoholic beverages for consumption on or off the licensed premises. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality:
 - i. legal hours of operation and Sunday sales;
 - ii. noise, litter, and zoning;
 - iii. leaving premises with alcohol;
 - iv. preemption of parish and municipal server training courses;
 - v. parish or municipal server licensing requirements;
 - vi. other relevant regulations;

g. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:

- i. state and federal legal purchasing age;
- ii. federal age verification requirements;
- iii. state and federal laws and regulations related to vending machines;
- iv. state laws related to sign posting requirements;
- v. state laws related to minimum packaging requirements.

3. Tobacco Products Course

a. Outline and review of all relevant changes to local, state, and federal laws, rules and regulations affecting the retail operation of tobacco businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers Tobacco courses and submit their local tobacco curriculum to the program administrator for approval;

b. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:

- i. state and federal legal purchasing age;
- ii. federal age verification requirements;
- iii. state and federal laws and regulations related to vending machines;
- iv. state laws related to sign posting requirements;
- v. state laws related to minimum packaging requirements;

c. state laws and regulation regarding the sales and service of tobacco products:

- i. legal form of identification in Louisiana;
- ii. procedures and methods for detecting false identification;
- d. guidelines for prevention of tobacco use and addiction:
 - i. health risks;
 - ii. addiction problems with adolescents;
 - iii. health effects of smoking among young people;

e. what you should know about tobacco:

i. tobacco and athletic performance;

ii. tobacco and personal appearance;

f. state laws and regulations regarding the sales and service of the Louisiana Lottery Corporation Law:

i. a review of the Louisiana Lottery Corporation Law, which shall include when it was established;

ii. legal age to purchase a lottery ticket and penalties for violation;

iii. legal age to claim a lottery ticket;

iv. legal age to sell lottery ticket;

v. advertisement;

g. parish and municipal ordinances and regulations that affect the sale and service of tobacco products. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality.

M. Minimum Course Standards for Security Personnel Training Courses. To be certified to issue a server permit for security personnel, the provider's course of instruction shall include the subject areas specified in R.S. 26:933(C) and (D) and the minimum course standards specified on subsection L of these regulations as well as the following:

1. A description of the role and duties of security personnel that includes the responsibility to monitor the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons; to enforce the establishment's rules; and to otherwise provide security for the establishment and its customers.

2. A review of the skills that make security personnel more effective including communication skills, self-control, posture, confidence, physical fitness and knowledge of certain laws.

3. Techniques to identify and handle disruptive customers and customer altercations including but not limited to:

a. description of common types of disturbances;

b. techniques to identify and manage potentially disruptive customers;

c. proper procedures to employ when removing a disruptive customer from the premises including common mistakes to avoid; and

d. identification and description of the types of resistance security personnel may encounter when dealing with disruptive customers.

4. Description and review of proper restraint techniques and when to use such techniques including the following:

a. description and review of “positional asphyxia” including techniques to manage “positional asphyxia”; and

b. description and review of “excited delirium” including techniques to manage “excited delirium.”

5. Identification and review of state laws related to the duties and responsibilities of security personnel including:

a. simple, second degree and aggravated battery;

b. simple and aggravated assault;

c. false imprisonment;

d. simple and aggravated criminal damage to property;

e. entry on or remaining in places or on land after being forbidden;

f. simple, second degree and armed robbery; and

g. disturbing the peace.

N. Minimum Standards and Certification for an Abbreviated Renewal Course

1. To be certified to conduct abbreviated renewal server training courses, the approved provider's course of instruction shall include the following.

a. An Outline and Review of All Relevant Changes to Local, State, and Federal Laws, Rules and Regulations Affecting the Retail Operation of Alcohol Beverage and or Tobacco Businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers abbreviated renewal courses and submit their local renewal course curriculum to the program administrator for approval.

b. Statistics Related to Drunk Driving Arrests, Accidents and Fatalities in Louisiana. The approved provider shall incorporate the statistics into their abbreviated renewal

course curriculum in the same form and content that it is provided by the program administrator and compiled from the most current annual report of the Louisiana Highway Safety Commission or National Highway Traffic Safety Administration.

c. Techniques to Prevent Persons Suspected of Being Intoxicated from Operating Motor Vehicles.

d. Any Other Information Relevant to the Prevention of Drunk Driving.

e. Information Concerning Societal and Health Concerns Related to the Use of Tobacco Products.

2. All abbreviated renewal course program content and method of presentation shall be approved by the Program Administrator prior to conducting any abbreviated renewal server training courses.

3. All abbreviated renewal server training courses shall include at least one hour of classroom instruction exclusive of breaks and examination time, and shall be presented in a continuous block of time.

4. Each abbreviated renewal server training course shall include an examination approved by the program administrator.

5. Prior to teaching an abbreviated renewal server training course, the trainer must receive proof of prior training from the server. This proof may consist of a server permit not having expired for longer than one year, or any other proof deemed valid by the discretion of the trainer.

6. Unless otherwise provided for in this Subsection, all other regulations applicable to regular server training courses shall apply to renewal server training courses.

CHAPTER 7. LIVE ENTERTAINMENT

§ 701. Prohibited Acts

A. Notwithstanding any provisions of R.S. 26:90(D) and (E) and R.S. 26:286(D) and (E) to the contrary, live entertainment shall be permitted on any licensed premises except that no permittee shall permit any person to perform acts of or act which permit or simulate:

1. sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;
2. the touching, caressing or fondling of the breasts, buttocks, anus or genitals;
3. the displaying of the pubic hair, anus, vulva or genitals.

B. Such live entertainers whose breasts or buttocks are exposed to view shall perform only upon a movable or immovable stage at least 18 inches above the immediate floor level. Any provisions of R.S. 26:90 and R.S. 26:286 to the contrary are hereby suspended.

SUBPART 2. TOBACCO

CHAPTER 31. TOBACCO PERMITS

§ 3101. Definitions

A. For purposes of this Chapter, the following terms are defined.

Brand Family—all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to “menthol”, “lights”, kings”, and “100s”, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

Cash or Cash Delivery – the payment of tobacco products by currency or coin at the time of delivery of the merchandise.

Dealer—every person who manufactures or purchases cigars, cigarettes, or other tobacco products for distribution or resale in this state. The term also means any person who imports cigars, cigarettes, or other tobacco products from any state or foreign country for distribution, sale, or consumption in this state.

Exporter License—permits wholesale dealers with a valid stamping agent designation to engage in interstate business or to affix the tax stamps of another state.

Knowing Violation—the knowing or intentional act of engaging in conduct without a good faith belief that the conduct was consistent with the Title 26 of the Louisiana Revised Statutes.

Manufacturer—anyone engaged in the manufacture, production, or foreign importation of tobacco products who sells to wholesalers.

On Terms – the payment of tobacco product at a date subsequent to the delivery of the merchandise, as established by an agreement between the parties or as listed on the invoice provided at the time of delivery.

Person—any natural person, trustee, company, partnership, corporation, or other legal entity.

Purchase—acquisition in any manner, for any consideration. Includes the transport or receipt of product in connection with a purchase.

Retail Dealer -- every dealer, other than a wholesale dealer, tobacconist, or manufacturer, who sells or offers for sale cigars, cigarettes, or other tobacco products, irrespective of quantity or number of sales.

Sale; sell—any transfer, exchange, or barter in any manner or by any means for any consideration. Includes the distribution or shipment of product in connection with a sale. References to a sale “in” or “into” a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale “from” a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

Sales Entity Affiliate—an entity that (1) sells cigarettes that it acquires directly from a manufacturer or importer and (2) is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

Stamping Agent—a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes pursuant to R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

State Directory; Directory—the directory compiled by the attorney general pursuant to R.S. 13:5073, or, when referencing another state's directory, the directory compiled pursuant to the similar law in that other state.

Tobacconist -- any bona fide tobacco retailer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes.

Vending Machine—any mechanical, electric, or electronic self-service device that, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products.

Vending Machine Operator—any person who controls the use of one or more vending machines as to the supply of cigarettes or any tobacco products in the machine or the receipts from cigarettes vended through such machines.

Wholesale Dealer—dealers whose principal business is that of a wholesaler, who sells cigars, cigarettes, or other tobacco products to retail dealers for purpose of resale, who is a bona fide wholesaler, and 50 percent of whose total tobacco sales are to retail stores other than their own or their subsidiaries within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services 50 or more cigarette vending machines in Louisiana other than his own, and those Louisiana dealers who were affixing cigarette and tobacco stamps as of January 1, 1974.

§ 3103. Identifying Information for Permits

A. Permits

1. An exporter license shall be issued to a wholesale dealer with a valid stamping agent designation if that dealer engages in interstate business or affixes the tax stamps of another state. Such wholesale dealer/stamping agent shall first apply for the license prior to the purchase or possession of unstamped or non-tax paid cigarettes of another state.

2. A retail dealer permit shall be issued to a dealer other than a wholesale dealer, tobacconist, 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.

3. A stamping agent designation shall be issued to a dealer that engages in the business of purchasing unstamped or non-tax paid cigarettes and that meets all the requirements of a wholesale dealer as defined in accordance with the provisions of R.S. 26:906(H) and the provisions of this Chapter.

4. A tobacconist permit shall be issued to a dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes, for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

5. A vending machine operator permit shall be issued to a vending machine operator operating one or more vending machines. Licensed wholesale dealers who operate vending machines shall not be required to obtain a vending machine operator permit.

6. A vending machine permit shall be issued to the vending machine operator or wholesale dealer for each vending machine he operates and such permit shall be affixed to the upper front surface of the vending machine.

7. A wholesale dealer permit shall be issued to a wholesale dealer for each wholesale place of business operated by the wholesale dealer.

B. The following identifying information shall be listed on the face of all retail dealer permits, vending machine operator permits, and wholesale dealer permits:

1. the name of the license holder;
2. the name and address of the establishment for which the license is obtained;
3. the license number;
4. the dates of issuance and expiration;
5. the amount paid for the license.

C. The following identifying information shall be listed on the face of all vending machine permits:

1. the name of the license holder;
2. the vending machine operator permit number;
3. the vending machine permit number;
4. the address for the location of the vending machine;
5. the date of expiration.

§ 3105. Additional Information for Licenses: Partnership, Corporation, Limited Liability Company (LLC)

A. In addition to all other information required of an applicant by Title 26, any partnership, corporation, or limited liability company applying for a tobacco license shall provide the written agreement (partnership) or certificate (corporation and LLC) to the Office of Alcohol and Tobacco Control.

B. This requirement is waived for any applicant who also has a liquor license with the Office of Alcohol and Tobacco Control, provided the applicant includes the liquor license number on the application.

§ 3107. Expiration of Licenses

A. The expiration of retail dealer permits shall be staggered to expire in accordance with the following schedule.

| Parish Code | Parish Name | Month Expires | Permit |
|--------------------|--------------------|----------------------|---------------|
| 01 | Acadia | October | |
| 02 | Allen | March | |
| 03 | Ascension | January | |
| 04 | Assumption | November | |
| 05 | Alveolus | July | |
| 06 | Beauregard | March | |
| 07 | Bienville | September | |
| 08 | Bossier | September | |
| 09 | Caddo | September | |
| 10 | Calcasieu | March | |
| 11 | Caldwell | December | |

| | | |
|----|------------------|-----------|
| 12 | Cameron | March |
| 13 | Catahoula | December |
| 14 | Claiborne | September |
| 15 | Concordia | December |
| 16 | DeSoto | September |
| 17 | East Baton Rouge | January |
| 18 | East Carroll | December |
| 19 | East Feliciana | August |
| 20 | Evangeline | July |
| 21 | Franklin | December |
| 22 | Grant | December |
| 23 | Iberia | October |
| 24 | Iberville | July |
| 25 | Jackson | December |
| 26 | Jefferson | February |
| 27 | Jefferson Davis | March |
| 28 | Lafayette | October |
| 29 | Lafourche | November |
| 30 | LaSalle | December |
| 31 | Lincoln | September |
| 32 | Livingston | August |
| 33 | Madison | December |
| 34 | Morehouse | December |
| 35 | Natchitoches | December |
| 36 | Orleans | May |
| 37 | Ouachita | December |
| 38 | Plaquemines | April |
| 39 | Pointe Coupee | July |
| 40 | Rapides | July |
| 41 | Red River | September |
| 42 | Richland | December |
| 43 | Sabine | September |
| 44 | St. Bernard | April |
| 45 | St. Charles | April |
| 46 | St. Helena | August |
| 47 | St. James | April |
| 48 | St. John | April |
| 49 | St. Landry | July |
| 50 | St. Martin | October |
| 51 | St. Mary | November |
| 52 | St. Tammany | August |

| | | |
|----|------------------|-----------|
| 53 | Tangipahoa | August |
| 54 | Tensas | December |
| 55 | Terrebonne | November |
| 56 | Union | December |
| 57 | Vermillion | March |
| 58 | Vernon | March |
| 59 | Washington | August |
| 60 | Webster | September |
| 61 | West Baton Rouge | July |
| 62 | West Carroll | December |
| 63 | West Feliciana | August |
| 64 | Winn | December |

B. All vending machine operator permits shall expire each year on June 30.

C. All vending machine permits shall expire each year on June 30.

D. All wholesale dealer permits shall expire each year on December 31.

§ 3109. Initial Application and Related Fees

A. Tobacco Permits

1. Except as otherwise provided by law and these regulations, tobacco permits shall be issued for a period of no more than one year.

2. Notwithstanding Paragraph A.1 of this Section, the commissioner may issue tobacco permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control with the fees for the entire permit period being due upon the submission of the original or renewal application. Obtaining a two year permit shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year certificate shall make application under the provisions of Paragraph A.1 of this Section.

2. For purposes of this Section, *good standing* shall mean any original or renewal applicant for a tobacco permit who has not been issued a warning, pled or been found guilty of any violations of Title 26 of the Louisiana Revised Statutes and/or the

regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

B. The fee for a retail dealer permit shall be \$25 per year or any portion thereof, as established in Title 26 of the Louisiana Revised Statutes.

C. The fee for a vending machine operator permit shall be \$75 per year or any portion thereof, as established in Title 26 of the Louisiana Revised Statutes.

D. The fee for a vending machine permit shall be \$5 per machine per year or any portion thereof, as established in Title 26 of the Louisiana Revised Statutes.

E. The fee for a wholesale dealer permit shall be \$75 per year or any portion thereof, as established in Title 26 of the Louisiana Revised Statutes.

F. Pursuant to Title 26 of the Louisiana Revised Statutes, the fee for a tobacconist permit shall be \$100 per year or any portion thereof based on the effective rate as of August 15, 2010.

§ 3111. Renewal Deadline: Penalties

A. For a renewal application to be timely filed, the application and the appropriate fee must be received by the Office of Alcohol and Tobacco Control on or before the license expiration date.

B. Failure to timely file the renewal application will subject the license holder to the delinquency penalties authorized by R.S. 26:905.

§ 3113. Special Event Permits and Related Fees

A. The Office of Alcohol and Tobacco Control may issue a special event permit for a duration of three consecutive days, with no more than 12 such permits issued to any one person within a single calendar year.

B. The fee for a special event permit shall be \$25.

§ 3115. Age Verification Requirements

A. Before a seller mails, ships, or otherwise delivers cigarettes cigars, pipe tobacco, chewing tobacco, smokeless tobacco, or any other tobacco product of any kind in connection with a sale, the seller must verify the consumer's age through electronic or written communication.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

C. No retailer may sell or deliver cigarettes, cigars, pipe tobacco, chewing tobacco, smokeless tobacco, or any other tobacco product of any kind in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless the customer submits to a clerk a valid driver's license, selective service card, or other lawful identification that on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity and correctness of the identification prior to approaching the self-checkout counter.

§ 3117. Importation of Cigarettes by Wholesaler Only

A. Cigarettes, as defined in R.S. 26:901, produced or manufactured outside of this state cannot be sold or offered for sale in Louisiana, or shipped or transported into the state except to the holder of a wholesaler's permit. Delivery of cigarettes produced or manufactured outside of this state must be made at the place of business of the wholesaler shown on the wholesaler's permit, and must be received and warehoused by the wholesaler at that place of business, where such cigarettes must come to rest before delivery is made to any retailer.

B. Pursuant to the provisions of R.S. 26:902 et seq., a wholesale dealer shall not accept delivery of any unstamped cigarettes produced or manufactured outside the state unless such wholesale dealer is also the holder of a valid stamping agent designation and exporter license. Acting within his duties as stamping agent, a wholesale dealer who comes into receipt of such an unstamped package of cigarettes, shall immediately cause the proper affixation of the required stamps to each package of cigarettes.

C. In accordance with La R.S. 47:871, no person who is engaged in the business of selling or distributing cigarettes may ship or transport, or cause to be shipped or transported, cigarettes to any consumer in the state. The provisions of this Section shall apply regardless of whether the person engaged in the business of selling or distributing cigarettes is located within or without the state.

D. Any retailer of cigarettes who violates any provision of this Section will be subject to a civil penalty in the amount of \$25,000. Any retailer that sells and ships directly to consumers in Louisiana pursuant to Subsection B of this Section must, on the application for authority to make such shipments filed with the Secretary of the Department of Revenue in accordance with Subsection C of this Section, acknowledge in writing the civil penalty established in this Subsection and must consent to the imposition thereof upon violation of this Section. The secretary may initiate and maintain a civil action in a court of competent jurisdiction to enjoin any violation of this Section and to recover the civil penalty established in this Subsection, together with all costs and attorney fees incurred by the secretary incidental to any such action.

E. Upon determination by the Secretary of the Department of Revenue that an illegal sale or shipment of cigarettes has been made to a consumer in Louisiana by either a manufacturer or retailer of such cigarettes, the secretary must notify both the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of cigarettes has been violated and shall request those agencies to take appropriate action.

§ 3119. Participation in Hearing by Video Conference

A. To the extent practicable and if the parties do not object, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any hearing authorized by the provisions of Title 26 of the Louisiana Revised Statutes and the regulations promulgated thereunder; unless prohibited by law.

B. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than 10 nor more than

30 calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

C. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

D. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

INDEX

A

Acts prohibited on licensed premises, 26:90, 26:286
Additional causes for suspension or revocation, 26:91, 26:287
Administrative hearings, 26:92 et seq., 26:289 et seq.,
Participation by video conference, 26:99.1, 26:296.1, 26:919.1, 55:VII.
329, 55: VII. 3119
Status after revocation, 26:97, 26:293
Summary Suspension, 26:93, 26:290
Adulterated beverages, 26:150, LAC 55:VII.303
Advertisements, unfair practices, 26:150
Advertising specialties, 55:VII.317
Age,
Identification, licensed premises, 26:90, 26:286
Licenses and permits, qualification, 26:80, 26:280
Misrepresentation, crimes and offenses, 14:333
Antiseptic, exempt from laws relating to, 26:3, 26:421
Appeal, see suspension or revocation
Application for permit, see Permits

B

B drinkers, employment prohibited, 26:90, 26:286
Background checks, for licensing purposes, 26:80, 26:280
Beer, see also Beverages of low alcoholic content
Beer cash law, 55:VII.101 et seq.
Business relations, suppliers and wholesalers, 26:801 et seq.
Cash sale, 26:741
Content of application, see Permits
Credit sale, 55:VII.103, et seq.
Location of business, see Permits
Qualifications of applicants for permits, see Permits
Reports by wholesalers, 55:VII.107
Submission of applications, see Permits
Beverages of high alcoholic content,
Acts prohibited on licensed premises, 26:90
Children and minors, sale or service to, 26:90
Containers, limitation on size and standard of fill, 26:351
Defined, 26:241
Maximum stock, excise tax bonds, 26:350
Prescribing as medicine to evade prohibition law, penalty, 26:71

- Samplings or tastings, 26:75
- Beverages of low alcoholic content, 26:241 et seq.
 - Acts prohibited on licensed premises, 26:286
 - Additional causes for suspension of permits, 26:287
 - Cash sales, wholesalers to retailers, 26:741
 - Children and minors, sales or service to, 26:286
 - Contributing to delinquency of minors, 14:92
 - Defined, 26:241
 - Enforcement, 26:294
 - Exclusion agreements, retailers, 26:287
 - Fines and penalties, 26:292
 - Hearings, 26:295 et seq.
 - Importation, wholesalers only, 26:359
 - Local permits, see Permits
 - Location of business, see Permits
 - Misrepresentation, tap marker, permit suspension or revocation, 26:287
 - Prohibited acts, licensed premises, 26:286
 - Sampling or tastings, 26:275
- Blind tiger, 26:711 et seq.
- Breach of the peace,
 - Licensed premises, 26:90, 26:286

C

- Cafeterias,
 - Permit for light wines, 26:72
- Carriers, see also Exports and imports
 - Import permits, 26:362
 - Invoices required, 26:368
 - Reports of, 26:369
 - Searches and seizures, 26:371
- Cash sales, see also Beer
 - Malt beverages, sales by wholesalers to retailers, 26:741
 - Payment by retailers, 26:148
- Caterer's, 26:793, LAC 55:VII.325
- Change of location, see Permits
- Charities, minors on premises, 26:90, 26:286
- Checks, malt beverages, see Cash sales
- Children and minors,
 - Contributing to delinquency, 14:92, 14:92.1
 - Employment, 26:90, 26:286,

| | | | |
|----------|-----|---------|----------------------|
| Children | and | minors, | Employment—continued |
|----------|-----|---------|----------------------|

- Minors under 18 prohibited, 23:161, 26:90, 26:286
- Identification, 26:90, 26:286
- Misrepresentation of age, 14:333
- Public possession by minors of, 14:93.12
- Purchase by minors, 14:93.12
- Retail dealers responsibilities, 14:93.14
- Sale or service to minors, 14:93.10 et seq.; Const. Art. 1, Sec. 3.1
- Sales or service, licensed premises, 26:90, 26:286
- Churches, location of business, 26:81, 26:281
- Cigars and cigarettes, see Tobacco
- Citizens and citizenship, licenses and permits, 26:80, 26:280
- Civic events, three day permits, 26:793, 55:VII.323
- Cleanliness of premises, 26:90
- Collection,
 - Fees and fines, 26:795
 - Local license permits, 26:74
- Commissioner,
 - Collection of fees, 26:795
 - Criminal records access, 26:800
 - Powers and duties, 26:792, 26:793, 26:794, 26:923, 26:923
- Combination of wholesale and retail business, 26:85
- Consignment sales, see Unfair practices
- Containers,
 - Beverages of high alcoholic content,
 - Limitation on size and standard of fill, 26:351
 - Refilling, 26:149
 - Unfair practices, 26:150
- Contest and game promotions, see Entertainment
- Contracts,
 - Exclusion agreements, beverages of low alcoholic content, 26:287
 - Malt beverages, business relations, 26:801 et seq.
- Contributing to delinquency of minors, 14:92
- Controlled dangerous substances, 26:90, 26:286
- Correctional institutions,
 - Procuring for inmates, penalties, 26:681
- Coupons, 55:VII.317

- Credit,
 - Retailers payment to wholesalers, 26:148
 - Wholesalers,

| | | |
|--------|------------|--------|
| volume | purchases, | 26:287 |
|--------|------------|--------|

- Crimes and offenses,
 - Blind tiger, 26:711 et seq.
 - Conviction, not essential to revocation or suspension of license, 26:95
- Dry areas,
 - Blind tigers, 26:711 et seq.
 - Sales or storage, 26:147
- Misrepresentation of age, 14:333
- Operation without licenses and permits, see Permits
- Poisonous beverages, 26:651, 26:652
- Prohibition territory, 26:711 et seq.
- Purchase,
 - Minors, 14:93.12
- Qualifications for license, see Permits
- Samples of beverages found on intoxicated persons, 26:653
- Schools and school districts, unauthorized possession or consumption, 14:91.7
- Second and subsequent offenses, fines, 26:96, 26:292
- Solicitation of beverages, dry area, 26:714

D

- Damages,
 - Limitation of liability, 9:2800.1
 - Malt beverages, business relations, 26:810
 - Music on licensed premises, 26:90, 26:286
- Definitions, 26:2, 26:241
 - Blind tiger, 26:711
 - Fees and fines, collection, 26:795
 - Light wines, 26:72
 - Local option, 26:581
 - Malt beverage sales, to retailers, 26:802
 - Malt beverages, business relations, 26:802
 - Penal provisions, 26:641
 - Restaurant establishments, 26:73, 26:272
 - Vintage wines, 26:351
- Delinquent lists, 26:152
- Dinner theaters, 26:2, 71.1, 241, 271.2
- Direct shipment, 26:359
- Disturbance of peace, licensed premises, 26:90, 26:286
- Domestic wines, wine producers, 26:2, 26:71, 26:85, 26:359, 55:VII.323.1

- Domicile and residence, licenses and permits, 26:80, 26:280
- Donut shops, licenses and permits, 26:73.1, 26:273
- Dram Shop Act,
 - Limitation of liability, 9:2800.1
- Drivers license, see Identify and identification
- Dry areas,
 - Blind tiger, 26:711 et seq.
 - Crimes and offenses, blind tigers, 26:711 et seq.
 - Local prohibition, 26:595, 26:596
 - Sales or storage, 26:147
 - Solicitation, penalties, 26:714
- Duties of commissioner, see Commissioner

E

- Enforcement, 26:797, 47:878
- Enhancers, 55:VII.317
- Entertainment,
 - Contest and game promotions, 55:VII.305
 - Lewd acts, 26:90, 26:286, 55:VII.305
 - Licensed premises, 26:90, 26:286
 - Live entertainment, 26:90, 26:286
 - Prohibited acts, 55:VII.701
 - Prohibitive acts, 55:VII.305
- Excise tax, 26:341 et seq.,
 - Discount payments, 26:354
- Exclusive outlet, 55:VII.317
- Exempt products, 26:3, 26:421 et seq.
- Exported beverages,
 - Beverages of high alcoholic content, 26:354
 - Carriers, 26:369
 - Imports, 26:360
 - Handling, 26:367
 - Highway carriers, invoices required, 26:368
 - Inventories, 26:354
- Invoices, 26:355, 26:356
 - Records and reports, 26:370
- Exports and imports,
 - Approval, 26:364
- Exclusion agreements, see Additional causes for suspension and revocation
- Exported beverages,

High alcoholic content beverages regulated by secretary, 26:367
Taxation, 26:366
Notice of shipment, 26:364
Wholesalers only, 26:142

F

Fairs and expositions, see Permits, Special events
False invoices, 26:356
Festivals, see Permits, Special events
Fines and penalties, 26:171, 26:641 et seq.
Fraud, see Adulterated beverages

G

Game promotions, see Entertainment
Gambling on licensed premises,
 Illegal gambling prohibited, 26:90, 26:286
 Game and contest promotions, see Entertainment
Gallonage tax, 26:341 et seq.
Gift of alcoholic beverages, see Unfair practices

H

Hearings, see Administrative hearings
High school students, possession on school grounds, reports, 14:403.1
Homebrew, 26:793
Hotels and motels, see Permits, Location limited
 Retail sales of beverages of high alcoholic content, 26:351
Husband and wife,
 Microbreweries, 26:273
 Permit qualifications, see Permits
 Qualifications, 26:80, 26:280

I

Identify and identification,
 Age, proof, acceptable forms, 26:90, 26:286
Immoral practices, licensed premises, 26:90, 26:286
Importation of alcoholic beverages,
 Distribution through wholesaler only, 26:142, 26:359
 Reports of importers, 26:360
Importation of cigarettes,

55:VII.3117

- In-state brewing facilities,
 - Class A retail permits, sale on or off premises, 26:273
- Inside signs, see Unfair practices
- Inspection, 26:145
- Interposed persons, 26:83
- Invoices, 26:143
 - False invoices, 26:144
 - Highway carriers, 26:368

K

- Keg registration, 26:306

L

- Labor and employment,
 - Children and minors, 26:90, 26:286
- Lewdness and obscenity, see Acts prohibited on licensed premises
- Liability, see Dram Shop Act
- Licenses and permits, see Permits
- Light wines, restaurants, permits, 26:72
- Liquor credit law, 55:VII.301
- Local permits, see Permits
- Local regulations, 26:491 et seq.
- Location of business, see also Permits
 - Manufacturers, 26:71
 - Microbreweries, 26:271.1
 - Fees, 26:271
- Local option, 26:581 et seq.
- Local taxation, 26:491 et seq.
- Location limited, see Permits
- Loud music, licensed premises, 26:90, 26:286

M

- Malt beverages, see also Beer and Beverages of low alcoholic content
 - Vending machines, 26:286
- Manufacturers and manufacturing, see also Suppliers
 - Defined, 26:241
 - Excise tax,
 - Bonds, (officers and fiduciaries), 26:348
 - Payment, 26:344
 - Exclusive agreements, beverages of low alcoholic content, 26:287

- Fees, 26:271
- Licenses and permits, see also Permits
 - In-state brewing facilities, sale on or off premises, 26:273
 - Microbreweries, 26:271.1
- Local taxation and regulations, 26:491, et seq.
 - Microbreweries, 26:271.1
- Occupational license tax, 47:341, et seq.
 - Fee schedule, 47:341, et seq.
 - Wholesales, exemption, 47:360
- Combination prohibited, 26:85, 26:85.1
- Permits, see Permits
- Sale on or off premises, in-state brewing facilities, Class A retail permits, 26:273
- Mardi Gras, see Permits, Special events
- Marketing and sale of alcoholic beverages, see Unfair practices
- Microbreweries,
 - Defined, 26:241
 - Permits, 26:271, 26:273
 - Retail sales, 26:271.1
- Military identification cards, proof of age, 26:90, 26:286
- Music and musicians, licensed premises, 26:90, 26:286
- Musicians, minors performing in bands, 23:161, 26:90

O

- Obscenity and lewdness, licensed premises, 26:90, 26:286
- Officers and employees,
 - Licenses and permits, qualifications, 26:80, 26:280
- Operation without permit, see Permits
- Ordinances, 26:493 et seq.
 - Local prohibition, 26:595
 - Location of business, 26:81, 26:281
- Outside signs, see Unfair practices

P

- Package houses, permits, fees, 26:71, 26:271
- Parishes,
 - Local option, 26:595
 - Taxation and regulation, 26:491 et seq.
- Passports, proof of age, 26:90, 26:286
- Payment,
 - Cash sales by wholesalers to retailers, 26:741

Playgrounds and recreation centers, location of Business, 26:81, 26:281

Permits,

Alcohol,

Application

Content, 26:78, 26: 278

Misstatement or suppression of fact, 26:84, 26:282

Qualifications, 26:80, 26:280

Authority to withhold, 26:86, 26:283

Procedure for determination, 26:87, 26:284, 55:VII.315

Exempt products, 26:3

Fees, 26:271

High alcoholic content, 26:71 et seq.

Limitations on issuance, 26:73.1, 26:273

Local permits, 26:74, 26:274

Location limited, 26:81, 26:281

Low alcoholic content, 27:271 et seq.

Manufacturers, 26:71, 26:271

Microbreweries, 26:271, 26:273

Necessary prior to purchase of alcoholic beverages, 26:151

Notice of application for retail permit, 26:77, 26:277

Operation without permit, 26:75, 26:275

Personal nature, 26:76, 26:276

Posting of, 26:76, 26:276

Renewal, 26:88, 26:89, 26:285

Retailers, 26:71, 26:271

Caterer's,

Additional power of commissioner, 26:793

Qualifications, 55:VII.325

Regulation, 55:VII.325

Class A, 26:71 26:271, 26:271.2

General, 26:71.1, 26:271

Restaurants,

Conditional, 26:71.1, 26:271, 26:271.2

General, 26:71.1, 26:73, 26:272

Light wine, 26:72

Special, 26:71.1, 26:271

Class B, 26:71, 26:271

Class C, 26:71.2, 26:271.3, 55:VII.327

Revocation, see Administrative hearings

Special events,

Alcoholic beverages, 26:793 and 55:VII.323

- Tobacco and tobacco products, 26:923 and 55:VII.3113
- Staggering of expiration dates, 55:VII.321
- Time delay for approval, 26:279
- Transportation, consignee to have permit from secretary, 26:365
- Wholesalers,
 - Combination with manufacturer's or retail permits, 26:85, 26:85.1
 - Issuance, 26:82
 - Permits, 26:71, 26:271
- Transfer of business, malt beverages, 26:806
- Tobacco, 26:901 et seq., 55:VII.3101 et seq.
 - Expiration, 55:VII.3107
 - Identifying information for license, 55:VII.3103, 55:VII.3105
 - Renewal, 55:VII.3111
 - Special events, Permits, Special events
 - Permits and fees, 26:902 et seq.
 - Vending machines, 26:910
- Poisonous beverages, 26:651 et seq.
- Pool and billiards, minors and licensed premises, 26:90, 26:286
- Posting, licenses and permits, see Permits, Posting
- Powers of commissioner, see Commissioner
- Pricing, 26:150, see also Stocking, pricing and rotating
- Prizes, wholesalers, volume purchases, 26:150
- Prohibitive acts, 55:VII.305
- Promotions, 55:VII.317, see also Entertainment
- Providers, see Responsible Vendor Program
- Providing alcohol to convicted persons, 26:681
- Public possession, minors of 18 to 21 years, 14:91.5

R

- Records,
 - Examination of, 26:357
 - False invoices, high alcoholic content, 26:356
 - Invoices, high alcoholic content beverages, 26: 355
- Refilling used containers, 26:149
- Religious organizations and societies,
 - Location of business, 26:81, 26:281
 - Minors on premises, 26:90, 26:286
 - Three day permits, 26:793, 55:VII.323
- Reports of importers, see Importation of alcoholic beverages
- Resetting, LAC 55:VII.319
- Responsible Vendor Program, 26:931 et seq., 55:VII.501 et seq.

- Restaurants,
 - Licenses and permits, see Permits
 - High alcoholic content beverages, 26:372
 - Light wines, 26:72
 - Low alcoholic content beverages, 26:271, 26:271.2
 - Permits, see Permits
 - Louisiana Smokefree Air Act, 40:1300.251, et seq.
- Retailers permits, 26:71, 26:71.1, 26:271, 26:271.2
- Revocation, see suspension or revocation
- Rotating, see Stocking, pricing and rotating

S

- Sabine River Authority, special permits, recreational Facilities, 26:71.1, 26:271.2
- Sake, containers, 26:351
- Sale and marketing of alcoholic beverages, see Unfair practices
- Sale in dry area, 26:147
- Sampling,
 - Alcoholic beverages, 26:75, 26:275, 55:VII.317
 - Tobacco and tobacco products, 26:923, 55:VII.3113
- Searches, seizures and forfeitures, 26:371 et seq.
 - Blind tiger, 26:712, 26:713
 - Claims to seized property, 26:373
 - Forfeitures and sale of vehicle, 26:363
 - Waiver of forfeiture of high alcoholic content beverages, 26:374
- Self-checkout, 55:VII.305, 55:VII.3115
- Servers, see Responsible Vendor Program
- Signs, see Unfair practices
- Social hosts, limitation of liability, 9:2800.1
- Soliciting sale in dry area, 26:714
- Solicitors, 26:71, 55:VII.309
- Stocking, pricing and rotating,
 - High alcoholic content beverages, 55:VII.319
- Storage in dry area, 26:147
- Special events, see Permits, Special events
- Sponsors and sponsorships, see Unfair practices
- Successions and succession proceedings,
 - Licenses and permits, 26:76, 26:276
- Sundays,
 - Closing of premises,
 - Revocation or suspension of licenses, 26:91, 26:287

Suppliers, see also Manufacturers
 Agreement with wholesalers, 26:805
 Permits, see Permits, Manufacturers
 Prohibited acts, 26:803
 Surviving spouses, licenses, 26:76, 26:276
 Suspension or revocation, see also Administrative hearings
 Sweepstakes, 55:VII.317

T

- Tastings, see Sampling
- Taxation, see also Excise tax
 - Donated beverages, 26:352
 - Exports, see Exports and imports
 - Failure to pay taxes, civil penalty, 26:358
- Taxation—continued Gallonage,
 - 26:341 et seq. Invoices and records of dealers,
 - High alcoholic content, 26:355
 - False invoices, 26:356
 - Local taxation and collection, 26:491 et seq.
 - Secretary to collect, 26:451 et seq.
- Three-day permits, see Permits, Special events
- Tied house, 55:VII.317
- Tobacco, 26:901 et seq., 55:VII.3101 et seq.
 - Administrative hearings, 26:919 et seq., 55:VII.113 et seq.
 - Retailers, beer cash violations, 55:VII.111
 - Wholesalers, beer cash violations, 55:VII.109
- Acts prohibited, 26:912
- Appeals of administrative decisions, 26:920
- Commissioner's examination of records, 26:907.1
- Delivery,
 - Age verification, 47:873, 55:VII.3115
 - Delivery sales, 47:872
 - Registration and reporting, 47:875
 - Shipping, 47:874
 - Taxes, 47:876
- Exceptions, 26:914
- Minimum price, 26:924
- Self-checkout, 55:VII.3115
- Suspensions and revocations, 26:916
- Tobacco
 - permits, see Permits

- Tobacconist, 26:901, 903, 932
- Violation, 26:913
- Trade calls, see Unfair practices
- Trainers, see Responsible Vendor Program
- Transportation of alcoholic beverages, see also Carriers
 - Forfeiture and sale of vehicle, see Searches, seizures and forfeitures
 - Within the state, taxes unpaid, 26:361
 - Permit from secretary, see Permits

U

- Unfair practices, 26:150, 55:VII.317

V

- Vending machines, see Permits
- Vendors, see Responsible Vendor Program
- Video draw poker devices, licenses and permits, 26:91, 26:287
- Visas, proof of age, 26:90, 26:286

W

- Warnings, see Administrative hearings
- Watering, see Unfair practices
- Weights and measure, see Containers
- Wholesalers, see also Permits, Wholesalers
 - Agreement with suppliers, 26:805
 - Civil action for violations, 26:810
 - Waiver of rights, 26:809
 - Business relations with suppliers, 26:801 et seq.
 - Combination of wholesale and retail business, 26:85, 26:85.1
 - Distribution of alcoholic beverages, 26:359
 - Dry areas, 26:147
 - Penalty, 26:596
 - Import permits, 26:362
 - Importation, 26:142, 26:359
 - Licenses and permits, see Permits, Wholesalers
 - Local taxation and regulation, 26:491 et seq.
 - Malt beverages,
 - Cash sales to retailers, 26:741
 - Reports by wholesaler, see Beer
 - Wine producers, 26:85, 26:359, 55:VII.323.1
 - Permits, see Permits

- Prohibited acts, 26:804
- Reasonable compensation for supplier's violation, 26:807
- Storage space, 26:82
- Tobacco, 26:901
- Transfer of business, 26:806
- Wines, 26:146
- Wine,
 - Containers, limitation on size and standard of fill, 26:351
 - Direct shipping, 26:359
 - Excise tax, 26:341
 - Licenses and permits, native wine producers, 26:325
 - Light wines, restaurant, permits, 26:72
 - Native wines, 26:321 et seq.
 - Still wine,
 - Definition, 26:2, 26:241
 - Distribution, 26:359
 - Permit, 26:72, 26:272
 - Production, 26:324
 - Regulation of traffic in, 26:146
 - Revenue determination, 26:73
 - Taxation, 26:341, 26:459
- Wine producers,
 - Combination manufacturer, wholesaler, and/or retailer, 26:85
 - Definition, 26:2
 - Direct shipping, 26:359
 - Fairs, festivals, farmer's markets and similar venues, 55:VII.323.1
 - Permit fees, 26:71

Z

- Zoning and planning, location of business, 26:81, 26:281