

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 2311 (24 **Del.C.** §2311)
24 **DE Admin. Code** 2300

FINAL

ORDER

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Secretary of Safety and Homeland Security ("Secretary") hereby issues this Order. Following public notice on the proposed adoption of amendments to rule 3.0 - Revocations and Emergency Suspensions, the Secretary makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Secretary did not receive written evidence or information pertaining to the proposed adoption.
2. The Secretary expressed his intent to adopt the amendment to issue a revocation and emergency suspension to pawnbrokers, secondhand dealers and scrap metal processors.

Findings of Fact

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the proposed amendment. The written comments received are described in paragraph 1.
4. The Secretary finds that the adoption of this rule will allow the Director of SBI to issue a revocation or emergency suspension to pawnbrokers, secondhand dealers and scrap metal processors.
5. The Secretary finds that the adoption will have no adverse impact on the public.
6. The Secretary finds that the amendment is well written and describes its intent to issue a revocation or emergency suspension of pawnbrokers, secondhand dealers and scrap metal processors.

Conclusion

7. The proposed rule adoption was promulgated by the Secretary in accord with the statutory duties and authority as set forth in 24 Del.C. Chapter 23 et seq. and, in particular, 24 Del.C. Section 2311.
8. The Secretary deems this adoption necessary and expedient to the full and official performance of his duties under 24 Del.C. Chapter 23 et. seq.
9. The Secretary concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Secretary therefore adopts the amendment pursuant to 24 Del.C. Section 2311 and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).
11. The adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Secretary.
12. The effective date of this Order shall be December 11, 2009.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 11th day of December, 2009.

Secretary Lewis D. Schiliro

APPROVED AS TO FORM:
Michael Tupman, Esquire

Deputy Attorney General

November 2, 2009

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors

1.0 Licensing

- 1.1 Any individual applying for a pawnbroker, secondhand dealer or scrap metal processor license under Title 24 Chapter 23 must meet and maintain the following qualifications:
 - 1.1.1 Must not be convicted of any felony within 5 years of application date; and
 - 1.1.2 Must not have been convicted of any misdemeanor involving theft or fraud within 5 years of application date; and
 - 1.1.3 Must not have been convicted of any misdemeanor involving drugs within 3 years of application date.
- 1.2 A license for a pawnbroker, secondhand dealer or scrap metal processor will not be issued if there is a pending charge as listed in Section 1.1.1, 1.1.2, or 1.1.3.
- 1.3 The individual applying for a pawnbroker, secondhand dealer or scrap metal processor under Title 24 Chapter 23 must also meet the following qualifications:
 - 1.3.1 Must be at least 18 years of age; and
 - 1.3.2 Must have a valid Delaware Business License; and
 - 1.3.3 Physical location of business must be in the State of Delaware; and
 - 1.3.4 Appropriate taxes must be filed to the State of Delaware and the United States of America; and
 - 1.3.5 License must be prominently displayed within the business along with the Delaware Business License.
- 1.4 The individual applying for licensure under Title 24 Chapter 23 must complete the following for approval:
 - 1.4.1 Applicant must appear in person at the Delaware State Police Criminal Investigative Unit (CIU) at Troop 2, Troop 3 or Troop 4 in their respective county, to submit the initial application. Licenses will be renewed annually. Renewal applications may be submitted via mail; and
 - 1.4.2 Any and all applications required by the Delaware State Police CIU; and
 - 1.4.3 Submit fingerprints, if requested to confirm the status or existence of a Delaware (CHRI) criminal history. The Director of the State Bureau of Identification (SBI) determines the fee for this process.
- 1.5 Notification of a change of address for the business during the license year must be made to the Delaware State Police CIU at Troop 2, Troop 3 or Troop 4.

2.0 Notification of Arrest

- 2.1 Anyone licensed under Title 24 Chapter 23 shall notify the Delaware State Police CIU within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any pawnbroker, secondhand dealer, or scrap metal processor license.

3.0 Revocations and Emergency Suspensions

- 3.1 ~~The Director of State Bureau of Identification (SBI) shall have the power authority to issue suspend the revocation or emergency suspension of any individual licensed under Title 24 Chapter 23 that violates the Chapter or the promulgated Rules & Regulations.~~
- 3.2 ~~The Director of SBI shall issue an emergency suspension due to:~~
 - 3.2.1 ~~Any conduct of the applicant deemed to be a threat to public safety; and/or~~
 - 3.2.2 ~~Any felony arrest; and/or~~
 - 3.2.3 ~~Any arrest of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.~~

- 3.3 The Director of SBI shall issue the revocation of any applicant due to:
 - 3.3.1 Any conduct of the applicant deemed to be a threat to public safety; and/or
 - 3.3.2 Any felony conviction; and/or
 - 3.3.3 Any conviction of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.
- 3.4 The Director of SBI must give written notice to the applicant stating the intent of revocation or an emergency suspension and the grounds therefore.
 - 3.4.1 Any applicant that has been revoked or suspended is entitled to a hearing before the Pawnbrokers hearing Committee.
 - 3.4.1.1 The Pawnbrokers Hearing Committee will be comprised of a DSP Executive Staff Member and the DSP CIU Troop Commander or Designee in respective county of business. The Director of SBI and a representative of the Attorney General's Office may attend but not vote.
 - 3.4.2 Anyone requesting a hearing shall notify the Director of SBI, in writing, within 30 days from the revocation or emergency suspension and the hearing shall be scheduled within 30 days of the filing of the request.
- 3.5 Anyone whose license has been revoked cannot be reinstated. The applicant must follow the standard licensing application process to apply for a new license.
- 3.1 The Director of State Bureau of Identification (SBI) shall have the authority to suspend any individual licensed under Chapter 23 of Title 24 of the **Delaware Code** on an emergency basis if the Director has good cause to believe that the individual:
 - 3.1.1 Has engaged in any conduct that is an imminent threat to public safety;
 - 3.1.2 Has been arrested for a felony crime; or
 - 3.1.3 Has been arrested for a misdemeanor crime involving theft, receiving stolen property, fraud, or any crime involving drugs.
- 3.2 Any individual whose license is suspended on an emergency basis by the Director shall be entitled to a hearing before the Superintendent of State Police or his designee within thirty (30) days if the individual requests a hearing in writing within ten (10) calendar days of the date of the notice of the emergency suspension. At the hearing, the individual will have the right to counsel, the right to present evidence and to examine and cross examine witnesses. The hearing will not be subject to the case decision requirements of the Administrative Procedures Act. After the hearing, the Superintendent or his designee may either lift the emergency suspension, or continue the suspension until the resolution of the criminal charge(s) and will notify the individual in writing of the decision.
- 3.3 If the individual whose license is suspended on an emergency basis is not convicted of the crime because the charge is nolle prossed or otherwise dismissed by the court, or if the individual no longer poses an imminent threat to public safety, then the individual may apply in writing to the Director to lift the suspension administratively. The individual has the burden to prove that the basis for the emergency suspension no longer exists.
- 3.4 If the individual whose license is suspended on an emergency basis is convicted of the crime, or continues to pose imminent threat to public safety, then the Director may issue a notice of intent to revoke the license. If the individual makes a written request for a hearing within ten (10) days of the date of the notice, the matter will be heard before the Superintendent or his designee. At the hearing, the individual will have the right to counsel, to present evidence, and to examine and cross-examine witnesses. The hearing will not be governed by the case decision requirements of the Administrative Procedures Act.
- 3.5 If the hearing officer determines that there is good cause to revoke the license, then he/she shall so notify the individual in writing. There shall be no further appeal within the Department of Safety and Homeland Security.
- 3.6 Any individual whose license has been revoked cannot be reinstated. Revocation may be a ground for denying the individual's application for a new license, depending upon the reason for the revocation and the lapse of time.

11 DE Reg. 687 (11/01/07)

13 DE Reg. 856 (12/01/09) (Final)