

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 1.0 – Licensing and the adoption of rule 4.0 – Electronic Reporting, 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 make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.

Findings of Fact

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the proposed amendments. The written comments received are described in paragraph 1.
4. The Secretary finds that the adoption of these rules will make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.
5. The Secretary finds that the adoptions will have no adverse impact on the public.
6. The Secretary finds that the amendments are well written and describes its intent to adopt the rules to make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.

Conclusion

7. The proposed rule adoptions were 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 these adoptions 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 adoptions of these rules will be in the best interests of the citizens of the State of Delaware.
10. The Secretary therefore adopts the amendments 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 rules replace in its entirety any former rule or regulation heretofore promulgated by the Secretary.
12. The effective date of this Order shall be November 1, 2012.
13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously on the 5th day of October 2012.

Secretary Lewis D. Schiliro
October 5, 2012

2300 Pawnbrokers, 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 24 Del.C. Ch. 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 24 **Del.C.** Ch. 23 must also meet the following qualifications:
 - 1.3.1 Must be at least 18 years of age; and
 - 1.3.2 Must ~~have~~ submit a current valid Delaware Business License issued by the Delaware Division of Revenue; 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 at the location listed on the license along with the Delaware Business License issued by the Delaware Division of Revenue.
- 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~~ Professional Licensing Section, by appointment only, 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~~ Compliance with 24 Del.C. §2302 and §2312 for reporting forms; 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 Renewal applications may be submitted via mail to the Professional Licensing Section no later than March 15th of each year for renewal, otherwise submission must be made in person.
- 1.56 Notification of a change of address, phone number, e-mail address, or contact person for the business during the license year must be made to the Delaware State Police CIU at Troop 2, Troop 3 or Troop 4 Professional Licensing Section.

2.0 Notification of Arrest

- 2.1 Anyone licensed under 24 **Del.C.** Ch. 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 authority to suspend any individual licensed under 24 **Del.C.** Ch. 23 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.

4.0 Electronic Reporting

- 4.1 Pawnbrokers, Secondhand Dealers and Scrap Metal Processors will electronically report their required transactions as outlined by 24 Del.C. Ch. 23 via a method acceptable to the Delaware State Police.
- 4.2 All costs and fees associated with this reporting shall be incurred by the business. These fees will be in addition to those required to obtain licensure.

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

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

16 DE Reg. 540 (11/01/12) (Final)