

830 CMR 270.00: PROVISIONS CONCERNING THE ISSUANCE OF A SMOKING BAR PERMIT

Section

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Purpose. The purpose of 830 CMR 270.1.1 is to explain the obligations of those persons and entities wishing to be certified under M.G.L. c. 270, § 22 as a smoking bar.

(2) Definitions. For the purpose of 830 CMR 270.1.1, the following terms have the following meanings, unless the context requires otherwise:

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Department. The Department of Revenue.

Owner. A partner, shareholder, individual or corporation that has an ownership interest in a smoking bar or its designated agent.

Revenues. For the purpose of 830 CMR 270.00 only, all gross proceeds from the sale of tobacco products, food and beverages of a smoking bar. The Commissioner reserves the right to include any other revenues from other closely located, affiliated or otherwise related businesses that are owned or controlled by a partner, shareholder or member of the ownership of the smoking bar.

Smoking Bar. An establishment that exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; and maintains a valid licensee or permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the smoking bar is located.

Smoking Bar Permit. A permit issued by the Commissioner pursuant to M.G.L. c. 270 to operate a smoking bar for a period of two years from date of issuance.

(3) General Rules for the Certification of a Smoking Bar.

(a) A smoking bar operating in the Commonwealth shall obtain a Smoking Bar Permit ("Permit") from the Commissioner. The Permit issued shall be valid for a period of two years from date of issuance, unless otherwise suspended or revoked. A valid Permit that is not suspended at the time of its expiration may be renewed for consecutive two-year periods.

(b) The application for the Permit must include a declaration signed by the owner under the pains and penalties of perjury demonstrating that the smoking bar's revenues generated from the sale of tobacco products are equal to or greater than 51% of the total combined revenues generated by the sale of tobacco products, food and beverages. The declaration received by the Department shall be confidential and the financial information contained therein shall not be disclosed to the public or any other state governmental agency or department.

(c) Applicants must file either a Certificate of Good Standing, a Letter of Compliance or a request for a Certificate or Letter with the smoking bar application. The Commissioner shall not issue or renew a Permit to any business that has not filed all applicable tax returns and paid all taxes due the Commonwealth; or is delinquent in filing declaration statements in connection with the Permit.

(d) The Commissioner shall notify the local board of health or municipal health department in the city or town where a smoking bar is located of any Permits issued or renewed.

(e) A non-refundable fee may be required with each Permit and renewal application. Each Permit issued by the Commissioner shall be non-transferable and for a specific location and business. An applicant must apply for a separate Permit for each business location.

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- (4) Quarterly Declaration Statement. Every smoking bar must file a quarterly declaration with the Commissioner on such form as he may prescribe, no later than 20 days following the end of the preceding quarter with the following information:
- (a) The quarterly declaration shall demonstrate that the revenue generated from the sale of tobacco products are equal to or greater than 51% of the total combined revenue generated by the sale of tobacco products, food and beverages.
 - (b) The declaration must be signed by the owner under the pains and penalties of perjury.
- (5) Suspension of a Permit.
- (a) If a smoking bar has not filed a required declaration, the Commissioner shall give written notice to the smoking bar that the declaration is delinquent and shall suspend the Permit if the smoking bar does not submit the required declaration after 21 days of the date of notice.
 - (b) If a smoking bar does not demonstrate at the end of a quarter or at year end that the revenues generated from the sale of tobacco products are equal to or greater than 51% of the total combined revenues generated by the sale of tobacco products, food and beverages, the Commissioner may suspend or revoke the Permit for non-compliance with M.G.L. c. 270.
 - (c) The Commissioner shall notify the local board of health or municipal health department in the city or town where the smoking bar is located of the suspended, revoked or reinstated of a Permit.
- (6) Reinstatement. When a smoking bar whose Permit has been suspended or revoked at the request of the Commissioner satisfies the Commissioner that it has filed the required declaration or is otherwise in compliance, the Commissioner shall reinstate the suspended Permit within five days after receiving the delinquent report or information.
- (7) Enforcement. Remedies the Commissioner may exercise, without limitation, include the Commissioner's authority to compel the production of books and records and to take testimony and proofs under M.G.L. c. 62C, § 70.
- (8) Record Retention. Every smoking bar is required to maintain a complete and accurate record of all tobacco products, food and beverages purchased or otherwise acquired and sold. Such record must include copies of statements or invoices containing: the name and address of the seller, the name and address of the purchaser, the date of delivery and the quantity purchased.

REGULATORY AUTHORITY

830 CMR 270.1.1: M.G.L. c. 14, § 6(1); c. 62C, § 3; and. c. 270.