

HOUSE BILL 1280

By McManus

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 5 and Title 67, relative to administrative procedures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-5-103, is amended by deleting subsection (c) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 4-5-106, is amended by deleting subsection (f) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 67-1-105, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-1-105.

Except as may otherwise be provided by law, whenever any person is aggrieved and desires a hearing with respect to the final resolution of any issue or question involved in connection with either an application for and entitlement to the issuance of, or the proposed revocation of, any certificate, license, permit, privilege or right, or relating to the confiscation of any property, or any other adverse action proposed or taken to implement any revenue regulatory or registration law administered by the commissioner, including those laws relating to assessments or levies of taxes, fees, fines, penalties, interest, or the waiver of penalties, such person shall be afforded an opportunity for a formal contested case hearing as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, conducted by an administrative judge or hearing officer employed in the office of the secretary of state as provided in title 4, chapter 5.

SECTION 4. Tennessee Code Annotated, Section 67-1-110, is amended by deleting subdivision (c)(16) in its entirety and by substituting instead the following:

(16) A speedy, informal and inexpensive appeal of any tax dispute before an impartial administrative law judge or hearing officer employed in the office of the secretary of state and to be represented by an attorney, certified public accountant or other representative;

SECTION 5. Tennessee Code Annotated, Section 67-4-1021, is amended by deleting subsections (e) – (m) and by substituting instead the following:

(e) The hearings shall be held in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, conducted by an administrative judge or hearing officer employed in the office of the secretary of state as provided in title 4, chapter 5, part 3.

(f) If no claim is interposed, such tobacco products or other property shall be forfeited without further proceedings and the property shall be sold as provided in this section.

(g)

(1) Whenever, in any proceeding under this section, a claim is filed for any vending machine, vehicle, aircraft or boat seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim, unless and until the claimant proves that:

(A) The claimant has an interest in such property that the claimant acquired in good faith; and

(B) The claimant had at no time any knowledge or reason to believe that the seized item was being or would be used in the violation of

the laws of the United States or of the state of Tennessee relating to tobacco products.

(2) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by a person who is the holder of a security interest or other claim arising out of a contract or agreement, the commissioner shall not allow the claim, unless and until the claimant proves that the claimant has an interest in such property that the claimant acquired in good faith. An interest that is acquired in the ordinary course of business shall be presumed to be in good faith, unless the commissioner receives evidence that the holder of the security interest had knowledge, at the time the interest attached, of the intended illegal use of the vehicle or was a co-conspirator in furtherance of the illegal activity. A holder of a security interest that is other than a natural person shall be considered a co-conspirator for purposes of this section, if evidence shows that an officer, employee or agent of the holder acting within the scope of employment is a co-conspirator, and the holder either:

(A) Has actual knowledge of the illegal activities of the officer, employee or agent from an individual other than the officer, employee or agent and fails to take appropriate action; or

(B) Has failed to reasonably supervise or monitor the activities of the holder's officer, employee or agent.

(3) In the event the interest of the owner is forfeited as provided in subdivision (g)(1) and the interest of the holder of a security interest is not forfeited as provided in subdivision (g)(2), the commissioner may, at the request of the holder of such interest, return the property to the holder for disposition in accordance with the applicable security agreement or other contract. If the

commissioner does not return the property to the holder, the forfeiture shall be subject to the holder's interest.

(4) An owner whose interest is forfeited after being arrested for or charged with any felony shall be ineligible to purchase the property from, or to bid at any sale of the property by, the commissioner or any seizing agency. The owner whose interest is forfeited after being arrested for or charged with any felony shall also be ineligible to redeem the property from, or to bid at any sale of the property by, any holder of a security interest acting pursuant to the agreement contract or title 47, chapter 9.

SECTION 6. Tennessee Code Annotated, Section 67-6-604, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-6-604.

Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the commissioner relating to this chapter, the commissioner, in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may revoke or suspend any one (1) or more of the certificates of registration held by the person. The commissioner shall issue the order; or may, upon review of the record, make such findings, conclusions, and issue such orders as, in the commissioner's discretion, the record justifies. The commissioner may request an administrative judge or hearing officer to conduct hearings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 7. This act shall take effect July 1, 2010, the public welfare requiring it.