

SENATE MEMBERS

Robert Stivers
President, LRC Co-Chair
David Givens
President Pro Tempore
Damon Thayer
Majority Floor Leader
Morgan McGarvey
Minority Floor Leader
Julie Raque Adams
Majority Caucus Chair
Reginald Thomas
Minority Caucus Chair
Mike Wilson
Majority Whip
Dennis Parrett
Minority Whip



LEGISLATIVE RESEARCH COMMISSION
State Capitol 700 Capital Avenue Frankfort, KY 40601

502-564-8100

Capitol Fax 502-564-2922
Annex Fax 502-564-6543
legislature.ky.gov

Jay D. Hartz
Director

HOUSE MEMBERS

David W. Osborne
Speaker, LRC Co-Chair
David Meade
Speaker Pro Tempore
Steven Rudy
Majority Floor Leader
Joni L. Jenkins
Minority Floor Leader
Suzanne Miles
Majority Caucus Chair
Derrick Graham
Minority Caucus Chair
Chad McCoy
Majority Whip
Angie Hatton
Minority Whip

MEMORANDUM

TO: Interim Joint Committee on Transportation
FROM: Jay D. Hartz, LRC Director *JDH*
SUBJECT: Administrative Regulations
DATE: August 4, 2021

At its July 8, 2021, meeting, the Administrative Regulation Review Subcommittee completed its review of the following administrative regulation: 605 KAR 001:215E.

Pursuant to the provisions of KRS Chapter 13A, this regulation has been assigned to the Interim Joint Committee on Transportation. Pursuant to KRS Chapter 13A, the committee has ninety (90) days from the date of this assignment to review this regulation.

The Subcommittee minutes will be delivered to your committee staff upon completion. The material considered by the Subcommittee in its review is attached to the appropriate administrative regulation.

cc: Administrative Regulation Review Subcommittee
John Snyder

SENATE MEMBERS

Robert Stivers
President, LRC Co-Chair
David Givens
President Pro Tempore
Damon Thayer
Majority Floor Leader
Morgan McGarvey
Minority Floor Leader
Julie Raque Adams
Majority Caucus Chair
Reginald Thomas
Minority Caucus Chair
Mike Wilson
Majority Whip
Dennis Parrett
Minority Whip



LEGISLATIVE RESEARCH COMMISSION

State Capitol 700 Capital Avenue Frankfort KY 40601

502-564-8100

Capitol Fax 502-564-2922

Annex Fax 502-564-6543

legislature.ky.gov

Jay D. Hartz
Director

HOUSE MEMBERS

David W. Osborne
Speaker, LRC Co-Chair
David Meade
Speaker Pro Tempore
Steven Rudy
Majority Floor Leader
Jon L. Jenkins
Minority Floor Leader
Suzanne Miles
Majority Caucus Chair
Derrick Graham
Minority Caucus Chair
Chad McCoy
Majority Whip
Angle Hatton
Minority Whip

MEMORANDUM

TO: Senator Robert Stivers, President of the Senate
Representative David Osborne, Speaker of the House
Members of the Legislative Research Commission

FROM: Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
Administrative Regulation Review Subcommittee

RE: Report of the Administrative Regulation Review Subcommittee

DATE: August 4, 2021

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Stephen West, and David Yates and Representatives Randy Bridges, David Hale, Deanna Frazier, and Marylou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Eden Davis and Larry Hadley, Board of Pharmacy; Leah Boggs, Board of Examiners of Psychology; Dr. C. Shawn Oak and Kevin R. Winstead, Board of Marriage and Family Therapists; Karyn Hascal and Kevin R. Winstead, Board of Alcohol and Drug Counselors; Dave Dreves, Steven Fields, Chris Garland, and Rich Storm, Department for Fish and Wildlife Resources; Carlos R. Cassady and Trevor L. Earl, Motor Vehicle Commission; Todd Allen, Department of Education; Erin Bravo and Buddy Hoskinson, Office of Unemployment Insurance; B. Dale Hamblin, Robin Maples, Chuck Stribling, and Robert Walker, Department of Workers' Claims; Waqas Ahmed, Marc A. Guilfoil, Chad Thompson, and Jennifer Wolsing, Kentucky Horse Racing Commission; Jonathan Scott, Department of Medicaid Services; Laura. Begin, Rachael Ratliff, Dr. Sarah Vanover, Department for Community Based Services; Julie Brooks and Wes Duke, Department for Public Protection.

through 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 35:080. Voluntary inactive and retired status.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:400. Assessing fish kill damages. David Dreves, acting fisheries director; Steve Fields, counsel; Chris Garland, wildlife division director; and Rich Storm, commissioner, represented the department.

Co-Chair Hale welcomed Mr. Storm's guests, his daughters, Avery and Phoebe Storm.

In response to questions by Co-Chair Hale, Mr. Dreves stated that the American Fisheries Society published a manual to calculate fish kill damages. In accordance with these standards, samples and investigations were conducted to determine the extent of a fish kill. The manual established a replacement value. Responsible entities often pushed back on paying the full replacement value and settlements were usually developed as part of negotiations.

Game

301 KAR 2:228. Sandhill crane hunting requirements.

TRANSPORTATION CABINET: Motor Vehicle Commission

605 KAR 1:215E. Licensing Fees. Carlos Cassady, executive director, and Trevor Earl, counsel, represented the commission.

In response to a question by Co-Chair Hale, Mr. Cassady stated that the 2021 General Assembly passed legislation that required this administrative regulation in order to replace fees that had been directly established by statute. Mr. Earl stated that House Bill 249 from

the 2021 General Assembly became effective with insufficient time in which to complete the administrative regulation process; therefore, this administrative regulation was filed on an emergency basis.

**EDUCATION AND WORKPLACE DEVELOPMENT CABINET: Board of Education:
Department of Education: Office of Chief State School Officer**

701 KAR 5:081. Repeal of 701 KAR 5:080. Todd Allen, general counsel, represented the department.

School Administration and Finance

702 KAR 3:060. Procedure for payment of employees.

In response to a question by Co-Chair Hale, Mr. Allen stated that the annual national board certification salary supplement was a \$2,000 award to teachers who were nationally board certified. School districts could apply for reimbursement for those supplements; however, that program had not been fully funded. The difference between the state funding and the supplement had been required to be paid by the local board of education. Changes to this administrative regulation, which were the result of legislative changes, required the local board of education to provide the amount funded by the state. The local board of education then had the option, rather than the mandate, to provide the difference.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Office of Unemployment Insurance: Unemployment Insurance

787 KAR 1:360E. Overpayment waivers. Erin Bravo, deputy general counsel, and Buddy Hoskinson, executive director, represented the office.

In response to a question by Co-Chair Hale, Mr. Hoskinson stated that, if someone received an overpayment of unemployment insurance between January 27, 2020 and December 1, 2020, the recipient could submit a waiver request. So far, the office had sent out under 14,000 waiver requests. The waiver requests in total could amount to approximately \$17 million.

Co-Chair Hale stated that he appreciated the cabinet's efforts to resolve issues related to unemployment insurance.

**Department of Workplace Standards: Division of Occupational Safety and Health
Compliance: Division of Occupational Safety and Health Education and Training**

803 KAR 2:181E. Recordkeeping and reporting occupational injuries and illnesses. Erin Bravo, deputy general counsel; Robin Maples, occupational safety and health

STATEMENT OF EMERGENCY
605 KAR 1:215E

This emergency administrative regulation is being promulgated to prevent a loss of state funds as a result of the imminent change imposed by state statute, namely HB 249. HB 249, Section 15, effective June 28, 2021, amends KRS 190.030 to eliminate statutory fees for licenses issued to motor vehicle dealers and other entities. These licenses are administered and enforced by the Kentucky Motor Vehicle Commission ("Commission"). Among other things, KRS 190.030, as amended by HB 249, requires the Commission to promulgate administrative regulations to establish license fees for the licenses administered by the Commission. This statutory change required new regulations and new fees. The Commission has been diligently working on these regulatory provisions since the passage of HB 249. This emergency amendment will establish the new fee structure for applicants until the ordinary regulations are approved. An ordinary administrative regulation is not sufficient, because of the imminent effective date of Section 15 of HB 249. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
DOUG DOTSON, Chair

TRANSPORTATION CABINET
Motor Vehicle Commission
(New Emergency Administrative Regulation)

605 KAR 1:215E. Licensing fees.

EFFECTIVE: May 12, 2021

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030; 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish fees for licenses issued by the Motor Vehicle Commission. This administrative regulation establishes the fees associated with acquiring and renewing licenses.

Section 1. Licensing Fees. The license fee for a calendar year, or part thereof, shall be as follows:

- (1) For new motor vehicle dealers, \$200 for each office or branch or agent thereof, plus \$200 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;
- (2) For used motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (3) For motor vehicle leasing dealers, \$200 for each office or branch or agent thereof;
- (4) For restricted motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (5) For motorcycle dealers, \$200 for each office, branch, or agent thereof;
- (6) For motor vehicle manufacturers, \$200; and for each factory branch in this state, \$200;
- (7) For distributors, motor vehicle auction dealers or wholesalers, \$200;
- (8) For motor vehicle or recreational vehicle salespersons, forty dollars (\$40), to be paid by the licensed dealer for every salesperson the dealer employs;
- (9) For factory representatives, or distributor branch representatives, \$200;
- (10) For automotive mobility dealers, \$200;

- (11) For nonprofit motor vehicle dealers, \$200;
- (12) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;
- (13) For recreational vehicle manufacturers or distributors, \$200; and
- (14) For new recreational vehicle dealers, \$200.

Section 2. Renewal and Renewal Fees. (1) Pursuant to KRS 190.030(5) all licenses expire December 31 of the calendar year for which they are granted. Licenses in good standing and which have no outstanding fines or charges owed to the Commission may be renewed by the licensee for the next calendar year by submitting a renewal application and the appropriate fee to the Motor Vehicle Commission prior to December 31. Licenses that have outstanding fines or charges owed to the Commission, have been revoked, suspended, or are not in good standing may not be renewed.

(2) The fee for a license renewal shall be the fee set forth in Section 1 for the applicable license type being renewed.

(3) A license may not be renewed for a new calendar year if events described KRS 190.030(7)(a) (change of location) or 605 KAR 1:070 (change of ownership) have occurred which have not been approved by the Commission. In such case, the licensee must submit a new application reflecting the changes in order to obtain a license for the new calendar year.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-245 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by June 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for licenses issued by the Kentucky Motor Vehicle Commission.

(b) The necessity of this administrative regulation: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish license fees for licenses issued by the Motor Vehicle Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the fees associated with the licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the fees to be charged to applicants and renewing licensee for the licenses required to do business as motor vehicle dealers, manufacturers, distributors and salespeople in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals

or businesses who wish to become licensed dealers, manufacturers, distributors and salespeople in Kentucky. The number of such entities is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes the fees for licenses issued by the Motor Vehicle Commission and the entities identified in question (3) will have to submit the required fees in order to obtain the applicable license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities is identified in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as motor vehicle dealers, manufacturers, distributors or salespeople in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of dealers and enforcement of the regulations. These costs will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Licensing fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 authorizes the increase in fees and the Commission does not anticipate a need for any additional or increased funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It increases fees consistent with the statutory authority.

(9) TIERING: Is tiering applied? No, tiering is not applied because the regulation maintains the license categories established by the original statutory language and licensees affected by this regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

