

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amended After Comments)

804 KAR 4:221. Alternating proprietorship agreements.

RELATES TO: KRS 243.220

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate reasonable regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. This regulation provides for the sharing of a licensed premises between two or more licensees in accordance with an alternating proprietorship agreement.

Section 1. Definition. "Alternating proprietorship agreement" means a written agreement under which two or more licensees share possession or ownership of a licensed premises and alternate exclusive use of the premises over the term of the agreement.

Section 2. A licensed premises may meet the requirements of KRS 243.220 if it is owned or possessed for a term not less than the license period by two or more eligible licensees under an alternating proprietorship agreement.

Section 3. A licensee ~~shall~~may not enter into an alternating proprietorship agreement with any person who holds a Kentucky alcoholic beverage license that the licensee is prohibited from holding under Kentucky law~~{other licensee with whom the licensee would have a prohibited interlocking substantial interest under 804 KAR 4:015}~~.

Section 4. Licensees who share a licensed premises in accordance with an alternating proprietorship agreement shall individually meet any requirements of their licenses, including, but not limited to, production and record-retention requirements.

Section 5. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

Section 6. Federal Law. This administrative regulation shall not exempt a person from complying with any applicable federal laws.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation permits and defines alternating proprietorship agreements so that two or more licensees may share possession or ownership of a licensed premises and alternate exclusive use of the premises.

(b) The necessity of this administrative regulation:

KRS 243.220 requires a licensed premise to be owned or leased by the licensee for the term of the license. This regulation allows licensees to enter into agreements to share a licensed premise and identify when each will have sole use of it. This is beneficial to smaller businesses who will now be able to share in the costs of maintaining a premise they may not need to use full-time.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation permits sharing of a licensed premise by two or more licensees and outlines how they may accomplish that. KRS 241.060 authorizes the board to promulgate reasonable regulations governing licensing and traffic of alcoholic beverages. This regulation is in conformity with the governing statute in outlining how a premise may be licensed to more than one licensee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 243.220 prohibits a premise from being licensed unless the applicant has ownership or possession of the premise under a written agreement for the term of the license. This regulation outlines how two or more licensees may share a premise to be licensed and the written agreement required.

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

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

NA

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

NA

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

NA

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

NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The number of licensees that will be affected by the regulation is unknown as it will allow current licensees to share premises under a written agreement and may open the door to others who would like to obtain a license but haven't had the financial ability or logistical need to own or lease a premises individually. Because the regulation does not change production limits or the prohibition on interlocking substantial interests, it will not adversely affect the industry or the consumer. There are no affects to state or local government operations.

(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:

Regulated entities will not be required to undertake any action to comply with this regulation unless they want to enter into an alternating proprietorship agreement and combine licensed premises. Those wishing to enter into such agreements will continue to operate under the laws they were subject to before implementation of the regulation.

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

There are no additional costs associated with compliance with this regulation, though many licensees may receive a cost benefit by sharing space.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

If the regulated entities choose to combine premises they may receive a cost benefit in the reduction of overhead costs for their operations.

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

(a) Initially:

There is no additional cost associated with implementation of this regulation.

(b) On a continuing basis:

There is no additional cost associated with implementation of this regulation.

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

There is additional no cost associated with implementation of this regulation and no funding is required.

(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:

There is no cost associated with implementation of this regulation and no increase in fees or funding will be necessary for its implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation did not establish any fees, and did not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because this will affect all regulated entities equally.

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?

The Department of Alcoholic Beverage Control and local Alcoholic Beverage Control administrators.

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

KRS 243.220, 241.060(1).

(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.

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

(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?

The specific dollar estimate of revenue this administrative regulation will generate cannot yet be determined. However, if new businesses are able to open due to the cost sharing this regulation will allow, then revenues associated with new businesses and alcohol taxes may be realized for both state and local governments.

(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?

The specific dollar estimate of revenue this administrative regulation will generate in subsequent years cannot yet be determined. However, if new businesses are able to open due to the cost sharing this regulation will allow, then revenues associated with new businesses and alcohol taxes may be realized for both state and local governments.

(c) How much will it cost to administer this program for the first year?

There are no costs associated with administering this program.

(d) How much will it cost to administer this program for subsequent years?

There are no costs associated with administering this program.

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: