

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations governing the issuance of licenses and permits. This administrative regulation establishes the requirements for issuing licenses and permits, electronically reporting license and permit sale data and ~~license~~ revenue, and suspending or revoking license agent status.

Section 1. Issuing Licenses and Permits.

(1) A license agent shall issue a license or permit to a person who completes the registration process with the agent and pays the appropriate license or permit fee as established in 301 KAR 3:022 and applicable issuance and operational fee as established in this administrative regulation.

(2) A license agent shall not knowingly enter false information while processing a license, permit or other transaction.

Section 2. Agent ~~Commission~~ Issuance Fee and Depositing of Funds.

(1) The license agent shall retain as an issuance fee ~~commission~~:

(a) Three (3) percent of the total sale ~~Fifty (50) cents for each Peabody permit issued pursuant to 301 KAR 4:100~~; or ~~and~~

(b) Print or display, on the initial license or permit issued, a coupon or advertisement, pursuant to a department sponsorship as established in KRS 45A.097, in lieu of retaining the applicable issuance fee. ~~Fifty (50) cents each for other transactions.~~

(2) A license agent shall promptly deposit transaction fees, less the issuance fee ~~commissions~~ established in subsection (1) of this section, into the ~~bank~~ account established in 301 KAR 5:010.

(3) License Agents are prohibited from requiring or encouraging particular payment methods. ~~A license agent may elect to print, on any license or permit issued, a coupon or advertisement, pursuant to a department sponsorship established in KRS 45A.097, in lieu of retaining the applicable commissions established in subsection (1) of this section.~~

Section 3. Electronic Transfer of Funds to the Department.

(1) The department or its vendor shall provide each license agent with a schedule of dates when electronic fund transfers will be initiated.

(2) On the day of a scheduled electronic fund transfer, a license agent shall have sufficient funds in the account to cover the amount of the transfer.

(3) A license agent shall contact the department or its vendor prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4. Voiding Licenses and Permits.

(1) A license agent may, within four (4) hours of issuing a license or permit, void a license or permit if the purchaser:

~~(a) The license does not print correctly; or~~

~~(b) After the license is printed, the purchaser;~~

(a) ~~1.~~ Discovers that the issued license or permit is incorrect;

(b) ~~2.~~ Will not pay for the license or permit; or

(c) ~~3.~~ Refuses to accept the license or permit.

- (2) An agent shall:
 - (a) Ensure that a license or permit established in subsection (1) of this section is voided in the system; and
 - (b) Destroy all paper copies of the voided license or permit.
- (3) Refund license or permit cost as established in 301 KAR 5:030, section 3(2)(a).

Section 5. Suspensions and Revocation of Agent Status.

- (1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years a license agent who twice in a twelve (12) month period:
 - (a) Causes an electronic fund transfer failure; or
 - (b) Violates a provision of:
 1. KRS 150.195; or
 2. An administrative regulation adopted pursuant to KRS 150.195.
- (2) The department shall permanently revoke the agent status of a license agent who:
 - (a) Commits an offense for which the license agent has been previously suspended;
 - (b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;
 - (c) Fails to notify the department prior to closing his agent bank account;
 - (d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling his account; or
 - (e) Knowingly issues a license or permit containing false information.
- (3) Before issuing a final order suspending or revoking the status of an agent, the department shall:
 - (a) Notify the agent by registered mail that the agent's status is under review; and
 - (b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.
- (4) A suspension or revocation shall become effective upon receipt of notification from the department.
- (5) A suspended or revoked agent shall:
 - (a) Allow the department access to financial records dealing with license and permit sales; and
 - (b) Immediately pay all funds owed to the department.

Section 6. Appeal of Suspension or Revocation of Agent Status.

- (1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.
- (2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.
- (3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B.
- (4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

RICH STORM, Commissioner

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:35 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 1:00pm, at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals

interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 March 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes procedures for agents of the department to sell and issue the department's licenses and permits.

(b) The necessity of this administrative regulation:

This regulation is necessary to define legal sales parameters to protect the interests of agents, customers and the department in implementing 301 KAR, Chapter 5.

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

KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

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

By defining processes for selling licenses and permits, it will assist the effective administration of the statutes authorizing the department and its agents to transact sales to fund the department's operations.

(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:

Provisions that are no longer applicable have been removed and new provisions that are to be used are added.

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

These amendments are necessary to retain and attract entities to be license agents by increasing the amounts received by license agents for sales to offset the deficit resulting from issuance costs incurred by license agents.

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

KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

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

KRS 150.195 authorizes the department to partner with license agents to distribute assist in sales. This amendment will improve the department's ability to secure and retain license agents.

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

The Department currently has 512 license agents who contract to sell licenses and permits; these include 80 county clerks, 8 other government entities such as state parks, and 424 retail businesses. These license agents will be impacted as well as individuals who make purchases.

(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 will require changes to software code by the department but does not require any specific action from agents for compliance. The agents will receive the fees to offset the costs incurred through issuance. The individual customers will be required to pay the nominal increase to cover the issuance fee.

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

Changes will not require any cost for compliance on the part of license agents, they currently run at a deficit so will actually benefit monetarily. Individual customers will pay the issuance fee.

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

The benefit to the license agents will be an increase in issuance fees received; it has been approximately twenty years since their fees were increased, whereas costs of selling and issuing licenses have continually risen. The individual purchasers will benefit by continued and increased access to license agents.

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

(a) Initially:

Changes to computer software code will require an estimated \$3,000 in staff costs.

(b) On a continuing basis:

No continuing additional costs.

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

The Fish and Game Fund.

(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:

The implementation of the amendments to this regulation will not increase fees or funding for license agents.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This regulation sets the fee for issuance of a license or permit to three percent (3%) rate per sale, replacing the prior flat-rate commission of fifty-cents per license or permit sold.

(9) TIERING: Is tiering applied?

No tiering is applied. All impacted entities are treated equally.

FISCAL NOTE

(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 Fish and Wildlife Resources and any entities that participate as license agents, including some county clerks and state parks.

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

KRS 150.195

(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?

This regulation will increase revenue to the department at an estimated \$500,000 to \$750,000 per year by allowing the Department to recoup the issuance fee as its own license agent, in addition to external license agents. County clerks and state parks will experience increased revenues as a result of a net increase in issuance fees, but the extent will depend on purchase locations of license customers (some purchases are made at retail businesses or directly from the department, online).

(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 revenue impact in subsequent years should be consistent with the first year for all license agents based upon their sales numbers.

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

There will be no added cost to administer these amendments, once the software code is updated and activated.

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

There will be no added cost to administer these amendments in subsequent years.

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

Revenues (+/-):Increases for county clerks, state parks and the department for a higher net rate for issuance of licenses and permits.

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

These amendments will result in cost savings to license agents due to the percentage based fee received for sales vs the prior set rate of \$0.50 per transaction. The exact savings will vary based upon the specific sales of each license agent.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Subsequent year cost savings will continue as with the first year.

(c) How much will it cost the regulated entities for the first year?

There will be no additional costs to the external license agents. Individual customers will pay an additional fee of 3% of the purchase price.

(d) How much will it cost the regulated entities for subsequent years?

There will be no added costs for license agents. Individual customers will continue to pay the 3% fee.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] These amendments are projected to have a major positive economic impact on the department, and a positive impact on external license agents. While individual customers will be minimally impacted, in aggregate the cost impact will offset the economic gains of the license agents and department.