

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

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

RELATES TO: KRS ~~45.345~~~~[45A.097]~~, 64.840, 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 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 ~~5~~~~[3]~~:022 and applicable agent fees~~[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 ~~Fees~~~~[Issuance Fee]~~ and Depositing of Funds.

(1) The license agent shall be permitted to charge and retain the following agent fees, if applicable:~~[retain as an issuance fee:]~~

(a) An agent commission of three ~~[Three]~~ (3) percent of the product price; and

(b) Payment processing fees consistently charged by license agents for non-cash payments for all products, both department products and non-department products, through the ordinary course of business, including those identified in KRS 45.345(2) for state agencies, KRS 64.840(3) for county agencies, and such fees incurred by license agents that are private entities; [total sale; or]

~~[(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.]~~

(2) A license agent shall deposit the full amount of the product price~~[transaction fees, less the issuance fee established in subsection (1) of this section,]~~ into the account established in 301 KAR 5:010.

~~[(3)] [A license agent shall not require or encourage a particular payment method.]~~

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) Discovers that the issued license or permit is incorrect;

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

(c) 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) A license agent shall 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. A requirement of KAR Title 301.
- (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 the 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 the agent bank account;
 - (d) Closes the business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling the 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 the commissioner's designee to show cause why the 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. If the suspension or revocation decision is upheld by the commission, the agent may then appeal the decision to the Franklin Circuit Court. An appeal shall be in accordance with KRS Chapter 13B and KRS 150.195.
- (4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on, January 31, 2024, at 11:00 a.m., 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, January 31, 2024. 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: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (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:

Updated agent fees to include statutorily permissible fees and remove conflict with KRS 45.345(2) and KRS 64.840(3) while placing private entities on even footing with public entities that are acting as license agents.

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

These amendments are necessary to avoid conflict with KRS 45.345(2) and 64.840(3) and to retain and attract entities to be license agents by placing private entity license agents on even footing as public entities.

(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 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 510 license agents who contract to sell licenses and permits; these include 79 county clerks, 8 other government entities such as state parks, and 423 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 be permitted to charge fees to recoup payment processing costs charged to them by financial institutions. The individual customers will be required to pay any applicable costs and may be required to pay the nominal increase to cover the potential payment processing costs as applicable to their payment method and the license agent processing the transaction.

(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. Individual customers may need to pay the payment processing costs as applicable to their payment method and the license agent processing the transaction.

(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 they will actually receive the full agent commission of three percent (3%) of the product price rather than having it reduced by payment processing fees charged by financial institutions. 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 amendment may indirectly increase fees insofar as the license agents will be able to pass on financial fees charged to the agent by financial institutions for processing non-cash payment methods, to the individuals who choose to purchase KDFWR products with payment methods that result in fees to the vendor for payment processing.

(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 private businesses acting as license agents, 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, KRS 64.840, KRS 45.345

(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?

There will be no net revenue gained.

(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?

There will be no net revenue gained in subsequent years.

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

There will be no added cost to administer these amendments.

(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 (+/-):

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?

This regulation will decrease expenditures for local and state entities insofar as they will no longer be required to pay transaction fees from their own budgets. License holders may incur additional expenditures equal to the savings realized by the license agents for processing non-cash transactions.

(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 license agents. License holders who choose to use non-cash payment methods may incur additional cost associated with payment processing fees.

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

Subsequent years will have the same cost as the first year.

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

Cost Savings (+/-):License agents may realize cost savings by passing on the payment processing fees to the individual purchasers.

Expenditures (+/-):License holders who choose to use non-cash payment methods may incur additional cost associated with payment processing fees.

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)] There will be no major economic impact in aggregate as the cost savings realized by agents will be equal to the additional expenditures of the license holders who chose to purchase with non-cash payment from agents who choose to recoup the payment processing fees.