

STATEMENT OF EMERGENCY
804 KAR 13:010E.

Pursuant to KRS 13A.190(1)(a)1. and 2025 Ky. Acts Ch. 78 (SB 100), this emergency amendment is being promulgated to meet an imminent threat to public health, safety, and welfare.

As SB 100, which the Governor signed into law on March 24, 2025, shows, the safe and reasonable regulation of tobacco, nicotine, and vapor products within the Commonwealth is crucial for the general public's health, safety, and welfare. The Department of Alcoholic Beverage Control estimates that approximately 7,000 tobacco, nicotine, or vapor product retailers are currently operating in the absence of licensure contemplated by SB 100. In order to ensure that safe, comprehensive regulation is in place – and to prevent a continued and imminent threat to all Kentuckians' health, safety, and welfare – this emergency amendment is being promulgated to implement the tobacco, nicotine, or vapor product licensing structure as soon as possible.

This emergency amendment to an administrative regulation will be replaced by an ordinary amendment to an administrative regulation filed concurrently. The ordinary amendment is identical to this emergency amendment.

SCOTTY TRACY, Commissioner
ANDY BESHEAR, Governor

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Emergency Amendment)

804 KAR 13:010E. Tobacco enforcement and administration.

RELATES TO: KRS Chapter 13B, 438.305 to 438.350

STATUTORY AUTHORITY: KRS 438.340, 438.3055

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 438.305 to 438.350 impose penalties upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate relevant statutory provisions or the department's administrative regulations related to tobacco, nicotine, or vapor products. These statutes also mandate that the department enforce penalties using an administrative hearing process in accordance with KRS Chapter 13B, and that the department collect and report statistics relating to the illegal sale to persons under the age of twenty-one (21) of tobacco products, alternative nicotine products, and vapor products, and the enforcement of KRS 438.305 to 438.350. Specifically, KRS 438.340 authorizes the department to promulgate administrative regulations necessary to implement and carry out the provisions of KRS 438.305 to 438.350, and KRS 438.3055 requires the department to carry out the enforcement provisions of KRS 438.305 to 438.350, including the promulgation of administrative regulations that govern the sale and distribution of alternative nicotine products, tobacco products, and vapor products.

Section 1. Definitions.

- (1) "Department" is defined in KRS 438.305(5).
- (2) "License" means a tobacco, nicotine, or vapor product license.

Section 2. Administration. The department shall be the administrative agency for hearing violations of KRS 438.305 to 438.350.

Section 3. Requests for Hearing.

- (1) A person or business receiving an administrative citation pursuant to KRS 438.305 to 438.350, a revocation of their license pursuant to KRS 438.3069, or a denial of their application for a license pursuant to KRS 438.3067, may request an administrative hearing, on the matter, to be conducted by the department in accordance with KRS Chapter 13B.
- (2) A request for hearing to contest the following shall be made in writing by the person or business receiving the administrative citation, revocation, or denial, or their attorney, within thirty (30) days of receipt:
 - (a) An administrative citation for a violation of KRS 438.305 to 438.350;
 - (b) A license revocation pursuant to KRS 438.3069; or
 - (c) A license application denial pursuant to KRS 438.3067.
- (3) A request for a hearing shall include:
 - (a) A copy of the administrative citation, notice of revocation, or notice of denial;
 - (b) The name, address, and contact information of the person or business that received the administrative citation, revocation, or denial; and
 - (c) The name, address, and contact information of their agent for service, if that differs from the information provided pursuant to paragraph (b) of this subsection.
- (4) A request for a hearing shall be mailed to the Department of Alcoholic Beverage Control, ATTN: Tobacco Hearing Request, 500 Mero Street, Frankfort, Kentucky 40601, or emailed to the department at abc.legal@ky.gov.
- (5) Upon receipt of a timely request for hearing, the department shall refer the matter to an administrative hearing officer for adjudication in accordance with KRS Chapter 13B.

(6) If a request for hearing is not made within thirty (30) days of receipt of an administrative citation, revocation, or denial, the opportunity for a hearing shall be deemed to have been waived and the disciplinary action imposed shall thereby be deemed effective.

Section 4. Prepayment of Fines. A fine imposed pursuant to an administrative citation shall be prepayable within thirty (30) days of issuance of the administrative citation. A person not wishing to contest the allegations in the citation may resolve the charge by making a payment in the amount set forth in the administrative citation through any of the following methods:

- (1) Mailing or otherwise submitting a cashier's check, certified check, business check, or money order payable to the Kentucky State Treasurer, to the Kentucky Department of Alcoholic Beverage Control, 500 Mero Street, Frankfort, Kentucky, 40601, or
- (2) Making an electronic Tobacco Citation Payment on the department's online payment portal at <https://abcportal.ky.gov/BELLEExternal>.

Section 5. License Surrender. A tobacco, nicotine, or vapor product licensee and its employees shall not evade imposition of penalties or a finding of culpability for violations alleged in a citation by surrender or expiration of its license. The department shall retain the authority to enforce relevant provisions and penalties of KRS 438.305 to 438.350 against any individual or business entity who is under investigation for or charged with a violation of those statutes, even if the individual's or business entity's tobacco, nicotine, or vapor product license has been surrendered or has expired by operation of law.

Section 6. Disposition of Records and Evidence.

- (1) The department shall preserve the confidentiality of all juvenile records by maintaining a separate filing system with access limited to the parties and their legal counsel. The department shall maintain statistical summaries of case information, including date of buy, geographical location of buy, name and address of retail seller, date of purchase, date of birth and gender of underage buyer, and disposition of case. Statistical summaries relating to underage buyers shall not identify the underage buyer by name.
- (2) Physical evidence seized in the course of administrative violations of KRS 438.305 to 438.350 shall be maintained by the department in a secured evidentiary storage facility and destroyed after the administrative matter is resolved, unless it is found that the evidence was not used in violation of the law, in which case the evidence will be returned to its owner.
- (3) The disposition of evidence shall not occur until all appeals associated with the administrative matter have been exhausted.

COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

SCOTTY TRACY, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: October 21, 2025

FILED WITH LRC: October 31, 2025 at 10:09 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on December 22, 2025, at 9:00 a.m. EST, at 500 Mero Street, 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 December 31, 2025. 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: Joshua Newton, General Counsel, Alcoholic Beverage Control, 500 Mero Street, Frankfort, Kentucky 40601; Joshua.Newton@ky.gov.