

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~~[438.310, 1996 GA SB 137, EO 1996-619]~~

STATUTORY AUTHORITY: KRS 438.340, 438.3055~~[EO 96-619]~~

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 438.305~~[0]~~ 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~~[requires a seller of tobacco products to obtain proof of the age of a prospective buyer recipient of tobacco products if he has reason to believe the prospective buyer or recipient is under eighteen (18) years old; requires the establishment of the types of documentation accepted as proof of age; notification of the employees of a seller of tobacco products of the requirements of SB 137; administrative proceedings in the enforcement of SB 137, and the collection of]~~ statistics relating to the illegal sale to persons under the age of twenty-one (21)~~[minors]~~ of tobacco products, alternative nicotine products, and vapor products, and the enforcement of KRS 438.305 to 438.350~~[SB 137]. 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)~~[means the Department of Alcoholic Beverage Control].~~

(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~~[438.340].~~

Section 3. Requests for Hearing. ~~[Enforcement.]~~

~~[(1)] [The department shall record and investigate complaints relating to violations of KRS 438.305 to 438.340.]~~

~~[(2)] [The department shall prepare an annual survey from data obtained from the annual inspection directed by KRS 438.330(1). The survey shall be prepared to determine the existing level of tobacco sales to minors. A copy of the report shall be submitted to the Office of Agriculture.]~~

~~[(3)] [The result of the annual survey may be inspected, copied or obtained at the office of the Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, excepting state holidays.]~~

~~[Section 4.] [Procedures.]~~

~~(1) [A person found to be violation of KRS 438.305 to 438.340 may be cited by the department. Any administrative citation shall conform to the requirements of KRS Chapter 13B.]~~

~~[(2)]~~ 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,~~[438.340]~~ may request an administrative hearing, on the matter, to be conducted by the department in accordance with KRS Chapter 13B~~], to contest the allegation in the citation. The department may, in its discretion, employ one (1) or more hearing officers to conduct the administrative hearings. All administrative hearings shall be governed by 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.

~~[(3)]~~ A fine ~~imposed~~~~[levied]~~ 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 ~~[mailing a]~~ or otherwise submitting a cashier's check, certified check, business check, or money order~~[in the amount set forth in the citation,]~~ payable to the Kentucky State Treasurer, to the Kentucky Department of Alcoholic Beverage Control, 500 Mero Street, Frankfort, Kentucky, 40601, ~~or~~~~[hearing agency name and address set forth in the citation.]~~

(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. ~~[(4)]~~ Disposition of Records and Evidence.~~[juvenile records.]~~

(1) The department shall preserve the confidentiality of all juvenile records by maintaining a separate filing system~~[, under lock and key,]~~ 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) ~~(5)~~ Physical evidence seized in the course of administrative violations of KRS 438.305 to 438.350~~[438.340]~~ 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

Subject Headings:

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation outlines the process for enforcement and administration of laws related to tobacco, nicotine and vapor products.

(b) The necessity of this administrative regulation:

KRS 438.305 to 438.350 impose penalties upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate their provisions, or the regulations of the department related to tobacco, nicotine, or vapor products. These statutes also mandate that the department enforce these penalties using an administrative hearing process in accordance with KRS Chapter 13B, and that the department collect and statistics relating to the illegal sale to persons under the age of twenty-one (21) of tobacco, alternative nicotine products, and vapor products and enforcement of KRS 438.305 to 438.350.

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

This administrative regulation outlines the process for enforcing the requirements of the statutes related to underage tobacco, nicotine and vapor product sales, how penalties are to be paid, and to whom the department will report data related to these enforcement efforts.

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

This regulation assists in effective administration of the statute by outlining the process for citing violations, payment of fines related to violations, and the process to appeal those citations.

(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:

This amendment adds language in response to Senate Bill 100 of the 2025 Regular Session of the General Assembly. These changes relate to how clerks and retailers may be cited, and how they can pay their fines or appeal the citations administratively. It also updates the address for the Department of Agriculture for obtaining a copy of the required data reporting.

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

This amendment is necessary to address changes made to tobacco, nicotine and vapor administration and enforcement by Senate Bill 100 during the 2025 Regular Session of the General Assembly.

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

KRS 438.305 to 438.350 impose penalties upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate their provisions, or the regulations of the department related to tobacco, nicotine, or vapor products. These statutes also mandate that the department enforce these penalties using an administrative hearing process in accordance with KRS Chapter 13B, and that the

department collect and statistics relating to the illegal sale to persons under the age of twenty-one (21) of tobacco, alternative nicotine products, and vapor products and enforcement of KRS 438.305 to 438.350. This amendment updates the regulation to reflect the changes made in Senate Bill 100 from the Regular Session of the General Assembly.

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

ABC is tasked with enforcing the tobacco, nicotine and vapor laws as it relates to sales to minors and unauthorized vapor products and with approving or denying applications for licenses to sell tobacco, nicotine, and vapor products. The amendment outlines how those charged with violating these laws can appeal violation citations, revocations, and denials as well as how they can pay related fines.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, 2025 Ky. Acts Ch. 78 (SB 100)

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

It is estimated that there are approximately 7,000 retailers of tobacco, nicotine or vapor products in the Commonwealth of Kentucky. These businesses include gas stations, grocery stores, and standalone vape/tobacco businesses. This amendment could affect any number of these retailers and their clerks to the extent that this amendment updates them on how to pay fines for violations or how to appeal violation citations. Additionally, all of these retailers will need to apply for tobacco, nicotine, and vapor product licenses, and this regulation details how they may request a hearing if their application for licensure is denied.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment:

The regulated businesses will be required to take no action because of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

This amendment does not impose costs on any entity identified in question (4).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

By complying with this amendment, a licensee who is charged with a violation will be afforded the benefit of a KRS Chapter 13B administrative hearing, should they elect to request one, whenever a tobacco, nicotine, or vapor product citation is issued.

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

(a) Initially:

To implement and enforce the licensing and retail sales requirements contemplated by 2025 Ky. Acts Ch. 78 (SB 100), the department will be required to employ 20 additional staff members, resulting in an initial cost of \$2,750,000.00 and an annual increased cost of \$2,250,000.00 to the department. A portion of those additional staff members will be dedicated to—and the costs associated with their hiring will

be attributed to—executing the new enforcement procedures contemplated by this administrative regulation.

(b) On a continuing basis:

See increased annual cost referenced above.

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

The implementation and enforcement of the licensing and retail sales requirements contemplated by 2025 Ky. Acts Ch. 78 (SB 100) will be funded through the collection of licensure fees and civil penalty fines.

(8) 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:

SB 100 established license fees and fines that will be necessary to implement this regulation.

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

This regulation amendment does not establish any fees directly or indirectly.

(10) TIERING: Is tiering applied?

Tiering is not applied. This regulation amendment provides the process for paying violation fines or appealing violation citations.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS Chapter 13B, KRS 438.3055, 438.3067, 438.3069, 438.310, 438.312, 438.313, 438.316

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

This administrative regulation is expressly authorized by KRS 438.340 and Senate Bill 100 of the 2025 Kentucky General Assembly.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

Kentucky Department of Alcoholic Beverage Control is the promulgating agency. No other state units, parts or divisions are affected by this regulation amendment.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

This regulation will have no effect on any local entities.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

No other entities will be affected by this regulation. This regulation will have no effect on any other regulated entities.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

This regulation has no fiscal impact as it only provides the process for paying fines or appealing citations.

(b) Methodology and resources used to reach this conclusion:

The only methodology used to reach this conclusion is that the amendment imposes no new action on any regulated body.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

This regulation is anticipated to have a major economic impact. To implement and enforce the licensing and retail sales requirements contemplated by 2025 Ky. Acts Ch. 78 (SB 100), the department will be required to employ 20 additional staff members, resulting in an initial cost of \$2,750,000.00 and an annual increased cost of \$2,250,000.00 to the department. A portion of those additional staff members will be dedicated to—and the costs associated with their hiring will be attributed to—executing the new enforcement procedures contemplated by this administrative regulation.

(b) The methodology and resources used to reach this conclusion:

The only methodology used to reach this conclusion is that the regulation amendment imposes no new action on any regulated body.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

N/A

(2) State compliance standards.

N/A

(3) Minimum or uniform standards contained in the federal mandate.

N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

N/A