

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

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 property seized as contraband property, as defined by KRS 438.305(4), in the course of investigations 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 property will be returned to its owner.

(3) The disposition of contraband property and evidence shall not occur until all appeals associated with the administrative matter have been exhausted.

SCOTTY TRACY, Commissioner

RAY PERRY, Secretary

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