

1 AN ACT relating to tobacco, nicotine, or vapor product licensure and declaring an
2 emergency.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS 438.305 TO 438.350 IS CREATED
5 TO READ AS FOLLOWS:

6 *(1) The application required in Section 4 of this Act shall contain only the following*
7 *information, given under oath:*

8 *(a) The name, age, Social Security number, federal employer identification*
9 *number, business address, and citizenship of each applicant;*

10 *(b) If the applicant is a partner, the name, age, Social Security number,*
11 *business address, and citizenship of each partner and the name and address*
12 *of the partnership;*

13 *(c) The name, age, Social Security number, business address, residence, and*
14 *citizenship of each individual or partner interested in the business for which*
15 *the license is sought, together with the nature of that interest, and, if the*
16 *applicant is a corporation, limited partnership company, limited liability*
17 *company, or other business entity recognized by law, the name, age, Social*
18 *Security number, and address of each principal owner, member, officer,*
19 *and director of the applicant. The department may require the names of all*
20 *owners and the ownership percentage held by each;*

21 *(d) The premises to be licensed, stating the street and number, if the premises*
22 *has a street number, and a description that will reasonably indicate the*
23 *location of the premises;*

24 *(e) 1. Proof of occupancy, to include:*

25 *a. A copy of the lease or deed for the premises to be licensed, if not*
26 *currently on file with the department under a license issued*
27 *pursuant to KRS Chapter 243; or*

- 1 b. Certification from a landlord or landowner stating that the
2 property can be used for the purpose in which the application
3 has been filed for the premise to be licensed.
- 4 2. If a change of ownership requires a resubmission pursuant to Section
5 4 of this Act, a copy of the revised lease or deed or certificate from a
6 landlord or landowner for the premises to be licensed shall be
7 included;
- 8 (f) Proof of registration with the Department of Revenue pursuant to KRS
9 139.390; and
- 10 (g) 1. A statement that neither the applicant nor any other person referred to
11 in this section has been convicted of:
- 12 a. Any misdemeanor directly or indirectly attributable to the sale of
13 illicit substances or illegal tobacco, nicotine, or vapor products;
- 14 b. Any violation involving a controlled substance that is described
15 in or classified pursuant to KRS Chapter 218A within the two (2)
16 years immediately preceding the application;
- 17 c. Any felony within five (5) years from the later of the date of
18 parole or the date of conviction; or
- 19 d. Knowingly providing false information to the department
20 preceding the application.
- 21 2. A statement that the applicant or any other person referred to in this
22 section has not had any license that has been issued under KRS
23 Chapter 438 revoked for cause within two (2) years prior to the date of
24 the application.
- 25 (2) (a) The renewal license form required in Section 4 of this Act shall only provide
26 for information in the event of a material change.
- 27 (b) As used in this subsection, "material change" means:

- 1 1. A change of:
- 2 a. Ownership;
- 3 b. Lease or deed status; or
- 4 c. Business address; and
- 5 2. Any civil or criminal violations.
- 6 (3) If, after a license has been issued, there is a change in any of the facts required to
- 7 be set forth in the application, a verified supplemental statement in writing giving
- 8 notice of the change shall be filed with the department within ten (10) days after
- 9 the change.
- 10 (4) In giving any notice or taking any action in reference to a license, the department
- 11 may rely upon the information furnished in the application or in the
- 12 supplemental statement connected with the application as accurate and truthful.
- 13 The information required to be furnished in the application or supplemental
- 14 statement shall be deemed material in any prosecution for perjury.
- 15 (5) The department shall not have the authority to establish any additional
- 16 requirements for licensure or licensure renewal beyond those statutorily required.
- 17 (6) (a) Within thirty (30) days of the effective date of this Act, the department shall
- 18 publish and maintain on its website the required application, renewal form,
- 19 and instructions for a tobacco, nicotine, or vapor product license.
- 20 (b) The application, renewal form, and instructions shall:
- 21 1. Be public-facing;
- 22 2. Be published outside of the department's licensure portal;
- 23 3. Not require a person to log into an account for access; and
- 24 4. Have a quick link for easy access on a main tab or section of the
- 25 department's website.

26 ➔Section 2. KRS 438.306 is amended to read as follows:

- 27 (1) Each retailer shall, upon organizational filing or application for certificate of

1 authority to the Secretary of State and upon its annual report, state whether it is
2 involved in the retail sale of authorized nicotine vapor products.

3 (2) The Secretary of State shall:

4 (a) Create a list of retailers that sell authorized nicotine vapor products;~~and~~

5 (b) Provide the list of retailers created under paragraph (a) of this subsection to
6 the department and the Department of Revenue on a monthly basis; and

7 (c) Prior to June 30 of each calendar year, as a part of the electronic
8 notification reminder to each business to submit its annual report, notify
9 retailers that a tobacco, nicotine, or vapor product license is required to sell
10 authorized nicotine vapor products.

11 ➔Section 3. KRS 438.3061 is amended to read as follows:

12 (1) A person, firm, or corporation shall not operate as a retailer selling alternative
13 nicotine products, tobacco products, or authorized nicotine vapor products in or on
14 any premises in the Commonwealth without first obtaining a tobacco, nicotine, or
15 vapor product license issued by the department.

16 (2) (a) Any person who, by himself or herself or through another, directly or
17 indirectly, violates subsection (1) of this section shall be subject to the
18 penalties in KRS 243.990(2).

19 (b) On and after November 1, 2026, the department shall confiscate all
20 alternative nicotine products, tobacco products, or authorized nicotine
21 vapor products from any person, firm, or corporation that violates
22 subsection (1) of this section.

23 ➔Section 4. KRS 438.3063 is amended to read as follows:

24 (1) (a) 1. Each applicant shall apply~~application~~ for an initial~~a~~ tobacco,
25 nicotine, or vapor product license on~~shall be made in~~ a form
26 prescribed by the department in accordance with Section 1 of this Act,
27 accompanied with a nonrefundable application fee of fifty dollars (\$50)~~f~~

1 ~~and any supporting documentation required by the department}.~~

2 **2. The department shall have the form published to its website within**
 3 **thirty (30) days of the effective date of this Act.**

4 **(b)** The application fee shall be applied to the licensing fee if the license is issued.
 5 If no license is issued, **the licensing fee required in subsection (4) of this**
 6 **section shall be refunded to the applicant and** the application fee shall be
 7 retained by the department.

8 (2) A tobacco, nicotine, or vapor product license shall:

9 (a) Be renewed annually, **accompanied with a licensure renewal form and a**
 10 **licensing fee required in subsection (4) of this section;**

11 (b) Remain in full force and effect for one (1) year from the date of issuance
 12 unless it is surrendered by the licensee, suspended, or revoked; and

13 (c) Be posted in a conspicuous place in the premises of the business where
 14 alternative nicotine products, tobacco products, or authorized nicotine vapor
 15 products are sold.

16 (3) **(a) As used in this subsection, "batch license" means to apply for or renew:**

17 **1. Multiple tobacco, nicotine, or vapor product licenses for multiple**
 18 **premises; or**

19 **2. A tobacco, nicotine, or vapor product license, or multiple licenses for**
 20 **multiple premises, in conjunction with one (1) or more licenses**
 21 **authorized under KRS Chapter 243.**

22 **(b) 1.** A retailer with a license issued by the department and operating under
 23 KRS Chapter 243 may initiate the application process to obtain a
 24 tobacco, nicotine, or vapor product license on the date of its next
 25 **alcohol license renewal or renew a tobacco, nicotine, or vapor product**
 26 **license on the date of its next alcohol license renewal.**

27 **2. An applicant seeking to obtain a tobacco, nicotine, or vapor product**

1 license or a licensee seeking to renew a license may batch license
 2 using a singular application or renewal form pursuant to paragraph
 3 (c) of this subsection.

4 3. A licensee may batch license:

5 a. On the date of its next alcohol licensure renewal pursuant to
 6 KRS Chapter 243; or

7 b. One (1) year from the date of issuance of its tobacco, nicotine, or
 8 vapor product license.

9 4. If an applicant or licensee chooses to batch license, the fee required in
 10 subsection (4) of this section shall be multiplied by the number of
 11 premises to be licensed or premises to be renewed.

12 (c) The department shall provide a singular application option and a singular
 13 renewal form option for businesses or retailers seeking to batch license.

14 (d) A retailer or business seeking licensure may choose not to batch license and
 15 may apply for its tobacco, nicotine, or vapor product license individually on
 16 any date throughout the calendar year and renew its license one (1) year
 17 from the date of issuance.

18 (4) (a) The fee for a tobacco, nicotine, or vapor product license shall be five hundred
 19 dollars (\$500) per year for each licensed premises and the fee shall be made
 20 payable to the State Treasury.

21 (b) All of the fees paid into the State Treasury for state licenses shall be credited
 22 to a revolving trust and agency account as provided in KRS 438.337 for the
 23 department.

24 (5) (a) Prior to denial or notification of failure to renew, if the department
 25 identifies any error or omission in any application submitted for issuance or
 26 renewal of a tobacco, nicotine, or vapor product license:

27 1. The department shall notify the applicant of the error within seven (7)

- 1 business days of its discovery;
 2 2. The applicant shall be granted a grace period of thirty (30) days for
 3 correction; and
 4 3. The department shall review the correction within seven (7) business
 5 days of the submitted correction.

6 (b) The department shall issue the license or permit within fourteen (14)
 7 business days of the date the application is complete.

8 (6) The tobacco, nicotine, or vapor product license shall not be transferred from one (1)
 9 person to another or from one (1) premises to another premises.

10 ~~(7)~~(6) (a) If a retailer has a change of ownership, the new owner shall provide
 11 written notice to the department of the change in ownership no later than
 12 fifteen (15) days prior to the transaction or sale closing, and the notice shall
 13 include:

14 1. The initial licensing application established in subsection (1) of this
 15 section; and

16 2. The licensing fee required in subsection (4) of this section.

17 (b) The department shall issue the license within fourteen (14) business days of
 18 the date the notice and application is received~~[A new tobacco, nicotine, or~~
 19 ~~vapor product license shall be required when a retailer has a change in~~
 20 ~~ownership].~~

21 ➔Section 5. KRS 438.3067 is amended to read as follows:

22 (1) (a) Except as provided in subsections (5) and (7) of Section 4 of this Act, the
 23 commissioner shall approve or deny every application for a tobacco, nicotine,
 24 or vapor product license within fourteen (14) business days.

25 (b) If a retailer has submitted an application and the department has not issued
 26 a license or denial, or notified of failure to renew within fourteen (14)
 27 business days, a retailer shall not be subject to any penalties during or after

1 the required fourteen (14) business days until the department has issued the
 2 license or denial, or notified of failure to renew to the retailer.

3 (2) A license shall only be denied if the:

4 (a) 1. Application required in Section 4 of this Act is incomplete; and

5 2. Applicant has been given the opportunity to correct an application as
 6 required in Section 4 of this Act;

7 (b) Licensing fee required in Section 4 of this Act is not remitted with the
 8 application;

9 (c) Applicant or business owners are not twenty-one (21) years of age or older;

10 (d) Applicant or business owners have a tax delinquency due to the Department
 11 of Revenue, unless the applicant or business owners have an approved
 12 payment agreement with the Department of Revenue; or

13 (e) Applicant has committed any act for which a license would be revoked
 14 pursuant to Section 6 of this Act.

15 (3) If the application is denied, the:

16 (a) License shall not be issued;

17 (b) Applicant shall be notified of the commissioner's denial, which shall include
 18 the reason for the denial; and

19 (c) Applicant may, within thirty (30) days, appeal the denial and request an
 20 administrative hearing on the matter in accordance with KRS Chapter 13B.

21 ~~(4)~~(3) (a) If the commissioner revokes a license pursuant to KRS 438.3069, the
 22 commissioner shall:

23 1. Notify the applicant within ten (10) days of the decision to revoke the
 24 license; and

25 2. Upon the request of a denied licensee, commence a hearing on the
 26 license revocation in accordance with KRS Chapter 13B.

27 (b) Revocation of a license subject to KRS 438.305 to 438.350, as it relates to the

1 *regulation of alternative nicotine products, tobacco products, and vapor*
 2 *products*, for any reason shall result in the inability of a retailer to reapply for
 3 a license for two (2) years.

4 (c) 1. A final order of the commissioner shall be appealable to the Franklin
 5 Circuit Court.

6 2. The licensee may, within thirty (30) days, appeal the final order and
 7 request an administrative hearing on the matter in accordance with KRS
 8 Chapter 13B.

9 ➔Section 6. KRS 438.3069 is amended to read as follows:

10 A license may be revoked or suspended by the commissioner for a violation of:

11 (1) Any of the provisions of KRS 438.305 to 438.350, *as they relate to the regulation*
 12 *of alternative nicotine products, tobacco products, and vapor products, except as*
 13 *provided in Section 7 of this Act and KRS 438.312, in which the schedule of*
 14 *penalty of each respective statute shall be followed;*

15 (2) Any administrative regulation of the department relating to the regulation of the
 16 manufacture, sale, and transportation of alternative nicotine products, tobacco
 17 products, or vapor products;

18 (3) Any administrative regulation of the Department of Revenue relating to the taxation
 19 of alternative nicotine products, tobacco products, or vapor products;

20 (4) Any Act of Congress or any rule or regulation of any federal board, agency, or
 21 commission; *or*

22 ~~(5) Any of the laws, regulations, or ordinances referred to in this section when an~~
 23 ~~agent, servant, or employee of the licensee committed the violation, irrespective of~~
 24 ~~whether the licensee knew of or permitted the violation or whether the violation~~
 25 ~~was committed in disobedience of the licensee's instructions;~~

26 ~~(6) Any cause which the department in the exercise of its sound discretion deems~~
 27 ~~sufficient; or~~

1 ~~(7)~~ Any of the reasons for which the commissioner would have been required to deny
2 a license if existing material facts had been known.

3 → Section 7. KRS 438.310 is amended to read as follows:

4 (1) ~~A~~~~Not~~ person shall ***not*** sell or cause to be sold any tobacco product or alternative
5 nicotine product at retail to any person under the age of twenty-one (21), or solicit
6 any person under the age of twenty-one (21) to purchase any tobacco product or
7 alternative nicotine product at retail.

8 (2) Any person who sells tobacco products or alternative nicotine products at retail
9 shall cause to be posted in a conspicuous place in his or her establishment a notice
10 stating that it is illegal to sell tobacco products, alternative nicotine products, or
11 vapor products to persons under age twenty-one (21).

12 (3) Any person selling tobacco products, alternative nicotine products, or vapor
13 products shall require proof of age from a prospective buyer or recipient if the
14 person has reason to believe that the prospective buyer or recipient is under the age
15 of twenty-one (21).

16 (4) A person who violates subsection (1) or (2) of this section shall be subject to a:

17 (a) One hundred dollar (\$100) fine to the retail sales clerk for a first citation and a
18 notice to the owner of a retail establishment which details the violation;

19 (b) One hundred dollar (\$100) fine to the retail sales clerk and an additional five
20 hundred dollar (\$500) fine to the owner of a retail establishment for a second
21 citation;

22 (c) One hundred dollar (\$100) fine to the retail sales clerk and an additional one
23 thousand dollar (\$1,000) fine to the owner of a retail establishment for a third
24 citation; and

25 (d) Revocation of the tobacco, nicotine, or vapor product license upon a fourth
26 citation. Revocation for any fourth and subsequent citation within a two (2)
27 year period shall result in the inability to reapply for a license for two (2)

1 years.

2 (5) Each citation shall be specific to the premises of the retail establishment where the
3 violation occurred.

4 (6) The fine shall be imposed and collected by the department using a civil
5 enforcement procedure.

6 (7) A retailer shall be prohibited from renewing its license until all fines incurred under
7 KRS 438.305 to 438.350 as they relate to the regulation of alternative nicotine
8 products, tobacco products, and vapor products are paid.

9 ➔Section 8. KRS 438.316 is amended to read as follows:

10 (1) A retailer of nicotine vapor products containing nicotine shall only sell authorized
11 nicotine vapor products.

12 (2) Any retailer that violates this section shall be subject to a:

13 (a) Five hundred dollar (\$500) fine to the owner of a retail establishment for a
14 first citation issued for a violation of this section;

15 (b) One thousand dollar (\$1,000) fine to the owner of a retail establishment for a
16 second or subsequent citation issued for a violation of this section; and

17 (c) Revocation of the tobacco, nicotine, or vapor product license upon a fourth
18 citation, which shall result in the inability to reapply for a tobacco, nicotine, or
19 vapor product license for two (2) years.

20 (3) Each citation shall be specific to the premises of the retail establishment where the
21 violation occurred.

22 (4) Any retailer with unpaid fines under this section that are more than sixty (60) days
23 overdue shall lose the ability to lawfully sell vapor products until the fines are paid.

24 (5) A retailer shall have an affirmative defense to a violation of selling an unauthorized
25 vapor product if the retailer can establish:

26 (a) Proof of an official material change in the status of a vapor product under
27 review by the FDA within forty-five (45) days of the issuance of the citation;

1 or

2 (b) Proof received under KRS 438.308(1)(b) that the product is an authorized
3 nicotine vapor product.

4 ➔Section 9. KRS 438.330 is amended to read as follows:

- 5 (1) Except as provided in KRS 438.337, the Department of Alcoholic Beverage Control
6 and the Department of Agriculture shall carry out annually conducted random,
7 unannounced inspections of retail establishments where tobacco products,
8 alternative nicotine products, or vapor products are sold or distributed for the
9 purpose of enforcing the provisions of KRS 438.305 to 438.350 as they relate to
10 the regulation of alternative nicotine products, tobacco products, and vapor
11 products. The inspections shall be conducted to the extent necessary to assure that
12 the Commonwealth remains in compliance with Pub. L. No. 102-321 and applicable
13 federal regulations. The department and the Department of Agriculture shall also
14 ensure that targeted inspections are conducted at those retail establishments where,
15 and at those times when, persons under the age of twenty-one (21) years are most
16 likely to purchase tobacco products, alternative nicotine products, or vapor
17 products. Persons under the age of twenty-one (21) years may be used to test
18 compliance with the provisions of KRS 438.305 to 438.350 as they relate to the
19 regulation of alternative nicotine products, tobacco products, and vapor products
20 only if the testing is conducted under the direct supervision of the department,
21 sheriff, or chief of police, or their employees, and written parental consent has been
22 obtained. The department shall prepare annually, for submission by the Governor to
23 the secretary of the United States Department of Health and Human Services, the
24 report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal
25 Public Health Service Act.
- 26 (2) The department shall develop and implement the survey sampling methodologies to
27 carry out the inspections as described in this section.

1 ➔Section 10. KRS 438.340 is amended to read as follows:

2 **(1)** The department and the Department of Agriculture are authorized to promulgate
3 administrative regulations pursuant to KRS Chapter 13A as necessary to implement
4 and carry out the provisions of KRS 438.305 to 438.350, including establishing a
5 procedure for administering citations, issuing orders, adjusting fees, and filing
6 appeals under this section and KRS 438.3067 for any violation of the provisions of
7 KRS 438.305 to 438.350, order of the commissioner, or administrative regulations
8 promulgated by the department.

9 **(2)** ***The department shall promulgate administrative regulations relating to tobacco,***
10 ***nicotine, and vapor licensing in accordance with KRS Chapter 13A within thirty***
11 ***(30) days of the effective date of this Act.***

12 ➔Section 11. The following KRS section is repealed:

13 438.3065 Transitional license.

14 ➔Section 12. Notwithstanding any laws to the contrary, this Act shall not be
15 construed to delay enforcement of Sections 7, 8, or 9 of this Act or KRS 438.311,
16 438.315, or 438.3071.

17 ➔Section 13. Notwithstanding any law to the contrary:

18 (1) Within 60 days of the effective date of this Act, any retailer selling tobacco,
19 nicotine, or vapor products in Kentucky that does not hold a tobacco, nicotine, or vapor
20 product license required by this Act shall remit the initial application form and the
21 licensing fee required in Section 4 of this Act to the department to obtain an initial
22 license.

23 (2) If a retailer is approved, the department shall issue a license within 14
24 business days.

25 (3) If a retailer is licensed pursuant to subsection (1) of this section, the retailer
26 shall renew annually on the date of issuance unless the retailer elects to renew by batch
27 license pursuant to Section 4 of this Act.

1 ➔Section 14. Any licensee who has obtained a tobacco, nicotine, and vapor
2 product license under KRS 438.305 to 438.350 in calendar year 2025 shall have the
3 licensing fee of five hundred dollars (\$500) paid in calendar year 2025 credited to the
4 licensee's upcoming licensing fee payment for licensure renewal in calendar year 2026.
5 Licensees not seeking renewal shall not receive a refund or credit and the licensing fee
6 paid in calendar year 2025 shall be retained by the department.

7 ➔Section 15. Sections 1 to 9 of this Act shall be retroactive to January 1, 2026.

8 ➔Section 16. Whereas the proper regulation and licensing of tobacco, nicotine,
9 and vapor products are crucial for public safety and protection, an emergency is declared
10 to exist, and this Act takes effect upon its passage and approval by the Governor or upon
11 its otherwise becoming a law.