

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:212. In-State Distilled Spirits Supplier License.

RELATES TO: KRS 243.030(35)

STATUTORY AUTHORITY: KRS 241.060; KRS 243.030(35)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

Section 1. Definition. "In-state distilled spirits supplier" means a resident brand owner and supplier of distilled spirits products who does not operate a distillery, but through other legal means creates distilled spirits products to sell under its own brand name.

Section 2. License.

- (1) An in-state distilled spirits supplier license shall authorize the licensee to:
 - (a) Sell distilled spirits under brands that the licensee owns, for which the licensee is the primary source of supply, or in which the licensee has an exclusive interest, at wholesale to wholesalers in the Commonwealth; and
 - (b) Advertise distilled spirits brands that the licensee is authorized to sell in accordance with KRS 244.130.
- (2) An in-state distilled spirits supplier license shall not authorize the licensee to purchase, transport, store, or possess distilled spirits for the purposes of sale.

Section 3. Qualifications.

- (1) To qualify for an in-state distilled spirits supplier license, the applicant shall:
 - (a) Reside in Kentucky;
 - (b) Be the owner, the primary source of supply, or have an exclusive interest in a particular brand of distilled spirits;
 - (c) Obtain a federal wholesaler's basic permit;
 - (d) Register with the Kentucky Department of Revenue; and
 - (e) Comply with all federal and state laws and regulations.
- (2) An applicant that wishes to sell 50,000 or more gallons of distilled spirits shall:
 - (a) Complete the New License Application pursuant to 804 KAR 4:400 for an in-state distilled spirits supplier license via the department's Online portal at <https://abcportal.ky.gov/BELLEExternal>; and ~~{Online In-State Distilled Spirits Supplier License Application for an in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/> following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and}~~
 - (b) Pay an annual fee equal to the amount of the fee for the out-of-state distilled spirits and wine supplier's license under KRS 243.030(30).
- (3) An applicant that wishes to sell less than 50,000 gallons of distilled spirits shall:

- (a) ~~Complete the New License Application pursuant to 804 KAR 4:400 for a limited in-state distilled spirits supplier license via the department's Online portal at: <https://abcportal.ky.gov/BELLEExternal> [Complete the Online In-State Distilled Spirits Supplier License Application for a limited in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/> following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and]~~
- (b) Pay an annual fee equal to the amount of the fee for the limited out-of-state distilled spirits and wine supplier's license under KRS 243.030(31).

Section 4. Prohibited substantial interests. An in-state distilled spirits supplier license applicant and in-state distilled spirits supplier licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a "manufacturer" as defined in 804 KAR 4:015.

Section 5. Brand Registration. In accordance with 804 KAR 4:410 and KRS 244.440, an in-state distilled spirits supplier licensee shall register with the department all brands the licensee intends to sell in Kentucky.

Section 6. Taxes. An in-state distilled spirits supplier licensee shall pay all applicable taxes for the sales of its products.

Section 7. Direct Shipper Licenses. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

~~[Section 8.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Online In-State Distilled Spirits Supplier License Application", December 2021; and]~~

~~[(b)] ["Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply)", September 2021, depicting the application process through the department's online portal.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky] [40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the department's Web site at https://abc.ky.gov/newstatic_Info.aspx?static_ID=652.]~~

ALLYSON C TAYLOR, Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 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, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, Phone: (502) 782-0770, Fax: (502) 564-4850, email Joshua.Newton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation outlines the form to be used to apply for an in-state supplier license.

(b) The necessity of this administrative regulation:

This regulation is necessary to guide members of the alcohol industry to the appropriate form to apply for an in-state supplier license.

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

KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

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

The agency has the duty to provide the public with the opportunity to apply for alcohol licenses. This regulation points them to the appropriate form to apply for or renew an in-state supplier license.

(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:

The amendment outlines the in-state supplier license form accessible on the agency's online licensing portal.

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

The amendment is necessary to update the regulation to incorporate the agency's online in- state supplier license application form.

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

This amendment reflects the updated forms to accomplish this statutory mandate.

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

KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

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

There are currently 39 non-distilling producers who hold an in-state supplier license.

These businesses use the online portal to apply for and receive licenses to operate.

(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:

The alcohol producers listed will continue to apply online for initial and renewed in-state supplier licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are fees for licenses but there is no fee to access or utilize the online portal. There will be no new cost or expense to the applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

By allowing online license application and renewal, these non-distilling producers have realized a positive impact in that the licenses are issued in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online applications and the licensing portal.

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

(a) Initially:

There is no cost to the agency as the licensing portal is built in-house.

(b) On a continuing basis:

There are no additional continuing costs to the agency as the licensing portal is built in-house.

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

The agency utilizes licensing fees to meet its licensing and enforcement obligations.

(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:

An increase in fees or funding is not necessary to implement this amendment.

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

This amendment does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied?

There is no tiering applied as this amendment is simply to update forms used online for licensing applications and renewals.

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 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

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

Kentucky Department of Alcoholic Beverage Control.

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This amendment is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

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

Local ABC administrators have access to the online portal for local approvals and denials. This amendment will not affect these entities.

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(4) Identify additional regulated entities not listed in questions (2) or (3):

None

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There is no fiscal impact related to this amendment.

(b) Methodology and resources used to determine the fiscal impact:

N/A

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This amendment, incorporating the online forms used to apply for and renew in-state supplier licenses, has no negative or adverse impact.

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

These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.