

FILED WITH LRC TIME: <u>3:11pm</u> DEC 29 2025 <i>Ange Darnell</i> REGULATIONS COMPILER
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## STATEMENT OF EMERGENCY

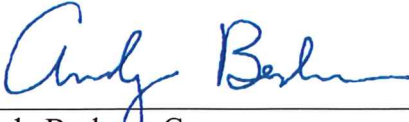
804 KAR 13:025E

Pursuant to KRS 13A.190(1)(a)3. and 2025 Ky. Acts Ch. 78 (SB 100), this emergency regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute.

Enacted in the 2025 Regular Session, Senate Bill 100 requires the Department of Alcoholic Beverage Control ensure the safe and reasonable regulation of tobacco, nicotine, and vapor products within the Commonwealth. Effective January 1, 2026, Section 31 of Senate Bill 100 requires entities to first obtain a tobacco, nicotine, or vapor product license issued by the Department before they may operate as a retailer selling alternative nicotine products, tobacco products, or authorized nicotine vapor products in or on any premises in Kentucky. Approximately 7,000 tobacco, nicotine, or vapor product retailers are currently operating in the Commonwealth. As of December 29, 2025, the Department had issued 3,362 licenses, with an additional 1,592 applications then pending. In order to ensure that retailers who have applied for a license before January 1, 2026, are not penalized through no fault of their own while the Department continues the process of evaluating each application thoroughly, this emergency regulation is being promulgated to implement a tobacco, nicotine, or vapor product provisional licensing structure as soon as possible to meet the statutory deadline under Senate Bill 100.

This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

 12-29-2025  
\_\_\_\_\_  
Scotty Tracy, Commissioner  
Department of Alcoholic Beverage Control  
Dated: December 29, 2025

  
\_\_\_\_\_  
Andy Beshear, Governor  
Commonwealth of Kentucky  
Dated: December 29, 2025

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

(New Emergency Administrative Regulation)

804 KAR 13:025E. Provisional license.

RELATES TO: KRS 438.305 to 438.350

STATUTORY AUTHORITY: KRS 438.340, 438.3055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 438.340 authorizes the department to promulgate administrative regulations as necessary to implement and carry out the provisions of KRS 438.305 to 438.350. KRS 438.3055 permits the department to promulgate administrative regulations that govern the sale and distribution of alternative nicotine products, tobacco products, and vapor products. This emergency administrative regulation provides privileges and restrictions of a provisional license to be issued by the commissioner to applicants for a tobacco, nicotine, or vapor product license whose initial application was filed prior to the license being required on January 1, 2026, but is still pending initial determination on and after January 1, 2026.

Section 1. Definitions.

(1) "Alternative nicotine product" is defined by KRS 438.305(1).

(2) "Authorized nicotine vapor product" is defined by KRS 438.305(2).

(3) "Commissioner" is defined by KRS 438.305(3).

(4) "Manufacturer" is defined by KRS 438.305(9).

Section 2. The commissioner may issue a provisional license to a tobacco, nicotine, or vapor product retailer who applied for a tobacco, nicotine, or vapor product license and paid the nonrefundable

1 application fee required by KRS 438.3063(1) prior to January 1, 2026, but whose application is  
2 pending initial determination by the commissioner. No additional application or fee shall be required  
3 for the issuance of a provisional license.

4 Section 3. A provisional license issued pursuant to this section shall:

5 (1) During the period in which the provisional license is effective, authorize the holder to  
6 purchase tobacco products, alternative nicotine products, and authorized nicotine vapor products  
7 at wholesale from a Kentucky-licensed wholesaler, or directly from a manufacturer, and sell  
8 them at retail, subject to the restrictions of KRS 438.305 to 438.350;

9 (2) Be posted in a conspicuous place in the premises of the business where tobacco, alternative  
10 nicotine products, and authorized nicotine vapor products are sold;

11 (3) Expire after:

12 (a) Sixty (60) days; or

13 (b) An initial determination is made by the commissioner on the application, whichever  
14 happens sooner; and

15 (4) Not be renewable.

APPROVED: December 29, 2025



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Scotty Tracy, Commissioner  
Department of Alcoholic Beverage Control



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Ray Perry, Secretary  
Public Protection Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on February 23, 2026, at 9:00 a.m. ET, at 500 Mero Street, Frankfort, KY 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 February 28, 2026. 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, KY 40601; [Joshua.Newton@ky.gov](mailto:Joshua.Newton@ky.gov).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

804 KAR 13:025E

Contact Person: Joshua Newton

Phone: 502-782-0770

Email: Joshua.Newton@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This emergency administrative regulation provides privileges and restrictions of a provisional license which may be issued by the commissioner to applicants for a tobacco, nicotine, or vapor product license whose initial application was filed prior to the license being required on January 1, 2026, but is still pending initial determination on and after January 1, 2026.

(b) The necessity of this administrative regulation:

KRS 438.3061 requires a person, firm, or corporation operating as a retailer selling alternative nicotine products, tobacco products, or authorized nicotine vapor products to obtain a tobacco, nicotine, or vapor product license issued by the department. This requirement is effective on January 1, 2026. This emergency administrative regulation allows for the issuance of a provisional license for retailers whose initial application for a tobacco, nicotine, or vapor product license was filed prior to January 1, 2026, but is pending determination on and after January 1, 2026.

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

KRS 438.340 authorizes the department to promulgate administrative regulations as necessary to implement and carry out the provisions of KRS 438.305 to 438.350. KRS 438.3055 permits the department to promulgate administrative regulations that govern the sale and distribution of alternative nicotine products, tobacco products, and vapor products. This emergency administrative regulation provides the privileges and restrictions of a provisional license to allow retailers who have applied for licensure before January 1, 2026, to continue selling tobacco, alternative nicotine product, or authorized nicotine vapor products for a limited time until a determination on the application is made by the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation establishes a provisional license for applicants who have submitted an application for a tobacco, nicotine or vapor product license before January 1, 2026, that will allow these retailers to continue selling these products until the commissioner makes a determination on the application.

(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:
- (b) The necessity of the amendment to this administrative regulation:
- (c) How the amendment conforms to the content of the authorizing statutes:
- (d) How the amendment will assist in the effective administration of the statutes:

This is a new emergency administrative regulation.

(3) 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. All businesses that want to sell tobacco, nicotine, or vapor products, must have a license to sell any of those products as of January 1, 2026. As of December 29, 2025, 3,362 licenses have been issued and 1,592 remain pending in various stages of process.

(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:

This emergency administrative regulation does not require the applicants to take any further action to be issued a provisional license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not impose costs on any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities wishing to sell tobacco, nicotine, or vapor products that have submitted an application for a license before January 1, 2026, will benefit from this regulation as it will allow them to continue selling tobacco products, alternative nicotine products, or authorized nicotine vapor products pending a determination on their application by the commissioner.

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

(a) Initially: There is no specific cost associated with implementation of this particular regulation. However, 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.

(b) On a continuing basis: See increased annual cost referenced above.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? The provisional license established by this emergency administrative regulation is only available to those retailers that have submitted an application for licensure before the statutory effective date of the licensure requirement.

## FISCAL IMPACT STATEMENT

804 KAR 13:030E

Contact Person: Joshua Newton

Phone: 502-782-0770

Email: Joshua.Newton@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 438.340, 438.3055

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

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

(b) Methodology and resources used to reach this conclusion: The only methodology used to reach this conclusion is that the regulation 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(13): This regulation will have no economic impact.

(b) The methodology and resources used to reach this conclusion: The only methodology used to reach this conclusion is that the regulation imposes no new action on any regulated body.

## FEDERAL MANDATE ANALYSIS COMPARISON

804 KAR 13:030E

Contact Person: Joshua Newton

Phone: 502-782-0770

Email: Joshua.Newton@ky.gov

- (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



**Andy Beshear**  
GOVERNOR  
**Jacqueline Coleman**  
LIEUTENANT GOVERNOR

**PUBLIC PROTECTION CABINET**  
**Kentucky Department of Alcoholic Beverage**  
**Control**  
500 Mero Street, 2NE33  
Frankfort, KY 40601  
Phone: (502) 564-4850  
Fax: (502) 564-1442

**Ray A. Perry**  
SECRETARY  
**DJ Wasson**  
DEPUTY SECRETARY  
**Scotty Tracy**  
COMMISSIONER

## **AFFIDAVIT IN SUPPORT OF STATEMENT OF EMERGENCY**

\* \* \* \* \*

I, the affiant, Scotty Tracy, being duly sworn, do hereby depose and state as follows:

1. My name is Scotty Tracy.
2. I am over eighteen years of age and have personal knowledge of the matters set forth herein.
3. I am employed as the Commissioner of the Department of Alcoholic Beverage Control in the Commonwealth of Kentucky.
4. As of December 29, 2025, the Department had:
  - a. Fully processed 3,362 tobacco, nicotine, or vapor product (TNVP) license applications and issued the license;
  - b. Approved an additional 472 TNVP license applications that awaited final payment before issuance of the license;
  - c. Processed 318 additional TNVP license applications that awaited approval; and
  - d. Received an additional 802 TNVP license applications from interested retailers.




5. In implementing SB 100, the Department estimated approximately 7,000 tobacco, nicotine, or vapor product retailers would seek licensure due to SB 100, leaving approximately 2,253 retailers who may still apply for licensure before January 1, 2026.
6. To ensure that these remaining retailers do not experience an interruption in tobacco, nicotine, or vapor product sales while their application is pending, a provisional license will be necessary.

  
Scotty Tracy, Commissioner  
Department of Alcoholic Beverage Control

**Notary Acknowledgement**

THE STATE OF KY  
COUNTY OF Franklin

Subscribed, sworn to, and acknowledged before me by Scotty Tracy, the affiant, on December \_\_, 2025.

Notary Signature:   
My Commission Expires: 8/22/28  
Notary ID Number: KYAD13824