

243.075 Eligible city or county may impose regulatory license fee up to five percent on gross receipts of each establishment's sale of alcoholic beverages -- Annual levies -- Credits -- Applicability of county regulatory license fee if city levies license fee -- Enactment of fee within two years following election -- Administrative regulations -- Use of revenue received from regulatory license fee -- Penalties for violation -- Party suing city or county for violation responsible for attorney fees if city or county found not to be in violation -- Regulatory fee imposed before 2019 permitted to continue at existing rate -- Applicability to direct shipper licensee -- Report to department.

- (1)
 - (a) A city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census, or a county that does not contain a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census, that is wet through a local option election held under KRS Chapter 242 is authorized to impose a regulatory license fee not to exceed five percent (5%) upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county licensed to sell alcoholic beverages.
 - (b) The regulatory license fee may be levied at the beginning of each budget period at a percentage rate that is reasonably estimated to fully reimburse the local government for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the city and county.
 - (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, except:
 1. A credit against a regulatory license fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070; and
 2. In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.
- (2)
 - (a) A city or county that is moist through a local option election held under KRS 242.1244 may by ordinance impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county and licensed to sell alcoholic beverages by the drink for consumption on the premises.
 - (b) The regulatory license fee may be levied annually at a rate that is reasonably estimated to fully reimburse the city or county for the estimated costs for any additional policing, regulatory, or administrative related expenses.
 - (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against the fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070.
 - (d) In a county in which the city and county both levy a regulatory license fee, the

county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.

- (3) For any election held after July 15, 2014, any new fee authorized under subsection (1) or (2) of this section shall be enacted by the city or county no later than two (2) years from the date of the local option election held under KRS Chapter 242.
- (4) After July 15, 2014, any fee authorized under subsections (1) and (2) of this section shall be established at a rate that will generate revenue that does not exceed the total of the reasonable expenses actually incurred by the city or county in the immediately previous fiscal year for the additional cost, as demonstrated by reasonable evidence, of:
 - (a) Policing;
 - (b) Regulation; and
 - (c) Administration;as a result of the sale of alcoholic beverages within the city or county.
- (5)
 - (a) The Alcoholic Beverage Control Board shall promulgate administrative regulations which set forth the process by which a city or county, in the first year following the discontinuance of prohibition, may estimate any additional policing, regulation, and administrative expenses by a city or county directly and solely related to the discontinuance of prohibition. This subsection shall apply to any discontinuance of prohibition occurring after the promulgation of administrative regulations required by this subsection.
 - (b) After the first year, the regulatory license fee for each subsequent year shall conform to the requirements of subsection (4) of this section.
- (6) The revenue received from the imposition of the regulatory license fee authorized under subsections (1) and (2) of this section shall be:
 - (a) Deposited into a segregated fund of the city or county;
 - (b) Spent only in accordance with the requirements of subsections (1) and (2) of this section; and
 - (c) Audited under an annual audit performed pursuant to KRS 43.070, 64.810, and 91A.040.
- (7) Any city or county found by a court to have violated the provisions of this section shall:
 - (a) Provide a refund as determined by the court to any licensee that has been harmed in an amount equal to its prorated portion of the excess revenues collected by the city or county that are directly attributable to a violation occurring after July 15, 2014;
 - (b) Be responsible for the payment of the reasonable attorney fees directly incurred by a party to a litigation in an amount ordered by the court upon its finding of an intentional and willful violation of this section by a city or county occurring after July 15, 2014; and
 - (c) Upon the finding by a court of a second intentional and willful violation of the provisions of this section, lose the ability to impose the regulatory fee

provided by this section for a period of five (5) years and, upon the finding by a court of a third intentional and willful violation, forfeit the right to impose the regulatory license fee authorized by this section.

- (8) Any party bringing suit against a city or county for an alleged violation of this section occurring after July 15, 2014, shall be responsible for the payment of the reasonable attorney fees of the city or county in an amount determined by the court upon a finding by the court that the city or county did not violate this section.
- (9)
 - (a) Any city that does not meet the population requirements of subsection (1) of this section, and any county that has a city exceeding the population requirements of subsection (1) of this section, that imposed a regulatory license fee pursuant to this section as of January 1, 2019, shall be deemed to meet the requirements for doing so set out in this section and may continue to impose the regulatory license fee previously established pursuant to this section.
 - (b) Any city or county that is authorized to impose the regulatory license fee under subsection (1) of this section, or under paragraph (a) of this subsection, that imposed the regulatory license fee at a rate higher than five percent (5%) prior to June 27, 2019, may continue to impose the regulatory license fee at a rate that exceeds five percent (5%). The rate shall continue to be calculated annually pursuant to the requirements of this section and shall not exceed the rate that was imposed by the city or county on January 1, 2019.
- (10) A direct shipper licensee shall collect and remit the regulatory license fee imposed by this section as though it were an establishment located in a city or county licensed to sell alcoholic beverages. This fee shall be considered a tax as defined in KRS 243.029.
- (11) Any city or county imposing a regulatory license fee under this section shall file with the department a report showing the applicable fee amount and remittance address for each affected license type in its jurisdiction on or before August 1, 2020. Any adoption of this fee after July 15, 2020, or modification of the applicable fee amount or remittance address for each affected licensee shall be reported to the department within thirty (30) days of adoption by the city or county imposing the fee. Within twenty (20) days after receipt of the information, the department shall compile and publish the information so that it is readily available to the public.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 80, sec. 9, effective July 15, 2020. -- Amended 2019 Ky. Acts ch. 53, sec. 1, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 62, sec. 45, effective June 29, 2017. -- Amended 2014 Ky. Acts ch. 22, sec. 9, effective July 15, 2014; ch. 39, sec. 1, effective July 15, 2014; and ch. 92, sec. 297, effective January 1, 2015. -- Amended 2013 Ky. Acts ch. 121, sec. 56, effective June 25, 2013. -- Amended 2000 Ky. Acts ch. 435, sec. 18, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 121, sec. 38, effective July 15, 1998. -- Created 1982 Ky. Acts ch. 434, sec. 16, effective July 15, 1982.

Legislative Research Commission Note (1/1/2015). This statute was amended by 2014 Ky. Acts chs. 22, 39, and 92. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 92, which was last enacted by the General Assembly, prevails under KRS 446.250.