

## Senate Bill 15

### Overview

*SB 15 Seeks to bring mutual fairness & equity to provisions that already exist and are dictated in statute.*

**This legislation addresses two issues:**

- 1) **It levels the playing field** for our statutorily mandated contracts with distributors. Contracting rules should be fair and equitable for both parties and our proposal adopts nationally accepted standards related to brand values. It addresses years of on-going issues in contractual relationships between beer distributors and microbreweries that pose unnecessary barriers to market access. Addresses issues that arise as a direct result of existing statutory provisions in KRS 244.606 and KRS 244.585.
- 2) **It would give microbrewers the right to engage in limited self-distribution direct to licensed retailers, not to exceed 2,500 barrels per year.** In other states with self-distribution, this market channel has been a lifeline for microbrewers. This limited ability is not the goal of the legislation to gain full distribution rights, but rather a tool to afford flexibility to address issues as they arise and not be without any means to market or to fulfill market demand. Thirty-nine (39) other states already permit some form of self-distribution by craft brewers. This provision remedies the existing lack of access to market when a distributor refuses to pick up brands or sign a brewer for distribution. As you know, the current law prohibits a brewer from selling to a licensed retailer. Therefore, a brewer is required by law to be under a written contract with a distributor, but a distributor does not have the same statutory requirement to have to sign with a brewer. Further, SB addresses several recurring situations that occur when retailers request our products, need extra or small amounts on short notice (known as a “*hot shot*”), or have asked/agreed to product amounts then are told by the distributor “no” or the requests/sells are not serviced or provided for by the distributor, thus harming the brewer and his/her brand with that valued retailer partner.

The legislation was vetted over the interim in November before the Interim Joint Committee-Licensing & Occupations. Specific provision changes of the bill would:

- Amend KRS 243.157 to permit microbreweries to have **limited** self-distribution privileges. It would allow up to, but not exceed, 2,500 barrels per year to be self-distributed by the microbrewer to licensed retailers. All brands will continue to be registered with ABC and the microbrewer will give notice to a distributor whenever it has to make a self-distribution delivery;
- Create a new Section in KRS Chapter 244 to level the playing field for both parties in the contracts between distributor and craft brewers while preserving KRS 244.606 as it pertains to contractual protections for distributors in their relationships with large, national brewers; and

- Apply to all microbrewers (in-state and out-of-state) to assure compliance with all applicable commerce laws.

The requirements in the current franchise law (KRS 244.606) ONLY apply to beer, which means there is not parity. There is no similar statute for wine or distilled spirits that gives alcohol wholesalers a similar ability to dictate contractual terms to distillers and small farm wineries. The new statute only applies to contractual distribution agreements between microbrewers and beer distributors and will put them on a level playing field. Examples of how these provisions will play out in practice include:

- Adding mutuality to distribution agreements so that the microbrewer would have many of the same commercial rights previously only given to distributors.
- Specifying the circumstances in which a microbrewer can terminate a distribution agreement, which are currently substantially limited under the current statute.
- Addressing issues arising from microbrewers being stuck in statutorily mandated contractual relationships in perpetuity (evergreen contracts) that are not mutually beneficial.
- Establishing a fair process by which a distributor is fairly compensated for the value of the brand they have helped develop when a distribution agreement terminates prior to its stated term. *(Only applies to microbrewers whose products represents 5% or less of the distributors' gross annual sales.)*
- Establishes a statutory formula for determining brand value, thereby providing both parties certainty and avoiding lengthy delays in providing a mechanism for microbrewers to get their product to market or fulfill existing retail obligations.

The proposed new section does NOT repeal provisions currently contained in KRS 244.606. Nor does it remove the protections distributors have from large producers which they claim pose a threat to them. Instead, the new statute assures a level playing field for small microbrewers and distributors. Currently, protections only apply to and for the benefit of the distributor. **This proposed bill does not apply to, nor impact any other industry sectors. It is not in lieu of existing distribution system but in ADDITION to.**