

CHAPTER 59**(HB 100)**

AN ACT relating to distilled spirits.

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

➔Section 1. KRS 241.010 is amended to read as follows:

As used in this chapter and in KRS Chapters 242 and 243, unless the context requires otherwise:

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid, solid, powder, or crystal, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - (d) Flavoring extracts and syrups;
 - (e) Denatured alcohol or denatured rum;
 - (f) Vinegar and preserved sweet cider;
 - (g) Wine for sacramental purposes; and
 - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (3)
 - (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;
 - (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Automobile race track" means a facility primarily used for vehicle racing that has a seating capacity of at least thirty thousand (30,000) people;
- (5) "Bed and breakfast" means a one (1) family dwelling unit that:
 - (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are occupied for sleeping purposes by persons not members of the single-family unit;
 - (b) Holds a permit under KRS Chapter 219; and
 - (c) Has an innkeeper who resides on the premises or property adjacent to the premises during periods of occupancy;
- (6) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (7) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (8) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;
- (9) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or

where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;

- (10) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (11) "Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests;
- (12) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (13) "Cider" means any fermented fruit-based beverage containing seven percent (7%) or more alcohol by volume and includes hard cider and perry cider;
- (14) "City administrator" means city alcoholic beverage control administrator;
- (15) "Commercial airport" means an airport through which more than five hundred thousand (500,000) passengers arrive or depart annually;
- (16) "Commercial quadricycle" means a vehicle equipped with a minimum of ten (10) pairs of fully operative pedals for propulsion by means of human muscular power exclusively and which:
 - (a) Has four (4) wheels;
 - (b) Is operated in a manner similar to that of a bicycle;
 - (c) Is equipped with a minimum of thirteen (13) seats for passengers;
 - (d) Has a unibody design;
 - (e) Is equipped with a minimum of four (4) hydraulically operated brakes;
 - (f) Is used for commercial tour purposes; and
 - (g) Is operated by the vehicle owner or an employee of the owner;
- (17) "Commissioner" means the commissioner of the Department of Alcoholic Beverage Control;
- (18) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (19) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (20) "County administrator" means county alcoholic beverage control administrator;
- (21) "Department" means the Department of Alcoholic Beverage Control;
- (22) "Dining car" means a railroad passenger car that serves meals to consumers on any railroad or Pullman car company;
- (23) "Discount in the usual course of business" means price reductions, rebates, refunds, and discounts given by wholesalers to distilled spirits and wine retailers pursuant to an agreement made at the time of the sale of the merchandise involved and are considered a part of the sales transaction, constituting reductions in price pursuant to the terms of the sale, irrespective of whether the quantity discount was:
 - (a) Prorated and allowed on each delivery;
 - (b) Given in a lump sum after the entire quantity of merchandise purchased had been delivered; or

- (c) Based on dollar volume or on the quantity of merchandise purchased;
- (24) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- (25) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- (26) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;
- (27) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- (28) "Dry" means a territory in which a majority of the electorate voted to prohibit all forms of retail alcohol sales through a local option election held under KRS Chapter 242;
- (29) "Election" means:
- (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
 - (b) Any other election not pertaining to alcohol;
- (30) "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes;
- (31) "Horse racetrack" means a facility licensed to conduct a horse race meeting under KRS Chapter 230;
- (32) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;
- (33) "License" means any license issued pursuant to KRS Chapters 241 to 244;
- (34) "Licensee" means any person to whom a license has been issued, pursuant to KRS Chapters 241 to 244;
- (35) "Limited restaurant" means:
- (a) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross receipts from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a wet or moist territory under KRS 242.1244(2); or
 - (b) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross receipts from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244;
- (36) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and includes weak cider;
- (37) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (38) "Manufacturer" means a winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (39) "Minor" means any person who is not twenty-one (21) years of age or older;
- (40) "Moist" means a territory in which a majority of the electorate voted to permit limited alcohol sales by any one (1) or a combination of special limited local option elections authorized by KRS 242.022, 242.123, 242.1238, 242.124, 242.1242, 242.1243, 242.1244, or 242.1292;

- (41) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- (42) "Private club" means a nonprofit social, fraternal, military, or political organization, club, or entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;
- (43) "Public nuisance" means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;
- (44) "Qualified historic site" means a contributing property with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served. Notwithstanding the provisions of this subsection:
- (a) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; and
 - (b) A not-for-profit or nonprofit facility listed on the National Register of Historic Places;
- shall be deemed a "qualified historic site" under this section;
- (45) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
- (46) "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- (47) "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and beverage receipts from the sale of food;
- (48) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not;
- (49) "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers;
- (50) "Retail sale" means any sale where delivery is made in Kentucky to any consumers;
- (51) "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required;
- (52) "Riverboat" means any boat or vessel with a regular place of mooring in this state that is licensed by the United States Coast Guard to carry one hundred (100) or more passengers for hire on navigable waters in or adjacent to this state;
- (53) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (54) "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited;
- (55) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;

- (56) "Small farm winery" means a winery producing wines, in an amount not to exceed one hundred thousand (100,000) gallons in a calendar year;
- (57) "Souvenir package" means a special package of distilled spirits available from a licensed retailer that is:
- (a) Available for retail sale at a licensed Kentucky distillery where the distilled spirits were produced or bottled; or
 - (b) Available for retail sale at a licensed Kentucky distillery but produced or bottled at another of that distiller's licensed distilleries in Kentucky;
- (58) "State director" means the director of the Division of Distilled Spirits or the director of the Division of Malt Beverages, or both, as the context requires;
- (59) "State park" means a state park that has a:
- (a) Nine (9) or eighteen (18) hole golf course; or
 - (b) Full-service lodge and dining room, and may include a nine (9) or eighteen (18) hole golf course;
- (60) "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures;
- (61) "Territory" means a county, city, district, or precinct;
- (62) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (63) ***"Vintage distilled spirit" means a package or packages of distilled spirits that:***
- (a) Are in their original manufacturer's unopened container;***
 - (b) Are not owned by a distillery; and***
 - (c) Are not otherwise available for purchase from a licensed wholesaler within the Commonwealth;***
- (64) "Warehouse" means any place in which alcoholic beverages are housed or stored;
- ~~(65)~~~~(64)~~ "Weak cider" means any fermented fruit-based beverage containing more than one percent (1%) but less than seven percent (7%) alcohol by volume;
- ~~(66)~~~~(65)~~ "Wet" means a territory in which a majority of the electorate voted to permit all forms of retail alcohol sales by a local option election under KRS 242.050, 242.125, or 242.1292 on the following question: "Are you in favor of the sale of alcoholic beverages in (name of territory)?";
- ~~(67)~~~~(66)~~ "Wholesale sale" means a sale to any person for the purpose of resale;
- ~~(68)~~~~(67)~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;
- ~~(69)~~~~(68)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes sake, cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It does not include weak cider; and
- ~~(70)~~~~(69)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person holding a license to sell distilled spirits by the drink or by the package at retail may sell vintage distilled spirits purchased from a nonlicensed person upon written notice to the department in accordance with administrative regulations promulgated by the department.***

(2) ***Vintage distilled spirits may be resold only:***(a) ***By the drink by a person holding a license to sell distilled spirits by the drink; and***(b) ***By the package by a person holding a license to sell distilled spirits by the package.***

➔Section 3. KRS 243.0305 is amended to read as follows:

- (1) Any licensed Kentucky distiller that is located in wet territory or in any precinct that has authorized the limited sale of alcoholic beverages at distilleries under KRS 242.1243 and that has a gift shop or other retail outlet on its premises may conduct the activities permitted under this section as a part of its distiller's license.
- (2) A wholesaler registered to distribute the brands of any distiller may permit the distiller to deliver a souvenir package directly from the distillery proper to any portion of the distillery premises. However, all direct shipments shall be invoiced from the distiller to the wholesaler and from the wholesaler to the distiller, and all products directly shipped shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.
- (3) A distiller may sell souvenir packages at retail to distillery visitors of legal drinking age, in quantities not to exceed an aggregate of four and one-half (4-1/2) liters per visitor per day.
- (4) Hours of sale for souvenir packages at retail shall be in conformity with KRS 244.290(3).
- (5) Except as provided in this section, souvenir package sales shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.
- (6) No wholesaler may restrict the sale of souvenir packages to the distiller of origin exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package.
- (7) Notwithstanding any provision of KRS 244.050 to the contrary, a distillery holding a sampling license may allow visitors to sample distilled spirits under the following conditions:
 - (a) Sampling shall be permitted only on the licensed premises during regular business hours;
 - (b) A distillery shall not charge for the samples; and
 - (c) A distillery shall not provide more than one and three-fourths (1-3/4) ounces of samples per visitor per day.
- (8) In accordance with this section, a distillery located in wet territory or in any territory that has authorized the limited sale of alcoholic beverages under an election held pursuant to KRS 242.1243 may:
 - (a) Hold an NQ3 retail drink license for the sale of alcoholic beverages on the distillery premises. Notwithstanding KRS 243.110, a licensed distiller may also hold any of the retail licenses available to it under this section;
 - (b) Sell alcoholic beverages produced or bottled on the premises of its Kentucky licensed distillery for on-premises purposes without having to transfer physical possession of those alcoholic beverages to a licensed wholesaler if:
 1. All direct shipments are invoiced from the distiller to its wholesaler and from the wholesaler to the distiller; and
 2. All products directly shipped are included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.890 and 243.990; and
 - (c) Employ persons to engage in the sale or service of alcohol under an NQ3 license, if each employee completes the department's Server Training in Alcohol Regulations program within thirty (30) days of the beginning of his or her employment.
- (9) ***A distiller may sell to consumers at fairs, festivals, and other similar types of events located in wet territory alcoholic beverages by the drink, containing spirits distilled or bottled on the premises of the distillery.***
- (10) Except as expressly stated in this section, this section does not exempt the holder of a distiller's license from:
 - (a) The provisions of KRS Chapters 241 to 244;
 - (b) The administrative regulations of the board; and
 - (c) Regulation by the board at all the distiller's licensed premises.

~~(11)(10)~~ Nothing in this section shall be construed to vitiate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages.

➔Section 4. KRS 243.480 is amended to read as follows:

(1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his or her discretion order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows:

(a) *Except for violations arising from retail sales activities, including sales under licenses issued pursuant to KRS 243.086 and sales at retail under KRS 243.0305:*

1. Distillers, rectifiers, wineries, and brewers, one thousand dollars (\$1,000) per day;
2. Wholesale liquor licensees, four hundred dollars (\$400) per day;
3. Wholesale beer licensees, four hundred dollars (\$400) per day; *and*

(b) 1. Retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink, fifty dollars (\$50) per day;~~and~~

2. *Distillers, wineries, and brewers for violations arising from their retail sales activities, including sales by distillers under licenses issued pursuant to KRS 243.086 and sales at retail under KRS 243.0305, fifty dollars (\$50) per day; and*

(c) All remaining licensees, fifty dollars (\$50) per day.

(2) Payments in lieu of suspension or for board-ordered agency server training, collected on a cost recovery basis, collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.

(3) In addition to or in lieu of a suspension of a license, the board may order a licensee to pay for and require attendance and completion by some or all of the licensee's alcoholic beverage servers in the department's server training program.

(4) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS Chapter 13B.

➔Section 5. KRS 244.370 is amended to read as follows:

No whiskey produced *from grains which are cooked, fermented, and distilled* in Kentucky, except whiskey the barrel containing which is branded "Corn Whiskey" under the internal revenue laws, shall be bottled in Kentucky or removed from this state unless such whiskey has been aged in oak barrels for a period of not less than one (1) full year; provided, however, that whiskey aged less than one (1) year may be removed from the state and bottled, or bottled in Kentucky, if the word "Kentucky" or any word or phrase implying Kentucky origin does not appear on the front label or elsewhere on the retail container or package except in the name and address of the distiller as required by federal regulation. For violations of this section, the department shall revoke the permit of the licensee from whose warehouse or premises such whiskey shall have been removed or in which such whiskey shall have been bottled.

➔Section 6. Sections 1 and 2 of this Act take effect January 1, 2018.

Signed by Governor March 21, 2017.