

CHAPTER 16

(HB 136)

AN ACT relating to microbreweries.

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

➔Section 1. KRS 243.157 is amended to read as follows:

- (1) A microbrewery license shall authorize the licensee to perform the following functions:
- (a) Engage in the business of a brewer under the terms and conditions of KRS 243.150, provided that production of malt beverages at the microbrewery shall not exceed fifty thousand (50,000) barrels in one (1) year;
 - (b) Serve on the premises complimentary samples of malt beverages produced by the microbrewery in amounts not to exceed sixteen (16) ounces per patron, provided the microbrewery is located in wet territory;
 - (c) Sell malt beverages produced on the premises of the microbrewery to licensed distributors;
 - (d) Sell malt beverages produced on the premises of the microbrewery for on- and off-premises purposes in accordance with subsection (3)(b) and (c) of this section, *pursuant to the following*:
 1. *Without restriction on the amount of malt beverages sold by the drink for on-premises consumption; and*
 2. *With a restriction on the amount of malt beverages sold for off-premises consumption, in an aggregate amount not to exceed thirty-one (31) gallons per person per day that shall not include more than three (3) cases in case format; and*
 - (e) Sell:
 1. *Unlimited amounts of malt beverages by the drink; and*
 2. *Not more than one (1) case of packaged malt beverages;*

~~{malt beverages} produced on the premises of the microbrewery to consumers at fairs, festivals, and other similar types of events located in wet territory, in accordance with subsection (3)(b)2. {and 3.} and {subsection (3)}(c)2. {and 3.} of this section. {The cumulative amount of malt beverages purchased by a consumer by the drink and by the package from a microbrewery under this paragraph shall not exceed two hundred eighty-eight (288) ounces per day.}~~
- (2) A microbrewery license shall not be deemed to be incompatible with any other license except for a distributor's license under the provisions of KRS 243.180.
- (3) In accordance with the provisions of this section, a microbrewery license holder may:
- (a) Hold retail drink and package licenses both on and off the premises of the microbrewery. The holder of a microbrewery license is exempt from the provisions of KRS 244.570 and 244.590 as applied to any retail licenses held by the microbrewery license holder, and from any other sections which would restrict the co-ownership of the microbrewery license and any retail licenses described in this section;
 - (b) Sell malt beverages produced on the premises of the microbrewery for on-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided:
 1. The microbrewery possesses a retail drink license for those premises; *and*
 2. ~~{The microbrewery has a written contract with a licensed distributor authorizing the distributor to purchase and distribute the microbrewery's malt beverages to any other retailer; and~~
 3. ~~—~~ *The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3) {provides to the distributor a monthly report of the quantity of malt beverages produced at the microbrewery and*

~~sold at retail at the microbrewery under the provisions of its retail drink license. The report required under this subparagraph shall:~~

- ~~a. Be provided to the distributor on or before the tenth day of the month next succeeding the month in which the malt beverages were produced and sold at the microbrewery; and~~
 - ~~b. Be provided on a form promulgated by the board by administrative regulation. The information provided on the form shall be reported to the Department of Revenue at the time and in the manner required by that department in accordance with its powers under KRS 131.130(3) and any administrative regulation promulgated thereunder.~~
 - ~~Nothing in this subparagraph shall require a distributor to verify the accuracy of the information provided by the microbrewery in its report; and~~
- (c) Sell malt beverages produced on the premises of the microbrewery for off-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided that:
- 1. The microbrewery possesses a retail package license for those premises; *and*
 - 2. ~~{The microbrewery has a written contract with a licensed distributor authorizing the distributor to purchase and distribute the microbrewery's malt beverages to any other retailer; and~~
 - 3. ~~{The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3)} provides to the distributor a monthly report of the quantity of malt beverages produced at the microbrewery under the provisions of its retail package license. The report required under this subparagraph shall:~~
 - ~~a. Be provided to the distributor on or before the tenth day of the month next succeeding the month in which the malt beverages were produced and sold at the microbrewery; and~~
 - ~~b. Be provided on a form promulgated by the board by administrative regulation. The information provided on the form shall be reported to the Department of Revenue at the time and in the manner required by that department in accordance with its powers under KRS 131.130(3) and any administrative regulation promulgated thereunder.~~
 - ~~Nothing in this subparagraph shall require a distributor to verify the accuracy of the information provided by the microbrewery in its report; and~~
 - 4. ~~The amount of malt beverages purchased by a customer during a visit to the microbrewery's premises does not exceed two hundred eighty-eight (288) ounces per customer per day.~~
- (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt beverages that are produced by the microbrewery at its licensed premises and:

- (a) Offered for sale by the microbrewery at that same premises under the microbrewery's retail drink or package license; or
- (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of event as authorized under subsection (1)(e) of this section.

All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor in compliance with all other relevant provisions of KRS Chapters 241 to 244, and a licensed microbrewery shall not otherwise affect sales of malt beverages directly to retail customers except as provided in subsection (3)(b) and (c) of this section.

- (5) (a) A microbrewery selling malt beverages in accordance with subsection (3)(b) and (c) of this section shall *pay* ~~collect and provide the licensed distributor} all **wholesale sales** taxes due under KRS 243.884. {The tax shall be computed at the rate of eleven percent (11%) of the wholesale value of the malt beverages sold by the microbrewery under the provisions of subsection (3)(b) and (c) of this section.} For the purposes of this subsection, "**wholesale sales**" means a sale of malt beverages made by a **microbrewery** {"wholesale value" shall be determined in accordance with the contract required } under subsection (3)(b)~~{2.}~~ and (c)~~{2.}~~ of this section, as applicable.~~
- (b) ~~{The licensed distributor shall be responsible for remitting these amounts to the Commonwealth as provided in KRS 243.884(1). In accordance with KRS 243.886, the licensed distributor shall be allowed~~

~~to deduct one percent (1%) of the tax remitted under this subsection, provided the amount due is not delinquent at the time of payment. Nothing in this subsection shall require the licensed distributor to verify the amount of taxes collected and provided by the microbrewery to be the true and accurate amount which is due according to KRS 243.884; nor shall the distributor be responsible for remittance of taxes due in the event the microbrewery fails to collect and provide the amounts owed under the provisions of this subsection.~~

~~(e)~~ A microbrewery shall pay the excise tax on malt beverages in accordance with KRS 243.720(3) and 243.730 and shall be entitled to the credit set forth in KRS 243.720(3)(b).

- (6) A microbrewery shall not be located in dry or moist territory.
- (7) An employee of a microbrewery may sample the products produced by that microbrewery for purposes of education, quality control, and product development.
- (8) This section does not exempt the holder of a microbrewery license from the provisions of KRS Chapters 241 to 244, nor from any rules of the board as established by administrative regulations, nor from regulation by the board, except as expressly stated in this section. The provisions of this section shall not be deemed inconsistent with the provisions of KRS 244.602.
- (9) Nothing in this section shall be construed to vitiate the policy of this Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly three (3) tier system for the production and sale of malt beverages.

➔Section 2. KRS 243.882 is amended to read as follows:

For the purposes of KRS 243.884 to 243.890:

- (1) **"Distributor" means a person required to be or who is a licensee authorized to do business pursuant to KRS 243.180;**
- (2) **"Microbrewery" means a person required to be or who is a licensee authorized to do business pursuant to Section 1 of this Act;**
- (3) "Wholesale sale" or "sale at wholesale" means:
 - (a) A sale made for the purpose of resale in the regular course of business of beer, wine, or distilled spirits, except as provided in KRS 243.884(3); **or**
 - (b) **A sale of malt beverages made by a microbrewery as authorized by Section 1 of this Act; and** ~~}~~
- ~~(4)~~~~(2)~~ ~~}~~ **"Wholesaler" means**~~is~~ a person required to be or who is a licensee authorized to do business pursuant to KRS 243.160 and 243.170.

~~(3) A "distributor" is a person required to be or who is a licensee authorized to do business pursuant to KRS 243.180.~~

➔Section 3. KRS 243.884 is amended to read as follows:

- (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits, ~~and upon~~ all distributors of beer, **and all microbreweries selling malt beverages under Section 1 of this Act.**
- (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent (11%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth except as provided in subsection (3) of this section. **For the purposes of this section, the gross receipts of a microbrewery making "wholesale sales" shall be calculated by determining the dollar value amount that the microbrewer would have collected had it conveyed to a distributor the same volume sold to a consumer as allowed under subsection (3)(b) and (c) of Section 1 of this Act.**
- (c) On and after July 1, 2015, the following rates shall apply:
 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at wholesale; and
 2. For wine and beer:
 - a. Ten and three-quarters of one percent (10.75%) for wholesale sales or sales at wholesale made on or after July 1, 2015, and before June 1, 2016;

- b. Ten and one-half of one percent (10.5%) for wholesale sales or sales at wholesale made on or after June 1, 2016, and before June 1, 2017;
 - c. Ten and one-quarter of one percent (10.25%) for wholesale sales or sales at wholesale made on or after June 1, 2017, and before June 1, 2018; and
 - d. Ten percent (10%) for wholesale sales or sales at wholesale made on or after June 1, 2018.
- (2) Wholesalers of distilled spirits and wine, ~~and~~ distributors of malt beverages, **and microbreweries** shall pay and report the tax levied by this section on or before the ~~twentieth~~^{twenty} day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine, or malt beverages is transferred from the wholesaler or distributor to retailers, or **by microbreweries to** consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (3) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:
- (a) Sales made between wholesalers or between distributors; and
 - (b) Sales made by a small farm winery or wholesaler of wine produced by a small farm winery, if that small farm winery produces no more than fifty thousand (50,000) gallons of wine per year.

➔Section 4. KRS 243.886 is amended to read as follows:

To reimburse himself for the cost of collecting and reporting the tax, each person required to pay and report the tax levied by KRS 243.884, **other than a microbrewery**, shall deduct on each report one percent (1%) of the tax due, provided the amount due is not delinquent at the time of payment. **A microbrewery that reports and pays the wholesale sales tax levied by Section 3 of this Act in accordance with Section 1 of this Act shall not be entitled to deduct one percent (1%) of the tax due.**

➔Section 5. KRS 211.285 is amended to read as follows:

- (1) There is hereby created the malt beverage educational fund which shall provide moneys on a matching basis for educational information and materials that deter or eliminate underage drinking. The fund shall consist of moneys generated from one percent (1%) of the excise tax collected from the sale and distribution of malt beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected from distributors of malt beverages **and microbreweries** under KRS 243.884.
- (2) The malt beverage educational fund shall be established in the State Treasury as a trust and revolving account under KRS 45.253. Moneys in the account shall be distributed by the State Treasurer to the Malt Beverage Educational Corporation, a nonprofit organization that is organized under the laws of this state, upon the authorization of the secretary of the Cabinet for Health and Family Services. The moneys shall be awarded to the corporation solely to fund educational programs to deter or eliminate underage drinking.
- (3) The secretary of the Cabinet for Health and Family Services shall authorize that moneys from the fund be disbursed to the corporation upon the secretary's receipt of a certification from the corporation showing the moneys the corporation has received from malt beverage distributors, **microbreweries**, and other private sources since the last certification. The moneys disbursed from the fund shall be equal to the contributions that the corporation has received from its members and other private sources during that period. The moneys in the fund shall be disbursed in accordance with a schedule established by the secretary, and shall be disbursed until the moneys in the fund are exhausted or until the moneys in the fund lapse in accordance with subsection (4) of this section, whichever comes first.
- (4) Moneys that are credited to the fund and not issued to the corporation shall lapse at the end of the fiscal year and shall be returned to the general fund.
- (5) As a condition of receiving the governmental funds, the corporation's board of directors shall include the following among its directors:
 - (a) The Governor or his or her designee;
 - (b) The Attorney General or his or her designee;
 - (c) The President of the Senate or his or her designee;
 - (d) The Speaker of the House or his or her designee;
 - (e) The secretary of the Cabinet for Health and Family Services or his or her designee; and

- (f) The commissioner of the Department of Alcoholic Beverage Control or his or her designee.
- (6) All expenditures of moneys from the fund shall be approved by a majority of those persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund are not expended in their entirety, any moneys that remain unused by the corporation at the end of the fiscal year shall be returned to the general fund.
- (7) Any moneys from the fund that are not expended shall be returned to the general fund upon the dissolution of the corporation.
- (8) Any high school in the Commonwealth of Kentucky that was registered with the Department of Education as of July 1, 1997, may make an application to the Malt Beverage Education Corporation by February 28 of each year and shall be granted a minimum of five hundred dollars (\$500) annually from the funds contributed by the malt beverage educational fund for the single purpose of supporting "Project Graduation" events.

Signed by Governor March 16, 2018.