

**244.608 Distribution agreements after June 29, 2021 -- Nonapplicability of KRS 244.602 to 244.606 -- Requirements for distribution agreements between microbrewer and distributor.**

- (1) As of June 29, 2021, KRS 244.602 to 244.606 shall not apply to any new distribution agreement, or the renewal of an existing distribution agreement, between a distributor of malt beverages and a microbrewery. Any existing distribution agreement between a distributor of malt beverages and a microbrewery shall be deemed to renew upon the earlier of January 1, 2022, or the renewal date set forth in that agreement.
- (2) Every distribution agreement providing for and specifying the rights and duties of a microbrewer and distributor with and in regard to the sale of the products of the microbrewer within the Commonwealth of Kentucky shall be in writing. The terms and provisions of the agreement shall comply with and conform to this section.
- (3) A distribution agreement between a microbrewer and a distributor shall not:
  - (a) Require the microbrewer or distributor to agree to renew the distribution agreement at the expiration of a term;
  - (b) Except as set forth in subsection (4) or (9) of this section, permit a microbrewer or distributor to terminate a distribution agreement without first giving written notice of any alleged deficiency and giving the other party a reasonable opportunity to cure the alleged deficiency. For purposes of this paragraph, a reasonable opportunity to cure shall be sixty (60) days from the date a notice of an alleged deficiency is received;
  - (c) Permit the assignment of the distribution agreement, in part or in whole, without first obtaining the consent of the other party, which shall not be unreasonably withheld provided the assignee possesses the financial, technical, and operational skills necessary to perform under the distribution agreement;
  - (d) Permit the microbrewer or distributor to unilaterally amend a distribution agreement, or any document referred to or incorporated by reference in the distribution agreement;
  - (e) Require a microbrewer or distributor to mediate or arbitrate disputes which may arise between them, though nothing shall prohibit the parties from resolving the dispute by retaining an independent mediator or arbitrator while equally sharing the cost; or
  - (f) Prohibit a microbrewer or distributor from litigating in state or federal courts located in Kentucky or from litigating under the laws of the Commonwealth.
- (4) A microbrewer may terminate a distribution agreement according to the terms of the agreement or in any of the following instances:
  - (a) The assignment or attempted assignment by the distributor for the benefit of creditors, the institution of proceedings in bankruptcy by or against the distributor, the dissolution or liquidation of the distributor, the insolvency of the distributor, or the distributor's failure to pay for malt beverages in accordance with law;

- (b) The felony conviction of a distributor, or any of its owners who participate in the distributor's management which, in the sole judgment of the microbrewer, may adversely affect the goodwill or interests of the microbrewer;
  - (c) Fraudulent or discriminatory conduct of the distributor in any of its dealings with a microbrewery or a microbrewer's products;
  - (d) Revocation or suspension for more than thirty-one (31) days of the distributor's federal basic permit or any state or local license required of the distributor for the normal operation of its business;
  - (e) Sale of malt beverages by a distributor outside its sales territory prescribed by the distribution agreement in accordance with KRS 244.585;
  - (f) Without microbrewer consent, the distributor effectuates a change in ownership or possession of ownership interests, establishes a trust or other ownership interest, enters into buy-sell agreements, or grants an option to purchase an ownership interest; provided, however, this right of termination shall not apply to the transfer, creation, sale, gift, or grant of an ownership interest, or option thereon, of a total aggregate of less than ten percent (10%) of the total existing ownership or possession of ownership interest of the distributor or intrafamily transfer; or
  - (g) In the case of a microbrewer whose products represent five percent (5%) or less of a distributor's gross annual sales, the giving of a forty-five (45) day notice of termination and the payment to the distributor of reasonable compensation, which shall be equivalent to the fair market value of the distributor's total investment in the microbrewer's products being terminated. For purposes of this subsection, fair market value shall be calculated based on a multiple of the distributor's gross profits from the sale of the microbrewer's products in the twelve (12) months immediately prior to the date of the microbrewer's written notice of intent to terminate. The fair market valuation shall be based on an arm's length transaction entered into without duress or threat of termination, and shall include all elements of value, including goodwill and going-concern value. If the parties are unable to agree on the fair market valuation, the dispute shall be resolved as provided in KRS 244.609. A microbrewer terminating an agreement under this paragraph may do so not more than once in a thirty-six (36) month period and shall not be deemed to be in violation of subsection (5)(b) of this section.
- (5) A microbrewer or a distributor of malt beverages shall not:
- (a) Unreasonably discriminate or retaliate against the other party in the application or performance of the terms of a distribution agreement;
  - (b) Require or request payment, convey money or other consideration, or accept any sum of money or other consideration in exchange for the right to distribute the product or products of the microbrewer in a designated territory, provided that the following items shall not be prohibited:
    - 1. A microbrewer's request to a distributor to pay or contribute any sum of money for or toward the cost of marketing the product or products of the

microbrewer so long as the money contributed by the distributor is spent by the microbrewer in a manner and at such times as agreed to in writing by the microbrewer and the distributor; and

2. Any payment pursuant to subsection (4)(g) of this section;
  - (c) Unreasonably withhold timely consent to a proposed sale or transfer, in part or whole, of the stock or assets of the microbrewer or distributor, and in no event shall the microbrewer or distributor take more than thirty (30) days to approve or disapprove the proposed sale or transfer after the microbrewer or distributor has received written notice of the proposal and received all requested information to enable the microbrewer or distributor to pass upon the purchaser's or transferee's financial, technical, and operational skills necessary to perform under the distribution agreement; or
  - (d) Fail to give at least thirty (30) days' advance notice of a change in ownership or possession of an ownership interest, whether by sale, transfer, gift, or grant of an option.
- (6) A distributor of malt beverages shall not:
- (a) Refuse to enter into a distribution agreement with a microbrewery, in whole or in part, except for good cause and in good faith; or
  - (b) Continue to distribute the microbrewer's products thirty (30) days after receiving a notice of termination of a distribution agreement. However, any sums owed to the distributor by the microbrewer or another distributor assuming the obligation to distribute the microbrewer's product within the territory encompassed by the terminated distribution agreement shall still be owed.
- (7) A microbrewer shall not enter into a contract with more than one (1) distributor to sell any of its products or brands within the same territory or area at the same time. This subsection shall not apply to contracts entered into prior to January 1, 2004, or future renewals of those contracts to the extent the existing contract and the future renewal allow different distributors to sell some but not all of the brewer's or importer's brands or brand extensions within the same territory or area at the same time.
- (8) A distributor that enters into or renews a distribution agreement with a microbrewer following June 29, 2021, shall maintain physical facilities and personnel so that:
- (a) The product and brand of the microbrewer are reasonably represented in the territory of the distributor for which the distribution agreement applies;
  - (b) The reputation and trade name of the microbrewer are reasonably promoted and protected; and
  - (c) The public is fully serviced.
- (9) A distributor may terminate a distribution agreement according to the terms of the agreement or in any of the following instances:
- (a) The assignment or attempted assignment by the microbrewer for the benefit of creditors, the institution of proceedings in bankruptcy by or against the microbrewer, the dissolution or liquidation of the microbrewer, or the

- insolvency of the microbrewer;
- (b) The felony conviction of a microbrewer, or any of its owners who participate in the microbrewer's management which, in the sole judgment of the distributor, may adversely affect the goodwill or interests of the distributor;
  - (c) Fraudulent or discriminatory conduct of the microbrewer in any of its dealings with a distributor or a distributor's brands;
  - (d) Revocation or suspension for more than thirty-one (31) days of the microbrewer's federal basic permit or any state or local license required of the microbrewer for the normal operation of its business;
  - (e) Without distributor consent, the microbrewer effectuates a change in ownership or possession of ownership interests, establishes a trust or other ownership interest, enters into buy-sell agreements, or grants an option to purchase an ownership interest; provided, however, this right of termination shall not apply to the transfer, creation, sale, gift, or grant of an ownership interest, or option thereon, of a total aggregate of less than ten percent (10%) of the total existing ownership or possession of ownership interest of the microbrewer or intrafamily transfer; or
  - (f) In the case of a microbrewer whose products represent five percent (5%) or less of a distributor's gross annual sales, the giving of a forty-five (45) day notice of termination and payment to the microbrewer of reasonable compensation, which shall be determined to be a sum equal to five (5) times the monthly average of purchases from the microbrewer over the twelve (12) months prior to the termination.
- (10) In the event of a termination of a contract between a microbrewer and a distributor, the microbrewer shall repurchase all of its product still in the distributor's inventory upon return from the distributor, provided that the "best by", "expiration", or other similar printed date is greater than thirty (30) days after the date of the return of the product.
- (11) Any microbrewer or distributor that violates any provision of this section shall pay the injured party all reasonable damages sustained as a result of the microbrewer's or distributor's violations, together with the costs and attorneys' fees incurred by the microbrewer or distributor in protecting its right.

**Effective:** June 29, 2021

**History:** Created 2021 Ky. Acts ch. 34, sec. 2, effective June 29, 2021.