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KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2015 REGULAR SESSION

Amend printed copy of HB 168

On page 1, line 8, delete the word "Each", and insert in lieu thereof, "Except as authorized by Section 2 of this Act, each"; and

On page 1, between lines 25 and 26, insert the following:

"(f) The holder of a brewer's license or microbrewery license may also hold a distributor's license as authorized by Section 2 or Section 3 of this Act."; and

On page 2, after line 5, insert the following:

"➔Section 2. KRS 243.150 is amended to read as follows:

- (1) A brewer's license shall authorize the licensee to engage in the business of a brewer at the premises specifically designated in the license, and to transport for himself only any malt beverage which he is authorized by his license to manufacture or sell, but he shall transport any malt beverages in accordance with the requirements provided by KRS 243.120 for distillers.
- (2) A brewer may sell any malt beverage produced under his license to:
 - (a) A licensed wholesaler from the licensed premises;
 - (b) A retailer, if the brewer also holds a distributor's license, and the brewer is selling the malt beverages under its distributor license as permitted by subsection (4) of this section;

Amendment No. HFA 1

Sponsor: Phillip J. Moffett

Committee Amendment: _____

Signed: _____

Floor Amendment: _____

LC Drafted: Arbuckle, Bryce

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXXX

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- (c) Any of its employees for home consumption; and
- (d)~~(e)~~ Charitable or fraternal organizations holding group meetings, picnics, or outings.
- (3) A brewer may serve on the premises of its brewery complimentary samples of malt beverages produced at the brewery in an amount not to exceed sixteen (16) ounces per patron per day, if the brewery is located in wet territory.
- (4) Notwithstanding KRS 244.602, a brewer may hold a distributor's license solely to distribute malt beverages that the brewer produced in Kentucky under its brewer's license. A brewer that holds both licenses shall be responsible under its distributor's license for paying any taxes imposed by KRS 243.730 and 243.884 for any sales or transfers authorized by this subsection.**
- ➔Section 3. 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 such microbrewery shall not exceed twenty-five thousand (25,000) barrels in one (1) year;
- (b) Serve on the premises complimentary samples of malt beverages produced by such 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; and
- (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.
- (2) A microbrewery license shall not be deemed to be incompatible with any other license except **that, notwithstanding KRS 244.602, the microbrewery may hold**~~for~~ a distributor's

license solely to distribute malt beverages that the microbrewery produced in Kentucky under its microbrewery license. A microbrewery that holds both a microbrewery license and a distributor license shall be responsible under its distributor's license for paying any taxes imposed by KRS 243.730 and 243.884 for any sales or transfers authorized by this subsection[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;
 - 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 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;
 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 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:
- (a) Produced by the microbrewery at its licensed premises; and
 - (b) Offered for sale by the microbrewery at that same premises under the microbrewery's retail drink or package license.

All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor **or passed through the microbrewery's own distribution center under its distributor license as authorized in subsection (2) of this section** in compliance with all other relevant provisions of KRS Chapters 241, 242, 243, and 244, and a licensed microbrewery shall not otherwise affect sales of malt beverages directly to retail customers except as provided in **subsection (2) and** 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 collect and provide the licensed distributor all 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 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.

- (c) 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 territory.
- (7) This section does not exempt the holder of a microbrewery license from the provisions of KRS Chapters 241, 242, 243, and 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.
- (8) **Except as described in subsection (2) of this section,** 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 4. KRS 244.606 is amended to read as follows:

- (1) Every brewer and importer of malt beverages shall contract and agree in writing with each of its distributors to provide and specify the rights and duties of the brewer, the importer, and the distributor with and in regard to the sale of the products of the brewer or the

importer within the Commonwealth of Kentucky. The terms and provisions of the contracts shall comply with and conform to KRS 244.602 to 244.606 and to all other applicable statutes.

- (2) If a particular brand or brands of malt beverage are transferred by purchase or otherwise from a brewer or importer, the successor brewer or importer, and the successor brewer's or importer's designee, shall comply with the following:
 - (a) The successor brewer or importer shall notify the existing distributor of the successor's intent not to appoint the existing distributor for all or a part of the existing distributor's territory for the product. The successor shall mail the notice of termination by certified mail, return receipt requested, to the existing distributor. The successor shall include in the notice the names, addresses, and telephone numbers of the successor's designees;
 - (b) A successor's designee shall negotiate with the existing distributor to determine the fair market value of the existing distributor's right to distribute the product in the existing distributor's territory immediately before the successor acquired rights to the particular brand or brands of malt beverage. For the purposes of this paragraph, fair market value shall be the value that would be determined in an arm's length transaction entered into without duress or threat of termination of the existing distributor's right and shall include all elements of value, including goodwill and going-concern value;
 - (c) The existing distributor shall continue to distribute the product until payment of the compensation agreed to under paragraph (b) of this subsection or awarded under paragraph (d) of this subsection is received;
 - (d) The successor's designee and the existing distributor shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing

distributor receives the notice under paragraph (a) of this subsection, the successor's designee or the existing distributor may send a written notice to the other party and the American Arbitration Association, or its successor in interest, declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules. Thereafter, an arbitration shall be held for the purpose of determining the fair market value of the existing distributor's right to distribute the product in the existing distributor's territory immediately before the successor acquired rights to the particular brand or brands of malt beverage. For the purpose of this paragraph, fair market value shall be the value that would be determined in an arm's length transaction entered into without duress or threat of termination of the existing distributor's right and shall include all elements of value, including goodwill and going-concern value;

- (e) Notice of intent to arbitrate shall be sent, as provided in paragraph (d) of this subsection, not later than thirty-five (35) days after the existing distributor receives notice under paragraph (a) of this subsection. The arbitration proceeding shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party;
- (f) Any arbitration held pursuant to this subsection shall be conducted in the city within Kentucky that:
 - 1. Is closest to the existing distributor; and
 - 2. Has a population of more than twenty thousand (20,000);
- (g) Any arbitration held pursuant to this subsection shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the

American Arbitration Association;

- (h) An arbitrator's award in any arbitration held pursuant to this subsection shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this subsection shall be instead of all other remedies and procedures;
- (i) The cost of the arbitrator and any other direct costs of any arbitration held pursuant to this subsection shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them;
- (j) The arbitrator in any arbitration held pursuant to this subsection shall render a decision not later than thirty (30) days after the conclusion of the arbitration, unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator;
- (k) A party who fails to participate in the arbitration hearings in any arbitration held pursuant to this subsection waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator;
- (l) If the existing distributor does not receive payment from the successor's designee of the compensation under paragraph (b) or (d) of this subsection not later than thirty (30) days after the date of the settlement or arbitration award:
 - 1. The existing distributor shall remain the distributor of the product in the existing distributor's territory to at least the same extent that the existing distributor distributed the product immediately before the successor's designee acquired rights to the product; and
 - 2. The existing distributor is not entitled to the settlement or arbitration award;
- (m) Nothing in this section shall be construed to limit or prohibit good-faith settlements voluntarily entered into by the parties; and

- (n) Nothing in this section shall be construed to give the existing distributor or a successor's designee any right to compensation if the existing distributor or successor's designee is terminated by a brewer or importer pursuant to subsection (4) of this section.
- (3) The terms or provisions of any contract or agreement among any brewers, importers, or distributors, including contracts or agreements entered into after July 13, 2004, and any renewals or extensions of contracts existing prior to July 13, 2004, shall not permit a brewer or importer of malt beverages to, nor may any brewer or importer:
- (a) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor, except for good cause and in good faith;
 - (b) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor without first giving the distributor written notice of any alleged deficiency on the part of the distributor and giving the distributor a reasonable opportunity of sixty (60) to one hundred twenty (120) days to cure the alleged deficiency;
 - (c) Unreasonably withhold timely consent to a proposed sale or transfer, in part or whole, of the stock or assets of the distributor, and in no event shall the brewer take more than thirty (30) days to approve or disapprove the proposed sale or transfer after the brewer has received written notice of the proposal from the distributor and received all requested information from the distributor to enable the brewer to pass upon the proposed sale or transfer;
 - (d) Assign an agreement, in part or in whole, with a distributor, except with consent from the distributor which shall not be unreasonably withheld. No consent is required where the distributor has proposed to transfer an ownership interest in its business and the brewer exercises its right to purchase this ownership interest in accordance

with a written agreement between the brewer and distributor, subject to the brewer or its designee purchasing the ownership interest at the price and on the conditions applicable to the proposed change.

- (e) Enter into a contract with more than one (1) distributor to sell any of its products or brand within the same territory or area at the same time. This paragraph shall not apply to contracts entered into prior to January 1, 2004, or future renewals of such contracts, to the extent the existing contract and the future renewal allow different distributors to sell certain but not all of the brewer's or importer's brands or brand extensions within the same territory or area at the same time;
- (f) Unilaterally amend its agreement, or any document referred to or incorporated by reference in its agreement, with any distributor, except modifications contemplated by the brewer-distributor agreement which modifications occur after written notice to the distributor or amendments that occur by a brewer after having consulted with an advisory panel of distributors;
- (g) Terminate an agreement with a distributor because the distributor refuses or fails to accept an unreasonable amendment to the agreement proposed by the brewer or importer;
- (h) Require a distributor to arbitrate disputes which may arise between it and the brewer or the importer;
- (i) Preclude a distributor from litigating in state or federal courts located in Kentucky or from litigating under the laws of the Commonwealth;
- (j) Unreasonably discriminate or retaliate against its distributor in the application of the terms of a written agreement;
- (k) Unreasonably fail to consent to the distributor's designation of an individual as the distributor's manager or successor-manager in accordance with nondiscriminatory and

- reasonable qualifications and standards; or
- (1) Withdraw approval of an individual as the distributor's manager or successor-manager without just cause.
- (4) Notwithstanding the provisions in subsection (3) of this section, a brewer or importer of malt beverages may terminate an agreement with a distributor if any of the following occur:
- (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 the agreed terms;
 - (b) Failure of any owner of the distributor to sell his or her ownership interest within one hundred twenty (120) days after the later of the owner having been convicted of a felony which, in the sole judgment of the brewer, may adversely affect the goodwill or interests of the distributor or the brewer, or the brewer learns of the conviction;
 - (c) Fraudulent conduct of the distributor in any of its dealings with the brewer or the brewer'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 brewer in accordance with KRS 244.585; or
 - (f) Without brewer consent, the distributor engaging in changes in ownership or possession of ownership interests, the establishment of trusts or other ownership interest, entering into buy-sell agreements, or granting an option to purchase an ownership interest.
- (5) During the term of a contract or agreement between the brewer or importer and a

distributor, including contracts or agreements in existence prior to July 13, 2004, the distributor shall, in accordance with the provisions of such contract or agreement, maintain physical facilities and personnel so that the product and brand of the brewer or importer are properly represented in the territory of the distributor, the reputation and trade name of the brewer or importer are reasonably protected, and the public is serviced. The brewer, importer, and distributor shall act in good faith at all times during the term of the contract or agreement.

- (6) Any brewer, importer, or distributor who violates any provision of this section shall pay the injured brewer, importer, or distributor all reasonable damages sustained by it as a result of the brewer's, importer's, or distributor's violations, together with the costs and attorney's fees incurred by the brewer, importer, or distributor in protecting its right. If a brewer or importer violates subsection (3)(a), (b), or (g) of this section, the injured distributor's reasonable damages shall be the fair market value of the distributor's business. In determining the fair market value of the distributor's business, proper and full consideration shall be given to all elements of value, including goodwill and going-concern value.

(7) (a) After the effective date of this Act, a brewer and its existing distributor shall follow and be bound by the same procedures as those established in subsection (2) of this section for a successor brewer or importer and its existing distributor, if the brewer:

- 1. Has acquired a distributor's license as authorized by Section 2 of this Act solely to distribute malt beverages that the brewer produced in Kentucky under its brewer's license; and**
- 2. Does not intend to appoint the existing distributor for all or a part of the existing distributor's territory for the brewer's products produced in Kentucky.**

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(b) For purposes of applying subsection (2) to this subsection, "successor's designee" means the brewer acting under its distributor's license."