

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2018 REGULAR SESSION
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Amend printed copy of **HB 400/GA**

On page 17, after line 17, insert the following:

"➔Section 12. KRS 241.065 is amended to read as follows:

- (1) The number of quota retail package licenses issued by the Alcoholic Beverage Control Board to licensees in counties containing cities of the first class, and including such cities, shall not exceed a number equal to one (1) for every one thousand five hundred (1,500) persons resident in such county.
- (2) ~~The number of quota retail drink licenses issued by the Alcoholic Beverage Control Board to licensees in counties containing cities of the first class, and including such cities shall not exceed a number equal to one (1) for every one thousand five hundred (1,500) persons resident in such county.~~
- (3) ~~In order that a fixed and approved standard of population as prescribed in subsection ~~subsections~~ (1) ~~and (2)~~ of this section may be adopted the annual estimates of population as determined by the Kentucky State Data Center at the University of Louisville ~~chambers of commerce of cities of the first class~~ shall be used in every year except a census year, and during a census year the United States government census figures of population shall be controlling.~~

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO READ AS FOLLOWS:

Amendment No. _____

Rep. Sen. Robert Stivers II

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Newlett, Tom

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

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- (1) The number of quota retail package licenses issued by the department in any wet county shall not exceed one (1) license for every two thousand three hundred (2,300) persons resident in the county, except that:
- (a) A wet county containing a city of the first class shall be subject to the limitations in Section 12 of this Act;
- (b) No fewer than two (2) quota retail package licenses shall be available for issuance by the department in any wet county; and
- (c) Any specific county quota amounts that were issued by the department prior to January 1, 2018, in excess of the population calculations established in this section shall remain in effect, and the department shall maintain the list of specific quotas in an administrative regulation.
- (2) Nothing in this section shall be construed to prohibit license renewal or license transfers approved by the department of an existing quota retail license issued in a wet county.
- (3) In counties that have not received an increased quota license amount from the department, any quota licenses over the established amount shall be reduced as the licenses are revoked, surrendered, or not renewed by the license holder.
- (4) If a dry county that contains a wet city becomes wet, the quota established by this section shall supersede and replace any separate city quota.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO READ AS FOLLOWS:

- (1) The number of quota retail package licenses issued by the department in any city that becomes wet separate from its county by virtue of a local option election pursuant to KRS 242.125 shall not exceed one (1) license for every two thousand three hundred (2,300) persons resident in the city, except that:
- (a) No fewer than two (2) quota retail package licenses shall be available for issuance

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by the department in any wet city; and

(b) Any specific city quota amounts that were issued by the department prior to January 1, 2018, in excess of the population calculations established in this section shall remain in effect, and the department shall maintain the list of specific quotas in an administrative regulation.

(2) Nothing in this section shall be construed to prohibit license renewal or license transfers approved by the department of an existing quota retail license issued in a wet city.

(3) In cities that have not received an increased quota license amount from the department, any quota licenses over the established amount shall be reduced as the licenses are revoked, surrendered, or not renewed by the license holder.

(4) If a dry county in which a wet city is located becomes wet, the quota established for that entire county by Section 13 of this Act shall supersede and replace any separate city quota under this section.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO READ AS FOLLOWS:

For the purposes of administering Sections 13 and 14 of this Act:

(1) The population data shall be based on a wet county's or city's annual population estimates prepared by the Kentucky State Data Center at the University of Louisville in every year except a federal decennial census year. The federal decennial census figures of population shall be used in a census year; and

(2) (a) On or before January 1 of each year, the department shall obtain the population figures of all wet counties and cities as of that date for determination of the number of quota licenses available.

(b) If a quota retail license vacancy is created by an increase in population or any other reason, the department shall publish notice of the vacancy and information

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on how to apply for the license within sixty (60) days in the newspaper used for the legal notices of that county or city.

(c) The department shall accept applications for a quota retail license vacancy not later than thirty (30) days following the date on which the public notice is published.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO READ AS FOLLOWS:

(1) A city may petition the board for an increase in the number of quota licenses available in its jurisdiction pursuant to Section 17 of this Act. A request for an increase shall not exceed the ratio of one (1) per every one thousand five hundred (1,500) residents.

(2) The board shall consider the following factors when deciding whether to grant the increase:

(a) Population served by the city;

(b) Total retail sales of the city for the most recent past fiscal year;

(c) Retail sales per capita for the most recent past fiscal year;

(d) Total alcohol sales in the city for the most recent past fiscal year;

(e) Tourist destinations in the area, if applicable; and

(f) Other economic and commercial data offered to show the capacity to support additional licenses.

(3) The board shall grant the request if the information supplied supports the requested increase, and shall begin the process of filing an amendment to its administrative regulation to register the increase. Additional licenses shall not be issued until the administrative regulation process is complete and the amendment is adopted.

(4) If the board determines the information supplied does not support a quota increase, it shall notify the city of its decision by registered mail at the address given in the request.

The city shall have thirty (30) days from the date of the mailing to file a written request for a hearing before the board regarding its request for an increase.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

- (1) A city shall not file a request with the board seeking to increase the number of quota retail licenses for the city unless at least three (3) years have passed since the certification of its local option election approving alcohol sales.**
- (2) Prior to making its request, the city shall publish a notice in the newspaper used for its legal notices, advising the general public of the city's intent to request additional licenses from the board.**
- (3) The request to the board for a quota increase shall include:**
 - (a) A certified copy of the governing body's resolution approving the request;**
 - (b) A certified copy of the notice referenced in subsection (2) of this section; and**
 - (c) An explanation as to the reason the city meets the criteria established in Section 16 of this Act for a quota increase.**
- (4) The city shall bear the burden of showing an increase is necessary.**
- (5) A city shall not petition the board for an increase more than once every three (3) years.**

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

A quota retail package licensee assumes the business risk that the number of quota licenses available in a city or county may be increased at a later time.

➔Section 19. 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

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- 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, *without restriction on the amount of malt beverages sold by the drink for on-premises consumption or the amount of malt beverages sold for off-premises consumption*; and
 - (e) Sell 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;

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- (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;

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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 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.

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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 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 or moist territory.

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- (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."; and
- Renumber subsequent sections.