

1 AN ACT relating to microbreweries.

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

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

4 (1) A microbrewery license shall authorize the licensee to perform the following
5 functions:

6 (a) Engage in the business of a brewer under the terms and conditions of KRS
7 243.150, provided that production of malt beverages at the microbrewery shall
8 not exceed fifty thousand (50,000) barrels in one (1) year;

9 (b) Serve on the premises complimentary samples of malt beverages produced by
10 the microbrewery in amounts not to exceed sixteen (16) ounces per patron,
11 provided the microbrewery is located in wet territory;

12 (c) Sell malt beverages produced on the premises of the microbrewery to licensed
13 distributors;

14 (d) Sell malt beverages produced on the premises of the microbrewery for on- and
15 off-premises purposes in accordance with subsection (3)(b) and (c) of this
16 section; and

17 (e) Sell malt beverages produced on the premises of the microbrewery to
18 consumers at fairs, festivals, and other similar types of events located in wet
19 territory, in accordance with subsection (3)(b)2.~~and 3.~~ and ~~subsection~~
20 ~~(3)(c)2. and 3.~~ of this section. ~~The cumulative amount of malt beverages~~
21 ~~purchased by a consumer by the drink and by the package from a~~
22 ~~microbrewery under this paragraph shall not exceed two hundred eighty eight~~
23 ~~(288) ounces per day.~~

24 (2) A microbrewery license shall not be deemed to be incompatible with any other
25 license except for a distributor's license under the provisions of KRS 243.180.

26 (3) In accordance with the provisions of this section, a microbrewery license holder
27 may:

- 1 (a) Hold retail drink and package licenses both on and off the premises of the
 2 microbrewery. The holder of a microbrewery license is exempt from the
 3 provisions of KRS 244.570 and 244.590 as applied to any retail licenses held
 4 by the microbrewery license holder, and from any other sections which would
 5 restrict the co-ownership of the microbrewery license and any retail licenses
 6 described in this section;
- 7 (b) Sell malt beverages produced on the premises of the microbrewery ***directly to***
 8 ***consumers*** for on-premises purposes without having to transfer physical
 9 possession of those malt beverages to a licensed distributor provided:
- 10 1. The microbrewery possesses a retail drink license for those premises; ***and***
 - 11 2. ~~1. The microbrewery has a written contract with a licensed distributor~~
 12 ~~authorizing the distributor to purchase and distribute the microbrewery's~~
 13 ~~malt beverages to any other retailer; and~~
 - 14 3. ~~2. The microbrewery~~ ***reports and pays all taxes required by subsection***
 15 ***(5)(a) and (b) of this section to the Department of Revenue at the time***
 16 ***and in the manner required by the Department of Revenue in***
 17 ***accordance with its powers under KRS 131.130(3)*** ~~provides to the~~
 18 ~~distributor a monthly report of the quantity of malt beverages produced~~
 19 ~~at the microbrewery and sold at retail at the microbrewery under the~~
 20 ~~provisions of its retail drink license. The report required under this~~
 21 ~~subparagraph shall:~~
- 22 a. ~~Be provided to the distributor on or before the tenth day of the month~~
 23 ~~next succeeding the month in which the malt beverages were produced~~
 24 ~~and sold at the microbrewery; and~~
 - 25 b. ~~Be provided on a form promulgated by the board by administrative~~
 26 ~~regulation. The information provided on the form shall be reported to the~~
 27 ~~Department of Revenue at the time and in the manner required by that~~

1 ~~department in accordance with its powers under KRS 131.130(3) and~~
 2 ~~any administrative regulation promulgated thereunder.~~

3 ~~Nothing in this subparagraph shall require a distributor to verify the~~
 4 ~~accuracy of the information provided by the microbrewery in its report];~~
 5 ~~and~~

6 (c) Sell malt beverages produced on the premises of the microbrewery ***directly to***
 7 ***consumers*** for off-premises purposes without having to transfer physical
 8 possession of those malt beverages to a licensed distributor provided that:

9 1. The microbrewery possesses a retail package license for those premises;

10 ***and***

11 2. ~~[The microbrewery has a written contract with a licensed distributor~~
 12 ~~authorizing the distributor to purchase and distribute the microbrewery's~~
 13 ~~malt beverages to any other retailer; and~~

14 3. ~~[The microbrewery ***reports and pays all taxes required by subsection***~~
 15 ~~***(5)(a) and (b) of this section to the Department of Revenue at the time***~~
 16 ~~***and in the manner required by the Department of Revenue in***~~
 17 ~~***accordance with its powers under KRS 131.130(3)***]~~ provides to the

18 distributor a monthly report of the quantity of malt beverages produced
 19 at the microbrewery under the provisions of its retail package license.

20 ~~The report required under this subparagraph shall:~~

21 a. ~~Be provided to the distributor on or before the tenth day of the~~
 22 ~~month next succeeding the month in which the malt beverages were~~
 23 ~~produced and sold at the microbrewery; and~~

24 b. ~~Be provided on a form promulgated by the board by administrative~~
 25 ~~regulation. The information provided on the form shall be reported~~
 26 ~~to the Department of Revenue at the time and in the manner~~
 27 ~~required by that department in accordance with its powers under~~

1 ~~KRS 131.130(3) and any administrative regulation promulgated~~
 2 ~~thereunder.~~

3 ~~— Nothing in this subparagraph shall require a distributor to verify the~~
 4 ~~accuracy of the information provided by the microbrewery in its report;~~
 5 ~~and~~

6 ~~4. — The amount of malt beverages purchased by a customer during a visit to~~
 7 ~~the microbrewery's premises does not exceed two hundred eighty eight~~
 8 ~~(288) ounces per customer per day].~~

9 (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt
 10 beverages that are produced by the microbrewery at its licensed premises and:

11 (a) Offered for sale by the microbrewery at that same premises under the
 12 microbrewery's retail drink or package license; or

13 (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of
 14 event as authorized under subsection (1)(e) of this section.

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

20 (5) (a) A microbrewery selling malt beverages ***directly to consumers*** in accordance
 21 with subsection (3)(b) and (c) of this section shall ***pay*** ~~collect and provide the~~
 22 ~~licensed distributor]~~ all ***wholesale sales*** taxes due under KRS 243.884. ~~[The~~
 23 ~~tax shall be computed at the rate of eleven percent (11%) of the wholesale~~
 24 ~~value of the malt beverages sold by the microbrewery under the provisions of~~
 25 ~~subsection (3)(b) and (c) of this section.]~~ For the purposes of this subsection,
 26 ***"wholesale sales" means a sale of malt beverages made by a microbrewery***
 27 ***directly to consumers*** ~~["wholesale value" shall be determined in accordance~~

1 ~~with the contract required]~~under subsection (3)(b)~~[2.]~~ and (c)~~[2.]~~ of this
2 section, as applicable.

3 (b) ~~[The licensed distributor shall be responsible for remitting these amounts to the~~
4 ~~Commonwealth as provided in KRS 243.884(1). In accordance with KRS~~
5 ~~243.886, the licensed distributor shall be allowed to deduct one percent (1%)~~
6 ~~of the tax remitted under this subsection, provided the amount due is not~~
7 ~~delinquent at the time of payment. Nothing in this subsection shall require the~~
8 ~~licensed distributor to verify the amount of taxes collected and provided by the~~
9 ~~microbrewery to be the true and accurate amount which is due according to~~
10 ~~KRS 243.884; nor shall the distributor be responsible for remittance of taxes~~
11 ~~due in the event the microbrewery fails to collect and provide the amounts~~
12 ~~owed under the provisions of this subsection.~~

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

16 (6) A microbrewery shall not be located in dry or moist territory.

17 (7) An employee of a microbrewery may sample the products produced by that
18 microbrewery for purposes of education, quality control, and product development.

19 (8) This section does not exempt the holder of a microbrewery license from the
20 provisions of KRS Chapters 241 to 244, nor from any rules of the board as
21 established by administrative regulations, nor from regulation by the board, except as
22 expressly stated in this section. The provisions of this section shall not be deemed
23 inconsistent with the provisions of KRS 244.602.

24 (9) Nothing in this section shall be construed to vitiate the policy of this
25 Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly
26 three (3) tier system for the production and sale of malt beverages.

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

1 For the purposes of KRS 243.884 to 243.890:

2 (1) **"Distributor" means a person required to be or who is a licensee authorized to do**
 3 **business pursuant to KRS 243.180;**

4 (2) **"Microbrewery" means a person required to be or who is a licensee authorized to**
 5 **do business pursuant to Section 1 of this Act;**

6 (3) "Wholesale sale" or "sale at wholesale" means:

7 (a) A sale made for the purpose of resale in the regular course of business of beer,
 8 wine, or distilled spirits, except as provided in KRS 243.884(3); **or**

9 (b) **A sale of malt beverages made by a microbrewery directly to consumers as**
 10 **authorized by Section 1 of this Act; and**[-]

11 (4)[-](2) [-] "Wholesaler" **means**[is] a person required to be or who is a licensee
 12 authorized to do business pursuant to KRS 243.160 and 243.170.

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

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

16 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
 17 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine
 18 and distilled spirits, ~~[-and upon]~~ all distributors of beer, **and all microbreweries**
 19 **selling malt beverages directly to consumers under Section 1 of this Act.**

20 (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent
 21 (11%) of the gross receipts of any such wholesaler or distributor derived from
 22 "sales at wholesale" or "wholesale sales" made within the Commonwealth
 23 except as provided in subsection (3) of this section.

24 (c) On and after July 1, 2015, the following rates shall apply:

25 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at
 26 wholesale; and

27 2. For wine and beer:

- 1 a. Ten and three-quarters of one percent (10.75%) for wholesale sales
2 or sales at wholesale made on or after July 1, 2015, and before
3 June 1, 2016;
- 4 b. Ten and one-half of one percent (10.5%) for wholesale sales or
5 sales at wholesale made on or after June 1, 2016, and before June
6 1, 2017;
- 7 c. Ten and one-quarter of one percent (10.25%) for wholesale sales
8 or sales at wholesale made on or after June 1, 2017, and before
9 June 1, 2018; and
- 10 d. Ten percent (10%) for wholesale sales or sales at wholesale made
11 on or after June 1, 2018.

12 (2) Wholesalers of distilled spirits and wine, ~~and~~ distributors of malt beverages, and
13 microbreweries shall pay and report the tax levied by this section on or before the
14 twentieth ~~20th~~ day of the calendar month next succeeding the month in which
15 possession or title of the distilled spirits, wine, or malt beverages is transferred from
16 the wholesaler or distributor to retailers, or by microbreweries to consumers in this
17 state, in accordance with rules and regulations of the Department of Revenue
18 designed reasonably to protect the revenues of the Commonwealth.

19 (3) Gross receipts from sales at wholesale or wholesale sales shall not include the
20 following sales:

- 21 (a) Sales made between wholesalers or between distributors; and
- 22 (b) Sales made by a small farm winery or wholesaler of wine produced by a small
23 farm winery, if that small farm winery produces no more than fifty thousand
24 (50,000) gallons of wine per year.

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

26 To reimburse himself for the cost of collecting and reporting the tax, each person required
27 to pay and report the tax levied by KRS 243.884, other than a microbrewery, shall

1 deduct on each report one percent (1%) of the tax due, provided the amount due is not
2 delinquent at the time of payment. **A microbrewery that reports and pays the wholesale**
3 **sales tax levied by Section 3 of this Act in accordance with Section 1 of this Act shall**
4 **not be entitled to deduct one percent (1%) of the tax due.**

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

- 6 (1) There is hereby created the malt beverage educational fund which shall provide
7 moneys on a matching basis for educational information and materials that deter or
8 eliminate underage drinking. The fund shall consist of moneys generated from one
9 percent (1%) of the excise tax collected from the sale and distribution of malt
10 beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected
11 from distributors of malt beverages **and microbreweries** under KRS 243.884.
- 12 (2) The malt beverage educational fund shall be established in the State Treasury as a
13 trust and revolving account under KRS 45.253. Moneys in the account shall be
14 distributed by the State Treasurer to the Malt Beverage Educational Corporation, a
15 nonprofit organization that is organized under the laws of this state, upon the
16 authorization of the secretary of the Cabinet for Health and Family Services. The
17 moneys shall be awarded to the corporation solely to fund educational programs to
18 deter or eliminate underage drinking.
- 19 (3) The secretary of the Cabinet for Health and Family Services shall authorize that
20 moneys from the fund be disbursed to the corporation upon the secretary's receipt of
21 a certification from the corporation showing the moneys the corporation has
22 received from malt beverage distributors, **microbreweries**, and other private sources
23 since the last certification. The moneys disbursed from the fund shall be equal to the
24 contributions that the corporation has received from its members and other private
25 sources during that period. The moneys in the fund shall be disbursed in accordance
26 with a schedule established by the secretary, and shall be disbursed until the moneys
27 in the fund are exhausted or until the moneys in the fund lapse in accordance with

- 1 subsection (4) of this section, whichever comes first.
- 2 (4) Moneys that are credited to the fund and not issued to the corporation shall lapse at
3 the end of the fiscal year and shall be returned to the general fund.
- 4 (5) As a condition of receiving the governmental funds, the corporation's board of
5 directors shall include the following among its directors:
- 6 (a) The Governor or his or her designee;
- 7 (b) The Attorney General or his or her designee;
- 8 (c) The President of the Senate or his or her designee;
- 9 (d) The Speaker of the House or his or her designee;
- 10 (e) The secretary of the Cabinet for Health and Family Services or his or her
11 designee; and
- 12 (f) The commissioner of the Department of Alcoholic Beverage Control or his or
13 her designee.
- 14 (6) All expenditures of moneys from the fund shall be approved by a majority of those
15 persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund
16 are not expended in their entirety, any moneys that remain unused by the corporation
17 at the end of the fiscal year shall be returned to the general fund.
- 18 (7) Any moneys from the fund that are not expended shall be returned to the general
19 fund upon the dissolution of the corporation.
- 20 (8) Any high school in the Commonwealth of Kentucky that was registered with the
21 Department of Education as of July 1, 1997, may make an application to the Malt
22 Beverage Education Corporation by February 28 of each year and shall be granted a
23 minimum of five hundred dollars (\$500) annually from the funds contributed by the
24 malt beverage educational fund for the single purpose of supporting "Project
25 Graduation" events.