

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 ~~(4)(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 ~~(4)(3)~~(b)2. and 3. and subsection
20 ~~(4)(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 licensee, however, shall not be permitted to ship or deliver malt**
25 **beverages directly to a customer's residence or place of business from:**

26 **(a) The premises of the microbrewery where sales are authorized by subsection**
27 **(1)(d) of this section; or**

1 **(b) The area of a fair, festival, or similar type of event where sales are**
2 **authorized by subsection (1)(e) of this section.**

3 ~~(3)~~~~(2)~~ A microbrewery license shall not be deemed to be incompatible with any other
4 license except for a distributor's license under the provisions of KRS 243.180.

5 ~~(4)~~~~(3)~~ In accordance with the provisions of this section, a microbrewery license
6 holder may:

7 (a) Hold retail drink and package licenses both on and off the premises of the
8 microbrewery. The holder of a microbrewery license is exempt from the
9 provisions of KRS 244.570 and 244.590 as applied to any retail licenses held
10 by the microbrewery license holder, and from any other sections which would
11 restrict the co-ownership of the microbrewery license and any retail licenses
12 described in this section;

13 (b) Sell malt beverages produced on the premises of the microbrewery for on-
14 premises purposes without having to transfer physical possession of those
15 malt beverages to a licensed distributor provided:

- 16 1. The microbrewery possesses a retail drink license for those premises;
- 17 2. The microbrewery has a written contract with a licensed distributor
18 authorizing the distributor to purchase and distribute the microbrewery's
19 malt beverages to any other retailer; and
- 20 3. The microbrewery provides to the distributor a monthly report of the
21 quantity of malt beverages produced at the microbrewery and sold at
22 retail at the microbrewery under the provisions of its retail drink license.

23 The report required under this subparagraph shall:

- 24 a. Be provided to the distributor on or before the tenth day of the
25 month next succeeding the month in which the malt beverages
26 were produced and sold at the microbrewery; and
- 27 b. Be provided on a form promulgated by the board by administrative

1 regulation. The information provided on the form shall be reported
2 to the Department of Revenue at the time and in the manner
3 required by that department in accordance with its powers under
4 KRS 131.130(3) and any administrative regulation promulgated
5 thereunder.

6 Nothing in this subparagraph shall require a distributor to verify the
7 accuracy of the information provided by the microbrewery in its report;
8 and

9 (c) Sell malt beverages produced on the premises of the microbrewery for off-
10 premises purposes without having to transfer physical possession of those
11 malt beverages to a licensed distributor provided that:

12 1. The microbrewery possesses a retail package license for those premises;
13 2. The microbrewery has a written contract with a licensed distributor
14 authorizing the distributor to purchase and distribute the microbrewery's
15 malt beverages to any other retailer; and

16 3. The microbrewery provides to the distributor a monthly report of the
17 quantity of malt beverages produced at the microbrewery under the
18 provisions of its retail package license. The report required under this
19 subparagraph shall:

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

23 b. Be provided on a form promulgated by the board by administrative
24 regulation. The information provided on the form shall be reported
25 to the Department of Revenue at the time and in the manner
26 required by that department in accordance with its powers under
27 KRS 131.130(3) and any administrative regulation promulgated

1 thereunder.

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

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

8 ~~(5)~~~~(4)~~ The provisions of subsection ~~(4)~~~~(3)~~(b) and (c) of this section shall apply only
9 to malt beverages that are produced by the microbrewery at its licensed premises
10 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 ~~(4)~~~~(3)~~(b) and (c) of this section.

20 ~~(6)~~~~(5)~~ (a) A microbrewery selling malt beverages in accordance with subsection
21 ~~(4)~~~~(3)~~(b) and (c) of this section shall collect and provide the licensed
22 distributor all taxes due under KRS 243.884. The tax shall be computed at the
23 rate of eleven percent (11%) of the wholesale value of the malt beverages sold
24 by the microbrewery under the provisions of subsection ~~(4)~~~~(3)~~(b) and (c) of
25 this section. For the purposes of this subsection "wholesale value" shall be
26 determined in accordance with the contract required under subsection
27 ~~(4)~~~~(3)~~(b)2. and (c)2. of this section, as applicable.

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

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

14 ~~(7)~~~~(6)~~ A microbrewery shall not be located in dry or moist territory.

15 ~~(8)~~~~(7)~~ An employee of a microbrewery may sample the products produced by that
16 microbrewery for purposes of education, quality control, and product development.

17 ~~(9)~~~~(8)~~ This section does not exempt the holder of a microbrewery license from the
18 provisions of KRS Chapters 241 to 244, nor from any rules of the board as
19 established by administrative regulations, nor from regulation by the board, except
20 as expressly stated in this section. The provisions of this section shall not be
21 deemed inconsistent with the provisions of KRS 244.602.

22 ~~(10)~~~~(9)~~ Nothing in this section shall be construed to vitiate the policy of this
23 Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly
24 three (3) tier system for the production and sale of malt beverages.