

1 AN ACT relating to the direct shipment of alcoholic beverages and declaring an
2 emergency.

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

4 ➔Section 1. KRS 243.027 is amended to read as follows:

5 (1) KRS 243.027 to 243.029 shall supersede any conflicting statute in KRS Chapters
6 241 to 244.

7 (2) A direct shipper license shall authorize the holder to ship alcoholic beverages to
8 consumers. The department shall issue a direct shipper license to a successful
9 applicant that:

10 (a) **Pays an annual license fee of one hundred dollars (\$100);**

11 (b) Is a manufacturer located in this state or any other state or an alcoholic
12 beverage supplier licensed under KRS 243.212 or 243.215; **and**

13 (c) **Holds a current license, permit, or other authorization to manufacture or**
14 **supply alcoholic beverages in the state where the applicant is located. If an**
15 **applicant is located outside of Kentucky, proof of its current license, permit,**
16 **or other authorization as issued by its home state shall be sufficient proof of**
17 **its eligibility to hold a direct shipper license in Kentucky.** ~~[- A manufacturer~~

18 applicant shall:

19 ~~1.—Hold a current license, permit, or other authorization to manufacture alcoholic~~
20 ~~beverages in the state where the manufacturer is located; and~~

21 ~~2.—Only ship alcoholic beverages that are sold under a brand name owned or~~
22 ~~exclusively licensed to the manufacturer and the alcoholic beverages were:~~

23 ~~a.—Produced by the manufacturer;~~

24 ~~b.—Produced for or by the manufacturer under an existing written contract with~~
25 ~~another manufacturer; or~~

26 ~~c.—Produced and bottled for the manufacturer;~~

27 ~~(b)—Pays an annual license fee of one hundred dollars (\$100); and~~

1 ~~(c) If a manufacturer applicant is located outside this state, proves that it has~~
 2 ~~completed the same registration necessary for a manufacturer located in this~~
 3 ~~state with respect to payment of any applicable excise tax, state or local sales~~
 4 ~~or use tax, or other tax owed under the law of this state in connection with the~~
 5 ~~direct shipment of alcoholic beverages to consumers in this state.]~~

6 (3) *(a) A manufacturer applicant shall only be authorized to ship alcoholic*
 7 *beverages that are sold under a brand name owned or exclusively licensed*
 8 *to the manufacturer, provided the alcoholic beverages were:*

9 *1. Produced by the manufacturer;*

10 *2. Produced for the manufacturer under a written contract with another*
 11 *manufacturer; or*

12 *3. Bottled for or by the manufacturer.*

13 *(b) An applicant licensed under KRS 243.212 or 243.215 shall only be*
 14 *authorized to ship alcoholic beverages for which it is the primary source of*
 15 *supply.*

16 (4) The department shall *establish*~~[set the requirements and]~~ the form for a direct
 17 shipper license application through the promulgation of an administrative
 18 regulation. These requirements shall include *only the following:*

19 (a) The address *of*~~[and a description of the premises from which]~~ the
 20 manufacturer or supplier~~[will ship alcoholic beverages to consumers];~~ *and*

21 (b) If the applicant is located outside this state, a copy of the applicant's current
 22 license, permit, or other authorization to manufacture, *store,* or supply
 23 alcoholic beverages in the state where the applicant is located~~[; and~~

24 ~~(c) Any other information the department determines to be necessary to~~
 25 ~~implement and administer the direct shipper licensing program].~~

26 (5)~~[(4)]~~ *For purposes of this section, the holder of a direct shipper license may*
 27 *utilize the services of a third party to fulfill shipments, subject to the following:*

1 *(a) The third party shall not be required to hold any alcoholic beverage license,*
 2 *but no licensed entity shall serve as a third party to fulfill shipments other*
 3 *than the holder of a storage license or transporter's license;*

4 *(b) The third party may operate from the premises of the direct shipper licensee*
 5 *or from another business location; and*

6 *(c) The direct shipper licensee shall be liable for any violation of KRS 242.250,*
 7 *242.260, 242.270, or 244.080 that may occur by the third party*~~in~~

8 ~~considering an application from an out-of-state applicant, the department shall~~
 9 ~~use the same standards relating to causes for license denial, suspension, or~~
 10 ~~revocation under KRS 243.100 and 243.500 as those it uses for similarly~~
 11 ~~situated in-state applications].~~

12 ~~(6)~~~~(5)~~ A direct shipper licensee shall:

13 (a) Appoint and continuously maintain an agent for service of process that need
 14 not be a resident of this state, and agree that the Secretary of State shall serve
 15 as its agent if it fails to maintain a current agent for service of process. The
 16 licensee shall agree that legal service on the agent constitutes legal service on
 17 the direct shipper licensee;

18 (b) Maintain the records required under KRS 243.027 to 243.029 and provide the
 19 department and the Department of Revenue access to or copies of these
 20 records;

21 (c) Allow the department or the Department of Revenue to perform an audit of
 22 the direct shipper licensee's records or an inspection of the direct shipper
 23 licensee's licensed premises upon request. If an audit or inspection reveals a
 24 violation, the department or the Department of Revenue may recover
 25 reasonable expenses from the licensee for the cost of the audit or inspection;

26 (d) *Register with the Department of Revenue, and* file all reports and pay all
 27 taxes required under KRS 243.027 to 243.029; *and*

- 1 (e) Submit to the jurisdiction of the Commonwealth of Kentucky for any
 2 violation of KRS 242.250, 242.260, 242.270, 244.080 or for nonpayment of
 3 any taxes owed~~[department and the Department of Revenue, the courts, and~~
 4 ~~all other enforcement authority of this state, including any related laws or~~
 5 ~~administrative regulations, with respect to enforcement against the applicant;~~
- 6 ~~(f) Hold the license contingent on obeying all laws and administrative regulations~~
 7 ~~of both the origin state and the destination state, including those relating to the~~
 8 ~~times, days, or other circumstances when alcoholic beverages may be sold or~~
 9 ~~shipped;~~
- 10 ~~(g) Be subject to potential fines, penalties, license suspension, or license~~
 11 ~~revocation for a violation of the duties or obligations to hold a direct shipper~~
 12 ~~license;~~
- 13 ~~(h) Meet any reciprocal license requirements, if applicable; and~~
- 14 ~~(i) Comply with all applicable federal and state labeling, licensing, and brand~~
 15 ~~registration requirements].~~
- 16 (Z)[(6)] (a) ~~[The department shall promulgate administrative regulations designed to~~
 17 ~~reduce unlicensed deliveries and shipments of alcoholic beverages in the~~
 18 ~~Commonwealth.]~~ Each direct shipper licensee shall submit to the department
 19 and the Department of Revenue a quarterly report for that direct shipper
 20 license showing:
- 21 1. The total amount of alcoholic beverages shipped into the state per
 22 consumer;
 - 23 2. The name and address of each consumer;
 - 24 3. The purchase price of the alcoholic beverages shipped and the amount of
 25 taxes charged to the consumer for the alcoholic beverages shipped; and
 - 26 4. The name and address of each common carrier.
- 27 (b) The Department of Revenue shall create a form through the promulgation of

1 an administrative regulation for reporting under paragraph (a) of this
2 subsection.

3 (c) The department shall provide a list of all active direct shipper licensees to
4 licensed common carriers on a quarterly basis to reduce the number of
5 unlicensed shipments in the Commonwealth.

6 **(8) Notwithstanding any provision of this section to the contrary, a manufacturer**
7 **located and licensed in Kentucky may ship by a common carrier holding a**
8 **Kentucky transporter's license samples of alcoholic beverages produced by the**
9 **manufacturer in quantities not to exceed one (1) liter of any particular product in**
10 **one (1) calendar year of distilled spirits or wine, or ninety-six (96) ounces of any**
11 **particular product in one (1) calendar year of malt beverages, to the following:**
12 **(a) Marketing or media representatives twenty-one (21) years of age or older;**
13 **(b) Distilled spirits, wine, or malt beverage competitions or contests;**
14 **(c) Wholesalers or distributors located outside of Kentucky;**
15 **(d) Federal, state, or other regulatory testing labs; and**
16 **(e) Third-party product formulation and development partners.**
17 **Such samples shall be marked by affixing across the product label, a not readily**
18 **removed disclaimer with the words "Sample-Not for Sale" and the name of the**
19 **manufacturer.**

20 ➔Section 2. KRS 243.028 is amended to read as follows:

21 (1) A direct shipper licensee may sell or ship to a consumer all types of alcoholic
22 beverages that the licensee is authorized to sell, with the following aggregate limits:
23 (a) Distilled spirits, in quantities not to exceed ten (10) liters per consumer per
24 month;
25 (b) Wine, in quantities not to exceed ten (10) cases per consumer per month; and
26 (c) Malt beverages, in quantities not to exceed ten (10) cases per consumer per
27 month.

- 1 (2) The direct shipper licensee shall notify the consumer placing the order that the
2 shipment shall not be left unless the recipient of the shipment provides a valid
3 identification document at the time verifying that the recipient is at least twenty-one
4 (21) years of age. All alcoholic beverage containers shipped to the consumer shall
5 be conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE
6 OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
- 7 (3) At the time of delivery, the recipient of the shipment shall present to the individual
8 delivering the package a valid identification document. Prior to transferring
9 possession of the package, the individual delivering the package shall visually
10 inspect the document and verify the identity of the recipient and, by visual
11 examination or by using age verification technology, that the recipient is at least
12 twenty-one (21) years of age.
- 13 (4) Before transferring possession of the package, the individual delivering the package
14 shall obtain the signature of the recipient of the shipment. The individual who
15 receives and signs for the alcoholic beverages is not required to be the consumer
16 who purchased the alcoholic beverages.
- 17 (5) A consumer who intentionally causes shipment to an address deemed unlawful
18 shall, for the first offense, be guilty of a violation punishable by a fine of two
19 hundred fifty dollars (\$250), and for each subsequent offense, be guilty of a
20 violation punishable by a fine of five hundred dollars (\$500). In this instance, the
21 direct shipper licensee and the common carrier shall be held harmless.
- 22 (6) A direct shipper licensee may not sell or ship alcoholic beverages to a consumer
23 from its licensed premises if the consumer's address is located in an area in which
24 alcoholic beverages may not be sold or received.
- 25 (7) **Shipments made pursuant to this section shall be made**~~[A direct shipper licensee~~
26 ~~shall only conduct the shipment of alcoholic beverages to a consumer]~~ through a
27 common carrier.

1 (8) ~~{A direct shipper licensee may ship alcoholic beverages to a consumer only from~~
2 ~~the licensed premises described in its direct shipper license application.~~

3 (9) ~~If a common carrier is unable to complete delivery, then the alcoholic beverages~~
4 ~~shall be returned to the consignor.~~

5 ➔Section 3. KRS 241.060 is amended to read as follows:

6 The board shall have the following functions, powers, and duties:

7 (1) To promulgate reasonable administrative regulations governing procedures relative
8 to the applications for and revocations of licenses, the supervision and control of the
9 use, manufacture, sale, transportation, storage, advertising, and trafficking of
10 alcoholic beverages, and all other matters over which the board has jurisdiction.

11 **The only administrative regulation that shall be promulgated in relation to the**
12 **direct shipper license is the license application, as set forth in subsection (4) of**
13 **Section 1 of this Act.** Administrative regulations need not be uniform in their
14 application but may vary in accordance with reasonable classifications;

15 (2) To limit in its sound discretion the number of licenses of each kind or class to be
16 issued in this state or any political subdivision, and restrict the locations of licensed
17 premises. To this end, the board may make reasonable division and subdivision of
18 the state or any political subdivision into districts. Administrative regulations
19 relating to the approval, denial, and revocation of licenses may be different within
20 the several divisions or subdivisions;

21 (3) To hold hearings in accordance with the provisions of KRS Chapter 13B. The
22 department may pay witnesses the per diem and mileage provided in KRS 421.015;

23 (4) To conduct hearings and appeals under KRS 241.150, 241.200, 241.260, 243.470,
24 and 243.520 and render final orders upon the subjects of the hearings and appeals;

25 (5) To order the destruction of evidence in the department's possession after all
26 administrative and judicial proceedings are conducted;

27 (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS

1 Chapter 13B, any license; and

2 (7) To prohibit the issuance of a license for the premises until the expiration of two (2)
3 years from the time the offense was committed if a violation of KRS Chapters 241
4 to 244 has taken place on the premises which the owner knew of or should have
5 known of, or was committed or permitted in or on the premises owned by the
6 licensee.

7 ➔Section 4. KRS 243.020 is amended to read as follows:

8 (1) A person shall not do any act authorized by any kind of license with respect to the
9 manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic
10 beverages unless the person holds or is an independent contractor, agent, servant, or
11 employee of a person who holds the kind of license that authorizes the act, *or is a*
12 *third party utilized by a direct shipper licensee as set forth in Section 1 of this Act.*

13 (2) The holding of any permit from the United States government to traffic in alcoholic
14 beverages without the corresponding requisite state and local licenses shall in all
15 cases raise a rebuttable presumption that the holder of the United States permit is
16 unlawfully trafficking in alcoholic beverages.

17 (3) Except as permitted by KRS 243.033, 243.036, 243.155, 243.157, and 243.260, a
18 person, conducting a place of business patronized by the public, who is not a
19 licensee authorized to sell alcoholic beverages, shall not permit any person to sell,
20 barter, loan, give away, or drink alcoholic beverages on the premises of the place of
21 business.

22 (4) A licensee shall not permit any consumer to possess, give away, or drink alcoholic
23 beverages on the licensed premises that are not purchased from the licensee.

24 ~~(5) [Any distilled spirits or wine in excess of three (3) gallons (twelve (12) liters) shall~~
25 ~~not be stored or kept except upon the licensed premises of a licensee.]~~

26 ~~(6)~~—In a moist territory, the only types of licenses that may be issued are those that
27 directly correspond with the types of sales approved by the voters through moist

1 elections within the territory, unless otherwise specifically authorized by statute.

2 ➔Section 5. KRS 243.029 is amended to read as follows:

- 3 (1) For purposes of this section, "taxes" associated with the purchase of alcoholic
4 beverages includes any applicable:
- 5 (a) Sales tax;
 - 6 (b) Use tax;
 - 7 (c) Excise tax;
 - 8 (d) Wholesale tax as established~~[equivalent at the rate set out]~~ in KRS 243.884~~[-~~
9 ~~If a wholesale price is not readily available, the direct shipper licensee shall~~
10 ~~calculate the wholesale cost to be seventy percent (70%) of the retail price of~~
11 ~~the alcoholic beverages]~~;
 - 12 (e) Regulatory license fees; and
 - 13 (f) Other assessments.
- 14 (2) For purposes of this section and for other tax purposes, each sale and delivery of
15 alcoholic beverages under a direct shipper license is a sale occurring at the address
16 of the consumer. For each tax remittance or collected group of tax remittances, the
17 direct shipper licensee shall include its federal tax identification number.
- 18 (3) A direct shipper licensee that sells alcoholic beverages under its direct shipper
19 license for shipment to a consumer shall charge the consumer all applicable taxes
20 and shall sell the alcoholic beverages with all applicable taxes included in the
21 selling price. The applicable taxes shall be separately identified on the consumer's
22 invoice. The taxes shall be collected by the direct shipper licensee from the
23 consumer.
- 24 (4) The amount of the taxes to be paid by the direct shipper licensee under this section
25 shall be calculated based on the sale of the alcoholic beverages occurring at the
26 location identified as the consumer's address on the shipping label.
- 27 (5) For taxes owed by a direct shipper licensee under this section, the direct shipper

1 licensee shall meet the standards of the destination state, including filing a return
2 that contains its license number and federal tax identification number.

3 ➔Section 6. KRS 243.110 is amended to read as follows:

4 (1) Except as provided in subsection (3) of this section, each kind of license listed in
5 KRS 243.030 shall be incompatible with every other kind listed in that section and
6 no person or entity holding a license of any of those kinds shall apply for or hold a
7 license of another kind listed in KRS 243.030.

8 (2) (a) Each kind of license listed in KRS 243.040(1), (3), or (4) shall be
9 incompatible with every other kind listed in KRS 243.040(1), (3), or (4), and
10 no person holding a license of any of those kinds shall apply for or hold a
11 license of any other kind listed in KRS 243.040(1), (3), or (4).

12 (b) A brewery holding a license listed in KRS 243.040(5) or (8) shall not apply
13 for or hold a license listed in KRS 243.040(3) or (4).

14 (3) (a) The holder of a quota retail package license may also hold a quota retail drink
15 license, an NQ1 retail drink license, an NQ2 retail drink license, an NQ3 retail
16 drink license, or a special nonbeverage alcohol license.

17 (b) The holder of a transporter's license may also hold a distilled spirits and wine
18 storage license.

19 (c) The holder of a distiller's license may also hold a rectifier's license, a special
20 nonbeverage alcohol license, a winery license, or a small farm winery license.

21 (d) A commercial airline system or charter flight system retail license, a
22 commercial airline system or charter flight system transporter's license, and a
23 retail drink license if held by a commercial airline or charter flight system may
24 be held by the same licensee.

25 (e) A Sunday retail drink license and supplemental license may be held by the
26 holder of a primary license.

27 (f) The holder of a distiller's, winery, ~~or~~small farm winery, brewer,

1 microbrewery, distilled spirits and wine supplier's, or malt beverage
2 supplier's license may also hold a direct shipper license.

3 (4) Any person may hold two (2) or more licenses of the same kind.

4 (5) A person or entity shall not evade the prohibition against applying for or holding
5 licenses of two (2) kinds by applying for a second license through or under the name
6 of a different person or entity. The state administrator shall examine the ownership,
7 membership, and management of applicants, and shall deny the application for a
8 license if the applicant is substantially interested in a person or entity that holds an
9 incompatible license.

10 ➔Section 7. KRS 243.220 is amended to read as follows:

11 No license shall be issued for any premises unless the applicant for the license is the
12 owner of the premises or is in possession of the premises under a written agreement or a
13 permit for a term of not less than the license period. A direct shipper license applicant
14 shall be exempt from the requirements of this section, and shall instead follow the
15 requirements as set forth in Section 1 of this Act.

16 ➔Section 8. KRS 243.380 is amended to read as follows:

17 (1) Applications for distilled spirit and wine licenses shall be made to the distilled
18 spirits administrator. Applications for malt beverage licenses shall be made to the
19 malt beverages administrator. Applications for distilled spirits, wine, and malt
20 beverage licenses shall be made to the distilled spirits administrator and to the malt
21 beverages administrator.

22 (2) All applications shall be on forms furnished by the department. They shall be
23 verified and shall set forth in detail all information concerning the applicant and the
24 premises submitted for licensing as the board requires through the promulgation of
25 an administrative regulation. Each application shall be accompanied by payment.
26 Payment of the license fee may be by certified check, a postal or express money
27 order, or any other method of payment approved in writing by both the Finance and

1 Administration Cabinet and the Office of the State Treasurer. Promptly upon receipt
2 of the payment the board shall pay it into the State Treasury, giving the Department
3 of Revenue copies of the pay-in vouchers and any other supporting data as the
4 Department of Revenue requires for revenue control purposes.

5 (3) (a) A business entity that owns more than two (2) licensed premises may initially
6 submit common information about ownership, officers, directors, managerial
7 employees, and shall provide current criminal background checks once for all
8 separately licensed premises in one (1) master file.

9 (b) Any business qualifying under this subsection shall only be required to amend
10 its master file information for material changes under KRS 243.390(2) or
11 ownership transfers under KRS 243.630.

12 (c) *A direct shipper license applicant shall be exempt from the requirements of*
13 *this subsection and shall instead meet the requirements for its license type*
14 *as set forth in Section 1 of this Act.*

15 ➔Section 9. KRS 243.390 is amended to read as follows:

16 (1) The board may require through the promulgation of an administrative regulation
17 that license applications contain the following information, given under oath:

18 (a) The name, age, Social Security number, address, residence, and citizenship of
19 each applicant;

20 (b) If the applicant is a partner, the name, age, Social Security number, address,
21 residence, and citizenship of each partner and the name and address of the
22 partnership;

23 (c) The name, age, Social Security number, address, residence, and citizenship of
24 each individual or partner interested in the business for which the license is
25 sought, together with the nature of that interest, and, if the applicant is a
26 corporation, limited partnership company, limited liability company, or other
27 business entity recognized by law, the name, age, Social Security number, and

- 1 address of each principal owner, member, officer, and director of the
2 applicant. The department may require the names of all owners and the
3 ownership percentage held by each;
- 4 (d) The premises to be licensed, stating the street and number, if the premises has
5 a street number, and a description that will reasonably indicate the location of
6 the premises;
- 7 (e) 1. A statement that neither the applicant nor any other person referred to in
8 this section has been convicted of:
- 9 a. Any misdemeanor directly or indirectly attributable to alcoholic
10 beverages;
- 11 b. Any violation involving a controlled substance that is described in
12 or classified pursuant to KRS Chapter 218A within the two (2)
13 years immediately preceding the application;
- 14 c. Any felony, within five (5) years from the later of the date of
15 parole or the date of conviction; or
- 16 d. Providing false information to the department preceding the
17 application; and
- 18 2. A statement that the applicant or any other person referred to in this
19 section has not had any license that has been issued under any alcoholic
20 beverage statute revoked for cause within two (2) years prior to the date
21 of the application;
- 22 (f) A statement that the applicant will in good faith abide by every state and local
23 statute, regulation, and ordinance relating to the manufacture, sale, use of, and
24 trafficking in alcoholic beverages; and
- 25 (g) Any other information necessary for the department to administer KRS
26 Chapters 241 to 244.
- 27 (2) If, after a license has been issued, there is a change in any of the facts required to be

1 set forth in the application, a verified supplemental statement in writing giving
2 notice of the change shall be filed with the department within ten (10) days after the
3 change.

4 (3) In giving any notice or taking any action in reference to a license, the department
5 may rely upon the information furnished in the application or in the supplemental
6 statement connected with the application. This information, as against the licensee
7 or applicant, shall be conclusively presumed to be correct. The information required
8 to be furnished in the application or supplemental statement shall be deemed
9 material in any prosecution for perjury.

10 **(4) A direct shipper license applicant shall be exempt from the requirements of this**
11 **section and shall instead meet the requirements for its license type as set forth in**
12 **Section 1 of this Act.**

13 ➔Section 10. KRS 243.450 is amended to read as follows:

14 (1) A license shall be denied:

15 (a) If the applicant or the premises for which the license is sought does not
16 comply fully with all alcoholic beverage control statutes and the
17 administrative regulations of the board;

18 (b) If the applicant has not obtained approval from the local ABC administrator
19 for a county or city license required at the proposed premises;

20 (c) If the applicant has done any act for which a revocation of license would be
21 authorized; or

22 (d) If the applicant has made any false material statement in its application.

23 (2) A license may be denied by a state administrator for any reason that the
24 administrator, in the exercise of the administrator's sound discretion, deems
25 sufficient. Among those factors that the administrator shall consider in the exercise
26 of this discretion are:

27 (a) Public sentiment in the area;

- 1 (b) Number of licensed outlets in the area;
- 2 (c) Potential for future growth;
- 3 (d) Type of area involved;
- 4 (e) Type of transportation available;
- 5 (f) Financial potential of the area; and
- 6 (g) Applicant's status as a delinquent taxpayer as defined in KRS 131.1815.

7 **(3) A direct shipper license applicant shall be exempt from the requirements of this**
 8 **section and shall instead meet the requirements for its license type as set forth in**
 9 **Section 1 of this Act.**

10 ➔Section 11. KRS 243.790 is amended to read as follows:

11 The sale or distribution of alcoholic beverages manufactured in or imported into this state
 12 for shipment permanently out of the state to be sold ~~[through retail outlets]~~ without the
 13 state and consumed without the state shall not be subject to the tax imposed by KRS
 14 243.720. Provided, however, the Department of Revenue may, when necessary for the
 15 purpose of control enforcement or protection of revenue, prescribe the conditions under
 16 which containers of such alcoholic beverages for shipment permanently out of the state to
 17 be sold ~~[through retail outlets]~~ without the state and consumed without the state may be
 18 kept and trafficked in without payment of the tax.

19 ➔Section 12. KRS 243.0305 is amended to read as follows:

20 (1) Any licensed Kentucky distiller that is located in wet territory or in any precinct that
 21 has authorized the limited sale of alcoholic beverages at distilleries under KRS
 22 242.1243 and that has a gift shop or other retail outlet on its premises may conduct
 23 the activities permitted under this section as a part of its distiller's license.

24 (2) **(a)** For purposes of all retail drink and package sales **that occur pursuant to**
 25 **subsection (3), (8), or (9) of this section, the distillery shall:**

26 **1. Be permitted to transfer its products from the distillery proper to the**
 27 **location where those sales occur; and**

1 2. Report and pay all taxes required to the Department of Revenue at the
 2 time and in the manner required by the Department of Revenue in
 3 accordance with its powers under KRS 131.130(3).

4 (b) All other distilled spirits that are produced by the distillery which are
 5 offered for retail sale shall be sold and physically transferred to a licensed
 6 wholesaler in compliance with all other relevant provisions of KRS
 7 Chapters 241 to 244 [~~under this section, a wholesaler registered to distribute~~
 8 ~~the brands of any distiller shall permit the distiller to transfer its products~~
 9 ~~directly from the distillery proper to any portion of the distillery premises.~~
 10 ~~However, for purposes of all retail drink and package sales by distillers under~~
 11 ~~subsections (3), (8), and (9) of this section, all of these transfers shall be~~
 12 ~~invoiced from the distiller to the wholesaler and from the wholesaler to the~~
 13 ~~distiller, and all of these transferred products shall be included in the~~
 14 ~~wholesaler's inventory and depletions for purposes of tax collections imposed~~
 15 ~~pursuant to KRS 243.710 to 243.895 and 243.990].~~

- 16 (3) A distiller may sell souvenir packages at retail:
- 17 (a) To consumers in accordance with KRS 243.027 to 243.029 if it holds a direct
 18 shipper license; and
- 19 (b) To distillery visitors of legal drinking age, in quantities not to exceed an
 20 aggregate of four and one-half (4-1/2) liters per purchaser per day for sales
 21 prior to January 1, 2021, and in quantities not to exceed an aggregate of nine
 22 (9) liters per purchaser per day on and after January 1, 2021.
- 23 (4) Hours of sale for souvenir packages sold to distillery visitors at retail shall be in
 24 conformity with KRS 244.290(3).
- 25 (5) Except as provided in this section, souvenir package sales to distillery visitors shall
 26 be governed by all the statutes and administrative regulations governing the retail
 27 sale of distilled spirits by the package.

- 1 (6) No wholesaler may restrict the sale of souvenir packages to the distiller of origin
2 exclusively, but shall make souvenir packages available to any Kentucky retail
3 licensee licensed for the sale of distilled spirits by the package.
- 4 (7) Notwithstanding any provision of KRS 244.050 to the contrary, a distillery holding
5 a sampling license may allow visitors to sample distilled spirits under the following
6 conditions:
- 7 (a) Sampling shall be permitted only on the licensed premises during regular
8 business hours;
 - 9 (b) A distillery shall not charge for the samples; and
 - 10 (c) A distillery shall not provide more than one and three-fourths (1-3/4) ounces
11 of samples per visitor per day.
- 12 (8) Notwithstanding the provisions of KRS 243.110, in accordance with this section, a
13 distillery located in wet territory or in any territory that has authorized the limited
14 sale of alcoholic beverages under an election held pursuant to KRS 242.1243 may:
- 15 (a) Hold an NQ2 retail drink license for the sale of alcoholic beverages on the
16 distillery premises; and
 - 17 (b) Employ persons to engage in the sale or service of alcohol under an NQ2
18 license, if each employee completes the department's Server Training in
19 Alcohol Regulations program within thirty (30) days of beginning
20 employment.
- 21 (9) A distiller may sell to consumers at fairs, festivals, and other similar types of events
22 located in wet territory alcoholic beverages by the drink, containing spirits distilled
23 or bottled on the premises of the distillery.
- 24 (10) A distiller may offer for sale in its gift shop products that were produced in
25 collaboration with a brewer or microbrewer except that:
- 26 (a) These packages shall not be exclusive to the distiller's gift shop; and
 - 27 (b) The distiller shall purchase the jointly branded souvenir package only from a

1 licensed malt beverage distributor.

2 (11) Except as expressly stated in this section, this section does not exempt the holder of
3 a distiller's license from:

- 4 (a) The provisions of KRS Chapters 241 to 244;
- 5 (b) The administrative regulations of the board; and
- 6 (c) Regulation by the board at all the distiller's licensed premises.

7 (12) Nothing in this section shall be construed to vitiate the policy of this
8 Commonwealth supporting an orderly three (3) tier system for the production and
9 sale of alcoholic beverages.

10 ➔Section 13. KRS 243.884 is amended to read as follows:

11 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
12 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine
13 and distilled spirits, all distributors of beer, all direct shipper licensees
14 shipping alcohol to a consumer at a Kentucky address, and all
15 microbreweries selling malt beverages under KRS 243.157.

16 (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent
17 (11%) of the gross receipts of any such wholesaler or distributor derived from
18 "sales at wholesale" or "wholesale sales" made within the Commonwealth,
19 except as provided in subsection (3) of this section. For the purposes of this
20 section, the gross receipts of a microbrewery making "wholesale sales" shall
21 be calculated by determining the dollar value amount that the microbrewer
22 would have collected had it conveyed to a distributor the same volume sold to
23 a consumer as allowed under KRS 243.157 (3)(b) and (c).

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 **(d) On and after the effective date of this Act, the following rates shall apply for**
13 **direct shipper sales:**

14 **1. For distilled spirits shipments, eleven percent (11%) for wholesale**
15 **sales or sales at wholesale; and**

16 **2. For wine and beer shipments, ten percent (10%) for wholesale sales or**
17 **sales at wholesale.**

18 **(e) For direct shipper sales, if a wholesale price is not readily available, the**
19 **direct shipper licensee shall calculate the wholesale price to be seventy**
20 **percent (70%) of the retail price of the alcoholic beverages.**

- 21 (2) Wholesalers of distilled spirits and wine, distributors of malt beverages, ~~and~~
22 ~~microbreweries,~~ **and direct shipper licensees** shall pay and report the tax levied by
23 this section on or before the twentieth day of the calendar month next succeeding
24 the month in which possession or title of the distilled spirits, wine, or malt
25 beverages is transferred from the wholesaler or distributor to retailers, or by
26 microbreweries **or direct shipper licensees** to consumers in this state, in accordance
27 with rules and regulations of the Department of Revenue designed reasonably to

1 protect the revenues of the Commonwealth.

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

4 (a) Sales made between wholesalers or between distributors; ~~and~~

5 (b) Sales from the first fifty thousand (50,000) gallons of wine produced by a
6 small farm winery in a calendar year made by:

7 1. The small farm winery; or

8 2. A wholesaler of that wine produced by the small farm winery; **and**

9 **(c) Sales made between a direct shipper licensee and a consumer located**
10 **outside of Kentucky.**

11 ➔Section 14. KRS 244.220 is amended to read as follows:

12 The prohibitions, restrictions and regulations relating to special licenses shall be those
13 which the board may by its regulations and in the exercise of its sound discretion
14 prescribe. **For purposes of this section, a special license shall be one that is not set**
15 **forth in KRS Chapters 241 to 244.**

16 ➔Section 15. KRS 244.050 is amended to read as follows:

17 A **retailer**~~retail licensee~~ shall not sell, give away, or deliver any alcoholic beverage at
18 retail in any quantity for less than paid or current wholesale cost, except upon written
19 request and approval by the administrators, pursuant to a bona fide "close out" sale, or as
20 provided by KRS 243.0305, 243.0307, 243.155, and 243.157.

21 ➔Section 16. The following KRS section is repealed:

22 243.886 Reimbursement for collecting and reporting -- Microbrewery that pays
23 wholesale sales tax not entitled to reimbursement.

24 ➔Section 17. Whereas the need for adequate and appropriate licensing, taxation,
25 and regulation of direct shipments of alcohol into the state is of the utmost importance,
26 and whereas licensees may find themselves subject to discipline if these issues are not
27 addressed immediately, an emergency is declared to exist and this Act shall take effect

- 1 upon its passage and approval by the Governor or upon its otherwise becoming a law.