

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, *pursuant to the following:*

17 *1. Without restriction on the amount of malt beverages sold by the drink*
18 *for on-premises consumption; and*

19 *2. With a restriction on the amount of malt beverages sold for off-*
20 *premises consumption, in an aggregate amount not to exceed thirty-*
21 *one (31) gallons per person per day that shall not include more than*
22 *three (3) cases in case format; and*

23 (e) Sell:

24 *1. Unlimited amounts of malt beverages by the drink; and*

25 *2. Not more than one (1) case of packaged malt beverages;*

26 [~~malt beverages~~] produced on the premises of the microbrewery to consumers
27 at fairs, festivals, and other similar types of events located in wet territory, in

1 accordance with subsection (3)(b)2. ~~and 3.~~ and ~~subsection (3)(c)2. and 3.~~
2 of this section. ~~The cumulative amount of malt beverages purchased by a~~
3 consumer by the drink and by the package from a microbrewery under this
4 paragraph shall not exceed two hundred eighty eight (288) ounces per day.]

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

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

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

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

18 1. The microbrewery possesses a retail drink license for those premises;

19 ~~and~~

20 2. ~~The microbrewery has a written contract with a licensed distributor~~
21 ~~authorizing the distributor to purchase and distribute the microbrewery's~~
22 ~~malt beverages to any other retailer; and~~

23 3. ~~The microbrewery~~ **reports and pays all taxes required by subsection**
24 **(5)(a) and (b) of this section to the Department of Revenue at the time**
25 **and in the manner required by the Department of Revenue in**
26 **accordance with its powers under KRS 131.130(3)** ~~provides to the~~
27 ~~distributor a monthly report of the quantity of malt beverages produced~~

1 ~~at the microbrewery and sold at retail at the microbrewery under the~~
 2 ~~provisions of its retail drink license. The report required under this~~
 3 ~~subparagraph shall:~~

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

7 ~~b. Be provided on a form promulgated by the board by administrative~~
 8 ~~regulation. The information provided on the form shall be reported to~~
 9 ~~the Department of Revenue at the time and in the manner required by~~
 10 ~~that department in accordance with its powers under KRS 131.130(3)~~
 11 ~~and any administrative regulation promulgated thereunder.~~

12 ~~Nothing in this subparagraph shall require a distributor to verify the~~
 13 ~~accuracy of the information provided by the microbrewery in its report];~~
 14 ~~and~~

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

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

19 ***and***

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

23 3. ~~]~~The microbrewery ***reports and pays all taxes required by subsection***
 24 ***(5)(a) and (b) of this section to the Department of Revenue at the time***
 25 ***and in the manner required by the Department of Revenue in***
 26 ***accordance with its powers under KRS 131.130(3)***~~[provides to the~~
 27 ~~distributor a monthly report of the quantity of malt beverages produced~~

1 ~~at the microbrewery under the provisions of its retail package license.~~

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

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

6 ~~b. Be provided on a form promulgated by the board by administrative~~
 7 ~~regulation. The information provided on the form shall be reported~~
 8 ~~to the Department of Revenue at the time and in the manner~~
 9 ~~required by that department in accordance with its powers under~~
 10 ~~KRS 131.130(3) and any administrative regulation promulgated~~
 11 ~~thereunder.~~

12 ~~Nothing in this subparagraph shall require a distributor to verify the~~
 13 ~~accuracy of the information provided by the microbrewery in its report;~~
 14 ~~and~~

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

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

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

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

24 All other malt beverages produced by the microbrewery which are offered for retail
 25 sale shall be sold and physically transferred to a licensed distributor in compliance
 26 with all other relevant provisions of KRS Chapters 241 to 244, and a licensed
 27 microbrewery shall not otherwise affect sales of malt beverages directly to retail

1 customers except as provided in subsection (3)(b) and (c) of this section.

2 (5) (a) A microbrewery selling malt beverages in accordance with subsection (3)(b)
3 and (c) of this section shall pay ~~collect and provide the licensed distributor~~
4 all wholesale sales taxes due under KRS 243.884. ~~The tax shall be computed~~
5 ~~at the rate of eleven percent (11%) of the wholesale value of the malt~~
6 ~~beverages sold by the microbrewery under the provisions of subsection (3)(b)~~
7 ~~and (c) of this section.~~ For the purposes of this subsection, "wholesale
8 sales" means a sale of malt beverages made by a microbrewery ~~["wholesale~~
9 ~~value" shall be determined in accordance with the contract required under~~
10 ~~subsection (3)(b){2.} and (c){2.} of this section, as applicable.~~

11 (b) ~~[The licensed distributor shall be responsible for remitting these amounts to~~
12 ~~the Commonwealth as provided in KRS 243.884(1). In accordance with KRS~~
13 ~~243.886, the licensed distributor shall be allowed to deduct one percent (1%)~~
14 ~~of the tax remitted under this subsection, provided the amount due is not~~
15 ~~delinquent at the time of payment. Nothing in this subsection shall require the~~
16 ~~licensed distributor to verify the amount of taxes collected and provided by~~
17 ~~the microbrewery to be the true and accurate amount which is due according~~
18 ~~to KRS 243.884; nor shall the distributor be responsible for remittance of~~
19 ~~taxes due in the event the microbrewery fails to collect and provide the~~
20 ~~amounts owed under the provisions of this subsection.~~

21 ~~(e)~~ A microbrewery shall pay the excise tax on malt beverages in accordance
22 with KRS 243.720(3) and 243.730 and shall be entitled to the credit set forth
23 in KRS 243.720(3)(b).

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

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

27 (8) This section does not exempt the holder of a microbrewery license from the

1 provisions of KRS Chapters 241 to 244, nor from any rules of the board as
 2 established by administrative regulations, nor from regulation by the board, except
 3 as expressly stated in this section. The provisions of this section shall not be
 4 deemed inconsistent with the provisions of KRS 244.602.

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

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

9 For the purposes of KRS 243.884 to 243.890:

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

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

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

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

17 (b) **A sale of malt beverages made by a microbrewery as authorized by Section 1**
 18 **of this Act; and**~~[.]~~

19 ~~(4)~~~~[(2)]~~ ~~[A-]~~ "Wholesaler" means~~[is]~~ a person required to be or who is a licensee
 20 authorized to do business pursuant to KRS 243.160 and 243.170.

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

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

24 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
 25 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine
 26 and distilled spirits, ~~[and upon]~~ all distributors of beer, and all
 27 **microbreweries selling malt beverages under Section 1 of this Act.**

1 (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent
2 (11%) of the gross receipts of any such wholesaler or distributor derived from
3 "sales at wholesale" or "wholesale sales" made within the Commonwealth
4 except as provided in subsection (3) of this section. **For the purposes of this**
5 **section, the gross receipts of a microbrewery making "wholesale sales"**
6 **shall be calculated by determining the dollar value amount that the**
7 **microbrewer would have collected had it conveyed to a distributor the same**
8 **volume sold to a consumer as allowed under subsection (3)(b) and (c) of**
9 **Section 1 of this Act.**

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

- 11 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at
12 wholesale; and
- 13 2. For wine and beer:
 - 14 a. Ten and three-quarters of one percent (10.75%) for wholesale sales
15 or sales at wholesale made on or after July 1, 2015, and before
16 June 1, 2016;
 - 17 b. Ten and one-half of one percent (10.5%) for wholesale sales or
18 sales at wholesale made on or after June 1, 2016, and before June
19 1, 2017;
 - 20 c. Ten and one-quarter of one percent (10.25%) for wholesale sales
21 or sales at wholesale made on or after June 1, 2017, and before
22 June 1, 2018; and
 - 23 d. Ten percent (10%) for wholesale sales or sales at wholesale made
24 on or after June 1, 2018.

25 (2) Wholesalers of distilled spirits and wine, ~~and~~ distributors of malt beverages, **and**
26 **microbreweries** shall pay and report the tax levied by this section on or before the
27 **twentieth** ~~20th~~ day of the calendar month next succeeding the month in which

1 possession or title of the distilled spirits, wine, or malt beverages is transferred from
 2 the wholesaler or distributor to retailers, or by microbreweries to consumers in this
 3 state, in accordance with rules and regulations of the Department of Revenue
 4 designed reasonably to protect the revenues of the Commonwealth.

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

- 7 (a) Sales made between wholesalers or between distributors; and
- 8 (b) Sales made by a small farm winery or wholesaler of wine produced by a small
 9 farm winery, if that small farm winery produces no more than fifty thousand
 10 (50,000) gallons of wine per year.

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

12 To reimburse himself for the cost of collecting and reporting the tax, each person required
 13 to pay and report the tax levied by KRS 243.884, other than a microbrewery, shall
 14 deduct on each report one percent (1%) of the tax due, provided the amount due is not
 15 delinquent at the time of payment. A microbrewery that reports and pays the wholesale
 16 sales tax levied by Section 3 of this Act in accordance with Section 1 of this Act shall
 17 not be entitled to deduct one percent (1%) of the tax due.

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

- 19 (1) There is hereby created the malt beverage educational fund which shall provide
 20 moneys on a matching basis for educational information and materials that deter or
 21 eliminate underage drinking. The fund shall consist of moneys generated from one
 22 percent (1%) of the excise tax collected from the sale and distribution of malt
 23 beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected
 24 from distributors of malt beverages and microbreweries under KRS 243.884.
- 25 (2) The malt beverage educational fund shall be established in the State Treasury as a
 26 trust and revolving account under KRS 45.253. Moneys in the account shall be
 27 distributed by the State Treasurer to the Malt Beverage Educational Corporation, a

1 nonprofit organization that is organized under the laws of this state, upon the
2 authorization of the secretary of the Cabinet for Health and Family Services. The
3 moneys shall be awarded to the corporation solely to fund educational programs to
4 deter or eliminate underage drinking.

5 (3) The secretary of the Cabinet for Health and Family Services shall authorize that
6 moneys from the fund be disbursed to the corporation upon the secretary's receipt of
7 a certification from the corporation showing the moneys the corporation has
8 received from malt beverage distributors, microbreweries, and other private sources
9 since the last certification. The moneys disbursed from the fund shall be equal to the
10 contributions that the corporation has received from its members and other private
11 sources during that period. The moneys in the fund shall be disbursed in accordance
12 with a schedule established by the secretary, and shall be disbursed until the moneys
13 in the fund are exhausted or until the moneys in the fund lapse in accordance with
14 subsection (4) of this section, whichever comes first.

15 (4) Moneys that are credited to the fund and not issued to the corporation shall lapse at
16 the end of the fiscal year and shall be returned to the general fund.

17 (5) As a condition of receiving the governmental funds, the corporation's board of
18 directors shall include the following among its directors:

19 (a) The Governor or his or her designee;

20 (b) The Attorney General or his or her designee;

21 (c) The President of the Senate or his or her designee;

22 (d) The Speaker of the House or his or her designee;

23 (e) The secretary of the Cabinet for Health and Family Services or his or her
24 designee; and

25 (f) The commissioner of the Department of Alcoholic Beverage Control or his or
26 her designee.

27 (6) All expenditures of moneys from the fund shall be approved by a majority of those

1 persons set out in subsection (5)(a) to (f) of this section. If the moneys from the
2 fund are not expended in their entirety, any moneys that remain unused by the
3 corporation at the end of the fiscal year shall be returned to the general fund.

4 (7) Any moneys from the fund that are not expended shall be returned to the general
5 fund upon the dissolution of the corporation.

6 (8) Any high school in the Commonwealth of Kentucky that was registered with the
7 Department of Education as of July 1, 1997, may make an application to the Malt
8 Beverage Education Corporation by February 28 of each year and shall be granted a
9 minimum of five hundred dollars (\$500) annually from the funds contributed by the
10 malt beverage educational fund for the single purpose of supporting "Project
11 Graduation" events.