

CHAPTER 15

(SB 28)

AN ACT relating to small farm wineries and declaring an emergency.

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

➔Section 1. KRS 243.155 is amended to read as follows:

- (1) ~~Any in state or out of state~~ small farm winery may apply for a small farm winery license. In addition to all other licensing requirements, an applicant for a small farm winery license shall submit with its application a copy of the small farm winery's federal basic permit and proof documenting its annual wine production. ~~As part of the application process, an out of state winery shall submit additional documentation evidencing its resident state. As part of the application process, an out of state winery shall publish its notice of intent, as required by KRS 243.360, in the Kentucky newspaper of highest circulation.~~ The board shall promulgate administrative regulations establishing the form the documentation of proof of production shall take.
- (2) A small farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each small farm winery off-premises retail site shall be separately licensed:
 - (a) Engage in the business of a winery under the terms and conditions of KRS 243.120 and 243.130, **except that a small farm winery may sell and deliver wine produced by it to a retailer as authorized by this section.** The manufacture of wine at the small farm winery shall not be less than two hundred fifty (250) gallons, and shall not exceed five hundred thousand (500,000) gallons, in one (1) year;
 - (b) Bottle wines produced by that small farm winery and other licensed small farm wineries;
 - (c) Enter into an agreement with another licensed small farm winery under which it crushes, processes, ferments, bottles, or any combination of these services, the grapes, fruits, or other agricultural products of the other small farm winery for a production year. The resulting wine shall be considered the product of the small farm winery that provides the fruit. The small farm winery providing the custom crushing services may exclude the wine produced under this paragraph from its annual production gallonage;
 - (d) If the licensed small farm winery or off-premises retail site premises is located in wet territory or in a precinct that has authorized alcoholic beverage sales by the small farm winery under KRS 242.124:
 1. Serve complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day; and
 2. Sell by the drink for on-premises consumption or off-premises consumption pursuant to KRS 243.081, or by the package wine produced by it or by another licensed small farm winery, at retail to consumers;
 - (e) Sell by the drink or by the package, at fairs, festivals, and other similar types of events, wine produced by it or by another licensed small farm winery, at retail to consumers if all sales occur in a wet territory;
 - (f) Sell and transport wine produced by it to consumers, licensed small farm winery off-premises retail sites, wholesale license holders, and small farm winery license holders, **except that wine purchased between small farm wineries shall not exceed five hundred (500) gallons per year per small farm winery;**
 - (g) Consume on the premises wine produced by the small farm winery or a licensed small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in wet territory; ~~and~~
 - (h) ~~A small farm winery may~~ Sell wine at retail to consumers in accordance with KRS 243.027 to 243.029 if it holds a direct shipper license; **and**
 - (i) **Sell and deliver, in accordance with KRS 243.120(1), up to twelve thousand (12,000) gallons of wine produced by it annually to any retail license holder as long as:**
 1. **Any products sold and delivered under this paragraph that are not otherwise registered by a licensed wholesaler shall be registered with the department by the small farm winery;**

2. *The small farm winery is responsible for payment of wine wholesale sales taxes and reporting of self-distributed wines in accordance with KRS 243.884; and*
3. *The small farm winery may extend credit on wine sold to retail licensees for a period not to exceed thirty (30) days from the date of invoice, with the date of invoice included in the total number of days.*

This paragraph shall not apply to small farm winery wholesalers licensed under KRS 243.154.

- (3) If the requirements of KRS 242.1241 or 244.290(5) relating to Sunday sales on the licensed premises of a small farm winery are met, a small farm winery within that territory may sell alcoholic beverages on Sunday only in accordance with this section during the hours and times as permitted in the local ordinance for that locality.
- (4) A small farm winery license holder may also hold an NQ2 retail drink license or an NQ4 retail malt beverage drink license if:
 - (a) The small farm winery is located in wet territory or in a precinct that has authorized alcoholic beverage sales by the small farm winery under KRS 242.124; and
 - (b) The issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise designed to promote viticulture, enology, and tourism.
- (5) This section shall not exempt the holder of a small farm winery license from the provisions of KRS Chapters 241 to 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small farm winery, except as expressly stated in this section.
- (6) Nothing contained in this section shall exempt a licensed out-of-state winery from obeying the laws of its resident state.
- (7) Upon the approval of the department, a small farm winery license may be renewed after the licensee submits to the department the winery's federal basic permit and proof of its annual wine production.
- (8) An employee of a small farm winery may sample the products produced by that small farm winery for purposes of education, quality control, and product development.

➔Section 2. KRS 243.355 is amended to read as follows:

- (1) A distilled spirits and wine storage license may be issued as a primary license or as a supplementary license to the holder of a *wholesaler's license, small farm winery's license*, distiller's license, rectifier's license, or quota retail package license.
- (2) A distilled spirits and wine storage license may be issued to any person operating a bonded warehouse for distilled spirits, and who does not at the same time, and for the same premises, hold a federal operating permit for distilling purposes, but who possesses only a federal operating permit for a bonded warehouse for distilled spirits as defined by federal law and the Internal Revenue Code.
- (3) A licensee under this section may operate a bonded warehouse or warehouses for premises specifically designated, but this license shall become void if a federal operating permit for distilling purposes is issued for the same premises, and shall remain void while the federal permit remains in effect. Upon the granting of a federal operating permit for distilling purposes, the licensee of the premises previously licensed under this section shall obtain a license as set out in KRS 243.030(1).
- (4) A distilled spirits and wine storage license may be issued to persons or entities not otherwise entitled under Kentucky law to store or warehouse distilled spirits or wine, but who are so authorized by the federal government. The license shall authorize the licensee to operate a warehouse or place of storage for distilled spirits or wine on the premises specifically designated.
- (5) A quota retail package licensee holding a supplemental distilled spirits and wine storage license may store distilled spirits and wine at the storage licensed premises convenient to the licensee's regular retail package licensed premises.

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

- (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits, all distributors of beer, all direct shipper licensees shipping alcohol to a consumer at a Kentucky address, all distillers making sales

pursuant to KRS 243.0305(3), (4)(a)1. and 2. and (c), (7), (9), (10), and (12), ~~and~~ all microbreweries selling malt beverages under KRS 243.157, **and all small farm wineries selling wine under Section 1 of this Act.**

- (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent (11%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth, except as provided in subsection (3) of this section. For the purposes of this section, the gross receipts of a microbrewery making "wholesale sales" shall be calculated by determining the dollar value amount that the microbrewer would have collected had it conveyed to a distributor the same volume sold to a consumer as allowed under KRS 243.157 (3)(b) and (c).
- (c) On and after July 1, 2015, the following rates shall apply:
 - 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at wholesale; and
 - 2. For wine and beer:
 - a. Ten and three-quarters of one percent (10.75%) for wholesale sales or sales at wholesale made on or after July 1, 2015, and before June 1, 2016;
 - b. Ten and one-half of one percent (10.5%) for wholesale sales or sales at wholesale made on or after June 1, 2016, and before June 1, 2017;
 - c. Ten and one-quarter of one percent (10.25%) for wholesale sales or sales at wholesale made on or after June 1, 2017, and before June 1, 2018; and
 - d. Ten percent (10%) for wholesale sales or sales at wholesale made on or after June 1, 2018.
- (d) On and after March 12, 2021, the following rates shall apply for direct shipper sales:
 - 1. For distilled spirits shipments, eleven percent (11%) for wholesale sales or sales at wholesale; and
 - 2. For wine and beer shipments, ten percent (10%) for wholesale sales or sales at wholesale.
- (e) For direct shipper sales or sales made pursuant to KRS 243.0305, if a wholesale price is not readily available, the direct shipper licensee or distillery shall calculate the wholesale price to be seventy percent (70%) of the retail price of the alcoholic beverages.
- (2) Wholesalers of distilled spirits and wine, distributors of malt beverages, microbreweries, distillers, and direct shipper licensees shall pay and report the tax levied by this section on or before the twentieth day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine, or malt beverages is transferred from the wholesaler or distributor to retailers, or by microbreweries, distillers, or direct shipper licensees to consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (3) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:
 - (a) Sales made between wholesalers or between distributors;
 - (b) Sales from the first fifty thousand (50,000) gallons of wine produced by a small farm winery in a calendar year made by:
 - 1. The small farm winery; or
 - 2. A wholesaler of that wine produced by the small farm winery; and
 - (c) Sales made between a direct shipper licensee and a consumer located outside of Kentucky.

➔Section 4. Whereas small farm wineries represent a growing industry in the Commonwealth, and their economic health is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 17, 2023.