

1 AN ACT relating to microbreweries and making an appropriation therefor.

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-premises
20 consumption, in an aggregate amount not to exceed thirty-one (31)
21 gallons per person per day that shall not include more than three (3)
22 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 produced on the premises of the microbrewery to consumers at fairs, festivals,
27 and other similar types of events located in wet territory, in accordance with

1 subsection (3)(b)2. and (c)2. of this section; and

2 (f) Sell and deliver up to two thousand five hundred (2,500) barrels of malt
3 beverages annually to any retail license holder, provided that any products
4 sold and delivered under this paragraph that are not otherwise registered by
5 a licensed distributor shall be registered by the microbrewery license holder
6 as set forth in KRS 244.585.

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

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

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

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

20 1. The microbrewery possesses a retail drink license for those premises;
21 and

22 2. The microbrewery reports and pays all taxes required by subsection
23 (5)(a) and (b) of this section to the Department of Revenue at the time
24 and in the manner required by the Department of Revenue in accordance
25 with its powers under KRS 131.130(3); and

26 (c) Sell malt beverages produced on the premises of the microbrewery for off-
27 premises purposes without having to transfer physical possession of those

1 malt beverages to a licensed distributor provided that:

2 1. The microbrewery possesses a retail package license for those premises;
3 and

4 2. The microbrewery reports and pays all taxes required by subsection
5 (5)(a) and (b) of this section to the Department of Revenue at the time
6 and in the manner required by the Department of Revenue in accordance
7 with its powers under KRS 131.130(3).

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

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

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

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

19 (5) (a) A microbrewery selling malt beverages in accordance with subsections (1)(f)
20 or~~subsection~~ (3)(b) and (c) of this section shall pay all wholesale sales taxes
21 due under KRS 243.884. For the purposes of this subsection, "wholesale
22 sales" means a sale of malt beverages made by a microbrewery under
23 subsections (1)(f) or~~subsection~~ (3)(b) and (c) of this section, as applicable.

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

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

- 1 (7) An employee of a microbrewery may sample the products produced by that
2 microbrewery for purposes of education, quality control, and product development.
- 3 (8) This section does not exempt the holder of a microbrewery license from the
4 provisions of KRS Chapters 241 to 244, nor from any rules of the board as
5 established by administrative regulations, nor from regulation by the board, except
6 as expressly stated in this section. The provisions of this section shall not be
7 deemed inconsistent with the provisions of KRS 244.602.
- 8 (9) Nothing in this section shall be construed to vitiate the policy of this
9 Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly
10 three (3) tier system for the production and sale of malt beverages.

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO
12 READ AS FOLLOWS:

- 13 **(1) As of the effective date of this Act, the provisions of KRS 244.602 to 244.606 shall**
14 **not apply to any new distribution agreement, or the renewal of an existing**
15 **distribution agreement, between a distributor of malt beverages and a**
16 **microbrewery holding a license under KRS 243.157. Any existing distribution**
17 **agreement between a distributor of malt beverages and a microbrewery holding a**
18 **license under KRS 243.157 shall be deemed to renew upon the earlier of January**
19 **1, 2021, or the renewal date set forth in that agreement.**
- 20 **(2) Every distribution agreement providing for and specifying the rights and duties of**
21 **a microbrewer and distributor with and in regard to the sale of the products of**
22 **the microbrewer within the Commonwealth of Kentucky shall be in writing.**
- 23 **(3) A distribution agreement between a microbrewer and a distributor shall not:**
- 24 **(a) Require the microbrewer or distributor to agree to renew the distribution**
25 **agreement at the expiration of a term;**
- 26 **(b) Except as set forth in subsection (4) of this section, permit a microbrewer or**
27 **distributor to terminate a distribution agreement without first giving written**

1 notice of any alleged deficiency and giving the other party a reasonable
2 opportunity to cure the alleged deficiency. For purposes of this paragraph, a
3 reasonable opportunity to cure shall be thirty (30) days from the date a
4 notice of an alleged deficiency is received;

5 (c) Permit the assignment of the distribution agreement, in part or in whole,
6 without first obtaining the consent of the other party, which shall not be
7 unreasonably withheld provided the assignee possesses the financial,
8 technical, and operational skills necessary to perform under the distribution
9 agreement;

10 (d) Permit the microbrewer or distributor to unilaterally amend a distribution
11 agreement, or any document referred to or incorporated by reference in the
12 distribution agreement;

13 (e) Require a microbrewer or distributor to arbitrate disputes which may arise
14 between them; or

15 (f) Prohibit a microbrewer or distributor from litigating in state or federal
16 courts located in Kentucky or from litigating under the laws of the
17 Commonwealth.

18 (4) A microbrewer may terminate a distribution agreement according to the terms of
19 the agreement or in any of the following instances:

20 (a) The assignment or attempted assignment by the distributor for the benefit of
21 creditors, the institution of proceedings in bankruptcy by or against the
22 distributor, the dissolution or liquidation of the distributor, the insolvency
23 of the distributor, or the distributor's failure to pay for malt beverages in
24 accordance with law;

25 (b) The felony conviction of a distributor, or any of its owners who participate
26 in the distributor's management which, in the sole judgment of the
27 microbrewer, may adversely affect the goodwill or interests of the

1 microbrewer;

2 (c) Fraudulent or discriminatory conduct of the distributor in any of its
3 dealings;

4 (d) Revocation or suspension for more than thirty-one (31) days of the
5 distributor's federal basic permit or any state or local license required of the
6 distributor for the normal operation of its business;

7 (e) Sale of malt beverages by a distributor outside its sales territory prescribed
8 by the distribution agreement in accordance with KRS 244.585;

9 (f) Without microbrewer consent, the distributor effectuates a change in
10 ownership or possession of ownership interests, establishes a trust or other
11 ownership interest, enters into buy-sell agreements, or grants an option to
12 purchase an ownership interest; provided, however, this right of
13 termination shall not apply to the transfer, creation, sale, gift, or grant of an
14 ownership interest, or option thereon, of less than ten percent (10%) of the
15 total existing ownership or possession of ownership interest of the
16 distributor; or

17 (g) In the case of a microbrewer holding a license under Section 1 of this Act
18 and whose products represent five percent (5%) or less of a distributor's
19 gross annual sales, the giving of forty-five (45) days' notice of termination
20 and the payment to the distributor of an amount equal to three hundred
21 percent (300%) of the distributor's gross profits from the sale of the
22 brewer's products in the twelve (12) months immediately preceding the
23 delivery of the notice of termination, provided a brewer terminating an
24 agreement under this paragraph may do so not more than once in a thirty-
25 six (36) month period and shall not be deemed to be in violation of
26 subparagraph (5)(a) of this section.

27 (5) A microbrewer or a distributor of malt beverages shall not:

- 1 (a) Unreasonably discriminate or retaliate against the other party in the
2 application or performance of the terms of a distribution agreement;
- 3 (b) Require or request payment, convey money or other consideration or accept
4 any sum of money or other consideration in exchange for the right to
5 distribute the product or products of the microbrewer in a designated
6 territory, provided that the following items shall not be prohibited:
- 7 1. A microbrewers request to a distributor to pay or contribute any sum
8 of money for or toward the cost of marketing the product or products
9 of the microbrewer so long as the money contributed by the distributor
10 is spent by the microbrewer in a manner and at such times as agreed
11 to in writing by the microbrewer and the distributor; and
- 12 2. Any payment pursuant to subsection (4)(g) of this section;
- 13 (c) Unreasonably fail to consent to, or withdraw approval of, the designation of
14 an individual as the microbrewer's or distributor's account manager or
15 successor-manager in accordance with nondiscriminatory and reasonable
16 qualifications and standards;
- 17 (d) Unreasonably withhold timely consent to a proposed sale or transfer, in part
18 or whole, of the stock or assets of the microbrewer or distributor, and in no
19 event shall the microbrewer or distributor take more than thirty (30) days to
20 approve or disapprove the proposed sale or transfer after the microbrewer
21 or distributor has received written notice of the proposal and received all
22 requested information to enable the microbrewer to pass upon the
23 purchaser's or transferee's financial, technical and operational skills
24 necessary to perform under the distribution agreement; or
- 25 (e) Fail to give less than thirty (30) days' advance notice of a change in
26 ownership or possession of an ownership interest, whether by sale, transfer,
27 gift or grant of an option.

- 1 (6) A distributor of malt beverages shall not:
- 2 (a) Refuse to enter into a distribution agreement with a microbrewery, in whole
- 3 or in part, except for good cause and in good faith; or
- 4 (b) Continue to distribute the microbrewer's products thirty (30) days after
- 5 receiving a notice of termination of a distribution agreement. However, any
- 6 sums owed to the distributor by the microbrewer or another distributor
- 7 assuming the obligation to distribute the microbrewer's product within the
- 8 territory encompassed by the terminated distribution agreement shall still be
- 9 owed.
- 10 (7) A microbrewer shall not enter into a contract with more than one (1) distributor
- 11 to sell any of its products or brands within the same territory or area at the same
- 12 time. This subsection shall not apply to contracts entered into prior to January 1,
- 13 2004, or future renewals of those contracts to the extent the existing contract and
- 14 the future renewal allow different distributors to sell some but not all of the
- 15 brewer's or importer's brands or brand extensions within the same territory or
- 16 area at the same time.
- 17 (8) A distributor that enters into or renews a distribution agreement with a
- 18 microbrewer following the effective date of this Act shall maintain physical
- 19 facilities and personnel so that:
- 20 (a) The product and brand of the microbrewer are properly represented in the
- 21 territory of the distributor for which the distribution agreement applies;
- 22 (b) The reputation and trade name of the microbrewer are reasonably promoted
- 23 and protected; and
- 24 (c) The public is fully serviced.
- 25 (9) Any microbrewer or distributor that violates any provision of this section shall
- 26 pay the injured party all reasonable damages sustained by it as a result of the
- 27 microbrewer's or distributor's violations, together with the costs and attorneys'

1 *fees incurred by the microbrewer or distributor in protecting its right.*