

1 AN ACT relating to quota licenses for alcohol, making an appropriation therefor  
2 and declaring an emergency.

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

4 ➔Section 1. KRS 243.884 is amended to read as follows:

- 5 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of *malt*  
6 *beverages*~~[beer]~~, wine, or distilled spirits, a tax is hereby imposed upon all  
7 wholesalers of wine and distilled spirits and upon all distributors of *malt*  
8 *beverages*~~[beer]~~.
- 9 (b) *On and after June 1, 2018*~~[Prior to July 1, 2015]~~, the tax shall be imposed at  
10 the rate of *fourteen*~~[eleven]~~ percent (*14%*~~[(11%)]~~) of the gross receipts of any  
11 such wholesaler or distributor derived from "sales at wholesale" or "wholesale  
12 sales" made within the Commonwealth except as provided in subsection (3) of  
13 this section.
- 14 (c) *Before June 1, 2018*~~[On and after July 1, 2015]~~, the following rates shall  
15 apply:
- 16 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at  
17 wholesale; and
  - 18 2. For wine and *malt beverages*,~~[beer]~~:
    - 19 a. ~~Ten and three-quarters of one percent (10.75%) for wholesale sales~~  
20 ~~or sales at wholesale made on or after July 1, 2015, and before~~  
21 ~~June 1, 2016;~~
    - 22 b. ~~Ten and one-half of one percent (10.5%) for wholesale sales or~~  
23 ~~sales at wholesale made on or after June 1, 2016, and before June~~  
24 ~~1, 2017;~~
    - 25 e. ~~ten and one-quarter of one percent (10.25%) for wholesale sales~~  
26 ~~or sales at wholesale made on or after June 1, 2017, and before~~  
27 ~~June 1, 2018; and~~

1                   d. ~~Ten percent (10%) for wholesale sales or sales at wholesale made~~  
2                   ~~on or after June 1, 2018].~~

3       (2) Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay  
4       and report the tax levied by this section on or before the 20th day of the calendar  
5       month next succeeding the month in which possession or title of the distilled spirits,  
6       wine or malt beverages is transferred from the wholesaler or distributor to retailers  
7       or consumers in this state, in accordance with rules and regulations of the  
8       Department of Revenue designed reasonably to protect the revenues of the  
9       Commonwealth.

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

12           (a) Sales made between wholesalers or between distributors; and

13           (b) Sales made by a small farm winery or wholesaler of wine produced by a small  
14           farm winery, if that small farm winery produces no more than fifty thousand  
15           (50,000) gallons of wine per year.

16      ➔Section 2. KRS 243.157 is amended to read as follows:

17      (1) A microbrewery license shall authorize the licensee to perform the following  
18      functions:

19           (a) Engage in the business of a brewer under the terms and conditions of KRS  
20           243.150, provided that production of malt beverages at the microbrewery shall  
21           not exceed fifty thousand (50,000) barrels in one (1) year;

22           (b) Serve on the premises complimentary samples of malt beverages produced by  
23           the microbrewery in amounts not to exceed sixteen (16) ounces per patron,  
24           provided the microbrewery is located in wet territory;

25           (c) Sell malt beverages produced on the premises of the microbrewery to licensed  
26           distributors;

27           (d) Sell malt beverages produced on the premises of the microbrewery for on- and

1 off-premises purposes in accordance with subsection (3)(b) and (c) of this  
2 section; and

3 (e) Sell malt beverages produced on the premises of the microbrewery to  
4 consumers at fairs, festivals, and other similar types of events located in wet  
5 territory, in accordance with subsection (3)(b)2. and 3. and subsection (3)(c)2.  
6 and 3. of this section. The cumulative amount of malt beverages purchased by  
7 a consumer by the drink and by the package from a microbrewery under this  
8 paragraph shall not exceed two hundred eighty-eight (288) ounces per day.

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

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

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

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

- 22 1. The microbrewery possesses a retail drink license for those premises;
- 23 2. The microbrewery has a written contract with a licensed distributor  
24 authorizing the distributor to purchase and distribute the microbrewery's  
25 malt beverages to any other retailer; and
- 26 3. The microbrewery provides to the distributor a monthly report of the  
27 quantity of malt beverages produced at the microbrewery and sold at

1 retail at the microbrewery under the provisions of its retail drink 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 Department of  
7 Revenue~~[board by administrative regulation]~~. The information  
8 provided on the form shall be reported to the Department of  
9 Revenue at the time and in the manner required by that department  
10 in accordance with its powers under KRS 131.130(3) and any  
11 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 2. The microbrewery has a written contract with a licensed distributor  
20 authorizing the distributor to purchase and distribute the microbrewery's  
21 malt beverages to any other retailer; and

22 3. The microbrewery provides to the distributor a monthly report of the  
23 quantity of malt beverages produced at the microbrewery under the  
24 provisions of its retail package license. The report required under this  
25 subparagraph shall:

26 a. Be provided to the distributor on or before the tenth day of the  
27 month next succeeding the month in which the malt beverages

- 1                   were produced and sold at the microbrewery; and
- 2                   b. Be provided on a form promulgated by the Department of
- 3                   Revenue~~[board by administrative regulation]~~. The information
- 4                   provided on the form shall be reported to the Department of
- 5                   Revenue at the time and in the manner required by that department
- 6                   in accordance with its powers under KRS 131.130(3) and any
- 7                   administrative regulation promulgated thereunder.

8                   Nothing in this subparagraph shall require a distributor to verify the

9                   accuracy of the information provided by the microbrewery in its report;

10                  and

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

14 (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt

15 beverages that are produced by the microbrewery at its licensed premises and:

- 16 (a) Offered for sale by the microbrewery at that same premises under the
- 17 microbrewery's retail drink or package license; or
- 18 (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of
- 19 event as authorized under subsection (1)(e) of this section.

20 All other malt beverages produced by the microbrewery which are offered for retail

21 sale shall be sold and physically transferred to a licensed distributor in compliance

22 with all other relevant provisions of KRS Chapters 241 to 244, and a licensed

23 microbrewery shall not otherwise affect sales of malt beverages directly to retail

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

- 25 (5) (a) A microbrewery selling malt beverages in accordance with subsection (3)(b)
- 26 and (c) of this section shall collect and provide the licensed distributor all
- 27 taxes due under KRS 243.884. The tax shall be computed at the rate

1           established in Section 1 of this Act on~~[of eleven percent (11%) of]~~ the  
2           wholesale value of the malt beverages sold by the microbrewery under the  
3           provisions of subsection (3)(b) and (c) of this section. For the purposes of this  
4           subsection "wholesale value" shall be determined in accordance with the  
5           contract required under subsection (3)(b)2. and (c)2. of this section, as  
6           applicable.

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

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

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

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

23          (8) This section does not exempt the holder of a microbrewery license from the  
24          provisions of KRS Chapters 241 to 244, nor from any rules of the board as  
25          established by administrative regulations, nor from regulation by the board, except  
26          as expressly stated in this section. The provisions of this section shall not be  
27          deemed inconsistent with the provisions of KRS 244.602.

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

4 ➔Section 3. KRS 241.065 is amended to read as follows:

5 (1) The number of quota retail package licenses issued by the Alcoholic Beverage  
 6 Control Board to licensees in counties containing cities of the first class, and  
 7 including such cities, shall not exceed a number equal to one (1) for every one  
 8 thousand five hundred (1,500) persons resident in such county.

9 (2) The number of quota retail drink licenses issued by the Alcoholic Beverage Control  
 10 Board to licensees in counties containing cities of the first class, and including such  
 11 cities shall not exceed a number equal to one (1) for every one thousand five  
 12 hundred (1,500) persons resident in such county.

13 (3) In order that a fixed and approved standard of population as prescribed in  
 14 subsections (1) and (2) of this section may be adopted the annual estimates of  
 15 population as determined by the Kentucky State Data Center at the University of  
 16 Louisville~~[chambers of commerce of cities of the first class]~~ shall be used in every  
 17 year except a census year, and during a census year the United States government  
 18 census figures of population shall be controlling.

19 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO  
 20 READ AS FOLLOWS:

21 **(1) The number of quota retail package licenses issued by the department in any wet**  
 22 **county shall not exceed one (1) license for every two thousand three hundred**  
 23 **(2,300) persons resident in the county, except that:**

24 **(a) A wet county containing a city of the first class shall be subject to the**  
 25 **limitations in Section 3 of this Act;**

26 **(b) No fewer than two (2) quota retail package licenses shall be available for**  
 27 **issuance by the department in any wet county; and**

- 1        (c) Any specific county quota amounts that were issued by the department prior  
2        to January 1, 2018, in excess of the population calculations established in  
3        this section shall remain in effect, and the department shall maintain the  
4        list of specific quotas in an administrative regulation.
- 5        (2) The number of quota retail drink licenses issued by the department in any wet  
6        county meeting the requirements of KRS 243.230 shall not exceed one (1) license  
7        for every two thousand five hundred (2,500) persons resident in the county,  
8        except that:
- 9        (a) A wet county containing a city of the first class shall be subject to the  
10        limitations in Section 3 of this Act;
- 11        (b) No fewer than two (2) quota retail drink licenses shall be available for  
12        issuance by the department in any wet county meeting the requirements of  
13        KRS 243.230;
- 14        (c) The department may issue a non-quota type 2 retail drink license to an  
15        applicant that is located within a premises that is licensed as an  
16        entertainment destination center by the department; and
- 17        (d) Any specific county quota amounts that were issued by the department prior  
18        to January 1, 2018, in excess of the population calculations established in  
19        this section shall remain in effect, and the department shall maintain the  
20        list of specific quotas in an administrative regulation.
- 21        (3) Nothing in this section shall be construed to prohibit license renewal or license  
22        transfers approved by the department of an existing quota retail license issued in  
23        a wet county.
- 24        (4) In counties that have not received an increased quota license amount from the  
25        department, any quota licenses over the established amount shall be reduced as  
26        the licenses are revoked, surrendered, or not renewed by the license holder.
- 27        (5) If a dry county that contains a wet city becomes wet, the quotas established by this

1 section shall supersede and replace any separate city quotas.

2 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO  
3 READ AS FOLLOWS:

4 (1) The number of quota retail package licenses issued by the department in any city  
5 that becomes wet separate from its county by virtue of a local option election  
6 pursuant to KRS 242.125 shall not exceed one (1) license for every two thousand  
7 three hundred (2,300) persons resident in the city, except that:

8 (a) No fewer than two (2) quota retail package licenses shall be available for  
9 issuance by the department in any wet city; and

10 (b) Any specific city quota amounts that were issued by the department prior to  
11 January 1, 2018, in excess of the population calculations established in this  
12 section shall remain in effect, and the department shall maintain the list of  
13 specific quotas in an administrative regulation.

14 (2) The number of quota retail drink licenses issued by the department in any city  
15 that becomes wet separate from its county by virtue of a local option election  
16 pursuant to KRS 242.125 shall not exceed one (1) license for every two thousand  
17 five hundred (2,500) persons resident in the city, except that:

18 (a) No fewer than two (2) quota retail drink licenses shall be available for  
19 issuance by the department in any wet city; and

20 (b) Any specific city quota amounts that were issued by the department prior to  
21 January 1, 2018, in excess of the population calculations established in this  
22 section shall remain in effect, and the department shall maintain the list of  
23 specific quotas in an administrative regulation.

24 (3) Nothing in this section shall be construed to prohibit license renewal or license  
25 transfers approved by the department of an existing quota retail license issued in  
26 a wet city.

27 (4) In cities that have not received an increased quota license amount from the

1 department, any quota licenses over the established amount shall be reduced as  
2 the licenses are revoked, surrendered, or not renewed by the license holder.

3 (5) If a dry county in which a wet city is located becomes wet, the quota established  
4 for that entire county by Section 4 of this Act shall supersede and replace any  
5 separate city quota under this section.

6 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO  
7 READ AS FOLLOWS:

8 For the purposes of administering Sections 4 and 5 of this Act:

9 (1) The population data shall be based on a wet county's or city's annual population  
10 estimates prepared by the Kentucky State Data Center at the University of  
11 Louisville in every year except a federal decennial census year. The federal  
12 decennial census figures of population shall be used in a census year; and

13 (2) (a) On or before January 1 of each year, the department shall obtain the  
14 population figures of all wet counties and cities as of that date for  
15 determination of the number of quota licenses available.

16 (b) If a quota retail license vacancy is created by an increase in population or  
17 any other reason, the department shall publish notice of the vacancy and  
18 information on how to apply for the license within sixty (60) days in the  
19 newspaper used for the legal notices of that county or city.

20 (c) The department shall accept applications for a quota retail license vacancy  
21 not later than thirty (30) days following the date on which the public notice  
22 is published.

23 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 241 IS CREATED TO  
24 READ AS FOLLOWS:

25 (1) A city may petition the board for an increase in the number of quota licenses  
26 available in its jurisdiction pursuant to Section 8 of this Act. A request for an  
27 increase shall not exceed the ratio of one (1) per every one thousand five hundred

1       (1,500) residents.

2       (2) The board shall consider the following factors when deciding whether to grant  
3       the increase:

4       (a) Population served by the city;

5       (b) Total retail sales of the city for the most recent past fiscal year;

6       (c) Retail sales per capita for the most recent past fiscal year;

7       (d) Total alcohol sales in the city for the most recent past fiscal year;

8       (e) Tourist destinations in the area, if applicable; and

9       (f) Other economic and commercial data offered to show the capacity to  
10       support additional licenses.

11       (3) The board shall grant the request if the information supplied supports the  
12       requested increase, and shall begin the process of filing an amendment to its  
13       administrative regulation to register the increase. Additional licenses shall not be  
14       issued until the administrative regulation process is complete and the amendment  
15       is adopted.

16       (4) If the board determines the information supplied does not support a quota  
17       increase, it shall notify the city of its decision by registered mail at the address  
18       given in the request. The city shall have thirty (30) days from the date of the  
19       mailing to file a written request for a hearing before the board regarding its  
20       request for an increase.

21       ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO  
22       READ AS FOLLOWS:

23       (1) A city shall not file a request with the board seeking to increase the number of  
24       quota retail licenses for the city unless at least three (3) years have passed since  
25       the certification of its local option election approving alcohol sales.

26       (2) Prior to making its request, the city shall publish a notice in the newspaper used  
27       for its legal notices, advising the general public of the city's intent to request

1 additional licenses from the board.

2 (3) The request to the board for a quota increase shall include:

3 (a) A certified copy of the governing body's resolution approving the request;

4 (b) A certified copy of the notice referenced in subsection (2) of this section;

5 and

6 (c) An explanation as to the reason the city meets the criteria established in

7 Section 7 of this Act for a quota increase.

8 (4) The city shall bear the burden of showing an increase is necessary.

9 (5) A city shall not petition the board for an increase more than once every three (3)

10 years.

11 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO  
12 READ AS FOLLOWS:

13 A quota retail package licensee or quota retail drink licensee assumes the business risk  
14 that the number of quota licenses available in a city or county may be increased at a  
15 later time.

16 ➔Section 10. The following KRS section is repealed:

17 243.886 Reimbursement for collecting and reporting.

18 ➔Section 11. Whereas, the sale of alcohol is a highly regulated activity under  
19 Kentucky law; and whereas the alcohol quota licensing system currently exists primarily  
20 in Kentucky Administrative Regulations Chapter 804; and whereas the department has  
21 filed to repeal those regulations, a repeal of which will upend the current regulatory  
22 licensing scheme of alcohol, an emergency is declared to exist, and this Act takes effect  
23 upon its passage and approval by the Governor or upon its otherwise becoming a law.