

243.157 Business authorized by a microbrewery license -- Functions licensee permitted to perform -- Microbrewery to pay wholesale and excise taxes on sales of malt beverages -- Sampling by employees.

- (1) A microbrewery license shall authorize the licensee to perform the following functions:
 - (a) Engage in the business of a brewer under the terms and conditions of KRS 243.150, provided that production of malt beverages at the microbrewery shall not exceed fifty thousand (50,000) barrels in one (1) year;
 - (b) Serve on the premises complimentary samples of malt beverages produced by the microbrewery in amounts not to exceed sixteen (16) ounces per patron, provided the microbrewery is located in wet territory or a precinct that has authorized the sale of alcoholic beverages at microbreweries under KRS 242.1239;
 - (c) Sell malt beverages produced on the premises of the microbrewery to licensed distributors;
 - (d) Sell malt beverages produced on the premises of the microbrewery for on- and off-premises purposes in accordance with subsection (3)(b) and (c) of this section, pursuant to the following:
 1. Without restriction on the amount of malt beverages sold by the drink for on-premises consumption provided the microbrewery is located in wet territory or a precinct that has authorized the sale of alcoholic beverages at microbreweries under KRS 242.1239; and
 2. With a restriction on the amount of malt beverages sold for off-premises consumption, in an aggregate amount not to exceed thirty-one (31) gallons per person per day that shall not include more than three (3) cases in case format;
 - (e) Sell:
 1. Unlimited amounts of malt beverages by the drink; and
 2. Not more than one (1) case of packaged malt beverages; produced on the premises of the microbrewery to consumers at fairs, festivals, and other similar types of events located in wet territory, in accordance with subsection (3)(b)2. and (c)2. of this section; and
 - (f) Sell and deliver up to two thousand five hundred (2,500) barrels of malt beverages annually to any retail license holder, provided that:
 1. Any products sold and delivered under this paragraph that are not otherwise registered by a licensed distributor shall be registered with the department by the microbrewery; and
 2. The microbrewer notifies the distributor of any self-distribution delivery by electronic or other means.
- (2) A microbrewery license shall not be deemed to be incompatible with any other license except for a distributor's license under the provisions of KRS 243.180.
- (3) In accordance with the provisions of this section, a microbrewery license holder

may:

- (a) Hold retail drink and package licenses both on and off the premises of the microbrewery. The holder of a microbrewery license is exempt from the provisions of KRS 244.570 and 244.590 as applied to any retail licenses held by the microbrewery license holder, and from any other sections which would restrict the co-ownership of the microbrewery license and any retail licenses described in this section;
 - (b) Sell malt beverages produced on the premises of the microbrewery for on-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided:
 - 1. The microbrewery possesses a retail drink license for those premises; and
 - 2. The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3); and
 - (c) Sell malt beverages produced on the premises of the microbrewery for off-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided that:
 - 1. The microbrewery possesses a retail package license for those premises; and
 - 2. The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3).
- (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt beverages that are produced by the microbrewery at its licensed premises and:
- (a) Offered for sale by the microbrewery at that same premises under the microbrewery's retail drink or package license; or
 - (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of event as authorized under subsection (1)(e) of this section.

All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor in compliance with all other relevant provisions of KRS Chapters 241 to 244, and a licensed microbrewery shall not otherwise affect sales of malt beverages directly to retail customers except as provided in subsection (3)(b) and (c) of this section under KRS 243.027 to 243.029 if the microbrewery holds a direct shipper license.

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

KRS 243.720(3) and 243.730 and shall be entitled to the credit set forth in KRS 243.720(3)(b).

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

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 34, sec. 1, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 80, sec. 20, effective July 15, 2020; and ch. 102, sec. 9, effective July 15, 2020. -- Amended 2018 Ky. Acts ch. 16, sec. 1, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 62, sec. 55, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 80, sec. 16, effective July 15, 2016. -- Amended 2013 Ky. Acts ch. 121, sec. 104, effective June 25, 2013. -- Amended 1992 Ky. Acts ch. 25, sec. 1, effective July 14, 1992. -- Created 1984 Ky. Acts ch. 60, sec. 1, effective July 13, 1984.

Legislative Research Commission Note (7/15/2020). Although 2020 Ky. Acts ch. 102, sec. 9 contained citations to "Section 4 of this Act" (codified as KRS 243.100) in subsection (1)(b) and (d)1. of this statute, it is clear from the context that Section 8 (codified as KRS 242.1239) was intended, and the Reviser of Statutes has corrected this manifest clerical or typographical error in codification under the authority of KRS 7.136.