

Kentucky's Alcoholic Beverage Laws 2017 Legislative Update

HB100, HB183, and HB319



Explaining the Changes

- HB100, HB 183, and HB 319 impact Kentucky's alcoholic beverage statutes in one of three ways:
 - Amend existing statutes.
 - Repeal existing statutes.
 - Create new statutes.



Explaining the Changes

- HB100, HB 183, and HB 319 impact five main topics.
 - Local Option Elections
 - State and Local Administrators
 - The Licensing Process
 - License Types
 - Licensee Practices



Local Option Elections

□ New Step- Intent to File Petition

- Before a petition for a local option (wet or moist) election can be circulated, an "intent to circulate petition" must be filed with the County Clerk along with a copy of the unsigned petition.

□ Petition

- The petition for a local option (wet or moist) election **MUST** now state the date of the local option election.



Local Option Elections

□ Primary and Regular Election Days

- A local option election can now be held on the same day as a primary or regular election.
- The petition must be filed by the last Tuesday in January for the local option election to be held on the **primary** election day. (The petition may not be filed sooner than the first Wednesday after the first Monday in the preceding November).
- The petition must be filed by the second Tuesday of August to hold the local option election on the same day as the **regular** election that year (The petition may not be filed sooner than one hundred fifty (150) days preceding the regular election day).
- If the person/group filing the petition names the local option election to be held on date **OTHER** than the primary or regular election day, they must now pay for the costs of the local option election and post a bond to ensure payment.



Local Option Elections

□ All Moist Local Option Elections now have Essentially the Same Rules.

- All qualifying businesses for that type of "moistness" in the territory can now be licensed.
- The only differences in moist election types:
 - The territory size authorized to hold the election. (city/county/precinct).
 - The type of businesses authorized to sell alcoholic beverages. (limited restaurant, golf course, qualified historic site, state park, small farm winery, distillery)



Local Option Elections

□ Dual “Moist” AND “Wet” Status

- Statutes provide more clarity about dual status of cities and counties that first vote moist and then later also vote wet.
- Such cities/counties retain dual status as BOTH wet and moist. If a subsequent election results in the reversal of its wet status, the city/county still retains its moist status.



State and Local Administrators

□ Advisory Opinions

- The Department now has authority to issue advisory opinions and declaratory rulings on questions regarding alcoholic beverage laws.

□ Administrative Subpoenas and Summons

- The Department now has administrative subpoena power to subpoena records for investigations regarding hidden ownership or other violations.



State and Local Administrators

□ Emergency Suspension Powers

- The Department now has authority to issue an emergency suspension order to immediately suspend a license, prior to hearing, if the business poses a threat to public health, safety, or welfare. Licensees have expedited due process rights.

□ Dissolution of Automatic Stay

- For “good cause shown,” a circuit court may now dissolve the automatic stay that prevents a Board Final Order from becoming effective until finality of court appeals.



State and Local Administrators

❑ **Failure to Comply with a Board Final Order**

▪ A licensee's failure to comply with the terms of a Board Final Order is now a specific ground for license revocation or suspension.

❑ **Fines for Producers Committing Retail Sale Violations**

▪ When producers (distillers, wineries, SFW's, brewers, microbrewers) commit retail sale violations, the Board may allow fines to be paid, in lieu of suspension days, at a rate of \$50.00 per suspension day.

❑ **Appeals of Final Orders**

▪ Board Final Orders may now be appealed to the Circuit Court for the county containing the licensee or applicant.



State and Local Administrators

❑ **Local ABC Administrators**

▪ Local ABC Administrators are **no** longer required to execute and post **bonds** before serving in that office.

▪ Local ABC Administrators are under the same **ethics** rules as Department employees.

▪ Local ABC Administrators have the same duties/functions regarding local license **applications** as the **Department**.

▪ Local ABC Administrators have the same duties/functions regarding license **penalization** as the **Board**.



State and Local Administrators

❑ **Appeals of Local ABC Administrator Orders & Decisions to the Board**

▪ Appeals of a decision or order by a local ABC Administrator require a licensee/applicant to file a notice of appeal with the Board within 30 days after the written decision is mailed/delivered.

▪ Appeals to the Board are *de novo* reviews as an original action.



State and Local Administrators

Local License Approval

- An applicant need only obtain approval from the local ABC administrator before applying with the Department when the city/county issues a local license that is the same type as that sought from the state. If there is no corresponding local license type, no local ABC Administrator approval is required.

No Double Local License Fees

- County ABC Administrators do not have jurisdiction to issue county licenses and impose county licensee fees to any person who holds a city ABC license.



State and Local Administrators

Population Requirements

- When a statute references a city's population, population figures are now based on either the federal decennial census (for a census year) or yearly population estimates prepared by U of L's Kentucky State Data Center.
- Changes in recent years have almost eliminated all differences in alcoholic beverage laws based upon a city's or county's population.



State and Local Administrators

Economic hardship ordinances are no longer needed and eliminated

- Old laws used to require some cities and counties to enact "economic hardship ordinances" in order to allow restaurants and hotels to obtain alcoholic beverage licenses.
- Legislation in prior years eliminated this requirement so that restaurants and hotels in ALL cities and counties can now obtain necessary licenses. All statutory references to "economic hardship ordinances" are now eliminated.



The Licensing Process

□ Applications

- Applications are no longer required to contain social security numbers of individual applicants and owners.
- Applicable statutes have been updated to reflect modern business relationships for purposes of application requirements. (i.e., corporations, LLCs, LLPs)
- Applicants can now have possession of premises by deed, lease, permit, management agreement or land contract.
- Department is in the process of amending forms to reflect such changes.



The Licensing Process

□ Acting on Applications

- An Administrator must either "Deny," "Approve," or "Issue" licenses.
- Administrators may conditionally approve applications pending completion of further acts such as a building project. Some applicants call these "letters of intent" which are often requested for financing purposes.
- An Administrator is required to act on an application when all necessary information has been obtained or the applicant has refused to provide requested information.



The Licensing Process

□ License Denials and Reasons Must be in Writing and Mailed to Applicant by Certified/Registered Mail.

- If an Administrator denies a license application, the Administrator must notify the applicant in writing of the denial and the denial reasons.
- The written denial must be mailed by certified or registered mail.



The Licensing Process

□ Newspaper Application Notices

- Applicants must use the newspaper that the city or the county (with local license jurisdiction) uses for their own required legal notices in KRS Chapter 424.
- Newspaper notices are now no longer required for a hotel in-room license or a sampling license.
- Statute (KRS 243.360) no longer references any KRS Chapter 424 timing requirement regarding when an application must be filed after the newspaper notice is filed.



The Licensing Process

□ Criminal Convictions Relating to Controlled Substances

- Statutes now prohibit licensure for two (2) years of any person convicted of any misdemeanor under KRS Chapter 218A for controlled substances.

□ The "700 Foot Rule" Is Gone

- Quota retail drink licenses and quota retail package licenses may be issued within 700 feet of each other in all cities and counties.

□ No Security Interests in a License

- An applicant cannot grant a creditor a security interest in a license and any security agreement doing so is void.



License Types

□ Quota Retail Drink Licenses

- Quota retail drink licenses are now available in ALL cities and counties. Availability is no longer based on population.
- There are no food sales or seating requirements associated with this license type.
- Quota retail drink licenses authorize the sale of distilled spirits and wine by the drink for consumption on the premises only.
- Quota retail drink licenses are limited in number (quota).



License Types

□ NQ2 Retail Drink Licenses

▪ Restaurants

- Restaurants no longer have any seating requirement to obtain an NQ2 license. A restaurant must simply maintain 50% food sales from its total food and alcohol sales.

▪ Hotels

- Hotels no longer have any seating requirement to obtain an NQ2 license. A hotel must simply have 50 sleeping units and maintain 50% food sales from its total food and alcohol sales.

▪ Entertainment Destination Centers

- A business located within or adjacent to an entertainment destination center licensed premises may obtain an NQ2 license.



License Types

□ NQ1 Retail Drink Licenses

- An NQ1 retail drink licensee can now also hold a quota retail package license in order to sell packages of distilled spirits and wine for off premises consumption.

- An NQ1 retail drink licensee can now also hold a sampling license in order provide limited free samples of distilled spirits and wine on the premises.



License Types

□ Small Farm Wineries

- Small Farm Wineries (SFW'S) are now required to actually produce wine in a minimum amount of 250 gallons/year.
- SFW's can now hold a distiller's license to produce brandy and other distilled spirits.
 - If an SFW holds a distiller's license, the SFW can sell bottles of its own brandy/distilled spirits for off premises consumption.
 - If an SFW holds an NQ2 drink license, the SFW can sell brandy/distilled spirits drinks for on premises consumption.
 - If an SFW holds both a distiller's license and a sampling license the SFW can provide limited free samples of brandy/distilled spirits at the SFW premises.



License Types

□ Distilleries

- Licensed distilleries located in a wet (or distillery moist) territory must now obtain an NQ2 drink license (rather than an NQ3 drink license) to authorize retail alcoholic beverage drink sales at the distillery.
- A licensed distiller may now sell drinks of its distilled spirit products to consumers at fairs, festivals, and other similar events located in a wet territory.



License Types

□ Caterer's License

- A caterer cannot operate as a bar but can cater an event open to the public.
- The difference lies in that a caterer is required to contract with a customer for the caterer's services.
- A caterer is required to maintain the following food sales:
 - 70% food for events catered in LR moist territory.
 - 50% food for events catered in territories where no QD licenses are available.
 - 35% food in all other wet territories.
- A caterer can provide cash bar services as part of its agreement with a customer.



License Types

□ Limited Restaurants

- Food sales percentage calculations for limited restaurants (LR's) are now the same as for other restaurants. The food sales of a limited restaurant must be 70% or more of the LR's total food and alcoholic beverage sales.
- LR-50 licensees are no longer required to serve alcoholic beverages within thirty (30) minutes after a meal is completed.



License Types

□ Special Temporary Drink License

- The state fee for a temporary drink license is now \$100.00.
- The special temporary drink license now provides the same privileges in all counties and cities.
- All alcoholic beverages (distilled spirits, wine and malt beverages) may be sold by the drink by the holder of a special temporary drink license.



License Types

□ Special Temporary Alcoholic Beverage Auction License

- The state fee for this license is now \$100.00 and the maximum city fee is \$100.00.
- A nonprofit organization, not just a charity, is now able to obtain this license.
- In addition to alcoholic beverage sales as a fundraiser, alcoholic beverages can now be donated to the holder of this license for consumption by patrons at a charity or non-profit event.



License Types

□ Supplemental Bar Licenses

- Supplemental Bar Licenses are no longer required to be a permanently constructed structure.
- Supplemental bars can now include temporary structures which can be used and later broken down for storage.
- Supplemental bars can now include a golf cart on a golf course so that distilled spirits and wine could also be served from these carts instead of only beer.



License Types

▪ Brewers License

- Licensed brewers can no longer sell twenty (24) 12 oz. beers (288 ounces) to one consumer to drink in one day.
- All package sales by a brewer must be made by re-sealable growlers under regulation safety requirements.
- Contract brewing is recognized by law. Allows brewer with limited production capabilities to contract with another brewer to produce and sell its product to meet product demand.
- Contract brewing does not authorize a brewery or microbrewery to purchase another's brewery's beer and then sell it at retail in circumvention of the three-tier system.



License Types

□ State Transitional License

- A state transitional license provides the same privileges as the permanent license(s) for which an applicant has applied.
- In order to obtain a transitional license, an applicant must file an application for permanent license(s) so that these privileges will be known.



License Types

□ Transporters License

- This license may be issued to a motor carrier or other person engaged in the business as a common carrier.
- Holders of this license must permit Department investigators to stop and examine the cargo of the truck or vehicle.



License Types

Registration of Brands And Out of State Suppliers

- All suppliers (U.S. alcoholic beverage producers and out-of-country importers) must register product brands and flavors prior to sale in Kentucky.
- If not already licensed, suppliers must obtain an out-of-state suppliers license in order to register products.
- Like malt beverages, there are now only two (2) types of out-of-state supplier's licenses for distilled spirits and wine. The micro out-of-state distilled spirits and wine supplier license no longer exists.
- An out-of-state supplier who imports less than 50,000 gallons of distilled spirits or wine into Kentucky may obtain the cheaper limited out-of-state distilled spirits and wine supplier license.



License Types

Distilled Spirits and Wine Storage License

- To have the same privileges as malt beverage storage, a quota retail package licensee may now also hold a distilled spirits and wine storage license for separate convenient premises.

Brew-on-Premises License

- This license no longer exists.



License Types

Extended Hours Supplemental License

- The Board now has the same discretion as local governments in permitting alcoholic beverage sales after hours and on Sunday to holders of extended hours supplemental licenses (ESL's).
- Holders of ESL licenses do not need local ordinances to engage in Sunday or after hours sales.
- An ESL license is an alternative license to a retail Sunday drink license. A licensee does not need both license types.
- The Board is drafting an amendment to the ESL sales times regulation (804 KAR 4:230) to provide more business flexibility for sales times.



License Types

☐ Qualified Historic Site License

- Counties and cities are now authorized to issue a local qualified historic site license at a maximum annual fee of \$1,030.00.
- There are still several state licenses types without any corresponding local license types.



Licensee Practices

☐ Independent Contractors/Management Agreements

- An independent contractor or management company can contract with a licensee and perform services relating to alcoholic beverages for the licensee without having to obtain a separate license.
- Just as a licensee is responsible for acts of its employees, the licensee is also responsible for acts of its contracting agents (independent contractors and employees).
- Employee prohibitions (KRS 244.090's age and criminal convictions) apply to independent contractor agents and their employees.



Licensee Practices

☐ No "Corking" or "BYOB"

- The Department's ancient statutory interpretation that "corkage" and "BYOB" is prohibited is now codified.
- Consumers are NOT permitted to bring their own alcoholic beverages onto licensed premises.
- All alcoholic beverages consumed on the licensed premises must be purchased from the licensee.



Licensee Practices

□ Delivery of Alcoholic Beverages by Retailers

- Quota retail package license retailers are now permitted to deliver packages of distilled spirits and wine to consumers' homes.
- Package retailers were already authorized to deliver packages of malt beverages to consumers' homes.
- Vehicles used by package retailers to deliver alcoholic beverages must contain the licensee's name and number on the vehicle in conformity with regulation requirements (804 KAR 8:050).



Licensee Practices

□ Sunday Sales

- Sunday sales laws dealing with distilled spirits and wine are now consistent with Sunday sales laws for malt beverages.
- Licensees are prohibited from **SELLING** during certain times and are no longer prohibited from remaining open.
- Local governments have broad discretion to permit Sunday alcoholic beverage sales at any time and by any business type.
- Licensees do not need to hold a Sunday retail **DRINK** license in order to sell alcoholic beverages by the package or malt beverages by the drink on Sunday. Only a local ordinance permitting same is needed.
- For Sunday drink sales of distilled spirits and wine, both a local ordinance and Sunday retail drink license is required.



Licensee Practices

□ KRS 244.050 "Treating" Violation

- Retailers are prohibited from selling alcoholic beverages for a price that is less than paid, or current, wholesale cost.
- Retailers may sell products below cost for a bona fide "close out" sale upon written request and approval by the administrators.
- Free sampling privileges provided by other statutes are recognized exceptions to the treating prohibition.



Licensee Practices

☐ Sales to Intoxicated Persons

- It is now illegal for a retailer to sell alcoholic beverages to a person who appears to actually or apparently be under the influence of alcohol, **controlled substances, other intoxicating substances** or combinations thereof.



Licensee Practices

☐ Gambling Prohibition

- Violation for permitting gambling and exceptions are now listed together. Exceptions are:
 - Lottery games authorized by KRS Chapter 154A
 - Pari-mutuel betting (horse racing) under KRS Chapter 230
 - Charitable gaming permitted under KRS Chapter 238
 - Alcoholic beverage raffles under KRS 243.036
- Note: "Gambling" requires three (3) elements: wager, game with element of chance, and prize.



Licensee Practices

☐ Minors on Premises

- Minors are now permitted at all times at a small farm winery, distillery, brewery, microbrewery or winery.
 - Tours are no longer required.
- Minors are now permitted inside Entertainment Destination Centers.
- Statute no longer contains vague language "or similar establishment" used by bars to allow minors on premises.
- Instead, Board has regulatory authority to allow minors on premises of types of businesses that can adequately monitor and prevent alcohol sales to minors.



Licensee Practices

☐ Sales to a Known Felon, Habitual Drunkard, Alcohol Misdemeanant, and Deadbeat Parent are No Longer Violations

- It is no longer a violation for a retailer to sell alcoholic beverages to known felons, habitual drunkards, alcohol related misdemeanants or persons failing to properly provide for their family.
- The "knowledge" element of these violations made them useless and ineffectual.



Licensee Practices

☐ Criminal Convictions Relating to Controlled Substances

- Violations relating to controlled substances now reflect correct terminology: "possession" and "trafficking" (not "use" and "sale").
- Violations now apply to any misdemeanor conviction under KRS Chapter 218A for controlled substances.



Licensee Practices

☐ Loyalty Cards

- Retailers can allow consumers to use a loyalty card to obtain a discounted price on alcoholic beverages as long as the discounted price is not below wholesale cost.
- Retailers can allow consumers to use loyalty cards to accumulate points for malt beverage purchases.



Licensee Practices

- ❑ **Name and License Number No Longer Required in Front Window**
 - Licensees are no longer required to have their name and license numbers printed in the front window.
- ❑ **Clear View for Quota Licenses**
 - Only quota retail package license and quota retail drink licensed premises are required to have entrances of clear glass to permit an unobstructed view inside.



Licensee Practices

- ❑ **Tied House Prohibitions**
 - It is now illegal for a retailer to require or demand that a distillery, winery, brewer or other producer, wholesaler or distributor commit a tied house violation.
- ❑ **Refrigerated Coolers**
 - On January 1, 2018, a brewer or distributor will no longer be permitted to provide free coolers to a retailer.
 - A brewer or distributor may still lease equipment under commercially reasonable terms.



Licensee Practices

- ❑ **Advertising**
 - Laws now recognize Constitutional commercial free speech rights of Kentucky businesses by permitting all forms of advertising unless prohibited or restricted by Board regulation.
- ❑ **Pregnancy Warning Sign**
 - The size of a pregnancy warning sign a retailer must display is now 8.5 inches by 11 inches.
 - Sign can be downloaded and printed from Department website.
 - Special temporary licensees are not required to display this sign.



Licensee Practices

□ Vintage Distilled Spirits

- Vintage distilled spirits may now be resold by:
 - Distilled spirits retail drink licensees
 - Distilled spirits retail package licensees
- A "Vintage distilled spirit" is:
 - Distilled spirits in their original manufacturer's unopened bottle or container
 - Not owned by a distillery
 - Not otherwise available for purchase from a licensed wholesaler within the Commonwealth
- Vintage distilled spirits may be purchased from a non-licensed individual.



Licensee Practices

□ Retailer Transporting Rights

- A retailer may now transport inventory between stores **across county lines** if the retailer submits a written request to do so that is subsequently approved by the Department.
- A retailer does not need prior approval to transfer inventory between stores **in the same county** but must maintain records in each store memorializing the inventory transfer.



Licensee Practices

□ Disposition of Inventory

- Law now recognizes modern commercial loan transactions and security agreements between licensees and their creditors.
- There is now more clarity on the process for creditors to sell alcohol inventory in which they hold a security interest.
- There is now a procedure for a landlord to dispose of alcoholic beverage inventory abandoned by tenant licensees.



Licensee Practices

Employees

- **All Producer's Licenses (Distilleries, Rectifiers, Wineries, Small Farm Wineries, Breweries and Microbreweries)**
 - Employees and agents of producers are permitted to taste their products during production to ensure quality.
- **Nonquota Malt Beverage Package Retailer**
 - Minors aged 18 years are permitted to sell packages of malt beverage if retailer only sells malt beverage packages and employee is supervised by an individual aged 20 years or older.



Licensee Practices

50 ml bottles at retail drink licensed premises

- Drink retailers are now able to buy and keep 50ml bottle of distilled spirits just like package retailers.

Use of "Kentucky" on Bourbon Whiskey Labels

- In order for a distillery to use the word "Kentucky" on its product labels, the bourbon must be produced from grains that are cooked, fermented, and distilled in Kentucky.
- The bourbon cannot just be aged in oak barrels and bottled in Kentucky.



Statutory Interpretations

Private Parties at licensed premises

- Department does not interpret statutes to prohibit all private parties at retail licensed premises.
- Department has a private party request form for licensees to seek approval of private parties.
- Licensee must comply with laws at all times.
- Licensee must allow Department investigators entry and inspection of premises at all times.



Statutory Interpretations

Private Golf Courses can hold Golf Course License

- Department does not interpret statutes to prohibit a private golf course from holding a golf course license.
- A private golf course holding golf course license is not required to be open to the public.



Recent Regulation Changes

Entertainment Destination Centers

- Department amended the Entertainment Destination Center license (EDC) to provide more flexibility to local communities to allow commingling of licensees' consumers in a common area (like 4th Street Live in Louisville).

Minors on Premises

- Department is drafting regulation to codify prior Department interpretations and decisions regarding business types who can adequately monitor minors on premises to prevent minor sales.



Questions


