

AN ACT relating to spas.

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

□ Section 1. KRS 241.010 is amended to read as follows:

As used in ~~this chapter and in~~ KRS Chapters 241 to 244~~[242 and 243]~~, unless the context requires otherwise:

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid, solid, powder, or crystal, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - (d) Flavoring extracts and syrups;
 - (e) Denatured alcohol or denatured rum;
 - (f) Vinegar and preserved sweet cider;
 - (g) Wine for sacramental purposes; and
 - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (3) (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for

- human consumption;
- (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Automobile race track" means a facility primarily used for vehicle racing that has a seating capacity of at least thirty thousand (30,000) people;
- (5) "Bed and breakfast" means a one (1) family dwelling unit that:
- (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are occupied for sleeping purposes by persons not members of the single-family unit;
- (b) Holds a permit under KRS Chapter 219; and
- (c) Has an innkeeper who resides on the premises or property adjacent to the premises during periods of occupancy;
- (6) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (7) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (8) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;
- (9) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;

- (10) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (11) "Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests;
- (12) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (13) "Cider" means any fermented fruit-based beverage containing seven percent (7%) or more alcohol by volume and includes hard cider and perry cider;
- (14) "City administrator" means city alcoholic beverage control administrator;
- (15) "Commercial airport" means an airport through which more than five hundred thousand (500,000) passengers arrive or depart annually;
- (16) "Commercial quadricycle" means a vehicle equipped with a minimum of ten (10) pairs of fully operative pedals for propulsion by means of human muscular power exclusively and which:
- (a) Has four (4) wheels;
 - (b) Is operated in a manner similar to that of a bicycle;
 - (c) Is equipped with a minimum of thirteen (13) seats for passengers;

- (d) Has a unibody design;
 - (e) Is equipped with a minimum of four (4) hydraulically operated brakes;
 - (f) Is used for commercial tour purposes; and
 - (g) Is operated by the vehicle owner or an employee of the owner;
- (17) "Commissioner" means the commissioner of the Department of Alcoholic Beverage Control;
- (18) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (19) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (20) "County administrator" means county alcoholic beverage control administrator;
- (21) "Department" means the Department of Alcoholic Beverage Control;
- (22) "Dining car" means a railroad passenger car that serves meals to consumers on any railroad or Pullman car company;
- (23) "Discount in the usual course of business" means price reductions, rebates, refunds, and discounts given by wholesalers to distilled spirits and wine retailers pursuant to an agreement made at the time of the sale of the merchandise involved and are considered a part of the sales transaction, constituting reductions in price pursuant to the terms of the sale, irrespective of whether the quantity discount was:
- (a) Prorated and allowed on each delivery;
 - (b) Given in a lump sum after the entire quantity of merchandise purchased had been delivered; or
 - (c) Based on dollar volume or on the quantity of merchandise purchased;

- (24) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- (25) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- (26) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;
- (27) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- (28) "Dry" means a territory in which a majority of the electorate voted to prohibit all forms of retail alcohol sales through a local option election held under KRS Chapter 242;
- (29) "Election" means:
- (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
 - (b) Any other election not pertaining to alcohol;
- (30) "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes;
- (31) "Horse racetrack" means a facility licensed to conduct a horse race meeting under

KRS Chapter 230;

- (32) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;
- (33) "License" means any license issued pursuant to KRS Chapters 241 to 244;
- (34) "Licensee" means any person to whom a license has been issued, pursuant to KRS Chapters 241 to 244;
- (35) "Limited restaurant" means:
- (a) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross receipts from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a wet or moist territory under KRS 242.1244(2); or
 - (b) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross receipts from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244;
- (36) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and includes weak cider;
- (37) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (38) "Manufacturer" means a winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (39) "Minor" means any person who is not twenty-one (21) years of age or older;

- (40) "Moist" means a territory in which a majority of the electorate voted to permit limited alcohol sales by any one (1) or a combination of special limited local option elections authorized by KRS 242.022, 242.123, 242.1238, 242.124, 242.1242, 242.1243, 242.1244, or 242.1292;
- (41) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- (42) "Private club" means a nonprofit social, fraternal, military, or political organization, club, or entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;
- (43) "Public nuisance" means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;
- (44) "Qualified historic site" means a contributing property with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served. Notwithstanding the provisions of this subsection:

- (a) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; and
 - (b) A not-for-profit or nonprofit facility listed on the National Register of Historic Places;
- shall be deemed a "qualified historic site" under this section;
- (45) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
 - (46) "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
 - (47) "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and beverage receipts from the sale of food;
 - (48) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not;
 - (49) "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers;
 - (50) "Retail sale" means any sale where delivery is made in Kentucky to any consumers;
 - (51) "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required;
 - (52) "Riverboat" means any boat or vessel with a regular place of mooring in this state that is licensed by the United States Coast Guard to carry one hundred (100) or

more passengers for hire on navigable waters in or adjacent to this state;

- (53) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (54) "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited;
- (55) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;
- (56) "Small farm winery" means a winery producing wines, in an amount not to exceed one hundred thousand (100,000) gallons in a calendar year;
- (57) "Souvenir package" means a special package of distilled spirits available from a licensed retailer that is:
- (a) Available for retail sale at a licensed Kentucky distillery where the distilled spirits were produced or bottled; or
 - (b) Available for retail sale at a licensed Kentucky distillery but produced or bottled at another of that distiller's licensed distilleries in Kentucky;
- (58) **"Spa" means any beauty salon employing at least ten (10) licensed cosmetologists practicing cosmetology under KRS Chapter 317A, not including contractors or persons who rent booths or chairs within the beauty salon. Any cosmetology services and other spa services that require an occupational license shall only be performed by individuals holding an occupational license authorizing the performance of those services. Nothing in this subsection shall be interpreted to limit or restrict a licensed practitioner, provider, or licensee from engaging in the full range of activities authorized by the license for that person's**

profession, training, or services. As used in this subsection:

(a) "Beauty salon" has the same meaning as in KRS 317A.010;

(b) "Cosmetologist" has the same meaning as in KRS 317A.010; and

(c) "Cosmetology" means the practice upon the human neck and head of cutting hair, permanent waving, or hairdressing, and may also include but is not limited to:

1. Giving facial and scalp massage or treatments with oils, creams, lotions, or other preparations, either by hand or any contrivance;

2. Shaping, designing, shampooing, pressing, arranging, tinting, or lightening the hair, or applying hair products;

3. Applying to the neck or head, cosmetics, lotions, powders, oils, clays, or other products;

4. Eyelash extensions;

5. Facial hair removal;

6. Eyebrow shaping, design, threading, or removal; and

7. Nail technology and finger waving, only when performed in an establishment that also performs hair cutting.

The practice of cosmetology does not include acts performed incident to treatment of an illness or a disease;

(59) "State director" means the director of the Division of Distilled Spirits or the director of the Division of Malt Beverages, or both, as the context requires;

(60)~~(59)~~ "State park" means a state park that has a:

(a) Nine (9) or eighteen (18) hole golf course; or

(b) Full-service lodge and dining room, and may include a nine (9) or eighteen (18) hole golf course;

(61)~~(60)~~ "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the

licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures;

~~(62)~~~~(61)~~ "Territory" means a county, city, district, or precinct;

~~(63)~~~~(62)~~ "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;

~~(64)~~~~(63)~~ "Warehouse" means any place in which alcoholic beverages are housed or stored;

~~(65)~~~~(64)~~ "Weak cider" means any fermented fruit-based beverage containing more than one percent (1%) but less than seven percent (7%) alcohol by volume;

~~(66)~~~~(65)~~ "Wet" means a territory in which a majority of the electorate voted to permit all forms of retail alcohol sales by a local option election under KRS 242.050, 242.125, or 242.1292 on the following question: "Are you in favor of the sale of alcoholic beverages in (name of territory)?";

~~(67)~~~~(66)~~ "Wholesale sale" means a sale to any person for the purpose of resale;

~~(68)~~~~(67)~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;

~~(69)~~~~(68)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes sake, cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It does not include weak cider; and

~~(70)~~~~(69)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

□ Section 2. KRS 243.086 is amended to read as follows:

- (1) A "Nonquota type 3" or "NQ3" retail drink license may be issued to:
 - (a) A private club in existence for longer than one (1) year prior to the license application;
 - (b) A dining car;
 - (c) A bed and breakfast;~~[-or]~~
 - (d) A distiller; or
 - (e) A spa.
- (2) An NQ3 retail drink license issued to a private club shall authorize the licensee to exercise the privileges of an NQ2 retail drink licensee, at the designated premises if the general public is excluded.
- (3) An NQ3 retail drink license issued to a dining car shall authorize the licensee to exercise the privileges of an NQ2 retail drink licensee and shall also authorize the licensee to sell distilled spirits and wine by the package, only on the designated dining car identified in the NQ3 license.
- (4) An NQ3 retail drink license issued to a bed and breakfast shall authorize the licensee to exercise the privileges of an NQ2 retail drink licensee, but the licensee may only sell alcoholic beverages by the drink to paid overnight guests of the licensee.
- (5) An NQ3 retail drink license issued to a distiller shall authorize the licensee to exercise the privileges of an NQ2 retail drink license at the designated premises.
- (6) An NQ3 retail drink license issued to a spa shall authorize the licensee to exercise the privileges of an NQ2 retail drink licensee, but the licensee may only sell

alcoholic beverages by the drink to its guests who are receiving at least one (1) hour of one (1) of the primary services offered by the spa under subsection (58) of Section 1 of this Act.

□ Section 3. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) A person under twenty-one (21) years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) A person under twenty-one (21) years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under twenty-one (21) years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) A person under twenty-one (21) years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (5) A person under twenty-one (21) years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (6) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:
 - (a) The usual and customary business of the establishment is a hotel, motel,

restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm winery, distillery or brewery or winery tour, convenience store, grocery store, drug store, licensed APC premises, spa, or similar establishment;

- (b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises;
- (c) Written approval has been granted by the department to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including but not limited to weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing; or
- (d) The usual and customary business of the establishment is an entertainment facility where prebooked concerts are held. For the purpose of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this paragraph, the licensee shall:
 - 1. Maintain the responsibility of all ticket sales;
 - 2. Sell the concert tickets directly to the patron or have a contractual agreement with a vendor or promoter to sell the concert tickets for the licensee;
 - 3. Maintain records of all gross concert ticket sales. The concert tickets shall have the name of a band or performer as well as the date of the concert;
 - 4. Permit minors to be in the area where the concert is taking place only during the time of the concert; and
 - 5. Prohibit minors on the premises until thirty (30) minutes prior to the

concert and prohibit minors from remaining on the premises more than thirty (30) minutes after the concert performance has ended.

- (7) Except as provided in subsection (6) of this section, a licensee or the licensee's agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (9) A violation of subsection (2), (3), (4), (5), or (8) of this section shall be deemed a status offense if committed by a person under the age of eighteen (18) and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.