



ALCOHOLIC BEVERAGE CONTROL  
COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1003 Twilight Trail  
Frankfort, Kentucky 40601-8400  
502-564-4850 phone  
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<http://abc.ky.gov>

Date received

AOR NO.: \_\_\_\_\_

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### ADVISORY OPINION REQUEST FORM

Attach additional pages as necessary and any documentation, research, or other evidence that you request the Department to consider.

Name of Requestor (individual or business entity): Kentucky Distillers' Association

Address: 614 Shelby Street

City: Frankfort State: Kentucky County: Franklin

Zip Code: 40601 Phone Number: (502) 875-9351

Email: eric@kybourbon.com

The above individual or business entity requests an:  Advisory opinion  Reconsideration request

If this is a reconsideration request or comment, the application Advisory opinion number: \_\_\_\_\_

Question or issue to be addressed: See attached Addendum

Applicable statutes, regulations, ordinances, or other authority: See attached Addendum

Proposed response, comment, or basis for reconsideration request: See attached Addendum

To your knowledge, is the question for which you request an advisory opinion or reconsideration pending before, under investigation by, or recently decided by a court or government entity?  Yes  No

If yes, please identify the court or government agency, any case or proceeding number, and filing dates of the proceeding or investigation \_\_\_\_\_

Signature of Requestor or Requestor's Agent  Date 5/14/19

Signer's Name and title if requestor is a business entity Stephen G. Amato, Outside Counsel Date \_\_\_\_\_

Addendum to Advisory Opinion Request Form

Kentucky Distillers Association

May 14, 2019

**Question or issue to be addressed:** May retail licensees and licensees with retail privileges sell package alcohol to a consumer and then ship or deliver said package to the consumers' private residence in a dry or moist territory?

**Applicable statutes, regulations, ordinances, or other authority:** KRS 243.240, KRS 243.280, KRS 242.260, 243.0305 and KRS 242.230<sup>1</sup>.

**Proposed response, comment, or basis for reconsideration request:** Yes. Kentucky licensees with retail privileges are able to ship and deliver package spirits to a person's home, even if located in dry territory.

Pursuant to, without limitation, KRS 243.240, 243.0305 and KRS 243.280, it is well settled that retailers and other licensees with retail package privileges are allowed to sell alcoholic beverages by the package and ship or deliver those beverages to a consumer's residence. It is also well settled that distillers possess certain retail privileges that allow them to sell and ship distilled spirits by the package in a manner consistent with other retailers and for purposes of this Opinion, distillers are considered a licensee with retail package sale privileges.

Previously, no retailer or other licensee with retail package sale privileges could transport or deliver alcoholic beverages into a dry or moist territory. Further still, private possession of alcoholic beverages that were lawfully purchased in a wet territory was previously considered prohibited. However, the General Assembly recently amended KRS 242.230 to read, in pertinent part:

- (4) (a) It shall not be a violation of this section for a person to possess or consume, or to provide alcoholic beverages to others in dry or moist territory, if:
1. The alcoholic beverages were lawfully purchased in wet or moist territory;
  2. The alcoholic beverages are not sold to any person in dry or moist territory;
  3. Any person possessing or consuming alcohol is twenty-one (21) years of age or older;
  4. The possession, consumption, or provision occurs at a private residence or private event, regardless of whether the venue is a public place; and
  5. The possession, consumption, or provision does not occur at a public place in violation of KRS Chapter 222.

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<sup>1</sup> Authorities are attached hereto as Composite Exhibit "A".

- (b) For purposes of this section, an event is public, not private, if any member of the public is permitted to enter or attend the event upon payment of consideration.

The provisions of KRS 242.260, which generally prohibit the transportation and delivery of alcohol into a dry or moist territory, were also changed by the recent legislation, specifically allowing for alcoholic beverages that were lawfully purchased in a wet or moist territory to be brought to a private residence or event in a dry or moist territory. KRS 242.260 provides, in pertinent part as follows:

- (5) It shall not be a violation of this section for a person to bring alcoholic beverages that were lawfully purchased in wet or moist territory into dry or moist territory to a private residence, or to a private event regardless of whether the venue is a public place, for personal consumption or consumption by others so long as the possession, consumption, or provision does not occur at a public place in violation of KRS Chapter 222. For purposes of this subsection, an event is public, not private, if any member of the public is permitted to enter or attend the event upon payment of consideration.

These new amendments together with the protections afforded to individuals privately possessing legally purchased alcohol would allow for persons to purchase package alcohol and then have it shipped or delivered to their residence, even if in dry territory.

For the forgoing reasons, the Board is requested to opine that retailers and those with retail package sale privileges may ship or deliver package alcohol that is purchased in person, electronically, online or by telephone, as allowed by law, to private residences and events located in dry and moist territories.

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Baldwin's Kentucky Revised Statutes Annotated  
Title XX. Alcoholic Beverages  
Chapter 243. Alcoholic Beverages; Licenses and Taxes (Refs & Annos)  
Licenses to Traffic in Alcoholic Beverages

KRS § 243.240

243.240 Business authorized by quota retail package license; delivery or shipment of alcoholic beverages purchased on premises by subscribers or club program members

Effective: April 13, 2018  
Currentness

(1) A quota retail package license shall authorize the licensee to:

(a) Purchase, receive, possess, and sell distilled spirits and wine at retail in unbroken packages only, and only for consumption off the licensed premises; and

(b) Deliver or ship to the customer, at the customer's request, alcoholic beverages that are purchased:

1. From the licensed premises where eighty percent (80%) of the monthly gross sales receipts are sales to Kentucky residents, in quantities not to exceed four and one-half (4 ½) liters of distilled spirits and four (4) cases of wine per purchaser per day for sales prior to January 1, 2021, and in quantities not to exceed an aggregate of nine (9) liters of distilled spirits and four (4) cases of wine per purchaser per day on and after January 1, 2021; and

2. By subscription members or club program members, in quantities not to exceed an aggregate of nine (9) liters per calendar year for distilled spirits, and an aggregate of one (1) case of wine per month per calendar year, provided that the enrollment and payment for the subscription or club is arranged in person at the premises.

(2) The licensee shall purchase distilled spirits and wine in retail packages only and only from licensed wholesalers.

(3) All deliveries or shipments made pursuant to this section shall be made through a licensed transporter or licensed common carrier authorized to deliver or ship distilled spirits in the jurisdiction to which the products will be delivered or shipped.

**Credits**

HISTORY: 2018 c 164, § 6, eff. 4-13-18; 2017 c 62, § 63, eff. 6-29-17; 2013 c 121, § 68, eff. 6-25-13; 1942 c 208, § 1, eff. 10-1-42; KS 2554b-122

"A"

KRS § 243.240, KY ST § 243.240

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Baldwin's Kentucky Revised Statutes Annotated  
Title XX. Alcoholic Beverages  
Chapter 243. Alcoholic Beverages; Licenses and Taxes (Refs & Annos)  
Licenses to Traffic in Alcoholic Beverages

KRS § 243.280

243.280 Business authorized by nonquota malt beverage package  
license; compatible licenses; certain premises not to be licensed

Effective: June 25, 2013  
Currentness

- (1) A nonquota retail malt beverage package license shall authorize the licensee to:
  - (a) Sell malt beverages at retail by the package from the licensed premises only for consumption off the licensed premises only; and
  - (b) Purchase malt beverages only from a distributor.
- (2) The holder of a quota retail package license under KRS 243.240 may also obtain a license under this section.
- (3) The holder of a nonquota retail malt beverage package license may also hold a NQ4 retail malt beverage drink license.
- (4) A nonquota retail malt beverage package license shall not be issued to sell malt beverages at retail for any premises from which gasoline and lubricating oil are sold or from which the servicing and repair of motor vehicles is conducted, unless there is maintained in inventory on the premises for sale at retail not less than five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.
- (5) The term "food and groceries" means:
  - (a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods, and hot food products prepared for immediate consumption;
  - (b) Seeds and plants to grow food for personal consumption.
- (6) The provisions of this section shall not apply to any licensed premises which sells no fuel other than marine fuel.

**Credits**

**HISTORY:** 2013 c 121, § 71, eff. 6-25-13; 1998 c 121, § 16, eff. 7-15-98; 1996 c 72, § 4, eff. 7-15-96; 1984 c 313, § 2, eff. 7-13-84; 1978 c 194, § 27; 1942 c 208, § 1; KS 2554b-200

**KRS § 243.280, KY ST § 243.280**

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Proposed Legislation

Baldwin's Kentucky Revised Statutes Annotated  
Title XX. Alcoholic Beverages  
Chapter 242. Alcoholic Beverages; Local Option (Refs & Annos)  
Prohibition

KRS § 242.260

242.260 Transportation and delivery in dry or moist territory prohibited; exception for any moist territory where sale of alcoholic beverages specifically authorized under limited local option election; immunity for common carriers; absolute defense

Effective: April 9, 2019  
Currentness

<Text and section title subject to final changes by the Kentucky Reviser of Statutes.>

- (1) It shall be unlawful for any person to bring into, transfer to another, deliver, or distribute in any dry or moist territory, except as provided in subsection (2) of this section, any alcoholic beverage, regardless of its name. Each package of such beverage so brought, transferred, or delivered in such territory shall constitute a separate offense. Nothing in this section shall be construed to prevent any distiller or manufacturer or any authorized agent of a distiller, manufacturer, or wholesale dealer from transporting or causing to be transported by a licensed carrier any alcoholic beverage to their distilleries, breweries, wineries, or warehouses where the sale of such beverage may be lawful, either in or out of the state.
- (2) Subsection (1) of this section shall also apply to any moist territory unless the sale of the alcoholic beverage in question has been specifically authorized in that moist territory under a limited local option election.
- (3) No properly licensed common carrier or any of its employees acting on behalf of a consignor shall be liable for a violation of this section.
- (4) Proof that the purchaser represented in writing that the delivery address is located in wet territory shall be an absolute defense to a violation of this section on behalf of a retailer, winery, small farm winery, or distillery in connection with the delivery or shipment of alcoholic beverages purchased at retail.
- (5) It shall not be a violation of this section for a person to bring alcoholic beverages that were lawfully purchased in wet or moist territory into dry or moist territory to a private residence, or to a private event regardless of whether the venue is a public place, for personal consumption or consumption by others so long as the possession, consumption, or provision does not occur at a public place in violation of KRS Chapter 222. For purposes of this subsection, an event is public, not private, if any member of the public is permitted to enter or attend the event upon payment of consideration.



**Credits**

**HISTORY:** 2019 c 201, § 2, eff. 4-9-19; 2018 c 164, § 10, eff. 4-13-18; 2013 c 121, § 25, eff. 6-25-13; 1942 c 186, § 1, 3, eff. 6-1-42; 1942 c 208, § 1; KS 2554c-20

**LRC NOTES**

**Legislative Research Commission Note:** “Alcoholic beverage” has been substituted for “intoxicating liquor” in order to fit the definitions contained in KRS 242.010.

**KRS § 242.260, KY ST § 242.260**

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Proposed Legislation

Baldwin's Kentucky Revised Statutes Annotated  
Title XX. Alcoholic Beverages  
Chapter 243. Alcoholic Beverages; Licenses and Taxes (Refs & Annos)  
Licenses to Traffic in Alcoholic Beverages

KRS § 243.0305

243.0305 Souvenir package sales by licensed distillers; direct shipment of souvenir packages to distillery visitors, subscribers, and distillery-sponsored club program members; sampling and sale of alcoholic beverages on premises of distillery; sale of alcoholic beverages by the drink at certain events

Effective: April 13, 2018  
Currentness

- (1) Any licensed Kentucky distiller that is located in wet territory or in any precinct that has authorized the limited sale of alcoholic beverages at distilleries under KRS 242.1243 and that has a gift shop or other retail outlet on its premises may conduct the activities permitted under this section as a part of its distiller's license.
- (2) For purposes of all retail drink and package sales under this section, a wholesaler registered to distribute the brands of any distiller shall permit the distiller to deliver its products directly from the distillery proper to any portion of the distillery premises. However, for purposes of all retail drink and package sales by distillers under subsections (3), (8), and (9) of this section, all direct shipments shall be invoiced from the distiller to the wholesaler and from the wholesaler to the distiller, and all products directly shipped shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.
- (3) A distiller may sell souvenir packages at retail:
  - (a) To distillery visitors of legal drinking age, in quantities not to exceed an aggregate of four and one-half (4- ½ ) liters per purchaser per day for sales prior to January 1, 2021, and in quantities not to exceed an aggregate of nine (9) liters per purchaser per day on and after January 1, 2021. At the purchaser's request, an order may be delivered or shipped directly to the purchaser. All deliveries or shipments shall be made through a licensed common carrier authorized to deliver or ship distilled spirits in the jurisdiction to which the products will be delivered or shipped; and
  - (b) Pursuant to subscription or distillery-sponsored club programs, in quantities not to exceed an aggregate of nine (9) liters per calendar year, provided that the enrollment and payment for the subscription or club is arranged in person at the distillery. At the member's request, an order may be delivered or shipped directly to the member. All deliveries or shipments shall be made through a licensed common carrier authorized to deliver or ship distilled spirits in the jurisdiction to which the products will be delivered or shipped.
- (4) Hours of sale for souvenir packages at retail shall be in conformity with KRS 244.290(3).

- (5) Except as provided in this section, souvenir package sales shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.
- (6) No wholesaler may restrict the sale of souvenir packages to the distiller of origin exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package.
- (7) Notwithstanding any provision of KRS 244.050 to the contrary, a distillery holding a sampling license may allow visitors to sample distilled spirits under the following conditions:
  - (a) Sampling shall be permitted only on the licensed premises during regular business hours;
  - (b) A distillery shall not charge for the samples; and
  - (c) A distillery shall not provide more than one and three-fourths ( $1\frac{3}{4}$ ) ounces of samples per visitor per day.
- (8) Notwithstanding the provisions of KRS 243.110, in accordance with this section, a distillery located in wet territory or in any territory that has authorized the limited sale of alcoholic beverages under an election held pursuant to KRS 242.1243 may:
  - (a) Hold an NQ2 retail drink license for the sale of alcoholic beverages on the distillery premises; and
  - (b) Employ persons to engage in the sale or service of alcohol under an NQ2 license, if each employee completes the department's Server Training in Alcohol Regulations program within thirty (30) days of beginning employment.
- (9) A distiller may sell to consumers at fairs, festivals, and other similar types of events located in wet territory alcoholic beverages by the drink, containing spirits distilled or bottled on the premises of the distillery.
- (10) Except as expressly stated in this section, this section does not exempt the holder of a distiller's license from:
  - (a) The provisions of KRS Chapters 241 to 244;
  - (b) The administrative regulations of the board; and
  - (c) Regulation by the board at all the distiller's licensed premises.
- (11) Nothing in this section shall be construed to vitiate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages.

**Credits**

**HISTORY:** 2018 c 164, § 1, eff. 4-13-18; 2017 c 59, § 3, c 62, § 32, eff. 6-29-17; 2016 c 80, § 5, eff. 7-15-16; 2013 c 121, § 46, eff. 6-25-13; 2003 c 102, § 1, eff. 6-24-03; 1998 c 53, § 1, eff. 7-15-98; 1996 c 95, § 2, eff. 7-15-96

**KRS § 243.0305, KY ST § 243.0305**

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Baldwin's Kentucky Revised Statutes Annotated  
Title XX. Alcoholic Beverages  
Chapter 242. Alcoholic Beverages; Local Option (Refs & Annos)  
Prohibition

KRS § 242.230

242.230 Traffic in alcoholic beverages in dry territory prohibited; unauthorized traffic  
in alcoholic beverages in moist territory prohibited; unlawful possession prohibited

Effective: April 9, 2019  
Currentness

<Text and section title subject to final changes by the Kentucky Reviser of Statutes.>

- (1) No person in dry territory shall sell, barter, loan, procure for, or provide another, or keep or transport for sale, barter, or loan, directly or indirectly, any alcoholic beverage.
- (2) No person in moist territory shall sell, barter, loan, procure for, or provide another, or keep or transport for sale, barter, or loan, directly or indirectly, any alcoholic beverage unless the sale of that alcoholic beverage has been specifically authorized in that moist territory under a limited local option election.
- (3) No person shall possess any alcoholic beverage unless it has been lawfully acquired and is intended to be used lawfully, and in any action the defendant shall have the burden of proving that the alcoholic beverages found in his or her possession were lawfully acquired and were intended for lawful use.
- (4) (a) It shall not be a violation of this section for a person to possess or consume, or to provide alcoholic beverages to others in dry or moist territory, if:
  1. The alcoholic beverages were lawfully purchased in wet or moist territory;
  2. The alcoholic beverages are not sold to any person in dry or moist territory;
  3. Any person possessing or consuming alcohol is twenty-one (21) years of age or older;
  4. The possession, consumption, or provision occurs at a private residence or private event, regardless of whether the venue is a public place; and
  5. The possession, consumption, or provision does not occur at a public place in violation of KRS Chapter 222.

(b) For purposes of this section, an event is public, not private, if any member of the public is permitted to enter or attend the event upon payment of consideration.

**Credits**

**HISTORY:** 2019 c 201, § 1, eff. 4-9-19; 2013 c 121, § 23, eff. 6-25-13; 1942 c 208, § 1, eff. 10-1-42; KS 2554c-18, 2554c-37

**KRS § 242.230, KY ST § 242.230**

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