2013 Legislative Changes to Kentucky's Alcohol Laws

Senate Bill 13

Fact Sheet & Informational Guide

As most of you are aware, the Kentucky General Assembly passed Senate Bill 13 ("SB 13") into law during the 2013 Legislative Session. The passage of SB 13 will result in many changes to Kentucky's alcoholic beverage statutes. The Department of Alcoholic Beverage Control (the "Department") has prepared this informational fact sheet and guide to provide a brief explanation about the changes to Kentucky law that will become effective on June 25, 2013.

SB 13 included all 34 recommendations made by the Governor's Task Force on the Study of Alcoholic Beverage Control Laws after a six (6) month study. The Task Force's recommendations focused on simplification and consistency in the licensing process and scheme, clarification regarding local option election laws and additional ways to protect the public. To effectuate these goals, SB 13 consolidated similar license types and fees, (both state and local licensing fees), simplified the licensing process, modernized local option election laws, and strengthened the Department's and local government's public protection powers. In addition, SB 13 modernized laws regarding alcohol sales on election days, and reinforced protection of Kentucky's three-tier alcohol distribution system relating to microbreweries.

SB 13 provided a much needed "clean up" of existing statutory problems and inconsistencies that existed in Kentucky law without changing or expanding existing license privileges. SB 13 reduced and streamlined existing licensing processes without impairing or reducing regulatory oversight, so as to make the licensing process more "user–friendly" to all customers of the Department. SB 13 equitably made fees uniform for the same license types while keeping costs and fees low and maintaining revenue neutrality.

This informational guide is intended to highlight some of the law changes and provide the reader with some guidance and explanation regarding those changes. **These changes will require counties and cities to update ordinances, licensing procedures, forms, and examine local licensing fees and renewal schedules.** The information provided in this guide does not cover all changes resulting from Senate Bill 13. As a local official/ local ABC Administrator, it is your responsibility to familiarize yourself with these changes and all alcoholic beverage laws. As such, the Department encourages local officials and attorneys to read SB 13 in its entirety at: http://www.lrc.ky.gov/record/13RS/SB13.htm

Changes to Department Licensing Forms.

- All state Department licensing applications and reporting forms are being revised in accordance with SB 13. On June 25, 2013, SB 13 will become effective so that the new forms alone will be accepted by the Department, and any applications submitted on old forms will be rejected. As such, any old forms need to be destroyed after June 24, 2013. When the new forms are ready, notices will be provided by email and by posting on the Department's website: http://abc.ky.gov/Pages/Licensing.aspx
- Forms will become effective prior to June 25, 2013, when the Department files regulations with the Legislative Research Commission.
- New forms will be available prior to June 25, 2013, on the Department's website. Beginning June 25, 2013, the Department will not accept, and will return, any license application using the old forms.
- As explained below, several license types have changed. For this reason, the Department will not accept newspaper (public notice) advertisements received after June 25, 2013, which incorrectly state the name of an eliminated license type. The Department will require applicants using eliminated license type names to re-run their public notice advertisements.
- The Department has already started advising callers and potential applicants of the changes in forms, fee amounts and ad requirements.
- On June 25, 2013, please check the website to locate and verify the revised forms are posted for your future use.
- **To avoid license processing delay, local ABC Administrators should begin advising applicants of the new forms and stop providing the old Department licensing forms.**
- **To avoid license processing delay and additional costs, local ABC Administrators should begin advising applicants that the Department will not accept newspaper (public notice) advertisements received after June 25, 2013, which incorrectly state the name of an eliminated license type.**

Overview of SB 13 Changes to License Types and Licensing Process.

- Simplifies the licensing process while preserving existing licensing requirements and qualifications.
- Simplifies and reduces the number of license types without changing any existing privileges or permissible activities related to production, sales etc. SB 13 consolidates similar license types and unnecessary types into one new type, so as to simplify the licensing scheme.
- Corrects inconsistencies in existing licensing statutes.
- Continues to preserve the three-tier distribution system.
- Reduces state license types from 88 types to 44 types without eliminating any existing license privileges. All licensees holding a consolidated license type will receive the new license type that permits the same privileges and activities as the old license type.

Licensees will retain all existing privileges that were afforded by the old license type after they transition to the new license type/name.

- Changes the name of several license types and fees associated with all licenses. Although the name of several license types changes, the existing privileges of the old license types will NOT change. Privileges, activities and qualifications for old license types will be exactly the same for the new license types.
- Simplifies the licensing scheme, renewal schedule, fee schedule and forms. Although the transition period will result in many initial questions by existing licensees, the changes will prove to be positive after adjustments.
- Converts many license types into "combo" licenses so as to permit sales of all forms of alcohol (distilled spirits, wine, and beer) under one license for simplicity.
- Eliminates inconsistencies in licensing scheme for license types and activities related to selling alcoholic beverages for on-premises consumption (by the drink) versus off-premises consumption (by the package).
- Permits holders of producer, wholesaler or distributors licenses the option to renew their licenses for a one (1) year or a two (2) year licensing period, instead of just a one (1) year license. This two (2) year licensing period and renewal option is ONLY available for producers or distributors/wholesalers, NOT retail licenses.
- Corrects inconsistencies with the licensing of out-of-state producers/suppliers. Out-of-state producers of distilled spirits and wine must obtain licenses just like out-of-state producers/suppliers of beer.
- **Not all license types were changed or renamed**. For state license types that were changed, local license types were also changed consistently with the new state licenses.
- Enclosed is a list of all forty-four (44) license types and the new fees associated with each license type.
- The new license types are indicated in black text, and (if applicable) qualifying business types (based on the former license types) are shown in blue text.
- Some new license types use the term "NQ" which is an acronym used for "non-quota" licenses. In addition to the new "NQ" licenses, there are other license types that are also non-quota licenses without "NQ" in their name.

Specific Changes to License Types. ***(If a license type is not listed or addressed below, it has not been changed).***

- **Distiller's license**- The Distiller's license remains the same, however the holder of this license no longer has to obtain a Souvenir Retail Liquor license in order to engage in souvenir package sales at a gift shop. The privileges under the former Souvenir Retail license have simply been added to privileges of a Distiller's license so that only one license is now needed.

- **Winery license**- formally named a Vintner license. No changes other than renaming it to "Winery".

- **Rectifier's license**- The Blender's license was eliminated and its privileges consolidated into the Rectifier's license. The holder of a Rectifier's license will be able to perform the same privileges as under the old Blender's license.

- **Brewer's license**- In-state Brewer's license holders located within the Commonwealth are now permitted limited sampling like microbreweries, but only on their licensed brewery premises.

- **Out-of-State Distilled Spirits/Wine Producer/Supplier's license**- Out-of-state distilled spirits/wine producers/suppliers must now obtain licenses and register products for sale into the Commonwealth. License classes based on import amounts are as follows:
  - **Out-of-State Distilled Spirits/Wine Producer/Supplier** - 50,000 gallons or more.
  - **Limited Out-of-State Distilled Spirits/Wine Producer/Supplier** - 2001 to 49,999 gallons.
  - **Micro Out-of-State Distilled Spirits/Wine Producer/Supplier** - 2000 gallons or less.

- **Special Agent's or Solicitor's licenses**- The out-of-state special agent or solicitor's license was eliminated and its privileges consolidated into this license. The out-of-state holder of a special agent or solicitor's license will be able to perform the same privileges as under the old license.

- **Quota Retail Package license and Quota Retail Drink license**- Only the names of these licenses have changed from Retail Liquor Package license and Retail Liquor Drink license. These licenses still remain quota licenses, have the same qualifications, and authorize the exact same types of distilled spirits and wine sales. These two license types continue to ONLY permit distilled spirits and wine. Holders of these two license types will be required to obtain an additional retail beer license in order to sell beer.

- **NQ-1, NQ-2, NQ-3, and NQ-4 Retail Drink licenses**- Several existing non-quota licenses have been "bundled" together, and new types created to simplify and reduce the license types. Old license types were grouped together based upon similar qualifications and privileges.

  - **NQ-1 Retail Drink license** – The Convention Center license, Horse Track license, Automobile Race Track license and Air/Rail System licenses were consolidated into the NQ-1 Retail Drink license. The qualifications and privileges of the old license types have not changed. An applicant's business must be a convention center, horse track, automobile race track or air/rail system in order to obtain the NQ-1 Retail Drink license. The NQ-1 license is a combo license meaning the holder of this license is authorized to sell distilled spirits, wine and malt

beverages (beer) by the drink. A second retail malt beverage license is not required.

- **NQ-2 Retail Drink license-** The Restaurant Drink license, the Motel Drink license, Restaurant Wine license, Airport Drink license, and Riverboat license were consolidated into the NQ-2 Retail Drink license. The qualifications and privileges of the old license types have not changed. An applicant's business must be a qualifying restaurant, motel, riverboat or be located in an airport in order to obtain the NQ-2 Retail Drink license. The NQ-2 license is a combo license meaning the holder of this license is authorized to sell distilled spirits, wine and malt beverages (beer) by the drink. A second retail malt beverage license is not required.

- **NQ-3 Retail Drink license** – The Special Private Club license, Dining Car Liquor license, and Dining Car Beer licenses were consolidated into the NQ-3 Retail Drink license. The qualifications and privileges of the old license types have not changed. An applicant's business must be a qualifying private club or commercial railroad dining car in order to obtain the NQ-3 Retail Drink license. The NQ-3 license is a combo license meaning the holder of this license is authorized to sell distilled spirits, wine and malt beverages (beer) by the drink. A second retail malt beverage license is not required.

- **The NQ-4 Retail Malt Beverage Drink license-** To avoid inconsistencies, SB 13 creates two separate retail malt beverage licenses from the old retail malt beverage license. The qualifications and privileges of the old license type have not changed. The NQ-4 Retail Malt Beverage Drink license permits malt beverage DRINK sales ONLY on the premises. Existing licensee's holding a current Retail Malt Beverage license will be assigned one of the two options of malt beverage licenses based upon information in their original application. Qualifying business types may hold both types of retail malt beverage licenses (both by the drink and package). Existing licensees will be asked by the Department to verify if the business requires both package and by the drink sales, or just one or the other, depending on their daily operations.

- **The NQ Retail Malt Beverage Package license-** The second type of retail malt beverage license created from the old retail malt beverage license is the NQ Retail Malt Beverage Package license. The qualifications and privileges of the old license type have not changed. The NQ Retail Malt Beverage Package license permits malt beverage PACKAGE sales ONLY for consumption off the premises. All existing licensee's holding a current retail malt beverage license will be assigned one of the two options of malt beverage licenses based upon information in their original application. Qualifying business types may hold both types of malt beverage retail licenses (both by the drink and package). Existing licensees will be asked by the Department to verify if the business requires both

package and by the drink sales, or just one or the other, depending on their daily operations.

NOTE: Local governments should immediately amend ordinances and adopt the new division of retail malt beverage licenses into separate drink and package licenses. Licensees will need an NQ Retail Malt Beverage Package license to sell malt beverages by the package for consumption off the premises. Licensees will need an NQ-4 Retail Malt Beverage Drink license to sell malt beverages by the drink for consumption on the premises.

NOTE: The two separate retail malt beverage (beer) licenses were created to eliminate the licensing scheme conflict with retail distilled spirits and wine license types. Once a licensee obtains the appropriate retail malt beverage license, it may need to change some business practices. For example, KRS 244.085(6) addresses minors on alcohol drink sales premises, whereas KRS 244.085(7) deals with minors on alcohol package sales premises. These statutes are not identical and will require some licensees to change business practices so as to comply with various laws. **Local ABC Administrators should verify that licensee business practices comply with law.**

- **Transporter's license**- Six (6) license types, the Transport Non-Resident license, Through Transporter's license, Freight Forwarder's license, Transporter's license (for liquor), Transporter license (malt beverage) and Special Beer Transporter's licenses were consolidated into one Transporter's license.

- **Malt Beverage Storage license**- Three (3) different types of malt beverage storage licenses, the Malt Beverage Warehouse license, Distributor's Storage license and the Off-Premises Retail Storage license, were consolidated into one Malt Beverage Storage license. The qualifications and privileges of the old license types have not changed.

- **Distilled Spirits/Wine Storage license**- Two (2) license types, Special Storage or Warehouse license and the Bonded Warehouse license, were consolidated into one Distilled Spirits/Wine Storage license. The qualifications and privileges of the old license types have not changed.

- **Special Non-Beverage Alcohol license**- Two (2) license types, the Special Non-Industrial Alcohol license and Special Industrial Alcohol license were consolidated into the Non-Beverage Alcohol license. The qualifications and privileges of the old license types have not changed, and the holder of the new Special Non-Beverage Alcohol license is permitted to make ethanol fuel. The Special Vendor's license was eliminated as unnecessary as holders of the new Special Non-Beverage Alcohol license may purchase alcohol from licensed wholesalers or distributors.

- **Special Temporary license**- Three (3) temporary license types, the Special Temporary Malt Beverage(beer) license, the Special Temporary Wine license, and Special Temporary Liquor/Wine license, were consolidated into one Special Temporary license type. The privileges of the old license types have not changed and the Special Temporary license will only authorize alcoholic beverage sales types that are permissible in the territory in which the event is held. The qualifications for non-profit or charitable groups have NOT changed. To prevent abuses, "for-profit" applicants may only obtain a temporary license for bona fide civic and community sponsored events. **For-profit applicants must attach written documentary evidence supporting the civic nature of the event and showing local government's knowledge and support of the event.** A different type of temporary license, the **Special Temporary Distilled Spirits and Wine AUCTION** license is not changing and remains the same.

NOTE: Promotional materials or news articles will satisfy the new requirement of written or documentary evidence of a local government's acknowledgement of bona fide civic event. A written comment by a local ABC Administrator or staff attached to an application is insufficient.

Specific Changes to State Licensing Fees and the Annual Renewal Schedule.

- On or about June 25, 2013, the Department will issue replacement state licenses to ALL existing licensees by mail. The replacement licenses will substitute the equivalent new license types for eliminated license types. License expiration dates remain the same. **Licensees must replace old state licenses with the new licenses and correct licensing numbers on the exterior windows or doors so as to reflect new license numbers.**

- State licensing fees and renewal fees are changing. The new fee schedule for license types is enclosed.

- SB 13 corrected inconsistencies and inequalities in license fees. State licensing fees are now standardized to one fee for the same license type. Licensees will no longer have four (4) different state licensing fees based on class of city or county.

- Changes to licensing fee amounts remained revenue neutral and were NOT made to increase state licensing "fees." Fees were calculated equitably across all license types. Consolidated fees remained low so as to protect licensees in smaller class cities and counties. License fees will actually decrease for many licensees.

NOTE: As discussed below, the licensing fees for county and city licenses still have different fees based on class of city or county of licensee. SB 13 did reduce the different local licensing fee amounts from four (4) to two (2).

- The state will no longer require bonds for the following licensing types: Brewer's, Wholesaler's, Distiller's, Rectifier's, Non-Resident Distilled Spirits/Wine Transporter, Winery or Bottling House.

- The state licensing renewal schedule has been simplified and is changing a little. The new annual licensing schedule for the state is enclosed and becomes effective on June 25, 2013.

- State renewals are now scheduled by month for specific counties instead of by zip code. These changes mainly affect licensees in bigger cities. Licensees need to check the attached schedule to see if their renewal date has changed.

- If a licensee's renewal schedule does change, the Department will phase in the new renewal schedule by requiring the licensee to renew twice this year. Licensees will receive their state renewal notices as normal even if the expiration month is changing. The renewal form will permit the licensee to renew their existing license(s), and pay a prorated fee in order to keep their license active and in good standing during the transition period this year.

- As an example, a county might currently have an expiration date of September 30, but the new updated renewal schedule changes the expiration date to April 30. All licensees in that county would receive renewal notices approximately six (6) weeks prior to the old Sept. 30 expiration date. The renewal form would identify the licensee's new expiration date and set a pro-rated fee. If a licensee held an NQ-4 Retail Malt Beverage Drink license, the renewal form will prorate the normal $210.00 annual fee to only $122.50 so as to cover the months remaining until the new renewal date. ($210.00 / 12 months x 7 months (Oct. 1 to April 30). Then approximately six (6) weeks prior to their new expiration date of April 30, the licensee would receive another renewal form instructing it to pay $210.00 for a full year's fee. The licensee would then be on the new annual renewal schedule and the renewed license would be valid for a full year.

- As the foregoing illustration reveals, it will take the Department a full calendar year to implement and transition all licensees to the new annual renewal schedule.

NOTE: Local governments are **NOT** required to renew local licenses based on the state's licensing renewal schedule. As such, the local renewal date may not mirror the state renewal schedule. If a local government chooses a different renewal schedule, the Department asks the local ABC Administrator to notify licensees to be sure they understand that they cannot allow either license to expire and cannot operate at any time without the state license and a local license.

Changes to Local Licenses and Fees.

- The legislative body of any wet/moist county or city may impose local license fees for the privilege of manufacturing and trafficking in alcoholic beverages. Only those license types listed in KRS 243.060 and KRS 243.070 may be issued.
- As previously stated, local license types were also changed consistently with the new state license types. **Cities and counties need to amend local ordinances to reflect the new license types.**
- Unlike state license fees, local license fees were not standardized to one fee for the same license type. SB 13 did reduce the number of different fees for the same license type from four (4) to two (2) different fees. Not all local licenses have different fees.
- For those license types with two (2) different fee amounts, the different fees are based upon whether the licensed premises are located in: (1) counties containing a consolidated local government; and, (2) all other counties.
- In consolidating the four (4) different fees, the maximum license fee amounts permitted will increase for some counties and cities. To protect licensees from drastic increases, SB 13 only permits gradual increases in current fees by providing that counties and cities may only increase current license fees by 5% during any five (5) year period.

Retail Alcohol Sales on Election Days.

- SB 13 amends KRS 244.290 and KRS 244.480 to permit licensees to sell alcoholic beverages on any primary, regular, local option, or special election days as the default state law. Under the old law, retail alcohol sales were prohibited on election days while the polls are open.
- SB 13 authorizes counties and cities of the first four (4) classes to adopt local ordinances to prohibit sales, or limit the hours and sales times of alcoholic beverages on any primary, regular, local option, or special election days.
- Counties and cities are not required to enact ordinances on the subject of election day sales. If no local ordinance exists, retail alcohol sales will be permitted, by default, under state law. If prohibition is desired on election days by local government, an ordinance will be required to establish the prohibition of alcohol sales on election days.
- All licensees should check with their local governments to learn whether ordinances already exist, or will exist, to prohibit retail sales on election days.

Local Option Election laws.

- SB 13 also corrects many problems in Kentucky's local option election laws in KRS Chapter 242.
- All local option election laws were placed in KRS Chapter 242, and all unrelated laws dealing with licensing, ordinances, etc. were removed.
- KRS Chapter 242 better explains which territories can have local option elections and now states how petitions should be worded.
- KRS Chapter 242 specifically addresses new "moist" territories where voters only approve a limited form of alcoholic beverage sales in a territory. SB 13 clarified that "moist" territories remain dry except for moist status approved.
- Election rules were modernized to be more consistent with KRS Chapter 117 dealing with primary and general elections.
- Amended KRS 242.125 dealing with city elections to become wet separate from the county. The statute is now easier to understand. KRS 242.125 was amended to recognize all possible combinations of "wet," "dry", and "moist" status of cities and counties so as to permit them to hold full wet elections.

Public Safety and Protection.

- SB 13 creates a new Medical Amnesty law. The purpose of this law is to encourage minors to seek needed emergency medical attention for self or others due to alcohol poisoning. If certain strict requirements are met, the law would provide immunity from criminal prosecution for less serious offenses such as alcohol intoxication, drinking alcoholic beverages in a public place, and possession of alcoholic beverages by a minor under 21 years of age.

- SB 13 expanded the scope of KRS 244.120, the disorderly premises statute, to provide the Department and local ABC Administrators with additional powers to protect the public.

- KRS 244.120 was amended to specifically prohibit disorderly conduct by licensees and their employees, as old language only applied to patrons' conduct.

- In addition to prior prohibitions, the acts constituting disorderly conduct were broadened to include: (1) creating a public nuisance; (2) engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; and (3) failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.

Three-Tier System Protections relating to Microbreweries.

- Under prior law, microbreweries were permitted to obtain a Retail Malt Beverage license so as to authorize retail beer sales at the microbrewery. Kentucky's Three-Tier System requires retailers to purchase malt beverages from licensed Kentucky distributors.

- Microbreweries will now be required to obtain one or both of the new retail malt beverage license types in order to sell malt beverages at retail. SB 13 permits Microbreweries to sell limited amounts of malt beverages produced on the premises without having to transfer physical possession of those malt beverages to a licensed wholesaler. To protect the Three-Tier System, microbreweries must file required monthly reports and collect and provide all taxes due to the licensed distributor.

Please contact legal counsel for KACO or KLC (as applicable) to provide further legal assistance to you. Should you have any specific questions, please contact the Department.

To assist local officials and their local ABC Administrators, there will be a joint statewide training conference in Louisville for all local ABC Administrators. The Department strongly recommends that local ABC Administrators attend.

The statewide training conference will be held on August 21 & 22, 2013, at the Marriott Louisville East. Register online at klc.org or for more information, please contact Lynda Schwendeman at KLC by calling 1-800-876-4552. Please mark your calendars and save the date!!!!

Enclosures or Reference Documents:

Kentucky License Types and Fees
Kentucky Revised Annual Renewal Schedule