



# Laws Related to Tied Houses

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# What is a Tied House?

- Traditionally a tied house was a pub that was owned by a brewery or otherwise controlled by a brewery so that it only sold products made by that brewery.
  - This guaranteed the brewery a “loyal” customer base.
  - The opposite of a tied house was an independent pub known as a “free house” that could sell products from any brewery that it wanted.
- Before prohibition, saloons in the U.S. were frequently tied houses with exclusive contracts with a particular brewer.
- Modern alcohol law deals with the issue through:
  - the three-tier system; and
  - laws prohibiting manufacturers from causing a retailer to exclude products of other manufacturers.

# Federal Definition of Tied House (27 U.S.C. § 205(b))

- The inducement “. . . [of] any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons . . .
  - (1) By acquiring or holding . . . any interest in any license with respect to the premises of the retailer; or
  - (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or
  - (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Secretary of the Treasury shall by regulation prescribe . . .; or
  - (4) by paying or crediting the retailer for any advertising, display, or distribution service; or
  - (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or
  - (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions . . .; or
  - (7) by requiring the retailer to take and dispose of a certain quota of any of such products

# Statutes related to Tied Houses

- 27 U.S.C. § 205, prohibits a manufacturer or wholesaler from restricting a retailer from carrying a competitors products through a “tied house,” contractual restrictions, or commercial bribery.
- 7 V.S.A. § 203(a) provides that “a packager, manufacturer, or rectifier licensed in Vermont or in another state, a certificate of approval holder, or a wholesale dealer shall not have any financial interest in the business of a first-, second-, or third-class licensee, and a first-, second-, or third-class licensee shall not have any financial interest in the business of a packager, manufacturer, or rectifier licensed in Vermont or in another state, a certificate of approval holder, or a wholesale dealer.”
  - There are several exceptions to this prohibition in Vermont’s law.

# Exception to Prohibitions on Tied Houses

- 7 V.S.A. § 203(b) provides “. . . a manufacturer of malt beverages may have a financial interest in the business of a first- or second-class license, and a first- or second-class licensee may have a financial interest in the business of a manufacturer of malt beverages, provided the first- or second-class licensee does not purchase, possess, or sell the malt beverages produced by a manufacturer with which there is any financial interest.”

# Vermont's Exceptions to Prohibitions on Tied Houses

- 7 V.S.A. § 271 provides several small exceptions for manufacturers and rectifiers:
- (d)(1) The Board of Liquor and Lottery may grant to a licensed manufacturer or rectifier a first-class license or a first- and a third-class license permitting the licensee to sell alcoholic beverages to the public at an establishment located at the manufacturer's premises, provided the manufacturer or rectifier owns or has direct control over that establishment.
- (d)(2) For a manufacturer of malt beverages, the premises of the manufacturer may include up to two licensed establishments that are located on the contiguous real estate of the license holder, provided the manufacturer owns or has direct control over both establishments.

# Vermont's Exceptions to Prohibitions on Tied Houses

- 7 V.S.A. § 271 continued:
- (e) The Board of Liquor and Lottery may grant a licensed manufacturer of malt beverages a second-class license permitting the licensee to sell alcoholic beverages to the public anywhere on the manufacturer's premises.
- (f)(1) A licensed manufacturer or rectifier may serve alcoholic beverages with or without charge at an event held on the premises of the licensee or at a location on the contiguous real estate of the licensee, provided the licensee at least five days before the event gives the Division written notice of the event, including details required by the Division.

# Vermont's Exceptions to Prohibitions on Tied Houses

- Fourth-Class Licenses, 7 V.S.A. § 224:
- A manufacturer or rectifier may get up to 10 4<sup>th</sup>-class licenses
- (b) At each licensed location, a fourth-class licensee may sell by the unopened container or distribute by the glass, with or without charge, alcoholic beverages manufactured by the licensee.
- (b)(2) At a fourth-class license location at the licensee's manufacturing premises, the licensee may distribute by the glass up to four mixed drinks containing a combined total of no more than one ounce of spirits or fortified wine to each retail customer for consumption only on the licensed premises.
- (b)(3) At each licensed location, a fourth-class licensee may, pursuant to section 64 of this title, sell malt beverages or vinous beverages, or both, by the keg.



# Vermont's Exceptions to Prohibitions on Tied Houses

- Special Event Permits, 7 V.S.A. § 252:
- (b)(1) A special event permit holder may sell alcoholic beverages manufactured or rectified by the permit holder by the glass or the unopened bottle.
- (c)(1) A licensed manufacturer or rectifier may be issued no more than 104 special event permits during a year.

# Division of Liquor Control Rules Related to Tied Houses

- Advertising Rules:
- 4. Certificate of Approval holders and wholesale dealers may distribute bottle openers, can openers, and cork screws to retail dealers. These openers may carry the name of the manufacturer and/or brand name of the product. Retail dealers may distribute the openers to their customers with the sale of malt or vinous beverages. These openers are for the convenience of the public and not for advertising purposes.
- 5. Consumer advertising specialties, such as ash trays, bottles or can openers, cork screws, shopping bags, matches, printed receipts, pamphlets, cards, leaflets, recipe booklets, blotters, post cards, and pencils, which bear advertising matter may be furnished, given or sold to a retailer for unconditional distribution by the retailer to the general public. The retailer may not be paid or credited in any manner, directly or indirectly, for this distribution service.

# Division of Liquor Control Rules Related to Tied Houses

- Advertising Rules continued:
- 7. Definitions for advertising, display or distribution service as used in the advertising regulations are:
- a. Manufacturers, holders of certificate of approval or wholesale dealers are prohibited from influencing or controlling the purchases of a retailer by paying or crediting the retailer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.
- b. An arrangement where manufacturer, holder of a certificate of approval, or wholesale dealer participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising.
- c. Manufacturer, certificate of approval holder or wholesale dealer payments to retailers as compensation for setting up product or other displays constitutes paying the retailer for rendering a display service.
- d. A promotion whereby a manufacturer, holder of a certificate of approval, or wholesale dealer rents display space at a retail establishment constitutes paying the retailer for rendering a display service.

# Division of Liquor Control Rules Related to Tied Houses

- General Regulations:
- 19. No licensee that sells or distributes malt or vinous beverages to the public may accept free malt or vinous beverages, services, monetary payments or other things of value from a manufacturer, holder of a certificate of approval, bottler, wholesale dealer, or holder of a solicitor's permit, nor purchase malt or vinous beverages below the uniform price charged by the bottler or wholesale dealer. The Liquor Control Board is empowered to define the terms "things of value" as contained herein; "thingsofvalue" exclude brand-identified items that are primarily valuable for advertising purposes and are approved by the Liquor Control Board.

# Division of Liquor Control Rules Related to Tied Houses

- General Regulations continued:
- 21. Any individual having a direct or vested financial interest in the business of the licensee must be disclosed on the license application. The licensee must notify the Department no less than 20 days before any intended changes in the ownership of and/or financial interest of any person or entity in the licensed entity can occur. Any such changes not approved by the Department, may place the license in jeopardy and/or may result in administrative penalties after a Board hearing.
- a. Licensees shall have prior approval from the Liquor Control Board of any change of directors, officers, members, managers, or affiliates, and of any change in shares that causes the holdings of any new or existing shareholder, including the holdings of that shareholder's immediate family, to equal ten percent or more of a corporation's voting shares. Notices shall be given in writing to the Liquor Control Board not later than 20 days prior to any change. The Board will consider changes in the same way that new licenses are considered. If changes, other than changes caused by the death of a joint tenant, are concluded without obtaining prior Board approval, in writing, the license shall be subject to suspension or revocation.



**ANY QUESTIONS?**