

HGO&MA Primer on Liquor and Lottery

Alcoholic Beverages

I. U.S. Constitution

U.S. Const., amend. XXI, § 2 provides that “[the] transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

The 21st amendment repealed the 18th amendment to the U.S. Constitution, which prohibited “the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes[.]”

While the 21st amendment granted states the authority to regulate the importation of alcoholic beverages, this state power must still be balanced against the other demands and constraints of the U.S. Constitution. For example, state alcoholic beverages laws cannot violate the Commerce Clause or the First Amendment.

II. Federal Law

The federal law governing alcoholic beverages is largely codified in U.S.C. Title 27 (intoxicating liquors); the Internal Revenue Code; and regulations adopted by the Tax and Trade Bureau. Federal alcoholic beverage regulation applies primarily to discrete aspects of the interstate alcoholic beverage market, including:

- Tax and Trade Bureau regulations, such as labeling, marketing, and trade practices (tied-house arrangements and commercial bribery);
- Internal Revenue Code provisions related to alcoholic beverages; and
- Food and Drug Administration enforcement of food and drug law, including those governing food additives.

III. Vermont law

Vermont’s alcoholic beverage laws are codified in Title 7. Among the major and notable features of Vermont’s alcoholic beverage laws are:

- Beverage categories: [7 V.S.A. § 2](#) defines beverage categories for purposes of alcoholic beverage regulation. Under Vermont law, there are six categories of alcoholic beverages: malt beverages; vinous beverages; ciders; ready-to-drink spirits beverages; fortified wines; and spirits.
- Restricted or Prohibited Acts: [7 V.S.A. chapter 3](#) contains limitations on hours of sale, personal limits for the importation of alcohol, restrictions on the sale and

- purchase of kegs, allowances for home-fermentation, and prohibition on powdered alcohol products.
- Establishment of Regulatory Agency: [7 V.S.A. chapter 5](#) establishes the Department of Liquor and Lottery and the Board of Liquor and Lottery. This chapter also delegates regulatory authority to the Board and Department and establishes the Liquor Control Enterprise Fund.
 - Local Control: [7 V.S.A. chapter 7](#) contains provisions concerning local votes to authorize the sale of alcoholic beverages within a municipality. There are “dry towns” within Vermont.
 - Licensing: [7 V.S.A. chapter 9](#), contains Vermont’s alcoholic beverage licensing structure. Vermont uses a “three tier” system of alcoholic beverage distribution, which can be generally described as a requirement that the manufacture, distribution, and retail sale of alcoholic beverages be conducted by different entities. With some exceptions, Vermont law prohibits a single entity from operating in the three tiers simultaneously.
 - Franchises for Distribution: [7 V.S.A. chapter 23](#) governs franchises for the distribution of malt beverages, vinous beverages, and ready-to-drink spirits beverages.
 - Taxes: [7 V.S.A. chapter 15](#) establishes the per gallon tax on malt beverages, vinous beverages, ciders, and ready-to-drink spirits beverages. Chapter 15 also establishes the tax on gross revenue from the sale of spirits and fortified wines.
 - Enforcement: [7 V.S.A. chapters 17](#) and [19](#) contain the enforcement provisions and penalties associated with alcoholic beverage manufacture and sales, including the penalties for sales to individuals under 21 years of age.

Vermont uses a “control state” model for the manufacture, distribution, and sale of spirits and fortified wines. This means that the State has control at both the wholesale and retail levels of the system. The State allows for liquor stores operated and managed by state-appointed agents to sell spirits. The state-appointed agents act as independent contractors.¹

The Vermont Department of Liquor and Lottery (DLL) ships alcohol to its retailers. Retail stores also have the option to obtain the product from DLL. Beer and wine wholesalers may “hold franchise contracts to deliver products to retailers.” Additionally, bars and restaurants can purchase alcoholic beverages from retail stores or obtain the goods from distributors.

¹ There is an exception for fortified wines, which may be sold by retailers provided that they acquire a “fortified wine permit” from DLL.

Malt beverages, vinous beverages, ciders, and ready-to-drink spirits beverages are not subject to the exclusive control and jurisdiction of DLL. Manufacturers of these beverages may sell them to private distributors or may ship these beverages directly to consumers in Vermont.

There are multiple sources of revenue associated with the manufacture and sale of alcoholic beverages. At the primary level, alcoholic beverages are subject to either a gallonage tax or an excise tax, depending on the beverage category. The gallonage tax is paid to the Department of Taxes; the excise tax on spirits and fortified wines is paid to the Department of Liquor and Lottery. At the secondary level, DLL collects a revenue share on the sale of spirits and fortified wines. At the tertiary level, alcoholic beverages are subject to the State and any local option tax on sales.

The State Lottery and Gambling Generally

With few exceptions, gambling is a prohibited criminal activity in Vermont. [13 V.S.A. chapter 51](#) broadly prohibits gambling, lotteries, bookmaking, wagering pools, and betting on horses.

However, Vermont has legalized the operation of a State Lottery. Under [31 V.S.A. chapter 14](#), the Board of Liquor and Lottery is authorized to adopt and operate a State Lottery, multijurisdictional lottery, and a Tri-State Lottery pursuant to a compact. The lottery games established by the Board are operated through lottery agents.

The revenue generated by the State Lottery accrues to the State Lottery Fund, which then is appropriated to the Education Fund after deductions for the costs associated with operating the State Lottery.

The Department of Liquor and Lottery

I. The Board of Liquor and Lottery

The Board of Liquor and Lottery is comprised of five members, who serve for staggered three-year terms. Members are appointed by Governor, with advice and consent of the Senate. Members may serve no more than two consecutive terms.

Title 7 grants the Board jurisdiction over: administrative regulatory structure relating to alcoholic beverages, the sale of tobacco products, and the State Lottery. The Board's duties include:

- Licensing the manufacture, distribution, and sale of alcoholic beverages
- Licensing tobacco sales agents
- Licensing State Lottery agents
- Adopting rules to carry out the laws within the Board's jurisdiction
- Overseeing the opening and operation of State liquor agencies

TA; 1/18/23

- Overseeing the operation of the State Lottery

II. The Commissioner of Liquor and Lottery and the Department as an Administrative Agency

The Commissioner of Liquor and Lottery is appointed by the Governor, with advice and consent of the Senate. The Commissioner serves a four year term. The Commissioner is charged with directing and supervising the Department and, subject to the direction of the Board, ensuring that the laws relating to alcohol, tobacco, and the State Lottery are enforced. The Commissioner has authority to recommend rules, subject to approval by the Board, that relate to the lawful jurisdiction delegated to DLL pursuant to Title 7.

In addition to the administrative and enforcement duties assigned to the Commissioner, the Commissioner is responsible for directing the enterprise functions of DLL.