

TIED HOUSE PRIMER



INTRODUCTION

Preserving tied house law has been very important to Vermont’s craft beer industry. The craft beverage industry is thriving in Vermont – creating jobs, generating tax revenue, supporting rural economic development and bringing tourist into the state. The industry has been able to grow and thrive with the support of the legislature and nimble and targeted changes to alcohol laws, including deliberate adjustments to tied house laws. Over the years, the legislature has intentionally created opportunities for manufacturers to establish their own distribution companies, open tasting rooms, open tap rooms on their premises, sell at farmers’ markets, etc. While Vermont’s three-tier and tied house statutes have evolved, holding the line between the three tiers and the prohibition on tied-houses has remained constant and has served the craft beer industry well.

WHAT ARE TIED-HOUSE LAWS?

What is a tied house? In simple terms, a tied house is any retail outlet that is owned by or otherwise beholden to a particular alcohol manufacturer for any reason. Prior to Prohibition large alcohol manufacturers often would provide retailers with low-interest loans, free draft systems, and even direct payments in exchange for favorable or monopolistic treatment from that retailer. In some cases, a manufacturer might own a number of retail outlets in a town and those outlets would then sell only that manufacturer’s product. The result of tied houses is a decrease in competition and consumer choice, while providing retailers with every incentive to oversell alcoholic beverages (particularly those made by the retailer’s owner or benefactor). After Congress repealed Prohibition in 1933 through the Twenty-First Amendment, every state in the union enacted some version of laws designed to prohibit and minimize tied-houses.

The most fundamental purpose of tied house laws was and remains the **preservation of the three-tier system**. This system is the marketing structure in which alcoholic beverages are sold by suppliers to wholesalers, and by wholesalers to retailers. Supplier, wholesaler, and retailer are the three tiers.

The primary tied house prohibition in Vermont law which prohibits a licensee from having a financial interest in more than one tier is found in 7 VSA §203 (a)(1): “Except as provided in section 271 of this title, 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

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packager, manufacturer, or rectifier licensed in Vermont or in another state; a certificate of approval holder; or a wholesale dealer.”

EXCEPTIONS TO TIED HOUSE LAWS

As mentioned earlier, Vermont law has evolved over the years to include a number of exceptions to the tied house prohibition found in 7 VSA §203 (a)(1). For the most part, these exceptions were adopted at the request of the craft beer industry in order to allow the industry to grow, while preserving the three-tier framework.

There are many other exceptions to tied house in Vermont law. Any provision that allows a manufacturer to obtain a license or permit to sell beer directly to the public is essentially an exception to the three-tier system and tied house prohibitions. The numerous exceptions are listed below.

COMPLETE LIST OF STATUTORY EXCEPTIONS TO TIED HOUSE PROHIBITIONS

- 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.”
- 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.
 - (2) A licensed manufacturer of malt beverages may operate up to two licensed establishments pursuant to this subsection that are located at the licensed manufacturing facility or on property that is owned by the licensee and is contiguous with the parcel of land on which the licensed manufacturing facility is located, provided the manufacturer owns or has direct control over both establishments.
 - (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 premises of the licensed manufacturing facility.
 - (f)(1) A licensed manufacturer or rectifier may serve alcoholic beverages with or without charge at an event held at the licensed manufacturing or rectifying facility or at a location on property that is owned by the licensee and is contiguous with the parcel of land on which the licensed facility is located, provided the licensee at least five days before the event gives the Division written notice of the event, including details required by the Division.

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- (2) Any beverages not manufactured by the licensee that are served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer or the Board of Liquor and Lottery.

Exceptions specific to Fourth-Class Licenses, 7 V.S.A. § 224:

- (a) The Board of Liquor and Lottery may grant up to a combined total of 20 fourth-class licenses to a manufacturer or rectifier that submits an application and the fee provided in section 204 of this title.
- (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.
 - (1) A licensee may, for consumption at the licensed premises or location, distribute the following amounts of alcoholic beverages to a retail customer:
 - (A) not more than two ounces of malt beverages, vinous beverages, or ready-to-drink spirits beverages with a total of eight ounces; and
 - (B) no more than one-quarter ounce of spirits or fortified wine with a total of one ounce.
 - (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.
 - (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.
- (c)(1) At only one fourth-class license location, a licensed manufacturer or rectifier may sell by the unopened container or distribute by the glass, with or without charge, alcoholic beverages produced by no more than five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier.
 - (2) A manufacturer or rectifier may sell its product to no more than five additional manufacturers or rectifiers.
- (d) A fourth-class license issued for a farmers' market location shall be valid for all dates of operation for the specific farmers' market location.

§ 252. Special event permits

- (a)(1) The Division of Liquor Control may issue a special event permit if the application is submitted to the Division of Liquor Control with the fee provided in section 204 of this title at least five days prior to the date of the event.
 - (2) A special event permit shall be valid for the duration of each public event or four days, whichever is shorter.
- (b)(1) A special event permit holder may sell alcoholic beverages manufactured or rectified by the permit holder by the glass within the event boundaries or the unopened bottle.

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- (2) For purposes of tasting, a special event permit holder may distribute beverages manufactured or rectified by the permit holder with or without charge, provided the beverages are distributed:
 - (A) by the glass; and
 - (B) in quantities of not more than two ounces per product and eight ounces total of malt beverages, vinous beverages, or ready-to-drink spirits beverages and not more than one ounce in total of spirits or fortified wines to each individual.
- (c) A licensed manufacturer or rectifier may be issued not more than 20 special event permits for the same physical location in a calendar year.