

Retail Master License Report As Required by Act 156, Sec. 9.

1

Published:
12.6.2024

Prepared by:
Skylar Genest
*Chief / Sr. Director of Licensee
Operations*
Vermont Department of Liquor
and Lottery
Skylar.Genest@vermont.gov
802-477-3439

From:
Wendy Knight
Commissioner
Vermont Department of Liquor
and Lottery
Wendy.Knight@Vermont.gov
802-636-7188

Report to the Senate Committee on Economic Development, Housing, and General Affairs, and to the House Committee on Government Operations and Military Affairs

CONTENTS

Executive Summary.....	Page 3
Background	Page 4
Issues and Challenges	Page 5
Operational Benefits	Page 7
Financial Considerations and Fee Structure	Page 8
Proposal for Legislation amendments under Title 7	Page 9
Conclusion and Recommendations.....	Page 10

EXECUTIVE SUMMARY

Act 156, Sec. 9, Master Retail License Report Summary

In response to the evolving needs of Vermont's beverage alcohol market, the 2024 Legislative session included H.662, which proposed to allow two or more licensed entities that have merged and formed a parent corporation, to continue to hold separate alcoholic beverage licenses while operating under a unified payroll and administrative system. While this short form bill was not codified, Act 156 did require the Vermont Department of Liquor and Lottery (DLL) to report to the Senate Committee on Economic Development, Housing and General Affairs and to the House Committee on Government Operations and Military Affairs regarding the creation of a Retail Master License (RML) that could be granted to a person that acts as the parent corporation for licensed retail dealers or manufacturers that have merged and permits the license holder to provide unified payroll and administrative services for the licensed retail dealers or manufacturers. The legislation required that the report include a proposal for legislation to create the license and an appropriate licensing fee. This report evaluates the need for an RML, identifies the associated regulatory and operational challenges, and complies by recommending legislative changes under Title 7, along with a suggested fee structure.

BACKGROUND

Under Title 7 of Vermont Statutes, beverage alcohol laws focus on the control, distribution, and sale of alcohol, ensuring compliance with public health and safety standards. A proposed Retail Master License would aim to provide efficiencies for entities that manage multiple licensed establishments, creating opportunities for centralized employment/payroll of staff. By granting a single RML to a parent corporation, the licensees believe they could simplify administrative functions.

DLL understands that the primary concern is the employment requirement of licensed employees as stated in General Regulation 40 under CVR 26-020-001 states:

40. All licensee employees must be hired by the licensee and paid on a fixed salary or hourly basis except when allowable by state law. All employees must have the required withholdings deducted from their wages and the required reporting of such withholdings must be made to the Vermont Department of Labor. A First, Second, and/or Third-class licensee shall not contract out any work, labor or services directly or indirectly related to the preparation, sale or service of beverage alcohol. All such duties shall be performed by individuals who are employees in fact and by law.

Furthermore, woven throughout Title 7 is the requirement that all activities conducted around the manufacturing, distributing, and serving of beverage alcohol are only permissibly conducted by the entity that is licensed to do so.

ISSUES AND CHALLENGES

1. Title 7 Compliance and Enforcement

a. Regulatory Authority and Licensing Requirements

Currently, Title 7 requires a person, as defined by 7 V.S.A. § 2(30), to apply for and to be issued a license or permit for any singular location to engage in the manufacture, distribution, or sale of beverage alcohol. It is necessary and is woven throughout Title 7, as well as within many federal laws and regulations, that activity related to the manufacture or sale of beverage alcohol shall be conducted ONLY by the entity that holds the license, permit, or other instrument of approval granting it that authority to do so.

Under the current paradigm, the interaction between licenses to entities is a one-to-many ratio. Any one entity may hold multiple licenses, but the inverse is not true. No license issued under Title 7 is issued to multiple entities under that one license.

The proposed paradigm of one license/multiple people is also not commonly practiced under many regulatory frameworks. Imagine if two related Vermont residents approached the Department of Motor Vehicles and asked for one driver's license to be issued to them both. How would driving violations be enforced? Each person, regardless of their relationship, would need to obtain a driver's license so as to maintain individual liability as to the authority of the Department and Title 23 laws upon the driver.

To highlight this as a regulatory reality, it is important to note the definition of a person as defined by 7 V.S.A. § 2(30) is singular in nature. By having a singular entity as the sole holder of any license or permit, the undergirding regulatory authority of the Board of Liquor and Lottery (the Board) allows the Board to ensure accountability of a singular entity at each authorized location. As summarily proposed, the granting of an RML to a parent corporation which held no specific licenses that allowed it to manufacture or sell beverage alcohol, but was instead a collection of subsidiary licensed entities would require careful regulatory oversight to ensure that their desired ability to

provide centralized administrative functions does not dilute the enforcement of both Vermont's local control standards, as well as the authority of the Board. Ensuring the legal RML framework upholds these requirements will be essential.

Lastly, DLL's current licensing system is not designed to contemplate a many-to-one relationship between entities and a license. As such, significant and costly, both in financial impact and time, system upgrades would be necessary to accommodate a license like the proposed RML. (See the attached cost estimate.)

b. Enhanced Compliance Reporting

DLL would have to ensure that not only each licensed subsidiary entity under an RML continues to adhere to Vermont's health and public safety standards, but also would duplicate efforts in adding adherence to laws and regulations to a parent entity that itself doesn't engage in the direct sales or manufacturing but would employ individuals who do so on behalf of the individually licensed subsidiaries. Increased reporting requirements would be necessary, including periodic audits and mandatory compliance reviews for both the subsidiary entities and the licensed establishments as well as the parent company holding an RML. Any enforcement actions for violations at the licensed locations as well as with any parent entity that was granted an RML would be complex and potentially dilutes the state's authority to address violations of law or regulation.

C. Local Control and Community Impact

Centralized administrative operations risk reducing local oversight. Each licensed establishment should maintain its community engagement and compliance with local standards as required under Title 7. A condition of an RML should include local accountability measures, ensuring each location operates with Vermont's public safety standards in mind.

OPERATIONAL BENEFITS

a. Centralized Management of Payroll and Compliance Functions

An RML as contemplated could centralize payroll and administrative services of subsidiary licenses to the parent entity, which could alleviate logistical challenges. However, Title 7 would need amendments allowing an RML holder to streamline these functions without interfering with individual retail and manufacturer compliance and violation liability. These changes should include specific provisions to ensure consistent on-site accountability and compliance with Vermont's licensing standards.

DLL believes that employing a “holding company” corporate structure as has been employed historically to solve these challenges is the most effective way to reach the desired end state. Many if not the bulk majority of payroll systems can manage payroll for multiple subsidiary corporate entities. Most enterprise-level solutions (e.g., ADP, SAP SuccessFactors, Workday, UKG) offer robust features for managing multiple subsidiaries or entities. These systems often have configurable options to handle multiple EINs, jurisdictions, and compliance requirements. Small to Mid-Sized Business (SMB) Payroll Systems may have limited support for managing multiple subsidiaries but may be upgraded to offer these services for increased user costs.

FINANCIAL CONSIDERATIONS AND FEE STRUCTURE

a. License Fee Structure

An RML will require a fee structure that covers administrative oversight costs while supporting DLL's public safety mandate under Title 7. A flat licensing fee with per-location surcharges can ensure fair contributions from each RML holder without burdening smaller operators. It is imperative to mention that the licenses and related fees held by the subsidiary entities underneath the holder of a proposed RML would and should remain. Each of the individual licenses to manufacture and sell are routinely assessed to ensure that the licensing fees cover the global maintenance and issuance of each license. Both are often a current state and federal requirement to engage in certain activity at each licensed location. However, relative to a fee for an RML, DLL designates this cost under two subsections:

1. Licensing Infrastructure Costs

Attached to this report is a quote from DLL's Licensing and Enforcement System (LEMS) developer on costs to implement an RML within DLL's existing system. That cost is \$45,000. This development would take 300 hours to bring to our production environment.

2. Licensing and Compliance Costs

DLL believes that Licensing and Compliance would be diminished for an RML as the subsidiary entities would maintain their independent licensure. Therefore, the costs related to licensing a parent company should be fractional relative to the cost of the number and types of licenses held by its subsidiaries.

PROPOSAL FOR LEGISLATIVE AMENDMENTS UNDER TITLE 7

To implement the Retail Master License, the following amendments to Vermont's Title 7 are proposed:

1. Creation of a New Licensing Category:

- Add a new section to Chapter 9 of Title 7 that establishes the Retail Master License, including definitions and eligibility criteria for parent corporations overseeing multiple licensed entities.
- Eligibility would be restricted to entities that demonstrate financial solvency, compliance history, and capacity to oversee administrative functions without compromising operational compliance.

2. Compliance and Accountability Measures:

- Each RML holder would be required to submit an operational plan to DLL outlining compliance protocols for each licensed establishment.

3. Public Safety and Community Standards:

- References to 7 V.S.A. § 213 provisions should be included that require RML holders to implement training programs that comply with Title 7 public safety requirements at each licensed establishment where the employed staff would work.
- Clear guidelines for revocation or suspension of an RML and the underlying subsidiary entities licenses if individual locations fail to meet public safety standards.

4. Recommended Licensing Fee Structure:

- A fair and balanced fee structure will ensure that an RML covers administrative and regulatory costs without creating entry barriers:
- Base Fee: A \$9,000 initial licensing fee, with annual renewal fees set at \$1,000 to cover DLL administrative costs for the licensing infrastructure upgrades, issuing, and renewal processing.
- Per-Location Surcharge: A \$500 surcharge for each additional underlying subsidiary entities licenses under an RML, ensuring contributions proportionate to the size of the parent corporation's footprint in Vermont.
- Small Business Reduction: A fee reduction for RML holders with fewer than three licensed locations to prevent undue burdens on small operators.

CONCLUSION AND RECCOMENDATIONS

The introduction of a Retail Master License under Title 7 could address the regulatory hurdle for merged entities that refused to obtain new licenses under the parent entity for the subsidiary licensed entities. By implementing these legislative changes and a structured fee schedule, DLL could address challenges created by the creation of this type of license and ensure comprehensive compliance with Vermont's alcohol laws.

However, DLL believes that an RML, as contemplated, presents more challenges than it solves. Currently, several corporations or similar business entities have created arrangements in the state, where they serve as a "holding company." In virtually all arrangements where the "holding company" acquires or includes subsidiary entities that have held licenses in the past, the individual licenses have transferred ownership to the parent holding company, which conforms to Vermont law and results in a one-to-many relationship between entities and licenses. DLL believes that this corporate or entity arrangement is the appropriate manner to structure entities to reach the desired end state.

Furthermore, as many modern payroll systems can manage payroll for multiple subsidiary corporate entities, DLL believes that any efforts to impact Title 7 to reach the desired end state could be avoided. Entities that merge as described and refuse to implement more traditional holding company business organization could reach their combined payroll goals through system infrastructure upgrades that would conform to state law and regulation, but not open legal dilution of the Board's authority.

DLL remains committed to supporting Vermont's beverage alcohol industry while upholding the regulatory standards that safeguard public health and welfare.