

## TIED HOUSE PRIMER – DECEMBER 2024

### 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 After Congress repealed Prohibition in 1933 through the Twenty-First Amendment, every state in the union enacted some version of laws designed to prohibit and minimize tied-houses.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 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.

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The most direct assault on tied house in our statutes is a provision allowing ownership interest in more than one tier. This exception is sometimes referred to as “The Bobcat Exception” because it was inspired by the ownership of the Bobcat Café in Bristol. The exception allows a manufacturer of malt beverages to have a financial interest in the business of a first- or second-class license, provided that “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. § 203(b).

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.

### **WHY HAS THE VBA SUPPORTED TIED HOUSE PROHIBITIONS OVER THE YEARS?**

**For the last decade Vermont Brewers Association has supported tied house law and opposed efforts to** allow manufacturers to open bars that are not located at their manufacturing facility for the following reasons:

- Vermont’s craft beverage industry has emerged, grown and thrived under the current legal framework – one that prohibits manufacturers from owning bars and restaurants unless they are located at their manufacturing facility.
- If every alcohol manufacturer was allowed to open a bar or restaurant that is OFF the premises of the manufacturing facility, the demographics of Vermont’s craft beverage industry would change dramatically.
- Instead of drawing tourists and visitors to rural communities to tour and sample craft beverages, manufacturers would be pressured to open establishments in population centers.
- Competition in the population centers would be fierce, and many small manufacturers would not be able to survive. The result would be consolidation in the marketplace and a reduction in consumer choice. This could undermine the current robust craft beverage industry and would be a disincentive to rural economic development.

### **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

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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.
  - (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,

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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.
  - (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.

## VBA Tied House Scenarios

*December 16th, 2024*

### Scenario #1 - Distribution Self- Sales & Delivery

Allowing small VT breweries (annual production of 500 Barrels or less) to directly sell and deliver beer to bars, restaurants and retailers, without getting a Wholesale Dealer's License.

- **Currently prohibited because:** Vermont law prohibits distribution without a Wholesale Dealer's License. 7 V.S.A §273. The Wholesale Dealer's License allows producers of malt beverages to sell and distribute malt beverages at wholesale to retail dealers in Vermont. Wholesale Dealers also need a Solicitor's permit for every employee who solicits orders for the company.

Please discuss how advocating for this change would impact the following -

- **Impact on Distribution:**
  - How do the current tied house laws limit breweries' ability to distribute their products? Are there specific examples of breweries affected by these restrictions?
- **Consumer Access:**
  - How do these laws influence where consumers can purchase and enjoy Vermont-brewed beers? How do tied house laws limit consumer choices when it comes to purchasing and enjoying local beers? Are there specific instances where consumers have expressed frustration?
- **Potential Risks:**
  - What are the potential risks or drawbacks of changing the tied house laws? How can we mitigate these concerns? Who would oppose this and why?
- **Future Vision:**
  - What is the ideal scenario for Vermont's brewing industry regarding tied house laws? How can we work towards that vision?

## Scenario #2 - Satellite location

Allowing the holder of a Manufacturer's License to apply for one satellite taproom located off the premises of the manufacturer and allow the manufacturer to transport beer to the satellite location.

- **Currently prohibited because:** Vermont law prohibits a manufacturer from obtaining a First Class and a Second Class license for an establishment unless "it is located at the manufacturer's licensed facility, provided the manufacturer owns or has direct control over that establishment." 7 V.S.A §271(d).

Please discuss how advocating for this change would impact the following -

- **Impact on Distribution:**
  - How do the current tied house laws limit breweries' ability to distribute their products? Are there specific examples of breweries affected by these restrictions?
- **Consumer Access:**
  - How do these laws influence where consumers can purchase and enjoy Vermont-brewed beers? How do tied house laws limit consumer choices when it comes to purchasing and enjoying local beers? Are there specific instances where consumers have expressed frustration?
- **Potential Risks:**
  - What are the potential risks or drawbacks of changing the tied house laws? How can we mitigate these concerns? Who would oppose this and why?
- **Future Vision:**
  - What is the ideal scenario for Vermont's brewing industry regarding tied house laws? How can we work towards that vision?

### Scenario #3 - Revising 7 V.S.A. § 203(2)

Allowing a manufacturer of malt beverages to have a financial interest in the business of a first - class license (e.g. restaurant), and allowing that “the first-class licensee to purchase, possess, or sell the malt beverages produced by a manufacturer with which there is any financial interest.

- **Currently prohibited because:** Vermont law currently prohibits a manufacturer of malt beverages from having a financial interest in the business of a first- or second-class license, unless “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. § 203(2).

Please discuss how advocating for this change would impact the following -

- **Impact on Distribution:**
  - How do the current tied house laws limit breweries' ability to distribute their products? Are there specific examples of breweries affected by these restrictions?
- **Consumer Access:**
  - How do these laws influence where consumers can purchase and enjoy Vermont-brewed beers? How do tied house laws limit consumer choices when it comes to purchasing and enjoying local beers? Are there specific instances where consumers have expressed frustration?
- **Potential Risks:**
  - What are the potential risks or drawbacks of changing the tied house laws? How can we mitigate these concerns? Who would oppose this and why?
- **Future Vision:**
  - What is the ideal scenario for Vermont's brewing industry regarding tied house laws? How can we work towards that vision?