

It's about More than Just Putting it on Ice

Alcohol Law: An Overview of "Tied House"

By Dave Cannon and Danielle Walther

In alcohol beverage law, tied house rules and regulations are restrictions and limitations on the relationships among wholesalers, manufacturers, importers and retail sellers of alcoholic beverages. Adopted in the United States after Prohibition, the rules draw their name from a practice in England in which a bar or pub may be "tied" – either through ownership or contractual obligations – to a specific manufacturer of alcoholic beverages.

There are three levels of alcohol beverage industry members: retail, wholesale, and manufacturers/importers. There is a prohibition on different levels of industry members having a financial interest in the other levels. This prohibition doesn't apply just to the entity and its owner. It also applies to officers, directors, or affiliates thereof.

These regulations emerged as an issue in the N.C. Legislature because of concerns that if there is a "tied house," the retailer will feel pressure to only serve the brand of alcohol owned or sold by the manufacturer/importer – or will actually be pressured to only sell one brand. This could potentially impede the freedom of choice of both the retailer and the consumer.

The question of who tied house regulations affect, and why, can depend on any number of factors:

- A sole proprietor of a store/restaurant/hotel that sells alcoholic beverages may not be impacted, at least for now. However, taking on an additional owner could pose tied-house issue.
- The prohibition doesn't just apply to ownership interest in the business. It also applies to an ownership interest in the land where a business that sells alcoholic beverages is located. Therefore, if a tenant rents a building from which it operates a restaurant, and the owner of the building also has an ownership interest in a brewery, there may be a tied house violation.
- If there are co-owners of a business, they will need to consider their partners and their other investments. If a co-owner also owns part of a vineyard, for example, that could result in a tied house violation.
- If a corporation or other entity owns the business, the possibility of a tied house violation is even greater, since regulators look not just at the ownership interests and investments of the direct owners of a business – they also look up the ownership chain to other corporations and their owners.

Assessing the risk of facing tied house violations starts with a review of the ownership structure. Next, consider the land and the building; if you don't own them, ask yourself how much you know about the owner and try to find out what else, if anything, they might own.

A business owner should also look around at their place of business. Are there signs or displays? If so, who paid for them? Has a manufacturer/importer or wholesaler ever paid for advertising, given the owner money, or "helped" with things around the business? If the answer is yes, then there could be tied house violations.



You may want to engage an attorney to help you review the situation, the laws, and the regulations in order to see exactly where you stand and to help you evaluate options and look for ways to eliminate the problem. There may be practical or relatively simple methods to solve the tied-house problem. Finally, while there may be no way to solve the problem, there may be ways to minimize it. One way to do that is to request an exemption to the tied house prohibitions.

To gain an exemption, the owner needs to make his or her case to the North Carolina ABC Commission. As part of this, be prepared to explain why the tied-house violations do not pose a problem and do not fall into the risk categories that concern the Commission. Obviously, there are no guarantees, but the more you can distance yourself from the practices that tied house provisions seek to avoid, the more likely you are to be granted an exemption.

All of this relates to addressing an existing tied house issue. But it is just as important to be able to identify a *potential* tied house problem before you enter into future business arrangements. Here are four ways you can do that:

- Anytime you take on a new owner – whether it’s a person, a corporation or other entity – ask about any other businesses in which they have an ownership interest.
- If you’re moving your business or starting a new business, ask the building owner and the landowner if they have any ownership interests in other alcoholic beverage sellers, manufacturers or wholesalers.
- Be wary of any gifts or free services offered to you by a wholesaler, importer, or manufacturer, which could result in a tied house violation.
- Engage an attorney to review any transaction and identify any problems, and then deal with those problems before they lead to violations.

Violations of tied house regulations can lead to fines or result in a revocation of your license to sell alcohol. So given the complexity of the issue, and the fact that tied-house issues can be lurking in the shadows of everything from ownership to advertising, it just makes good business sense to know your risks and plan accordingly.

	<p><i>Dave Cannon, a member with Nexsen Pruet’s Environmental, Administrative & Regulatory Law Group in Charlotte, practices in the areas of alcohol and other licensing matters, commercial real estate, commercial leasing as well as in hospitality and business transactions. You can contact him via email at dcannon@nexsenpruet.com or by phone at 704.338.5301.</i></p>
	<p><i>Danielle Walther, an associate with Nexsen Pruet’s Environmental, Administrative & Regulatory Law Group in Charlotte, practices in the areas of alcohol licensing, state and local permitting as well as in negotiation of sales and commercial agreements. You can contact her via email at dwalther@nexsenpruet.com or by phone at 704.339.0304</i></p>