

Brewers Association guidance cannot be considered legal advice. Each Brewers Association member must seek information from government agencies, attorneys, or other reliable sources to address compliance issues and to get answers about specific questions concerning business activities.

Explanation of “Tied House” Laws

This overview is designed to provide a basic understanding of tied house laws and to direct BA members to resources available from TTB and state ABCs.

1. *What is a tied house?*

“Tied house” is a term used today to describe a tie or link between an industry member in one tier of the alcohol beverage industry and an industry member in another tier. Tied house originally referred to taverns attached to or owned by breweries and distilleries in England. In the United States, the term was appropriated by temperance activists during the late Nineteenth and early Twentieth Centuries. They claimed that the “Whisky Trust” and “Beer Barons” were maintaining tied houses across the nation through unscrupulous and hidden means, fostering all manner of criminal and antisocial behavior. Those political arguments led to ratification of the Eighteenth Amendment to the Constitution and National Prohibition. The terms “tied house” and “saloon” were often used interchangeably to vilify retail establishments, which were often the focus of noisy protests and even vandalism. The title of Florida’s tied house law still includes the words “tied house evil.”

2. *Where can I find the text of tied house laws and administrative regulations?*

[Section 205\(b\) of the Federal Alcohol Administration Act](#);

[Part 6 of federal Alcohol and Tobacco Tax and Trade Bureau Regulations](#);

A wide range of [TTB](#) administrative guidance;

State statutes, regulations, and administrative guidance are generally available at state alcohol beverage control websites available [here](#).

3. *Why do brewers and other industry members have to operate under a federal and state tied house law?*

The U.S. Constitution provides broad authority for Congress to regulate “commerce among the several states.” The Twenty-first Amendment, which repealed National Prohibition, provides an exception to the commerce power of Congress: “The transportation or importation into any State, Territory, or possession of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 alcohol beverage industry involves transactions in interstate and intrastate commerce. For example, thousands of shipments of packaged beer move each day from breweries to distributors

in other states. Most consumer purchases are made in-person at retailers licensed by the state where the retail premise is located.

The federal tied house law and lengthy tied house regulations adopted by TTB regulate the upper tiers of the industry, which are manufacturers, importers and wholesalers. TTB does not have direct jurisdiction over retailers, but TTB does regulate business activities that involve manufacturers, importers, and wholesalers on the one hand and retailers on the other. When federal laws were enacted in the 1930s, retailers generally operated entirely within their home states and were not considered to be operating in interstate commerce and subject to federal regulation. In fact, many brewers were also doing business entirely within one state. For that reason, federal tied house and certain other federal trade practices laws only apply to brewers if a similar law exists in the state where the violation occurred. That exception may be helpful in some situations. Nevertheless, brewers must still be very cautious about compliance because the same activity can violate both federal and state laws, triggering multiple penalties.

State laws regulate all three industry tiers and generally separate brewers (and other manufacturers and importers) from wholesalers and retailers. These governing strictures are usually found in several different laws and regulations establishing license criteria and regulating specific activities. A combination of “tied-house laws” exists in each state.

4. *What is the connection between tied house laws and the three-tier system?* The three-tier system was not part of the original regulatory framework of the alcohol beverage industry. It evolved through eight decades of continuous tinkering by state legislatures and alcohol beverage control agencies. Tied house laws do preserve the regulated distribution system in the U.S. alcohol beverage industry, which generally consists of:

- (a) manufacturers/suppliers (breweries, wineries, distilleries, and importers);
- (b) wholesalers/distributors; and
- (c) innumerable types of retail establishments that sell alcohol beverages to consumers.

The system has nuances and exceptions in each state based on history, geography, the presence of manufacturers in a given state, cultural differences, and last, but certainly not least, local political and economic considerations.

5. *What are typical restrictions in tied house laws?*

The structure of the alcohol beverage industry in each state is largely maintained by “tied house laws,” that include:

- (a) Licensing criteria that authorize specific activities and a specific role in the chain of commerce for the license holder, such as manufacturing, importing, distribution, and sales to consumers;
- (b) General prohibitions on ownership “interests” in more than one tier of the industry so that businesses in one tier cannot exercise control over decisions of businesses in other tiers;

(c) General prohibitions on industry members in one tier providing members of another tier with cash or other “things of value,” except for purchases of alcohol beverages, narrowly defined services, and items of nominal value; and

(d) Restrictions on many collaborative business arrangements between or among industry members in different industry tiers, such as pooling funds for events, advertising or other business activities.

Fifty state laws with a federal overlay create many anomalies and ambiguities. To prevent inadvertent violations of tied house laws, legal guidance is needed for projects and transactions (other than normal beer sales) that involve members of more than one industry tier.

6. *What is an “interest” in another tier of the alcohol beverage industry?*

One common theme of tied house laws is that an investor cannot simultaneously hold an interest in a supplier tier business and a retail business. “Interest” is usually very broadly defined in state laws. An interest can include stock, membership shares, debt instruments, leaseholds, and virtually any type of ownership. Substantial variation and numerous exceptions exist among the states. The federal-state overlap and differences among state laws complicate otherwise ordinary commercial transactions. The complex legal framework also prevents individuals and certain institutional investors from obtaining an interest in more than one industry tier. Restrictions on “cross-tier interests” are based on the post-Prohibition fear that manufacturers, importers, and wholesalers would dominate retailers, the vast majority of which (in the 1930s) were small, independent bars, restaurants, and package stores.

7. *What exceptions exist to allow cross-tier ownership interests in federal and state tied house laws?*

Federal tied house regulations allow brewers and other manufacturers to hold a 100 percent ownership interest in a retailer. Many state laws are far more restrictive.

States have enacted innumerable exceptions to permit specific cross-tier interests, but the lack of uniformity poses major challenges to brewers and other industry members and investors. Exceptions in state laws often authorize a particular person or business to operate in more than one tier. For example, large manufacturers have been permitted to make major investments in sports stadiums where multiple retailers operate. Many exceptions are simply enacted into law in response to requests from politically-connected businesses, groups, or individuals.

8. *How do tied house laws apply to brewpubs and taprooms?*

Under federal law, brewers are treated as manufacturers. Federal law also authorizes a brewery to sell beer to consumers at the brewery and to hold a 100 percent ownership interest in a retailer.

State laws vary widely and a full understanding of state licensing requirements is needed before starting or investing in a brewpub or a brewery with a taproom. Some states follow the federal model, treating brewers as manufacturers and authorizing retail sales on the brewery premises. Other states treat brewpubs as retail operations similar to restaurants. Several states have

complex exceptions that permit brewers to operate wholly-owned retail establishments at locations other than the licensed brewery.

9. *What is a thing of value?*

The federal tied house law was enacted to protect retailers from domination by manufacturers, importers, and wholesalers. Federal law and regulation is focused heavily on retailer independence and prohibiting relationships that allow manufacturers and wholesalers to exercise control over retailers. Accordingly, federal law and regulations generally prohibit manufacturers and wholesalers from directly or indirectly (*e.g.*, through third parties) providing cash, cash substitutes (gift cards, credit card swipes, etc.), durable equipment, and other goods to retailers. Payments for services provided to retailers are also prohibited. Federal law and TTB regulations have additional specific prohibitions on “commercial bribery” and “offering or giving any bonus, premium, or compensation” to any officer, employee or representative of a wholesaler or retailer that induces the wholesaler or retailer to purchase a manufacturer’s products to the exclusion of competitors’ products.

10. *What exceptions exist in tied house laws?*

Numerous exceptions exist in federal regulations for advertising materials and essential services, such as delivery and stocking shelves.

State laws vary widely, but many states maintain restrictions on exchanges of value between or among each tier with the obvious exception of payments for the fair market value of beer and other beverages.

Tied house laws often begin with a sweeping prohibition on exchanges of money or any other thing of value, typically followed by a list of narrow exceptions. Common exceptions include:

- a. Essential services, such as delivery and stocking;
- b. Signs and other point of sale advertising materials, often with limits on value and prohibitions on use of utilitarian items that could be used by owners, managers, or employees of retailers after a promotion ends (*e.g.*, barbeque grills, golf clubs, outdoor furniture); and
- c. Items of limited value, such as consumer and retailer advertising specialties (apparel, trinkets, etc.), often with limits on the value of such items.

TTB tied house regulations allow advertising that references the names of two or more unaffiliated retailers. A few states have similar exceptions that are helpful for social media and other modern advertising platforms that brewers can use for off-premise promotions, tasting events, and similar activities.