

State of Vermont
Department of Liquor and Lottery
Division of Liquor Control
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Patrick Delaney, Commissioner

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To: Supplier Partners of the Vermont Dept. of Liquor and Lottery
From: Commissioner Patrick Delaney
Date: 6/11/19
Re: Legislative change to Vermont's liquor excise tax

Dear Supplier Partner,

With the recent conclusion of the 2019 Vermont Legislative session it seems like an appropriate time to recap legislative changes to Title 7 that were pertinent to our industry. During the 2019 session the Department of Liquor and Lottery proposed numerous changes to our liquor laws. Our goal was to address areas where we perceived opportunities to improve the legal framework that supports our efforts to encourage socially responsible consumption of beverage alcohol. As you may recall during the 2017 session Title 7, our statutory framework for tobacco and beverage alcohol laws, was revised and modernized. This successful process eliminated redundancies, conflicting language, antiquated terminology, and re-organized certain sections to make the statute more user friendly. After the modernization of Title 7, the DLC was tasked, by the legislature, to review and evaluate penalties and sanctions related to infractions. As a result of this analysis the Dept. presented proposals to rationalize related fines and penalties so that they would be relevant by today's standards. These new standards became a law on June 19, 2019 when the Governor signed H13.

Two areas of H13 that I would like to focus on are the change in the Vermont's excise tax on distilled spirits and the new requirement that all solicitors of distilled spirits be registered and licensed by the State. A brief narrative on the decision to change the state's excise tax rate would be appropriate at this point. A good starting point for that discussion is to recognize that the Vermont craft distilling industry has exploded over the past decade. The governor's administration and the state legislature have been proponents and supporters of the craft distilling industry since day one. A component of the legislature's craft industry support has been an excise tax carve out for local manufacturer's direct-to-consumer sales. These direct-to-consumer sales included venues such as their manufacturing premises, farmers markets, county fairs and other direct to consumer events. Local manufacturers could pay a 5% excise tax on those sales up to a certain threshold versus the standard rate 25% excise tax rate. This reduced excise rate was well intended but it was also unconstitutional. The reduced tax rate for local manufacturers discriminated against all other out of state producers who were afforded equal treatment. The legislature decided to take a different approach and leveled the playing field by reducing the excise tax on all distilled spirits sales. The local 5% tax rate will be allowed for all distilled spirit sales in order to circumvent the legal issues of the present model. My initial reaction to this proposal was to question how this would affect our business model. Questions that needed to be answered were; what the effect would be on our retail price points and our competitive position with surrounding states, and how would this change affect our net revenue and our annual contribution to the general fund. After some initial evaluation it became clear that this change in excise tax would not affect any of those areas of concern. The VDLC does not intend to change our pricing formulas and there will be no impact on our retail price points as a result. The intention of the legislature was to maintain and increase our general fund contributions. Our pricing formula which is based on individual category markups only. The category markup includes both excise tax and gross profit margins. So, in this case, the decrease in excise tax will be accompanied by an increase of equivalent increase in gross profit if the category markups remained the same. I would like to assure everyone that the excise tax change will not affect your current Vermont F.O.B.S or retail price points. In other words, this change in taxation is essentially a re-labeling of two revenue sources and its business as usual in Vermont.



Liquor and Lottery Control Board:

Martin Manahan, Chair; Edward Flanagan, Sam Guy, Sabina Haskell, Thom Lauzon - Members

The other change in statute that I would like to make you aware of is the new requirement for solicitors of distilled spirits to be registered and licensed by the VDLC. Effective July 1st individuals that are involved in the solicitation for both on and off premises placement of distilled spirits will require a license to do so. Historically, the State only required licensure by solicitors of wine and beer but not spirits. Since my arrival in Vermont I have always found this situation, the exclusion of spirits solicitors to be puzzling. Please find the language pertaining to solicitors in H13.

All solicitors for distilled spirit manufacturers, brokers, and distributors will be required to apply for a solicitor's license.

651. SOLICITING ORDERS

A person who, for himself or herself or as agent, takes or solicits orders for the sale of malt or vinous beverages, except for licensees or from agencies of the U.S. Armed Forces as specified in section 421 of this title, or of spirits or fortified wines shall be imprisoned not more than six months nor less than three months or fined not more than \$500.00 nor less than \$100.00, or both.

I would also like to remind everyone that an employee of a class 1,2, or 3 licensed establishment is precluded from also being simultaneously employed as a solicitor by a broker, licensed manufacturer or distributor of beer, wine, or distilled spirits. This regulation is included in our wholesaler and manufacturer regulations and reads as follows:

1. A liquor representative, employee of a wholesale dealer, holder of a certificate of approval or manufacturer's license shall not be employed directly or indirectly on a paid or voluntary basis by a first class licensee. Holders of a certificate of approval, manufacturer's license, wholesale dealer's license, solicitor permit, or any full-time employee of such licensees may, at a retail establishment, stock, rotate, build and move displays and price products which they sell, provided products purchased from other wholesalers are not altered or disturbed. a. An employee of a wholesale dealer of beer and wine may also work for a second class licensee in a store that sells beer and wine for off premise consumption, provided the employee has no management role and does not exercise any control over the business or any business decisions or the second class licensee, and that neither of these employment relationships has the effect of excluding another wholesale dealer or any brand of beverage handled by another wholesale dealer.

Please feel free to contact me at the VDLC at 802-828-4929 if I can answer questions.

Patrick Delaney
Commissioner Vermont Department of Liquor and Lottery
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