

## **STATE LIQUOR CONTROL FREQUENTLY ASKED QUESTIONS**

The below information pertains to some of the common inquiries that the Department of Business Regulation (DBR) receives. It is based solely on the laws under the DBR’s jurisdiction under Title 3 of the Rhode Island General Laws and the regulations promulgated thereunder. It is recommended you consider any other applicable laws including, for example, local ordinances and tax implications, which a private attorney may be able to assist you with.

For more specific answers on these topics or other topics under the DBR’s liquor jurisdiction, please contact Lee Ann Desilets at [LeeAnn.Desilets@dbr.ri.gov](mailto:LeeAnn.Desilets@dbr.ri.gov) or (401) 462-9544. You may find it helpful to first consult the statutes, regulations, and Bulletins/Notices linked on the DBR liquor control website and, if possible, please reference any specific laws you may have found to pertain to your inquiry. Please note that responses are highly dependent on the particular facts and circumstances of the inquiries, so the more factual details you can provide, the better, including details about the specific operation or practice at issue and identification of the Rhode Island business or prospective business.

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### **What kind of liquor licenses does DBR issue?**

Manufacturers – Winery, Distillery, Brewery; Brewpub, Farmer-Winery

Wholesalers – Class A, B, and C

Limited types of retail licenses – Class P Caterer; Class G and Class GD Rail, Air, and Marine Transportation

All other licenses are issued by the municipality in which the licensed premises are located.

## **How does Rhode Island liquor law define and regulate different types of alcohol?**

R.I. Gen. Laws § 3-5-1 provides that a license is required for manufacture, sale, and importation of “beverages.” R.I. Gen. Laws § 3-1-1(3) defines “Beverage” as “any liquid that either by itself or by mixture with any other liquid or liquids, is, or may become, fit for human consumption as a drink and that contains five-tenths of one per cent (.5%) or more of alcohol by weight.” Accordingly, the manufacturing, distribution, and consumer sale of liquid drinks with 0.5% alcohol by weight requires a license.<sup>1</sup>

Title 3 makes some distinctions based on different types of alcoholic beverages, starting with these definitions found in R.I. Gen. Laws § 3-1-1:

- (11) “Malt beverage” means any beverage that is usually produced at breweries, as distinguished from distilleries.
- (17) “Wines” means all fermented alcoholic beverages made from fruits, flowers, herbs, or vegetables and containing not more than twenty-four percent (24%) of alcohol by volume at sixty degrees Fahrenheit (60 degrees F)...”
- (17) also distinguishes “Cider” from wine as follows: “cider obtained by the alcohol fermentation of the juice of apples ...containing not more than six percent (6%) of alcohol by weight at sixty degrees Fahrenheit (60 degrees F), including, but not limited to, flavored, sparkling, or carbonated cider.”

These definitions/distinctions determine which kind of Rhode Island alcohol manufacturer license to apply for and how a beverage is classified for purposes of the beer and wine limited wholesale and retail licenses. For example: Wine may be manufactured either by a licensed winery (§ 3-6-1) or a licensed farmer-winery (§ 3-6-1.1). Malt beverages may be manufactured either by a licensed brewery (§ 3-6-1) or a licensed brewpub (§§ 3-6-1.2, 3-7-7.2). Distilled spirits may be produced by a distillery licensed under § 3-6-1. A hard cider that is between 0.05% and 6% alcohol by weight at 60 F would be regulated under Rhode Island law as a “malt beverage,” requiring a brewery license or a brewpub license. A hard cider that is more than 6% alcohol by weight at 60 F would be regulated under Rhode Island law as “wine,” requiring either a winery license or a farmer-winery license.

*What about “intoxicating” and “non-intoxicating” beverages?* R.I. Gen. Laws §§ 3-1-1(10) and (12) and 3-1-2 define the differences between “intoxicating” and “non-intoxicating” based on a 3.2% alcohol by weight benchmark. However, a classification based on this benchmark does not affect state liquor licenses. R.I. Gen. Laws § 3-14-3 of the Rhode Island Liquor Liability Act makes this distinction as well; however, the Department does not enforce this statute for private civil remedies.

*What about Rhode Island tax implications for different types of beverages?* The Department of Business Regulation does not oversee the taxation of alcoholic beverages. Please contact the Division of Taxation. <http://www.tax.ri.gov/>

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<sup>1</sup> Note that many alcoholic beverage labels use alcohol by volume (vs. alcohol by weight) and the conversion factor for these measures may depend on the recipe of the individual beverage at issue.

**What do I do if I have a question about a matter pending before the local licensing board or a matter that I anticipate may come before the local licensing board?**

Municipal liquor license decisions are appealable to DBR sitting as an appellate body. When such an appeal is filed, the case follows the normal course of being presented to a neutral hearing officer who presents a recommended decision to the Director. Accordingly, DBR staff and attorneys cannot provide any advice or legal opinions on questions that are pending before a municipal liquor licensing authority or that can be reasonably anticipated to be brought before such authority. To the extent that DBR staff and attorneys provide links or citations for any relevant statutes, regulations, or cases that may be helpful, such information is intended as a starting point reference only and not a comprehensive collection of all potentially relevant sources of law.

Municipal officials should consult with their respective solicitors. Licensees and applicants may wish to consult with a private attorney.

**Can alcohol be served with Sunday brunch?**

There is nothing under the statutes or regulations under DBR's jurisdiction that prohibits serving alcohol with Sunday brunch. Holiday and Sunday alcohol sales and hours for such sales are governed by R.I. Gen. Laws § 3-8-1 and the particular statutory sections establishing each license type.

**Does DBR regulate restaurants where you can bring your own alcohol but not buy it from the establishment (commonly referred to as BYOBs)?**

DBR does not consider BYOBs subject to any state liquor licensing requirements under Title 3 if they are not selling alcoholic beverages. Bulletin CL-LC-2009-1 provides that an establishment whose retail liquor license has been revoked cannot thereafter operate on a BYOB basis. This is an area where it is especially important to check with the municipality where the BYOB is located.

**Are Mail-In-Rebates and other similar promotions allowed?**

Mail-in-rebates and similar manufacturers' discounts are generally considered permissible if they are redeemed by manufacturers, clearinghouses, or their agents. See Rule 1.4.29 of 230-RICR-30-10-1.

**What are the Rhode Island restrictions in relationships and dealings between different tiers in the three-tier system?**

The Department receives a high volume of inquiries about relationships and dealings between different tiers in the three-tier system. The three tiers are manufacturers, wholesalers, and retailers. Inquiries about the permissibility of volume discounts, promotional products and displays, etc. are common. Such relationships and dealings have case by case variations, but in general, the below cited statutes are interpreted as being directed at financial and management interests such as ownership, financing, common business manager, etc.

R.I. Gen. Laws § 3-7-22(a) provides:

Except as otherwise provided, it shall be unlawful for any holder of a manufacturer's or wholesaler's license to have any direct or indirect interest in any retailer's license or in the business carried on under a retailer's license.

R.I. Gen. Laws § 3-6-15 provides:

No manufacturer of distilled spirits or wines whose principal place of manufacture is outside of this state shall hold a wholesaler's license issued under this title or shall have any interest in a wholesaler's license, either directly or indirectly, as an owner or part owner, or through a subsidiary or affiliate, or by any officers, directors, or employees of the manufacturer, or by stock ownership, interlocking directors, trusteeship, loan, mortgage or by being a guarantor, endorser or surety of any obligation of a wholesaler.

**Can a Class A liquor store deliver to a customer? What about liquor delivery apps?**

R.I. Gen. Laws § 3-7-3 provides “a retailer's Class A license authorizes the holder to keep for sale and to sell, at the place described, beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold.”

Rule 1.4.10 of 230-RICR-30-10-1 entitled “Deliveries – Retail” builds on § 3-7-3 as follows:

- A. A Class A alcoholic beverage licensee may deliver alcoholic beverages to the residence of a customer. In making a permissible delivery, a licensee must be sure that the alcoholic beverage is not delivered into the possession of a person under the age of twenty-one (21). No identification documents shall be accepted unless they bear a photographic representation of the person accepting the delivery.
- B. Sale and delivery shall be made only during the legal hours of business for a Class A license by an employee and/or owner of the licensed establishment.
- C. Each delivery must be accompanied by an invoice which shall state at a minimum:
  - 1. Name of licensed establishment or person making delivery;
  - 2. Name and address of purchaser;
  - 3. Date of delivery;
  - 4. List of products being delivered; and
  - 5. Signature of consignee.

There is no prohibition on a Class A liquor store accepting orders for alcohol beverages via a third-party website or smartphone application, provided the orders are delivered by an employee or owner of the licensee in compliance with the ID-checking requirements.

Please note that Class B restaurant/bars cannot deliver alcohol to consumers since the license issued to them under § 3-7-7 is a separate and distinct license from a Class A liquor store and only authorizes sale “for consumption on the premises.”