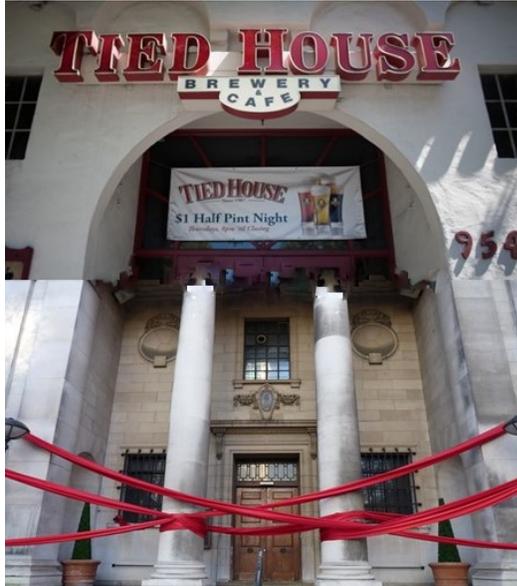


# TIED HOUSE

## WHAT IS a "TIED HOUSE" ?

The statutes for Utah's Tied House laws can be found in Title 32B-chapter 4 part 7 "Trade Practices Act. Specifically, **32B-4-704** "Tied House – Prohibitions" and **32B-4-705** "Exclusions from Tied House Prohibitions".



**HISTORY:** To understand what a "Tied House" is let's first visit our U.S. history.

Prior to 1919 it was a common practice for alcohol manufacturers to persuade, induce, bully or coerce traditional pubs and saloons to sell ONLY their brand of alcohol beverages exclusively over someone else's alcohol beverages. The manufacturer may have provided things like loans, startup money, free draft systems, or even direct payments to the saloon. Worst case scenario, the inducements were threats of physical harm or economic harm if they did not comply. So the saloon had either a contracted type of obligation or an unspoken kind of beholden - or "tied" to that one particular "house"

(manufacturer) or in other words, a "tied house" rather than a "free house".

In some cases a large manufacturer might be "tied" to every saloon in town creating a monopoly. Other manufacturers, especially the small ones, could not sell their products anywhere in town and there was virtually no other choices for the public either.

During prohibition from 1919 to 1933, the practice of tied houses was eliminated because manufacture and sales of alcohol was illegal. A myriad of criminal gangs took over the control of the now illegal liquor supply and sales, but that is another story.

In any case, after Congress repealed prohibition laws in 1933, the federal government and every state in the union, including Utah, enacted some version of tied house laws designed to prohibit and minimize these alcohol monopolies.

These days, a DABC industry member (manufacturer, producer, supplier, importer, wholesaler, their affiliates, contracted third party non-retailer, etc.) who requires a retailer, either by agreement or otherwise, directly or indirectly, to purchase an alcohol product to the exclusion (in whole or in part) of an alcohol product offered by another industry member, is unlawful.



## HERE ARE SPECIFICS:

An industry member may not *require* a retailer to purchase their products:

- By coercion through an act or threat of physical or economic harm
- By voluntary industry member-retailer purchase agreements, either written or unwritten if it has the effect of requiring the purchase of their alcohol beyond a single sales transaction.

An industry member may not **REQUIRE** a retailer to **exclusively purchase their products**



### Examples include:

- Advertising contracts between industry members and a retailer with the express or implied requirement of the purchase of the advertiser's product
- Sales contracts awarded on a competitive bid basis that has the effect of prohibiting the retailer from purchasing from another industry member by requiring that the retailer purchase a product(s) exclusively from the industry member for a period of the agreement
- Requiring that the retailer purchase a specific or minimum quantity during the period of the agreement

An industry member may not *induce* a retailer to purchase their products, either directly or indirectly or through an affiliate to the exclusion in whole or in part of a product sold or offered for sale by another person by furnishing, giving, renting, lending, or selling to the retailer:



An industry member may not **INDUCE** a retailer to **exclusively purchase their products**

- Equipment
- Fixtures
- Signs
- Supplies
- Money
- Services
- Other things of value.

### **INDIRECT INDUCEMENTS ARE NOT LAWFUL. – THIS INCLUDES:**

- Furnishing a thing of value to a third party when the benefit will flow to the retailer
- Making a payment for advertising or a display company when the resulting benefits will flow to the retailer.

### **FURNISHING OF A SERVICE OR THING OF VALUE:**

- Negotiating a special price for equipment from an equipment company
- Furnishing free warehousing by delaying delivery of an alcoholic product beyond the time that payment for the product is received
- If a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended
- A financial, legal, administrative, or influential assistance in the retailer's acquisition of the retailer's license
- Paying or crediting the retailer for an advertising, display, or distribution service
- Guaranteeing a loan or the repayment of a financial obligation of the retailer
- Extending to a retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge from all indebtedness arising from the transaction by the retailer paying cash or its equivalent

### **MAY NOT REQUIRE THE RETAILER TO:**

- Take and dispose of a certain quota of a product
- Purchase one product in order to purchase another product
- Take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium container such as a distinctive decanter or a wooden or tin box
- Combination sales if one or more products may be purchased only in combination with another product and not individually

## EXCEPTIONS:

There are some items of value which are NOT considered to constitute a means to induce. These are product displays which include any wine racks, bins, barrels, casks, shelving, or similar items that primarily hold and display consumer products. These may be provided by the industry member if:

**There are usually exceptions to rules. In this case, some display items and some "sign" exceptions may apply.**

- The total cost does not exceed \$300 per brand at any one time in any one retail establishment.
- The \$300 is the actual cost to the industry member who initially purchased it.
- If transportation and installation costs are excluded.
- All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed.
- The name and address of the retailer may appear on the product displays.

Equipment and supplies may also be sold by the manufacturer or distributor to the licensee. However, they must be sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of the sale.

### Outside signs may be given or sold to a retailer provided that:

- The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed
- The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and
- The cost of the signs may not exceed \$400.



### A beer industry member may assist a beer retailer in:

- ordering,
- shipping
- delivering beer merchandise
- new product notification
- listing and delisting information
- price quotations
- product sales analysis
- shelf management
- educational seminar

## AND LAST BUT NOT LEAST – EVENT PERMITS:

An industry member may lease or furnish the following items for a special event if a reasonable rental or service fee is charged for the equipment; and the period for which the equipment is leased or furnished does not exceed 30 days.

- a picnic pump
- a cold plate
- a tub
- a keg box;
- a refrigerated trailer
- a refrigerated van
- a refrigerated draft system



## IN SUMMARY

Although “Tied House” laws can seem quite complex, perhaps to make it simple, ask the questions: Is the licensee in any way being influenced, bribed, coerced, paid, given free stuff, feeling or expected to be ‘tied’ to one specific brand, talked into one specific brand, given free or discounted products . . . you know. That “I’ll scratch your back if you scratch mine” kind of behavior? Even if the DABC licensee is the instigator, well, it still won’t work. The other brands out there must have fair play and customers must be given choice. And if you really are not sure, call your DABC compliance officer.