

**STATE OF VERMONT
DEPARTMENT OF LIQUOR AND LOTTERY
DIVISION OF LIQUOR CONTROL
BOARD OF LIQUOR AND LOTTERY**

IN RE: WALMART INC.

DECLARATORY RULING ON PROPOSED DRIVE-UP SALES

The Board of Liquor and Lottery (“Board”) is asked to address whether drive-up sales (also referred to as “drive-through sales,” “drive-thru,” “delivery window” or “curb sales”) of alcoholic beverages by Second-Class¹ Licensees are permissible. The Board considered testimony from a Walmart representative at its October 10, 2018 hearing. Such proposed sales may include those transacted, in advance, over the internet via a Website or Smartphone application. For such sales, delivery would take place at a scheduled time and may occur physically outside of the current boundaries of licensed premises, including parking areas. This is an issue of first impression for this Board.

While there are no specific prohibitions against such sales, the Board is without sufficient information to generally authorize them. The Board recommends collaboration between licensees and the Department of Liquor and Lottery (“DLL”) to establish appropriate guidelines and definitive proposals for our review. To aid in this process, the Board recommends that the following concerns, namely those of a Licensee’s ability to properly identify and assess any patron before making a sale, be addressed:

1. Second-Class licensee employees have a comparatively limited duration to assess patrons’ suitability to purchase alcoholic beverages than bartenders in First/Third-Class licensed establishments. A bartender may have several face-to-face opportunities to decline a sale to a patron, but a Second-Class licensee’s employee has only one opportunity, because the alcoholic beverages will be consumed elsewhere. Consequently, any potential harm flowing from that sale will occur elsewhere as well. In a traditional Second-Class establishment, a

¹ Pursuant to 7 V.S.A. §2 (35): “Second-class license” means a license permitting the licensee to export and to sell malt beverages and vinous beverages to the public for consumption off the premises for which the license is granted.

trained seller of alcoholic beverages would have the opportunity to properly, and while face to face, compare the information on the purchaser's identification to their personal characteristics. Moreover, the seller would be able assess the patron's level of intoxication while inside the licensed premises. DLL Training materials illustrate that the importance of the Second Class licensee's employee, typically a cashier or sales clerk, to interact with the customer and to employ the "SIR" method.² This method compels the seller to:

- Size up the person to notice visible signs of intoxication;
- Interview them to figure out whether they are exhibiting signs of alcohol's impairment; and
- Refuse them if you see signs of intoxication.

Drive-up sales should not hinder a Licensee's ability to employ the "SIR" method.

2. The Board understands that the proposed delivery of alcoholic beverages may involve a transaction where the purchaser never exits his or her vehicle. This will interfere with a licensee's ability to assess whether the identification offered is both valid and that of the purchaser. The Second-Class licensee is obligated to confirm that the person purchasing alcoholic beverages is actually the person depicted on valid identification. For example, a discrepancy between the purchaser's actual height and the height depicted on the license might exist, but would not be apparent if the purchaser remained in their vehicle. The Second-Class licensee is obligated to confirm that the person purchasing alcoholic beverages is not exhibiting signs of impairment. A licensee's employee typically must interact with that customer in order to identify if they are of legal age or under the influence, showing apparent signs of intoxication, such as staggering, slurring speech or fumbling with cash or credit card. This interaction is crucial and would be limited if it occurs through the driver's side window of a motor vehicle. The interaction is limited further still because the financial aspect of the

²See https://liquorcontrol.vermont.gov/sites/dlc/files/documents/Education/Publications/In-House_Training_Booklet_for_Stores.pdf

transaction may be over before the customer even arrives if the purchase was made online. That leaves even less time for the Licensee's employee to assess the purchaser for signs of intoxication. This raises additional concerns over whether a delivery area would be appropriate for an employee to conduct a proper evaluation of the purchaser at all. The Board would want to ensure that there is, for example, proper lighting and an appropriate parking/loading area. The Board may consider a requirement that purchaser should be required to exit their vehicle to complete the sale, subject to their physical ability to do so.³

3. The Board also understands that the proposed delivery of alcoholic beverages may involve a licensee's employee loading alcoholic beverages directly into the purchaser's vehicle. It is unclear whether the licensee would load alcoholic beverages directly into the passenger compartment through a window or door, or directly into the vehicle's trunk. The Board is concerned about any consumer's ability to purchase single cans or bottles of alcoholic beverages through, for example, a drive-thru window. The concerns might be less in situations where a sealed case of beer is loaded into the trunk of that vehicle. A minimum purchase quantity might be a means to address this concern.

Overall, this matter cannot be addressed without a specific, detailed proposal from a licensee. Until there is a statute enacted and/or a rule promulgated on this issue, the Board would need to consider detailed proposals from licensees and would expect to permit such sales on a case-by-case basis to ensure that the any unintended consequences of such sales are avoided.

³ We have reviewed statutes and matters from other jurisdictions for guidance, including:

S.C. Code Ann. § 61-2-170 (Supp. 2006) states that the Department may not generate license fees to be deposited in the general fund of the State through the issuance of licenses or permits for on-premises or off-premises consumption which authorize alcoholic liquors, beer or wine to be sold on a drive-through or curbside service basis. An applicant was required to store beer and wine in a room closed off from the main area of her store so that customers will have to exit their vehicles in order to retrieve beer or wine for purchase.

In *Coffman v. Hammer*, 548 S.W.2d 310, (Tenn. 1977), the Tennessee Supreme Court reversed a local board's denial of a beer permit based on reasoning that convenience in getting beer into the hands of drivers interferes with public safety. In that case the reasons stated for denial of a beer permit were that the proposed location was right at the entrance to a highway and as such, "the sale of beer [at that location] will lead to its consumption, and in most instances, a portion of that consumption will occur as soon as the purchaser gets onto the highway" thereby greatly increasing the danger to the safety of the public. *Id.* at 311-12. However, the Court disallowed this reasoning, ruling instead that there was no evidence to indicate any adverse effect upon the public welfare. *Id.*

DATED at Montpelier, Vermont this 12th day of December 2018.

VERMONT BOARD OF LIQUOR AND LOTTERY

A handwritten signature in black ink, appearing to read "Mark W. Mansfield". The signature is written in a cursive style with a horizontal line extending from the end.

Board Chair