

SB 125-FN - AS AMENDED BY THE HOUSE

03/18/2021 0745s
3Jun2021... 1237h

2021 SESSION

21-0900
08/10

SENATE BILL ***125-FN***

AN ACT relative to beverage manufacturer licenses.

SPONSORS: Sen. Gannon, Dist 23; Sen. Perkins Kwoka, Dist 21; Sen. Carson, Dist 14; Sen. Rosenwald, Dist 13; Sen. Bradley, Dist 3; Rep. Welch, Rock. 13; Rep. Weyler, Rock. 13

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill makes changes to the requirements for serving samples for beverage manufacturers and nano breweries; provides for contract brewing arrangements for nano breweries and brew pubs; and requires reports for intrastate direct shippers of alcohol.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to beverage manufacturer licenses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Beverage Manufacturers License. Amend RSA 178:12, IV(a)(2) to read as follow:

2 (2) The general public for off-premises consumption [~~in quantities not to exceed a~~
3 ~~single 15.5 gallon keg or the equivalent of one case of 12 ounce containers per person per day~~]; or

4 2 New Paragraphs; Nano Brewer; Contract Brewing. Amend RSA 178:12-a by inserting after
5 paragraph VIII the following new paragraphs:

6 IX. Each nano brewery shall have the right to transport the beverage it manufactures in
7 barrels, kegs, bottles, or other closed containers within the state for sale to licensees and to the state
8 border for transportation and sale outside the state. A nano brewer in a contract brewing
9 arrangement may transport the beverage produced by the contract brewer in barrels, kegs, bottles,
10 or other closed containers within the state for storage or to the state border for transportation and
11 sale outside the state.

12 X. A nano brewer may enter into a contract brewing arrangement with a contract brewer
13 brewing in the state of New Hampshire after the nano brewer has been in operation for one year.
14 Beverages produced by a contract brewer intended for sale outside the state may be warehoused at
15 the nano brewer's facility or at some other facility accessible only to the nano brewer. A contract
16 brewer shall not deliver beverages to on-premises and off-premises licensees within the state. A
17 nano brewer shall file all contract brewing arrangements with the commission. A nano brewer shall
18 not enter into a contract brewing arrangement with a contract brewer if it does not brew at least 10
19 barrels annually.

20 XI. Nano brewers and contract brewers shall be allowed to store beverages manufactured in
21 accordance with the provisions of this title in a storage facility licensed by the commission. Nano
22 brewers and contract brewers storing beverages in a warehouse licensed under RSA 178:11, or other
23 facility approved by the commissioner for the purpose of storing alcohol, shall keep records of the
24 type, quality, and destination of beverages removed from storage. Such records shall be retained by
25 the nano brewer or contract brewer using the facility and shall be made available to the commission
26 upon request. A nano brewer shall not enter into a contract brewing arrangement with a contract
27 brewer if it does not brew at least 10 barrels annually.

28 XII. Annual on-site production by a nano brewer shall not be less than their production for
29 the calendar year prior to entering into an arrangement with a contract brewer. Total production,

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1 including tenant and contract brewers, shall be at least 10 barrels and shall not exceed 2,000 barrels
2 annually.

3 XIII. The nano brewer shall submit to the liquor commission an annual report of all
4 beverages by:

5 (a) The nano brewer on-site.

6 (b) Any tenant brewer.

7 (c) Any contract brewer the nano brewer has contracted with under paragraph X.

8 XIV. All taxes due on product that is made by a contract brewer shall be paid by the nano
9 brewer.

10 3 New Paragraphs; Brew Pub Contract Brewing. Amend RSA 178:13 by inserting after
11 paragraph VIII the following new paragraphs:

12 IX. Each brew pub shall have the right to transport the beverage it manufactures in barrels,
13 kegs, bottles, or other closed containers within the state for sale to licensees and to the state border
14 for transportation and sale outside the state. A brew pub in a contract brewing arrangement may
15 transport the beverage produced by the contract brewer in barrels, kegs, bottles, or other closed
16 containers within the state for storage or to the state border for transportation and sale outside the
17 state.

18 X. A brew pub may enter into a contract brewing arrangement with a contract brewer
19 brewing in the state of New Hampshire after the brew pub has been in operation for one year.
20 Beverages produced by a contract brewer intended for sale outside the state may be warehoused at
21 the brew pub's facility or at some other facility accessible only to the brew pub. A contract brewer
22 shall not deliver beverages to on-premises and off-premises licensees within the state. A brew pub
23 shall file all contract brewing arrangements with the commission. A brew pub shall not enter into a
24 contract brewing arrangement with a contract brewer if it does not brew at least 10 barrels
25 annually.

26 XI. Brew pubs and contract brewers shall be allowed to store beverages manufactured in
27 accordance with the provisions of this title in a storage facility licensed by the commission. Brew
28 pubs and contract brewers storing beverages in a warehouse licensed under RSA 178:11, or other
29 facility approved by the commissioner for the purpose of storing alcohol, shall keep records of the
30 type, quality and destination of beverages removed from storage. Such records shall be retained by
31 the brew pub or contract brewer using the facility and shall be made available to the commission
32 upon request.

33 XII. Annual on-site production by a brew pub shall not be less than their production for the
34 calendar year prior to entering into an arrangement with a contract brewer. Total production
35 including tenant and contract brewers, shall be at least 10 barrels and shall not exceed 2,500 barrels
36 annually.

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1 XIII. The brew pub shall submit to the liquor commission an annual report of all beverages
2 by:

3 (a) The brew pub on-site.

4 (b) Any tenant brewer.

5 (c) Any contract brewer the brew pub has contracted with under paragraph X.

6 XIV. All taxes due on product that is made by a contract brewer shall be paid by the brew
7 pub.

8 4 Contract Brewers; Nano Brewers and Brew Pubs Added. Amend RSA 175:1, XXV-a - XXV-b to
9 read as follows:

10 XXV-a. "Contract brewer" means a brewery hired by a beverage manufacturer, ***nano***
11 ***brewery, or brew pub*** to produce a beverage for the beverage manufacturer.

12 XXV-b. "Contract brewing arrangement" means a business relationship in which a beverage
13 manufacturer, ***nano brewery, or brew pub*** pays another brewer to produce a beverage for the
14 beverage manufacturer, ***nano brewer, or brew pub*** for sale.

15 5 New Section; Intrastate Shipment of Beverages; Specialty Beer. Amend RSA 178 by inserting
16 after section 27-a the following new section:

17 178:27-b Direct to Consumer Shipments of Alcohol to New Hampshire Residents.

18 I. Notwithstanding any other provision of law to the contrary, any business licensed under
19 this chapter as a beverage manufacturer, nano brewery, brew pub, wine manufacturer, liquor
20 manufacturer or beverage distributor may apply for an direct to consumer shipping permit from the
21 commission. The permit shall authorize the holder to sell and delivery alcohol beverages to
22 consumers 21 years of age or older located within the state of New Hampshire and businesses
23 licensed by the commission for on-sale and off-sale of alcoholic beverages. There shall be no fee to
24 obtain a shipping permit under this section.

25 II. No liquor manufacturer shall ship more than 60 individual containers of not more than
26 one liter each of liquor to any consumer's address in New Hampshire in any calendar year. No wine
27 manufacturer shall ship more than 12 9-liter cases or equivalent of wine to any consumer's address
28 in New Hampshire in any calendar year. No beverage manufacturer, nano brewery, brew pub, or
29 beverage distributor shall ship more than 27 gallons of beer, specialty beer or specialty beverage in
30 individual containers of not more than one liter to any consumer's address in New Hampshire in any
31 calendar year. Beer, specialty beer and specialty beverages delivered to New Hampshire consumers
32 under this section shall not exceed 8 percent alcohol by volume.

33 III. A manufacturer holding a direct to consumer shipping permit may ship directly to New
34 Hampshire consumers over 21 years of age or licensees in packages clearly marked "Alcoholic
35 Beverages, adult signature (over 21 years of age) required." All shipments from direct to consumer
36 shippers shall be made by a licensed carrier as defined in RSA 178:14 and such carriers are required
37 to obtain an adult signature. Direct to consumer permittees or carriers shall not ship into areas of

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1 the state where alcohol beverages may not be lawfully sold. Shipments of any other products shall
2 be considered unlicensed shipments under the provisions of RSA 178:1, I.

3 IV.(a) Direct to consumer shipping permittees shall file reports to the commission. Such
4 reports shall be filed once per month for any month in which a shipment was made in a manner and
5 form required by the commission and include the following information:

6 (1) The total amount of alcoholic beverages shipped within the state for the
7 preceding month.

8 (2) The names and addresses of the purchasers to whom the alcoholic beverages
9 were shipped.

10 (3) The date of purchase, if appropriate, the name of the common carrier used to
11 make each delivery, and the quantity and retail value of each shipment.

12 (b) The commission may assess a \$250 penalty for each failure to report to the
13 commission in a timely manner.

14 (c) Direct to consumer shipping permittees shall maintain records for at least 3 years
15 which will permit the commission to ascertain the truthfulness of the information filed and permit
16 the commission to perform an audit of the beverage manufacturer, nano brewery, brew pub, wine
17 manufacturer or liquor manufacturer.

18 V. The liquor commission shall adopt rules, pursuant to RSA 541-A, relative to:

19 (a) The application procedures and form for the direct to consumer shipping permit
20 authorized under paragraph I.

21 (b) The signature form or other identification procedures to be used by direct to
22 consumer shipping permittee to ensure that consumers to which alcoholic beverages are being
23 shipped are over 21 years of age.

24 (c) Filings of intrastate direct shippers under paragraph III.

25 VI. Violations of this section shall be subject to the penalties contained in RSA 179:58.

26 6 New Paragraph; Beverage Manufacturer Licenses. Amend RSA 178:12 by inserting after
27 paragraph II-a the following new paragraph:

28 II-b. Each beverage manufacturer shall have the right to manufacture beverages and
29 specialty beer as defined by RSA 175:1 at the beverage manufacturer's New Hampshire licensed
30 premises, to sell those beverages and specialty beers to New Hampshire wholesalers and at one
31 beverage manufacturer retail outlet as defined in RSA 175:1, IX-a, in quantities provided by statute,
32 and transport said beverages and specialty beer to the state line. The beverage manufacturer shall
33 pay an annual fee of \$336 to the commission for the beverage manufacturer retail outlet. The
34 beverage manufacturer may transport beverages it manufactures to its beverage manufacturer retail
35 outlet for sample or sale. Visitors of legal drinking age at the beverage manufacturer retail outlet
36 may be provided with samples of beverages manufactured by the licensee in this state for tasting. A
37 beverage manufacturer may either provide samples for free or for a fee which shall be limited to one

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4-ounce sample per label or one 16-ounce glass per person. At such times as food is available, a beverage manufacturer may serve no more than one additional 16-ounce glasses per person in any areas approved by the commission. For the purpose of this section, food and non-alcoholic beverages may be provided by a properly-licensed third party food vendor, prepared on or off the premises.

7 New Paragraph; Definition; Beverage Manufacturer Retail Outlet. Amend RSA 175:1 by inserting after paragraph IX the following new paragraph:

IX-a. "Beverage manufacturer retail outlet" means an outlet for the sale, sampling, production or manufacturing and promotion of beverages and other products manufactured by a beverage manufacturer licensee.

8 New Paragraph; Direct to Consumer Shipping Permit. Amend RSA 178:14 by inserting after paragraph III the following new paragraph:

IV. A licensed carrier shall authorize the licensee to pick up, transport, and deliver beer and alcoholic beverages from a business holding a direct to consumer shipping permit as provided in RSA 178:27-b.

9 Beverage; Definition. Amend RSA 175:1, VIII to read as follows:

VIII. "Beverage" means any beer, wine, similar fermented malt or vinous liquors and fruit juices, and any other liquid intended for human consumption as a beverage having an alcoholic content of not less than 1/2 of one percent by volume and not more than 6 percent alcohol by volume at 60 degrees Fahrenheit and specialty beer as defined in RSA 175:1, LXIV-a. The commission may approve any fermented malt beverage, *other similar fermented and brewed beverage*, or mead greater than 6 percent but not to exceed 8 percent or any cider greater than 6 percent or any specialty cider greater than 8 percent and not to exceed 12 percent alcohol by volume at 60 degrees Fahrenheit. A beverage shall not be considered a product classified by the commission as a domestic wine as defined in RSA 175:1, LXVII, or a table wine as defined in RSA 175:1, LXIX, or a fortified wine as defined in RSA 175:1.

10 Nano Brewery; Samples. RSA 178:12-a, II(e) is repealed and reenacted to read as follows:

(e) A nano brewery may either provide samples for free or for a fee which shall be limited to one, 4-ounce glass per label or one 16-ounce glass per person. At such times as food is available, a nano brewery may serve no more than 2, 16-ounce glasses per person in any areas approved by the commission. For the purpose of this section, food and non-alcoholic beverages may be provided by properly licensed third-party food vendors, prepared on or off the premises.

11 Direct Shippers. Amend RSA 178:27, IV to read as follows:

IV. No direct shipper shall ship more than 27 gallons of beer or beverage in individual containers of not more than one liter to any ~~[consumer's address]~~ *licensee or consumer* in New Hampshire in any calendar year. ~~[No direct shipper shall ship beer or beverage to a New Hampshire licensee.]~~

12 Effective Date. This act shall take effect July 1, 2021.

SB 125-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-0745s)

AN ACT relative to beverage manufacturer licenses.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General Liquor Fund <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other -			

METHODOLOGY:

This bill makes changes to the requirements for serving samples for beverage manufacturers and nano breweries; provides for contract brewing arrangements for nano breweries and brew pubs; and requires reports for intrastate direct shippers of alcohol.

The Liquor Commission is unable to determine how many licensees would be eligible to engage in the business opportunities created in this bill, or to predict how New Hampshire consumers will react to the proposed changes. The Commission is not able to predict the impact on sales or license revenue and anticipates an increase in the workload for licensing and auditing staff. Any increase in workload will depend on the number of eligible licensees engaging in the new opportunities. The Commission is not able to determine in advance if the increase in workload will require additional staff. The Commission identified the following provisions of the bill that could impact the expenditures and/or revenues of the Commission:

- Beverage Manufacturers License – RSA 178:12, IV(a)(2). This amendment would remove the limitation on the quantity of beer a beverage manufacturer may sell to a member of the general public per day.
- Nano Brewery License – RSA 178:12-a. The new paragraphs would permit a business holding a Nano Brewer license to enter into a contract brew arrangement with a brewer located within the State.

- Brew Pub Contract Brewing – RSA 178:13. The additional paragraphs will permit a business holding a Brew Pub license to enter into a contract brew arrangement with a brewer located within the State of New Hampshire.
- Intrastate Shipments of Alcohol by New Hampshire Manufacturers – RSA 178:27-b. This new section would allow Beverage Manufacturers, Nano Brewers, Brew Pubs, Wine Manufacturers, Importers, Wholesalers and Retailers” to ship alcoholic beverages, sold by that licensee, to New Hampshire consumers over the age of 21, in properly marked packages in areas of the state where alcohol may be lawfully sold. (The Commission notes the definitions of “Importer”, “Wholesaler” and Retailer” require further clarification in Statute.)
- Beverage Manufacturer Licenses – RSA 178:12, II-b. This new paragraph establishes a new authorization for a beverage manufacturer (RSA 178:12) to sell alcohol beverages, manufactured by the beverage manufacturer, at retail outlets owned and operated by the beverage manufacturer. The beverage manufacturer would pay a fee of \$336 for each retail outlet.

AGENCIES CONTACTED:

Liquor Commission