

HB 1591-FN - AS INTRODUCED

2022 SESSION

22-2256

08/04

HOUSE BILL ***1591-FN***

AN ACT eliminating the enforcement division of the liquor commission.

SPONSORS: Rep. Leishman, Hills. 24; Rep. Emerick, Rock. 21; Rep. G. Griffin, Hills. 5; Rep.
M. Smith, Straf. 6; Rep. Hatch, Coos 6; Rep. Walz, Merr. 23

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill eliminates the enforcement division of the liquor commission.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT eliminating the enforcement division of the liquor commission.

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

1 1 Liquor Commission; Division of Enforcement and Licensing Renamed Division of Education
2 and Licensing. Amend RSA 176:8 to read as follows:

3 176:8 Divisions and Directors. The commission shall have 3 divisions under the direction of
4 unclassified division directors. The directors shall be nominated by the commissioner for
5 appointment by the governor with the consent of the council and shall serve for terms of 4 years
6 dependent upon maintaining good behavior and competence. There shall be a division of marketing,
7 merchandising, and warehousing, a division of administration, and a division of ~~[enforcement]~~
8 **education** and licensing. The director of the division of ~~[enforcement]~~ **education** and licensing
9 shall be subject to a background check by the state police prior to appointment.

10 2 Liquor Commission; Liquor Investigator Renamed Liquor Specialist. Amend RSA 176:9 to
11 read as follows:

12 176:9 Liquor ~~[Investigator]~~ **License Specialists**; Training.

13 I. The commission may, subject to rules adopted by the director of personnel, employ and
14 dismiss liquor ~~[investigators]~~ **license specialists**. Liquor ~~[investigators]~~ **license specialists** shall,
15 under the direction of the commission, investigate any or all matters arising under this title.

16 II. ~~[Any new liquor investigator employed by the commission under this section after August~~
17 ~~13, 1985, shall, within 6 months of employment, satisfactorily complete a preparatory police training~~
18 ~~program as provided by RSA 106-L:6, unless he or she has already completed such a program.~~

19 ~~III.]~~ The commissioner, deputy commissioner, assistant, or liquor ~~[investigator]~~ **license**
20 **specialist** may enter any place where liquor, beverages, tobacco products, e-cigarettes are sold or
21 manufactured, ~~[at any time]~~ **during business hours**, and may examine any license or permit issued
22 or purported to have been issued under the terms of this title. They shall make complaints for
23 violations of this title.

24 3 Closing of State Stores; Enforcement and Licensing Division Renamed. Amend RSA 177:2, II
25 to read as follows:

26 II. In order to properly reflect the operating expenses of each state store, the commission
27 shall prepare annually an indirect cost allocation plan for all indirect operating expenses of the
28 commission. All such expenses of the commission, with the exception of the ~~[enforcement]~~
29 **education** and licensing division operating expenses, shall be included in the plan and allocated to
30 all state stores on a consistent, rational basis. No later than 30 days following the closure of any

1 state liquor store, the commission shall submit a revised indirect cost allocation plan to the fiscal
2 committee of the general court and the governor and council for approval.

3 4 Liquor/Wine/Beverage Warehouse License; Division of Enforcement and Licensing Renamed.
4 Amend RSA 178:11, V to read as follows:

5 V. Liquor/wine/beverage warehouseurs shall submit a monthly report both to the liquor
6 commission [~~enforcement~~] **education** and licensing division and the marketing, merchandising, and
7 warehousing division of the commission by the tenth day of the following month indicating the
8 quantity, type, size, and brands of all product received, stored, or shipped on their premises.

9 5 On-Premises Cocktail Lounge Licenses; Enforcement and Licensing Division Renamed.
10 Amend RSA 178:22,V(h)(12) to read as follows:

11 (12) Violations of subparagraph **(h)**(11) [~~of this subparagraph~~] shall be investigated
12 by the [~~enforcement~~] **education** division of the liquor commission and directed to the department of
13 justice for examination of issues unrelated to this title.

14 6 Alcohol Consultant; Enforcement and Licensing Division Renamed. Amend the introductory
15 paragraph of RSA 178:27-a, VI to read as follows:

16 VI. Alcohol consultants shall register each educational event with the liquor commission-
17 division of [~~enforcement~~] **education** and licensing. The commission shall adopt rules, pursuant to
18 RSA 541-A, relative to:

19 7 Fees; Expiration Dates; Enforcement and Licensing Division Renamed. Amend RSA 178:29,
20 VIII(b) to read as follows:

21 (b) After one year, a licensee may select the anniversary month in which to renew a
22 license. A licensee may change the anniversary renewal month of a license once by making a written
23 request to the director of [~~enforcement~~] **education** and licensing. A licensee who changes the
24 anniversary renewal month of a license shall not change the anniversary renewal month for a period
25 of 3 years from the selected month. Nothing in this paragraph shall be construed to be contrary to
26 the provisions of RSA 178:3 or commission rules.

27 8 Transportation of Beverages and Wine; Liquor Investigators Renamed. Amend RSA 179:15, V
28 to read as follows:

29 V. Every person operating such a vehicle, when engaged in such transportation or delivery,
30 shall carry a copy of the license in the vehicle so operated, and shall carry such evidence as the
31 commission by rule may prescribe showing the origin and destination of the beverages and wines
32 being transported or delivered. Upon demand of any [~~law enforcement officer, investigator,~~] **liquor**
33 **license specialist** or employee of the commission, the person operating such vehicle shall produce
34 for inspection a copy of the license and the evidence required by this section. Failure to produce such
35 license or evidence shall constitute prima facie evidence of unlawful transportation. Except as
36 otherwise provided, beverages and wines may be transported within the state only by a railroad or
37 steamboat corporation or by a person regularly and lawfully conducting a general express or

1 trucking business, and in each case holding a valid carrier's license issued by the commission.
2 Nothing in this section shall prohibit individual retail licensees from arranging for the delivery of
3 wine products to a location central for the parties involved.

4 9 Retention of Invoices and Sale and Delivery Slips; Liquor Investigators Renamed. Amend
5 RSA 179:35 to read as follows:

6 179:35 Retention of Invoices and Sale and Delivery Slips. All invoices, sales slips and delivery
7 slips, current and covering a period of 60 days prior to the current date pertaining to purchases of
8 beverages and liquor shall be retained by the licensee on the premises or be readily available for
9 examination by the commission or its liquor ~~[investigators]~~ **license specialists**.

10 10 Prosecutions; Liquor; January 1, 2023. RSA 179:59 is repealed and reenacted to read as
11 follows:

12 179:59 Prosecutions. Any person violating the provisions of any law under Title XIII may be
13 prosecuted by county or city attorneys, or by sheriffs or their deputies, or by police officials of towns.

14 11 Interference with Liquor Investigators; Renamed Liquor License Specialists. Amend RSA
15 179:60 to read as follows:

16 179:60 Interference With Liquor ~~[Investigators]~~ **License Specialists**. It shall be unlawful to
17 ~~[resist or attempt to resist arrest by a liquor investigator]~~, or to obstruct, or to intimidate or interfere
18 with a liquor ~~[investigator]~~ **license specialist** in the performance of his **or her** duty. Any person
19 who violates any of the provisions of this section shall be guilty of a misdemeanor.

20 12 Enforcement and Licensing Renamed. Amend RSA 21-J:14, V(d)(9) to read as follows:

21 (9) An officer or employee of the division of enforcement of the liquor commission,
22 pursuant to an agreement for exchange of information between the department and the division of
23 ~~[enforcement]~~ **education and licensing**, for the purposes of, and only to the extent necessary for,
24 the administration and enforcement of RSA 78:16. Officers or employees of the division of
25 ~~[enforcement]~~ **education and licensing** having any confidential and privileged department
26 information obtained from the department pursuant to the exchange agreement authorized under
27 this subparagraph shall be subject to the provisions of this section.

28 13 Enforcement and Licensing Division Renamed. Amend RSA 94:1-a, I(a) GG to read as
29 follows:

30 GG Liquor commission director of ~~[enforcement]~~ **education** and licensing

31 14 Enforcement and Licensing Division Renamed. Amend RSA 179:13, V to read as follows:

32 V. Each wholesale distributor, brew pub licensee, nano brewery, or beverage manufacturer
33 shall notify any retailer reported to the commission pursuant to RSA 179:13, I who is delinquent in
34 making payment of accounts. Notification shall be delivered in writing to the licensee by a
35 representative of the wholesaler, brew pub licensee, nano brewery, or beverage manufacturer. Proof
36 of notification shall be forwarded to the commission, whose ~~[enforcement]~~ **education and licensing**
37 division shall issue an administrative notice for a violation of the provisions of RSA 179:13, I and

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1 shall forward a report of violation for administrative action. Any license issued to any business
2 violating the provisions of RSA 179:13, I may be suspended by the commission for nonpayment of
3 accounts which are delinquent more than 15 days from the date of the wholesale distributor's, brew
4 pub licensee's, nano brewery's, or beverage manufacturer's notification, providing the requirements
5 of this section have been met.

6 15 Effective Date.

7 I. Section 10 of this act shall take effect January 1, 2023.

8 II. The remainder of this act shall take effect July 1, 2022.

**HB 1591-FN- FISCAL NOTE
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AN ACT eliminating the enforcement division of the liquor commission.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Liquor

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill eliminates the enforcement division of the liquor commission. The New Hampshire Liquor Commission offers the following information and assumptions concerning the fiscal impact of this bill:

- The bill does not eliminate liquor investigator positions but appears to reclassify them into the category of liquor license specialist, labor grade 18. Under State personnel rules, because the reclassification is being made through legislation, the liquor investigators reclassified to liquor licensing specialist must be paid at the liquor investigator rate for a period of 2 years. Therefore the reclassifications may not result in salary and benefit savings for 2 years.
- The bill could result in a loss of federal funding to the Department of Health and Human Services that obtains federal funds based upon law enforcement data generated by the Commission's division of enforcement.

- The Commission assumes the State would be obligated to provide funds to support local law enforcement who would be expected to assume the enforcement division activities once this function is removed from the Liquor Commission. Based on communications with local and state law enforcement, the Commission assumes local and state law enforcement will not engage in the enforcement of the Liquor statutes unless there is funding to train their officers and money to fund these activities.
- The Commission assumes most liquor investigators would leave Commission employment rather than accept the position changes and the change in their retirement benefits. This would result in an indeterminable loss of revenue to the general fund as there would be fewer people performing licensing and enforcement functions. The Commission cannot predict how long the replacement/hiring process would take or predict the impact on the licensed community.
- The Enforcement Division has primary enforcement responsibility for Chapter 126-K Youth Access to and Use of Tobacco Products. Investigators conduct investigations regarding the distribution of tobacco products to minors. Without changes made to Chapter 126-K, the commission would still be the primary enforcement agency but without authority to enforce these laws.
- Because Title XIII offenses include violations, misdemeanors and felonies, the County Attorney's would see increased activities as cases previously handled administratively by the Commission would now be brought for criminal prosecution by county prosecutors.

The Department of Health and Human (DHHS) services indicates federal law (Public Law 102-321, Sec 1926, USC 300x-6, the "Synar Amendment") requires all states and territories to enact and enforce laws prohibiting the sale of tobacco to minors. This mandate's requirements must be met and documented in order for a State to be awarded the Substance Abuse Block Grant (SABG). The State receives \$12 million under the SABG to support the delivery of services and supports for prevention, treatment and recovery. In New Hampshire, DHHS has a memorandum of understanding with the Liquor Enforcement Division providing the Division with \$50,000 to fulfill this requirement. The Department states the Enforcement Division has the resources, staffing, expertise and experience to meet the deliverables of the Synar Amendment. The Department assumes if it were to contract with local police departments for enforcement and compliance there would be additional costs to contract with multiple agencies, to recruit and retain a dedicated enforcement officer, train the officer, to recruit, train and compensate underage buyers, and to implement policies and procedures, and meet the reporting requirements. The Department indicates these costs are indeterminable, but expects they would be significant.

The New Hampshire Municipal Association states it is likely additional costs will be borne by municipalities, particularly municipal police departments. Local police will likely see an increased volume of calls related to potentially intoxicated drivers, assaults or other physical or verbal altercations, and other types of calls related to intoxicated individuals. Under current law, such calls may otherwise be handled by Liquor Enforcement either directly through enforcement of the criminal law, or indirectly by working with liquor serving establishments to ensure compliance with state regulations. There would be no impact on municipal revenues.

The Department of Safety indicated this bill would have no fiscal impact on the State Police.

AGENCIES CONTACTED:

Departments of Safety, Administrative Services and Health and Human Services, Liquor Commission and New Hampshire Municipal Association