

SB 381-FN – AS AMENDED BY THE SENATE

03/07/12 0799s

2012 SESSION

12-2859
03/05

SENATE BILL **381-FN**

AN ACT relative to auction houses and relative to wine auctions.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill:

- I. Establishes an auction house permit.
- II. Authorizes auctions of wine not generally listed for sale in the state of New Hampshire.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to auction houses and relative to wine auctions.

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

1 1 New Section; Auction Permit. Amend RSA 178 by inserting after section 17-a the following
2 new section:

3 178:17-b Auction House.

4 I. The state liquor commission may issue a permit to any person authorized as an auction
5 house in this state or any person currently licensed in its state of domicile as a public auction house.
6 The holder of any permit under this section shall be authorized to auction wine to individuals and
7 licensees. Auction shipment applicants shall be subject to all requirements under RSA 178:3.

8 II. An auction permit holder may ship directly to New Hampshire consumers over 21 years
9 of age in packages clearly marked “Alcoholic Beverages, adult signature (over 21 years of age)
10 required.” All shipments shall be made by a licensed carrier or other carrier approved by the
11 commission, and such carriers are required to obtain an adult signature. Any shipments made to a
12 person less than 21 years of age shall be guilty of a class B felony and shall have such permit
13 revoked. No auction houses or carriers shall ship into any New Hampshire city or town where
14 alcoholic beverages are not lawfully sold or prohibit direct shipments of wine.

15 III. No licensee shall purchase or sell wine at an auction house without first obtaining
16 written approval from the commission.

17 IV. Except with written permission from the commission, no auction house shall ship more
18 than 12, 9-liter cases or equivalent of wine to any one New Hampshire consumer in any calendar year.

19 V. For the purpose of this section, an in state auction house may obtain wine to be auctioned
20 from within or outside of New Hampshire. All wine shall be shipped directly to or delivered to the
21 auction house for auction.

22 VI. In addition, auction houses shall pay a fee of 8 percent of the auction hammer price of
23 the wine shipped to any one New Hampshire consumer.

24 VII. Auction houses shall file a report on or before the tenth day of each month in which a
25 shipment was made and pay the additional fees provided in paragraph VI, covering all shipments by
26 the auction house made during the preceding calendar month. Such reports shall be made in a
27 manner and form required by the state liquor commission, division of enforcement and licensing.
28 Shipping records shall be maintained for at least 3 years by the auction house.

29 VIII. The state liquor commission may assess a \$250 penalty for failure to report any
30 shipment to the commission.

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1 IX Upon notification by authorities in another state which imposes a reciprocal enforcement
2 policy, a New Hampshire permit holder making illegal direct shipments to consumers in said state
3 shall be subject to action by the state liquor commission.

4 2 New Section; Wine Auctions. Amend RSA 179 by inserting after section 47 the following new
5 section:

6 179:47-a Wine Auctions.

7 I. The commission shall, upon application, authorize any person to conduct an auction of
8 wines not generally listed for sale in the state of New Hampshire. Such auctions shall be open to on-
9 premises licensees and members of the public.

10 II. An on-premises licensee may resell, in accordance with its license, wines purchased at an
11 auction under this section, provided that the commission has verified that the wines are not
12 generally listed for sale in the state of New Hampshire.

13 III. The purchaser shall pay to the commission a fee of 8 percent of the auction hammer
14 price of the wine. If the wine for which the fee has been paid is sold at a subsequent auction
15 authorized under this section, the subsequent sale shall not subject the buyer to a fee under this
16 section.

17 3 Effective Date. This act shall take effect July 1, 2012.

SB 381 FISCAL NOTE

AN ACT relative to auction houses and relative to wine auctions.

FISCAL IMPACT:

The Liquor Commission states this bill, as amended by the Senate (Amendment #2012-0799s), will increase state revenue by an indeterminable amount in FY 2013 and each year thereafter. The Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2013 each year thereafter. There will be no fiscal impact on local expenditures, or county and local revenue.

METHODOLOGY:

The Liquor Commission states this bill authorizes wine manufacturers to sell wines to wholesale distributors, establish an auction house permit, and to authorize auctions of wines not generally listed for sale in New Hampshire. The bill requires an 8 percent fee be paid on the auction hammer price of the wine shipped to any one NH consumer. The Commission states it is not able to estimate the amount of fees that would be generated through these wine auctions to determine the increase in state liquor fund revenue.

The Judicial Branch states this bill makes it a class B felony for anyone to make shipments to a person less than 21 years of age. RSA 179:58, I would also apply, which makes any violation dealing with alcoholic beverages a misdemeanor for a natural person and a felony for any other person. Additionally, this bill allows the liquor commission to assess a \$250 penalty, which can be appealed to the Supreme Court under RSA 179:58, II. The Branch has no information to estimate how many charges would be brought as a result of the changes contained in the bill to determine the fiscal impact on expenditures but does have information on the cost for processing a misdemeanor or a class B felony. All costs are estimated based on case weight information from the last needs assessment completed in 2005. A misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor. The Branch states a class A misdemeanor will cost \$59.11 per case in FY 2013 and \$61.31 per case in FY 2014 and each year thereafter, and a class B misdemeanor will cost \$43.19 per case in FY 2013 and \$44.54 per case in FY 2014 and each year thereafter. The Branch states the class B felony

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would be classified as an average routine felony and treated as an average routine criminal case in the Superior Court. The Branch states an average routine criminal case will cost \$389.84 per case in FY 2013 and \$401.48 per case in FY 2014 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in state general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor and \$756.24 per felony is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Office of Legislative Budget Assistant has included information provided by the Department of Corrections for other bills containing penalties that may result in incarceration to complete this fiscal note due to the Department not responding to request to discuss the fiscal impact of the penalties contained in the bill as introduced. Based upon the Department of Correction's response to other proposed bills containing a penalty that could result in incarceration, the Department has stated it is not able to determine the fiscal impact because it does not have sufficient detail to predict the number of individuals who would be subject to the legislation. However, the Department of Corrections does note the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2011 was \$33,698. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2011 was \$672.

The Department of Justice states this bill will have no fiscal impact upon the Department.