

HB 637-FN-A – AS INTRODUCED

2013 SESSION

13-0267
03/09

HOUSE BILL **637-FN-A**

AN ACT transferring licensing for retail tobacco sales to the department of revenue administration from the liquor commission.

SPONSORS: Rep. D. McGuire, Merr 21

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill transfers licensing for retail tobacco sales to the department of revenue administration from 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Thirteen

AN ACT transferring licensing for retail tobacco sales to the department of revenue administration from the liquor commission.

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

1 1 Tobacco Tax; Licenses. RSA 78:2 is repealed and reenacted to read as follows:

2 78:2 Licenses.

3 I. Each manufacturer, wholesaler, sub-jobber, vending machine operator, retailer, and
4 sampler shall secure a license from the commissioner before engaging in the business of selling or
5 distributing tobacco products in this state or continuing to engage in such business. Each wholesale,
6 sub-job, and retail outlet shall have a separate license regardless of the fact that one or more outlets
7 may be owned or controlled by a single person. Each tobacco products vending machine to be
8 operated in this state shall be licensed by the commissioner and shall be appropriately identified as
9 being licensed. The commissioner shall adopt rules pursuant to RSA 541-A relative to the licensing
10 and identification of each tobacco products vending machine, and the information required in an
11 application for a license. The commissioner shall issue a license upon application stating such
12 information necessary to identify the outlet and the character of business transacted. The fees for
13 licenses shall be: \$100 for a manufacturer’s license; \$250 for a wholesaler’s license; \$150 for a sub-
14 jobber’s license; \$70 for a vending machine operator’s license; \$10 for a retailer’s license; \$10 for a
15 sampler’s license; and \$10 for each vending machine location, for the purpose of helping to pay the
16 cost of administering this chapter. Each license shall be prominently displayed on the premises
17 described in it. Any person who shall sell, offer for sale or possess with intent to sell any tobacco
18 products without such license as provided in this section shall be subject to the penalty provisions of
19 RSA 21-J:39.

20 II. Notwithstanding RSA 21-J:14, information regarding licenses issued pursuant to this
21 section and information regarding enforcement actions taken pursuant to this chapter and RSA 126-
22 K shall be public records.

23 III. The commissioner, when issuing or renewing a retailer’s license under RSA 78:2, shall
24 furnish a sign which shall read or be substantially similar to the following: “State Law prohibits the
25 sale of tobacco products to persons under age 18 and the purchase, possession, or use of tobacco
26 products by persons under age 18. Warning: violators of these provisions may be subject to a fine.”
27 The sign shall be posted at any location where tobacco products are sold or distributed. The
28 commissioner shall adopt rules, under RSA 541-A, relative to placement of these warning signs in
29 areas where tobacco products are sold or distributed.

30 IV. Tobacco vending machine licensees shall register each vending machine with the

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1 commissioner and obtain a permit for each machine. Such permit shall be displayed on the machine,
2 and each machine shall have a separate permit regardless of the fact that one or more machines may
3 be owned or controlled by a single licensee.

4 2 Unauthorized Sales. Amend RSA 78:12-a to read as follows:

5 78:12-a Unauthorized Sales. Manufacturers, wholesalers, and sub-jobbers shall not sell tobacco
6 products to any licensee who does not possess a valid or current license issued by the commissioner
7 ~~[or issued by the liquor commission under RSA 178]~~. Any person who violates the provisions of this
8 section shall be subject to the penalty provisions of RSA 21-J:39.

9 3 Unstamped Tobacco Products. Amend RSA 78:14 to read as follows:

10 78:14 Unstamped Tobacco Products. No sub-jobber, vending machine operator, or retailer, and
11 no other person who is not licensed under the provisions of this chapter ~~[or licensed under the~~
12 ~~provisions of RSA 178]~~, shall sell, offer for sale, display for sale, ship, store, import, transport, carry,
13 or possess with or without intent to sell, any tobacco products not properly stamped under RSA 78:12
14 or 78:13, except as provided in RSA 78:12, II. This section shall not prevent any unlicensed person
15 able to purchase unstamped tobacco products by statute from possessing such products for his or her
16 own use or consumption, if the tax otherwise due under this chapter is paid by the unlicensed person
17 to the department directly. The provisions of this section shall not apply to common carriers
18 transporting unstamped tobacco products. Any person who violates the provisions of this section
19 shall be guilty of a felony.

20 4 Inspection Authorized. Amend RSA 78:26 to read as follows:

21 78:26 Inspection Authorized. The commissioner or any agent or employee of the department of
22 revenue administration, and any policeman, constable, sheriff or deputy sheriff ~~[- or agent of the~~
23 ~~liquor commission]~~ may enter in and upon any place or premises where tobacco products are held,
24 kept, located, or stored for the purpose of inspecting such products and ascertaining that the tobacco
25 products at such premises, or any portion thereof, shall not be sold, used, or consumed in this state
26 without the tobacco products tax first having been paid.

27 5 Definitions; License. Amend RSA 175:1, XXXIX to read as follows:

28 XXXIX. "License" means the authority granted by the commission to engage in the sale of
29 liquor, wine, **or** beverages ~~[- or tobacco products]~~ otherwise unlawful unless evidenced by such
30 document.

31 6 License Examinations. Amend RSA 176:9, III to read as follows:

32 III. Any member of the commission, assistant, or liquor investigator may enter any place
33 where liquor ~~[- or tobacco products]~~ **or** beverages are sold or manufactured, at any time, and may
34 examine any license or permit issued or purported to have been issued under the terms of this title.
35 They shall make complaints for violations of this title.

36 7 Licenses Authorized. Amend RSA 178:2, I to read as follows:

37 I. The commission may issue licenses to individuals, partnerships, limited liability

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1 companies and partnerships, or corporations but not to unincorporated associations, on applications
2 duly made therefor for the manufacture, warehousing, sale, offer for sale, or solicitation of orders for
3 sale of liquor or beverages [~~and for retail sales of tobacco products~~] within the state, subject to the
4 limitations and restrictions imposed by this title. The commission shall keep a full record of all
5 applications for licenses, of all recommendations for and remonstrances against the granting of
6 licenses, and of the action taken on such applications.

7 8 Combination and Retail Wine Licenses. Amend RSA 178:18 and RSA 178:19 to read as
8 follows:

9 178:18 Combination License.

10 I. Off-premises licenses shall be issued only for grocery and drug stores not holding on-
11 premises licenses. Such licenses shall authorize the licensees to sell fortified wine, table wine, and
12 beverages for consumption only off the premises designated in the licenses and not to other licensees
13 for resale. Such sale shall be made only in the immediate container in which the beverage, wine, or
14 fortified wine was received by the off-premises combination licensee; except that in the case of the
15 holder of a wholesale distributor license, beverages may be sold only in such barrels, bottles, or other
16 containers as the commission may by rule prescribe. [~~Off-premises licenses may also authorize the~~
17 ~~licensee to sell tobacco products.~~] There shall be no restriction on the number of combination
18 licenses held by any person. The license shall authorize the licensee to transport and deliver
19 beverages[~~, tobacco products,~~] and table or fortified wines ordered from and sold by the licensee in
20 vehicles operated under the licensee's control or an employee's control.

21 II. All sales of [~~tobacco,~~] beverages, fortified wines, and table wine shall be recorded on cash
22 registers. No additional registers shall be added during the remainder of the year without prior
23 approval of the commission. No rebate shall be allowed for cash registers discontinued during the
24 license year.

25 [~~III. The commission may suspend the tobacco or alcohol sales portion of the license~~
26 ~~separately under the provisions of RSA 179:57; any revocation shall revoke the entire license.~~]

27 178:19 Retail Wine License.

28 I. A retail wine license may be issued by the commission to any person operating a retail
29 outlet in this state which shall allow the licensee to sell [~~tobacco products,~~] fortified wines[~~,~~] and
30 table wines directly to individuals at retail on the premises for consumption off the premises;
31 provided, however, that persons holding any license authorizing the sale of liquor or wine by the
32 glass under this chapter shall sell the wines authorized pursuant to this section in a separate area of
33 the premises from the areas licensed for on-premises consumption. A separate license shall be
34 required with respect to each place of business of an applicant. The license shall authorize the
35 licensee to transport and deliver fortified and table wines ordered from and sold by the commission
36 and sold by the licensee in vehicles operated under the licensee's control or an employee's control.

37 II. All sales of wine [~~and tobacco products~~] shall be recorded on cash registers. No additional

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1 registers shall be added during the remainder of the year without prior approval of the commission.
2 No rebate shall be allowed for cash registers discontinued during the license year.

3 III. On-premises licensees licensed under this chapter shall maintain separate rooms for
4 storage, shelving, display, and sale of ~~[tobacco products and]~~ fortified and table wine for consumption
5 off the premises. Such rooms shall be equipped with at least one cash register which shall be capable
6 of separately registering wine sales, and such rooms shall have an attendant at all times while open
7 for business. Wine purchased for resale by virtue of the retail wine license shall be purchased on
8 separate invoices from that wine intended for consumption in the dining room or lounge, and
9 separate sales records shall be maintained for this purpose.

10 ~~[IV. The commission may suspend the tobacco or alcohol sales portion of the license~~
11 ~~separately under the provisions of RSA 179:57; any revocation shall revoke the entire license.]~~

12 9 Cigar Bar. Amend RSA 178:20-a, I to read as follows:

13 I. The commission may issue a license to a person who operates a cigar bar as defined in this
14 section and who holds a tobacco retailers license under RSA ~~[178:19-a]~~ 78:2 in any town which has
15 voted to accept the provisions of RSA 663:5, I(b), (c), and (d). The license shall entitle the licensee to
16 serve beverages containing at least 1/2 percent and not more than 6 percent alcohol by volume at 60
17 degrees Fahrenheit by the glass or other suitable container and by the bottle with the cork or cap
18 removed; specialty beer in any suitable container; liquor containing more than 6 percent alcohol by
19 volume at 60 degrees Fahrenheit, by the glass or other suitable container; and wines, by the glass, by
20 the bottle with the cork or cap removed; or other suitable container, under rules adopted by the
21 commission.

22 10 Fees; Wine Festival License. Amend RSA 178:29, I to read as follows:

23 I. On-premises licensees shall pay the following applicable fees annually:

	<u>Supplemental</u>	<u>Beverages</u>	<u>Beverages</u>	<u>Cocktail</u>
	<u>Only</u>	<u>and Wine</u>	<u>and Liquor</u>	<u>Lounge</u>
24 Airport				\$1,200
27 Ballroom	\$45			\$1,200
28 Bed and Breakfast	\$480	\$840		
29 Beer Festival				
30 One-day	\$250			
31 Two-day	\$300			
32 Three-day	\$350			
33 Catering (all)				\$1,200
34 Catering (off-site only)				\$ 840
35 Catering (on-site only)				
36 18 events-	\$5			
37 36 events-	\$5			

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1	52 events-	\$5			
2	Club Military				\$100
3	Club Social				
4	9 events	\$250			
5	18 events	\$450			
6	36 events	\$750			
7	52 events	\$1,200			
8	Club Private				\$1,200
9	Club Veterans				
10	9 events	\$250			
11	18 events	\$450			
12	36 events	\$750			
13	52 events	\$1,200			
14	College Club				\$1,200
15	Convention Center				\$2,400
16	Dining Car	\$480	\$840		
17	Fairs		\$112		
18	Hotel		\$840		\$1,200
19	One day License				\$100
20	Performing Arts				\$360
21	Racetrack/Motor Vehicle				\$1,800
22	Racetrack/Pari-Mutuel				\$3,000
23	Rail Cars				\$1,200
24	Restaurant		\$480	\$840	\$1,200
25	Special License			\$25	
26	Sports/Entertainment Complex				\$1,800
27	9 events	\$250			
28	18 events	\$450			
29	36 events	\$750			
30	52 events	\$1,200			
31	Sports Recreation Facility				\$1,200
32	Tobacco Retailer/ <i>Cigar Bar</i>				\$840
33	Vessel		\$480	\$840	\$1,200
34	Wine Festival				
35	One-day	\$250			
36	Two-day	\$300			
37	Three-day	\$350			

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1 11 Youth Access to Tobacco Products. RSA 126-K:12, III is repealed and reenacted to read as
2 follows:

3 III. On or before April 1 of each even-numbered year, the commission shall provide the
4 department of revenue administration with a list of the names and addresses of all persons against
5 whom fines and penalties were assessed pursuant to this chapter and who have not paid said fines
6 and penalties in full by the date of the list. The commission shall update the information provided to
7 the department of revenue administration prior to June 30 of each even numbered year and
8 thereafter as requested by the department.

9 12 Repeal. The following are repealed:

10 I. RSA 175:1, LIX-a, relative to definition of retailer.

11 II. RSA 175:1, LX-b, relative to definition of sampling.

12 III. RSA 175:1, LXIV-d and LXIV-e, relative to relative to definitions of tobacco products and
13 vending machine.

14 IV. RSA 178:1, VI, relative to tobacco licenses.

15 V. RSA 178:19-a through RSA 178:19-c, relative to tobacco licenses.

16 VI. RSA 178:29, V-a, relative to tobacco license fees.

17 VII. RSA 179:57, III, relative to tobacco license suspension or revocation.

18 13 Effective Date. This act shall take effect July 1, 2013.

HB 637-FN-A – FISCAL NOTE

AN ACT transferring licensing for retail tobacco sales to the department of revenue administration from the liquor commission.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as introduced**, will increase state general fund revenue and expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on county and local revenue and expenditures.

METHODOLOGY:

The Department of Revenue Administration states this bill transfers responsibility for licensing retail tobacco sales to the Department from the State Liquor Commission. In addition, the bill increases the license fee for tobacco vending machine operators from \$35 to \$70, and for individual vending machines, retailers, and samplers from \$6 to \$10 each. Prior to 2009, the Department was responsible for licensing retail tobacco operations. In 2008, RSA 78:2 was amended to transfer responsibility for these functions to the Liquor Commission, effective January 1, 2009; this bill proposes again establishing these functions within the Department. While the Department currently licenses tobacco manufacturers, sub-jobbers, and wholesalers, it states the addition of retail vendors will require modifying the existing tobacco license forms. The Department states it is able to absorb the costs of modifying the existing forms within its current budget. However, the Department states it is unable to absorb the cost of printing licenses, permits, and warning signs as required by the bill. Based on the cost of these materials when it was last responsible for licensing tobacco retailers, the Department estimates these costs at between \$3,000 and \$5,000 per year.

Prior to the transfer of retail licenses to the Liquor Commission, the Department had three employees dedicated to processing all tobacco licenses, including those for retailers as well as for wholesalers, manufacturers, and sub-jobbers. The Department states that one of those positions has since been eliminated and two have assumed other responsibilities within the Department that will make it difficult to perform additional functions. Consequently, the Department estimates it will need two additional labor grade 21 compliance officers in order to assume responsibilities for retailer licensing. The Department states the additional costs of these positions will be as follows:

	FY 2014	FY 2015	FY 2016	FY 2017
Compliance office salary (LG 21 * 2, with annual steps)	\$75,699	\$78,780	\$82,173	\$85,488
Benefits * 2	\$47,315	\$50,785	\$54,530	\$58,528
Total Salary and Benefits	\$123,014	\$129,565	\$136,703	\$144,016

Based on its prior licensing responsibilities, the Department estimates it will issue 25 vending machine licenses, and between 1,500 and 1,800 retail tobacco licenses every even-numbered year when licenses are required to be renewed. With the increase in license fees, the Department anticipates the bill will increase state revenue by an amount between \$6,875 (1,500 licenses * a \$4 increase, plus 25 vending machines * a \$35 increase), and \$8,075 (1,800 licenses * a \$4 increase, plus 25 vending machines * a \$35 increase) each even-numbered year. This revenue will be deposited into the general fund. Additional revenue will be earned from new licenses, but the Department states it does not have recent data on the number of new licenses issued each year.

The Liquor Commission states that when it assumed retail tobacco licensing responsibilities in 2009, it did not add positions or increase any other portion of its budget in order to fulfill the new responsibilities. As such, the Commission states it does not expect the bill to result in a reduction in personnel or other expenses. Accordingly, the Commission states it will not experience a fiscal impact as a result of the bill.

This bill does not contain an appropriation or authorization for additional positions.