

SB 137-FN - AS INTRODUCED

2023 SESSION

23-0922

08/04

SENATE BILL ***137-FN***

AN ACT relative to nano brewery licenses and beverage manufacturers licenses.

SPONSORS: Sen. Lang, Dist 2; Sen. Pearl, Dist 17; Rep. Moffett, Merr. 4

COMMITTEE: Commerce

ANALYSIS

This bill repeals the nano brewery license and creates a 4 tiered beverage manufacturers license.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to nano brewery licenses and beverage manufacturers licenses.

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

1 1 Beverage Manufacturer License; Fees. RSA 178:29, III(a) is repealed and reenacted to read as
2 follows:

3 (a) Beverage manufacturer license:

4 (1) Domestic sales under 500 barrels per year, \$240.

5 (2) Domestic sales of 501 to 2,500 barrels per year, \$480.

6 (3) Domestic sales of 2,501 to 15,000 barrels or less per year, \$1,200.

7 (4) Domestic sales of more than 15,000 barrels per year, \$1,692.

8 2 Definitions; Nano Brewery Removed. Amend RSA 175:1, XXV-a-XXV-b to read as follows:

9 XXV-a. "Contract brewer" means a brewery hired by a beverage manufacturer~~[, nano~~
10 ~~brewery,]~~ or brew pub to produce a beverage for the beverage manufacturer.

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

14 3 Wholesale Distributor; Nano Brewery Removed. Amend RSA 175:1, LXVI to read as follows:

15 LXVI. "Wholesale distributor" means a person licensed by the commission to engage in the
16 purchase of beverages only from the holders of wholesale distributor licenses, beverage
17 manufacturer licenses, beverage vendor licenses, **or** brew pub licenses~~[, or nano brewery licenses]~~.
18 Wholesale distributors may resell, to other licensees, beverages in their original containers, as
19 prepared for the market by the manufacturer, but not for consumption, except for tasting on the
20 premises of the wholesaler.

21 4 Direct to Consumer Shipments of Alcohol. Amend RSA 178:27-b to read as follows:

22 178:27-b Direct to Consumer Shipments of Alcohol to New Hampshire Residents.

23 I.(a) Notwithstanding any other provision of law to the contrary, any business licensed
24 under this chapter as a beverage manufacturer, ~~[nano brewery,]~~ brew pub, wine manufacturer,
25 liquor manufacturer or beverage distributor may apply for a direct to consumer shipping permit
26 from the commission. The permit shall authorize the holder to sell and deliver alcoholic beverages to
27 consumers 21 years of age or older located within the state of New Hampshire and businesses
28 licensed by the commission for on-sale and off-sale of alcoholic beverages. The permit shall also
29 authorize the licensee to deliver alcohol manufactured or distributed under their license to
30 consumers 21 years of age or older residing in New Hampshire by means of vehicles registered to the
31 New Hampshire licensee and holding a carrier license under RSA 178:14. There shall be no fee to

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1 obtain a shipping permit under this section. Nothing in this paragraph shall relieve the licensee of
2 their obligation to comply with the record keeping and reporting requirements of this section when
3 shipping products directly to legal age New Hampshire consumers by means of a third party holding
4 a carrier license under RSA 178:14. Direct to consumer permittees or carriers shall not ship into
5 areas of the state where alcoholic beverages may not be lawfully sold. Shipments of any other
6 products shall be considered unlicensed shipments under the provisions of RSA 178:1, I.

7 (b) Any individual engaged in the delivery of alcoholic beverages pursuant to this section
8 shall be an employee who regularly receives a W-2 from the licensee and is at least 21 years of age.
9 During deliveries conducted under this section, the person making the delivery shall obtain a signed
10 receipt from the consumer. Consumers who appear visibly intoxicated or who a reasonable and
11 prudent person would know are intoxicated, who do not produce identification verifying the
12 consumer's age, or who fail to sign a receipt shall not be entitled to his or her delivery of alcoholic
13 beverages.

14 (c) No holder of a direct to consumer shipping permit shall deliver any alcoholic
15 beverages to any college, university, or school, whether public or private, located within the state.
16 No holder of a direct to consumer shipping permit shall deliver any alcoholic beverages to any public
17 library, public playground, or public park.

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

26 III. A manufacturer holding a direct to consumer shipping permit may ship directly to New
27 Hampshire consumers over 21 years of age or licensees in packages clearly marked "Alcoholic
28 Beverages, adult signature (over 21 years of age) required." All shipments from direct to consumer
29 shippers shall be made by a licensed carrier as defined in RSA 178:14 and such carriers are required
30 to obtain an adult signature. Direct to consumer permittees or carriers shall not ship into areas of
31 the state where alcohol beverages may not be lawfully sold. Shipments of any other products shall
32 be considered unlicensed shipments under the provisions of RSA 178:1, I.

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

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

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

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

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

7 (c) Direct to consumer shipping permittees shall maintain records for at least 3 years
8 which will permit the commission to ascertain the truthfulness of the information filed and permit
9 the commission to perform an audit of the beverage manufacturer, ~~[nano-brewery,]~~ brew pub, wine
10 manufacturer or liquor manufacturer.

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

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

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

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

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

19 5 Limited Credits. Amend RSA 179:13 to read as follows:

20 179:13 Limited Credits.

21 I. Each holder of a wholesale distributor, brew pub, ~~[nano-brewery,]~~ or beverage
22 manufacturer license shall report to the commission the name and license number of any on-
23 premises or off-premises licensee who is delinquent in making payment of accounts over a total of
24 \$100 within 10 days, including Sundays and holidays, from the date of delivery of beverages on the
25 premises of such on-premises or off-premises licensee or on the premises of a liquor/wine/beverage
26 warehouse storing the beverages for an on-premises or off-premises licensee. Each holder of a
27 wholesale distributor license, brew pub license, ~~[nano-brewery-license,]~~ beverage manufacturer
28 license, or beverage vendor license shall report to the commission the name and license number of
29 any holder of a wholesale distributor license who is delinquent in making payments of accounts
30 within 30 days from the date of delivery of beverages on the premises of such holder of a wholesale
31 distributor license. Such report to the commission shall include the amounts purchased and the
32 dates when payments were due and shall be forwarded to the commission within 5 days after said
33 accounts become delinquent, unless the fifth day of such period is a Sunday or holiday in which case
34 the report shall be forwarded the day following such Sunday or holiday.

35 II. Each holder of a beverage manufacturer license, beverage vendor license, brew pub
36 license, ~~[nano-brewery-license,]~~ or wholesale distributor license shall immediately notify the
37 commission of the receipt of the payment of any account which has been reported to the commission

as delinquent. Post-dated checks beyond the 5-day reporting period shall not constitute payments of accounts for the purchases of beverages. Checks given in payment for beverages which are returned for nonpayment after the 5-day reporting period shall immediately constitute a delinquency and shall, upon return, be reported to the commission. Payments collected by agents shall be reported as delinquent unless actually received at the place of business of the holder of the beverage manufacturer license, beverage vendor license, brew pub license, [~~nano-brewery license,~~] or wholesale distributor license on or before the fifth day of the reporting period. When collections are made by an agent, the sales slips or invoices shall be clearly marked with the name of the person making the collection and the date of such collection. Nothing in this section shall prohibit a licensee from making a payment by credit card, debit card, or other acceptable commercial means. Holders of a beverage manufacturer license, beverage vendor license, brew pub license, [~~nano-brewery license,~~] or wholesale distributor license may add a transactional fee to the delinquent account when accepting a payment method that incurs a transactional fee. Nothing in this section shall require a beverage manufacturer licensee, beverage vendor licensee, brew pub licensee, [~~nano-brewery licensee,~~] or wholesale distributor licensee to accept a credit card, debit card, or other acceptable commercial means.

III. The commission shall inform holders of beverage manufacturer licenses, beverage vendor licenses, brew pub licenses, [~~nano-brewery licenses,~~] and wholesale distributor licenses of the names of licensees who are delinquent in making payments of a total amount of \$100 or more under the provisions of this section and no holder of a beverage manufacturer license, beverage vendor license, brew pub license, [~~nano-brewery license,~~] or wholesale distributor license shall knowingly make any delivery of beverages to any licensee whose payments for purchases of beverages are reported as delinquent under this section. The commission may withhold names of delinquent licensees under circumstances in which there is a dispute over payments, an agreement to liquidate which has been approved by the commission, or other reason which the commission may deem proper.

IV. The commission may impose a fine of not less than \$100 nor more than \$500 for a violation of this section. Determinations of a failure to comply with this section shall be made by the commission.

V. Each wholesale distributor, brew pub licensee, [~~nano-brewery,~~] or beverage manufacturer shall notify any retailer reported to the commission pursuant to RSA 179:13, I who is delinquent in making payment of accounts. Notification shall be delivered in writing to the licensee by a representative of the wholesaler, brew pub licensee, [~~nano-brewery,~~] or beverage manufacturer. Proof of notification shall be forwarded to the commission, whose enforcement division shall issue an administrative notice for a violation of the provisions of RSA 179:13, I and shall forward a report of violation for administrative action. Any license issued to any business violating the provisions of RSA 179:13, I may be suspended by the commission for nonpayment of accounts which are

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1 delinquent more than 15 days from the date of the wholesale distributor's, brew pub licensee's, [~~nano~~
2 ~~brewery's,~~] or beverage manufacturer's notification, providing the requirements of this section have
3 been met.

4 6 Sizes of Beer Containers; Promotions; Notification. Amend RSA 179:33 to read as follows:

5 179:33 Sizes of Beer Containers; Promotions; Notification.

6 I. Holders of beverage vendor, brew pub, [~~nano-brewery,~~] or beverage manufacturer licenses
7 shall have their packaging or containers specifically approved by the commission and shall be fined
8 \$250 for each packaging or container violation. Container and packaging approval shall not require
9 delivery of a physical sample unless the commission determines a physical sample is necessary for
10 approval.

11 II. All details of transactions between retailers and wholesale distributors, beverage
12 manufacturers, [~~nano-breweries,~~] or brew pubs shall be reflected on pertinent invoices. Promotions
13 shall be clearly identified by both brands and sizes and cash discounts shall be shown as credit and
14 itemized as such. All items noted on delivery slips shall also be noted on wholesale distributor's
15 account receivable ledger records.

16 III. All wholesale distributors, beverage manufacturers, [~~nano-breweries,~~] and brew pubs
17 shall make their current prices for wholesale sales available to the commission in writing by brand
18 package. Prices shall remain in effect until such time as they are changed in writing by the
19 wholesale distributor, beverage manufacturer, [~~nano-brewery,~~] or brew pub to the commission. Price
20 changes shall be in the commission offices no later than 5 working days prior to any change of prices.

21 IV. The liquor commission shall not, by rule or otherwise, require a beverage vendor,
22 beverage manufacturer[~~, nano-brewery,~~] or brew pub to obtain federal label approval for beverage, as
23 defined in RSA 175:1, VIII, sold exclusively in the state of New Hampshire.

24 7 Contract Brewing Arrangements. Amend RSA 178:12, XI to read as follows:

25 XI. A beverage manufacturer may enter into a contract brewing arrangement with a
26 contract brewer. Beverages produced by a contract brewer intended for sale outside the state may be
27 warehoused at the beverage manufacturer's facility or at some other facility accessible only to the
28 beverage manufacturer. A contract brewer shall not deliver beverages to on-premises and off-
29 premises licensees within the state. A contract brewer shall file all contract brewing arrangements
30 with the commission.

31 ***(a) Beverage manufacturer license holders with an annual production under***
32 ***2,500 barrels shall not enter into a contract brewing arrangement with a contract brewer if***
33 ***the licensee does not brew at least 10 barrels annually.***

34 ***(b) Beverage manufacturer license holders with an annual production under***
35 ***2,500 barrels may enter into a contract brewing arrangement after the licensee has been in***
36 ***operation for one year.***

1 8 New Paragraphs; Beverage Manufacturer; Sale at Wine Manufacturer. Amend RSA 178:12 by
2 inserting after paragraph XIII the following new paragraphs:

3 XIV. For an additional annual fee of \$120, any beverage manufacturer licensee with an
4 annual production under 2,500 barrels annually, may transport its products to a wine
5 manufacturer's facility licensed under RSA 178:8, for the purpose of sampling or selling its products.
6 Samples may be sold or given away. Retail sales made at the wine manufacturer's facility shall be
7 limited to products in their unopened original containers and to customers and persons of legal
8 drinking age. Beverage manufacturer licensees with an annual production under 2,500 barrels
9 annually shall be subject to the following additional limitations under this section:

10 (a) Beverage manufacturer licensees with an annual production under 2,500 barrels
11 annually shall be limited to one sampling event per day.

12 (b) The products of a beverage manufacturer licensees with an annual production under
13 2,500 barrels annually shall conform to the normal business hours of the winery licensee.

14 (c) Sample sizes shall be limited to one 16-ounce glass per person if no food is available
15 and 2 16-ounce glasses if food is available.

16 (d) Products produced by a beverage manufacturer licensee with an annual production
17 under 2,500 barrels annually that are brought to a sampling event shall be brought to the wine
18 manufacturer's facility on the day of the event and all such products shall be removed at the end of
19 the event.

20 (e) A beverage manufacturer licensee with an annual production under 2,500 barrels
21 annually shall notify the commission of the date, times, and location of each sampling event not less
22 than 5 days before each event.

23 XV. No unopened container sold by a beverage manufacturer licensee with an annual
24 production under 2,500 barrels annually shall be opened or consumed on the licensee's premises.

25 9 Repeal. The following are repealed:

26 I. RSA 178:12-a, relative to nano brewery licenses.

27 II. RSA 178:8, VIII, relative to the sale of wine at nano breweries.

28 10 Effective Date. This act shall take effect July 1, 2023.

SB 137-FN- FISCAL NOTE
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AN ACT relative to nano brewery licenses and beverage manufacturers licenses.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, as introduced, has a total fiscal impact of less than \$10,000 in each of the fiscal years 2023 through 2026.

AGENCIES CONTACTED:

Liquor Commission