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## Law Changes Relative to New Hampshire Beverage Manufacturers Licensed Under RSA 178:12

**Relative and Applicable Statutes and Rules:**

**RSA 175:1, RSA 178:12,  
RSA 17812-a, RSA 178:13**

### **1. Purpose.**

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (Commission) has provided this interpretation of laws passed in the 2021 legislative session. The purpose of this document is to provide licensees with clarity on the meaning of the provisions signed into law and provide guidance on how these provisions will be interpreted and applied by the Commission.

### **2. Authority.**

Administrative Rule Liq. 201<sup>i</sup> gives the Commission the authority to interpret statutes and administrative rules. These questions fall within the authority of the Commission. The purpose of Title XIII is to provide an orderly and controlled environment for the manufacture, wholesale and retail sale of alcoholic beverages. To that extent the General Court has charged the Commission with the fair and reasonable interpretation of the statutes and the administrative rules established under law.

### **3. Discussion of the Issues and Changes to Statutes.**

#### **A. Beverage Manufacturers Limitation on Retail Sales at the Licensed Brewery RSA 178:12, IV (a) (2)**

The first change for the Beverage Manufacturer is a repeal of the limitations on retail sales made to visitors to the manufacturer's brewery. Previously Beverage Manufacturers were allowed to sell their brewed products in limited quantities to consumers on a daily basis (one 15.5-gallon keg or a single case of 12 oz. containers per person, per day)

SB 125 has repealed this limitation and Beverage Manufacturers are no longer restricted in the quantities of their brewed products they can sell to a single person on a daily basis.



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**B. Beverage Manufacturers May Enter Into Contract Brewing Arrangements with Licensed Brew Pubs (RSA 178:13) and Licensed Nano Brewers (RSA 178:12-a)**

SB 125 made changes to RSA 178:13 and RSA 178:12-a, to allow these licensees to engage in contract brewing arrangements with a Beverage Manufacturer. The definitions of a Contract Brewer (RSA 175:1 XXV-a) and a Contract Brewing Arrangement (RSA 175:1 XXV-b) were amended to include the Brew Pub and Nano Brewer as eligible to participate in contract brewing.

It is the Brew Pub and the Nano Brewery who have the responsibility to provide the Commission with a copy of the contract brewing agreement with the Beverage Manufacturer and adhere to all production, reporting and taxation requirements.

The limitation on the maximum quantity of product produced by the Brew Pub and the Nano Brewer remain at 2500 barrels and 2000 barrels respectively. It is the responsibility of the licensees to adhere to the limitations on production. If questions on production quantities are brought forth then all parties to the brewing contract may be audited by the Division of Enforcement and Licensing.

**C. Change in the Definition of a Beverage (RSA 175:1, VIII)**

SB 125 amended the definition of a beverage. The amendment now includes products that are “similarly fermented or brewed.” The change allows the Beverage Manufacturer to produce beverages manufactured by means of this newly recognized method. Newly produced products will still need to be submitted to the Commission for approval before being distributed to the marketplace.

**D. Beverage Manufacturers May Open a Beverage Manufacturers Retail Outlet (BMRO)**

SB 125 established a new provision that allows a Beverage Manufacturer to open a single beverage manufacturer’s retail outlet. The phrase Beverage Manufacturers Retail Outlet (BMRO) is define in the new provision of RSA 175:1, IX-a and means “an outlet for the sale, sampling, production or manufacturing and promotion of beverages and other products manufactured by a beverage manufacturer licensee.”

The Beverage Manufacturer that seeks to open a BMRO is not limited as to the geographic location of the BMRO so long as it is within New Hampshire. The law does not forgive the need of the BMRO to obtain and comply with all local zoning and permitting processes in the



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community in which the Beverage Manufacturer seeks to locate as a condition precedent to opening a BMRO.

The Beverage Manufacturer shall pay an annual fee of \$336 to the Commission for the BMRO. The fee shall be prorated and shall be renewed at the same time as the beverage manufacturer license is renewed.

The Beverage Manufacturer may transport beverages it manufactures to the BMRO for sampling and sales. The definition of a BMRO indicates the Beverage Manufacturer may produce or manufacture its beverages at the site of the BMRO but is not a requirement to operate a BMRO.

The BMRO may provide samples of their products to consumers in sizes not to exceed 16oz. A BMRO may provide the legal aged customer with a single sample, free or for a fee. The fee shall be determined by the BMRO.

The BMRO is limited to serving a single sample, not to exceed 16 oz. unless food is available to the consumer. The food may be prepared on or off premise by the licensee or provided by a properly licensed third party food vendor.

A condition precedent to the extended sampling and service privilege is a requirement that the source of the food made available to the customer comes from a “**properly licensed**” source. The phrase “**properly licensed**” has been interpreted as a food manufacturer that holds a license from the Food Protection Section, Bureau of Public Health Protection, New Hampshire Division of Public Health Services, Department of Health and Human Services or from one of the 15 self-inspecting communities that issues food protection licenses. (*See the list of self-inspecting communities at this link <https://www.dhhs.nh.gov/dphs/fp/documents/selfinspect.pdf>*).

If properly licensed, the BMRO may prepare its own food and make it available to the visitor on its premises in satisfaction of the requirement. The BMRO may also use the services of caterers, food trucks or other restaurants **licensed by the NH Department of Public Health Protection** or by one of the self-inspecting communities. This requirement prevents an unlicensed person or entity from providing food in an attempt to satisfy the requirement.

Failure to maintain these core operational requirements could result in some type of administrative action against the licensee up to and including a fine or the inability to operate the BMRO.

The BMRO may sell pre-packaged containers of the beverages they manufacture to consumers without quantity and/or daily limitation. (*See change to RSA 178:12, IV (a) (2)*).



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Considering the BMRO will be allowed to serve beverages by the glass, offering food if the desire to serve a second sample and potentially preparing the food on premise and provide seating for customers, a local community may, under their permitting and zoning process, deem the BMRO to be a business type other than a retail, off-premise operation.

**E. Beverage Manufacturers Sell and Ship Their Products Directly to New Hampshire Consumers**

A separate industry circular has been developed to inform the eligible licensed community on the opportunities and responsibilities to ship their products directly to New Hampshire consumers located within the State.

**4. Frequently Asked Questions.**

**Q. I am going to apply for separate Beverage Manufacturing Retail Outlet (BMRO). My friends, who also are Beverage Manufacturers, thought we would get a joint location and bring all our products to the outlet for sale. Can we do that?**

A. No, a BMRO limits the Beverage Manufacturer to sampling and selling only products manufactured by the BMRO holder. The license does not permit the sampling or sale of products manufactured by other manufacturing license holders. You can only sell and sample products you make, not products made by others.

**Q. Can I open a second BMRO?**

A. No, the law change limits you to a single location. Should you wish to move to a different community you may request the transfer of the license from the Commission. You will need to adhere to all planning and zoning ordinances in the community where you wish to relocate.

**Q. Who should I contact if I have more questions?**

A. Please contact the Division of Enforcement and Licensing at 603-271-3521 to have your questions answered.

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Liq. 201.01 Interpretation of Statutes/Administrative Rules. Any question arising, relating to an interpretation of RSA 175- RSA 180, RSA 126-K, or administrative rules adopted by the commission shall be submitted in writing as a petition to the chairman of the liquor commission requesting a declaratory ruling.