



2022 Changes for Liquor Manufacturers on Tasting And Eligibility to Sell at Farmers Markets

Relative and Applicable Statutes and Rules:

RSA 178:6 and Liq.705.02

1. Purpose.

The 2021/2022 legislative session brought several changes for New Hampshire licensed liquor manufacturers. The changes were included in HB 1613 and SB 212. This Industry Circular will review the law change for SB 212 and HB 1613 will be reviewed in Industry Circular 2022-02. The New Hampshire Liquor Commission, Division of Enforcement and Licensing (Commission) has provided this guidance document to inform the industry of the changes in the law and to answer questions from the public and the liquor manufacturing industry (manufacturers).

2. Authority.

Administrative Rule Liq. 201¹ gives the Commission the authority to interpret statutes and administrative rules. This question falls 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.

SB 212 – Relative to Liquor Manufacturers

SB 212 has two separate provisions that apply to liquor manufacturers licensed under RSA 178:6. We will discuss them separately although they are all part of the provisions that apply to a liquor manufacturer.



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Change #1 - The first change applies to sales of liquor made by a licensee at a New Hampshire Farmer's Market. The previous provisions addressed the eligibility of a liquor manufacturer to transport and sell their liquor at a farmer's market. The previous version of RSA 178:6, IV restricted participation at farmer's markets to manufacturers who produced 10,000 bottles or less during their licensing year. SB 212 repealed the eligibility provision and replaced it with a sales limit that means any licensed liquor manufacturer (including new licensees who have acquired a license to produce 1000 cases or less) may participate in a farmer's market regardless of their production levels.

RSA 178:6, IV was amended to add a section (a) that places a sales limitation on liquor manufacturer's that participate in a New Hampshire farmer's market. All liquor manufacturers participating in a farmer's market are now limited to selling ***“up to 830, 9-liter cases of its products in a calendar year.”*** Products must be sold in the original sealed container and samples may be offered as prescribed in the section portion of SB 212 that will discussed below.

Liquor manufacturers participating in a farmer's market must be aware of all the allowances and limitations in the statute but particular attention should be paid to RSA 178:6, VI. Reporting requirements are required and samples distributed are taxed at a rate equal to 8 percent of the retail value of the samples sold or given away. This requirement also applies to samples sold or given away at the manufacturer's premise.

(It should be noted that communities oversee farmer's markets and may or may not allow the sampling of alcoholic beverages during market hours. It is prudent for a liquor manufacturer to become familiar with the market rules before participating. A state law will not supersede a decision made by a local body to restrict or prohibit the sale of alcohol at a farmer's market.).

Change #2 – New section (b) to RSA 178:6, IV applies to samples or tasting that take place on the liquor manufacturer's licensed premise. Liquor manufacturers have been allowed to offer visitors samples of the licensee's products in the amount of ½ ounces per label, per person. The samples must be produced on site and may be free or the licensee may charge a fee.

The new provision expands the scope of tastings so long as the licensee offers food and nonalcoholic beverages on their premise. The law change creates an either or scenario. If food is offered the licensee may continue to offer ½ ounce samples **AND** may offer the customer a mixed drink with no more than 1



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½ ounces of liquor. The OR scenario is the licensee may offer the consumer a second mixed drink with no more than 1 ½ ounces of alcohol but MAY NOT offer the customer the ½ ounce samples.

The customer may have both ½ ounces samples and a single mixed drink **OR** two mixed drinks. The key is the availability of food to the customer. If food is not available then the licensee is limited to the existing provisions of allowing ½ ounce samples of their products.

NOTE: Nothing in the law requires the licensee to offer samples or to offer mixed drinks if food is available. The licensee may exercise discretion in how they offer samples so long as they do not exceed the limits in the law. Licensees should be aware that nothing in these changes shields the licensee from potential action by the Commission if alcohol is served to a person under the age of 21 or if an visibly intoxicated person is served or served to the point of visible intoxication in violation of RSA 179:5.

4. Questions and Additional Information

The following are representative of some questions liquor manufacturers might have regarding the law change.

Q. I am an existing liquor manufacturer. I want to participate at a farmer's market and serve samples as a mixed drink using the new 1 ½ ounce of liquor provision. Can I do that?

A. No. The law change allowing the service of a mixed drink as a sample applies to consumers only when they are visiting the liquor manufacturers licensed distillery AND so long as the licensee offers food and nonalcoholic beverages on their premise.

The law related to the sampling of liquor at a farmer's market remains unchanged in HB 1039. Liquor manufacturers have been allowed to offer visitors samples of the licensee's products in the amount of ½ ounces per label, per person.



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Q. The law says the service of a cocktail is contingent on offering food and beverages prepared by a properly license third party food vendor prepared on or off the premises. I just want to put our pretzels will that satisfy the requirement?

A. No. A condition precedent to the extended sampling and service privilege is the 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://newhampshireonline.envisionconnect.com/#/pa2/search>).*

If properly licensed, the liquor manufacturer may prepare its own food and make it available to the visitor on their premise in satisfaction of the requirement. If the liquor manufacturer operates a second on premise license that facility may produce the food necessary to satisfy the requirement of availability. The distiller 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 eliminates an unlicensed person or entity from providing food in an attempt to satisfy the requirement.

Q. I don't want to offer food. I want to focus on my sampling and sales and still serve my visitors a cocktail. Can I do that?

A. No. The statute makes it clear that to offer your guests a cocktail with up to 1 ½ ounces of liquor, food must be “offered” to customers on your premise. If you don't have food you may still offer the customer samples limited to ½ ounce per label, per person.

More Questions? - If you have questions about the interpretation of these statutes beyond what has been provided in this circular you are encouraged to contact the Division of Enforcement, Licensing and Education at 603-271-3521 to have you questions answered.



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i 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.