



Relative to the Use of Internally Illuminated Signs by Licensees

Relative and Applicable Statutes and Rules:

RSA 175:4, 179:25, 179:31

1. Purpose.

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (commission) has provided this interpretation of law in response to questions from the public and New Hampshire retail (retailers) and beverage manufacturing industry (manufacturers).

New Hampshire has seen a significant increase in licensees in recent years. One of the fastest growing license categories are found in the manufacturing tier. Beverage manufacturers (RSA 178:12), Nano Brewers (RSA 178:12-a), Wine Manufacturers (RSA 178:8) and Liquor Manufacturers (178:6) have increased significantly over the past few years. With this explosive growth comes the desire to raise awareness of the manufacturer's products and gain market share in this competitive industry. One of the methods used by all licensees is the use of signs and signage to promote their location and the products available to consumers. This circular is intended to clarify existing laws and to advise the reader of the limitations in the use of signage to promote the sale of alcohol beverages.

2. Authority.

Administrative Rule Liq. 201ⁱ 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 Issue.

The general rule that governs the topic of advertising is found in RSA 175:4 *Advertising*. Section one provides that “[a]ll advertising of liquor and beverages is lawful, unless specifically



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prohibited by statute or administrative rule.” Therefore we must look at the second level of applicable statutes and rule for greater detail in how to determine if a particular type of advertising is expressly prohibited by law.

RSA 179:31 provides additional limitations on the advertising of liquor and beverages. Section 1 provides that “[a]dvertising or promotion of liquor or beverages by the use of **billboards**, sound trucks, or outdoor internally illuminated screen displays is prohibited.” It is important when reading a statute that the reader becomes familiar with any definitions that give precise meaning to a word contained in a statute. In this case RSA 179:31 references the word **billboard**. RSA 175:1 XI-a defines a billboard as “*a large, flat surface, panel, wall or fence outside on which advertising is posted, written or carried, or specifically authorized signs where the lettering advertising beverages or liquor exceeds 15 inches in height and is visible to the general or non-paying public.*” With this information a licensee who wished to advertise should be familiar with what might make their sign unlawful if it fits the definition of a billboard.

RSA 179:31 also references sound trucks and so a promotion using a sound truck (a practice more commonly used many years ago) is prohibited as well. The third form of media governed under 179:31 are internally illuminated signs. A review of the definition section of RSA 175:1 does not find a definition for this term therefore the meaning of this phrase is viewed through the well settled rules of “statutory construction.” The limitations in RSA 179:31, I have been in existence since at least 1996 (22 years). The General Court could not have envisioned what type of lighting might be used in the future but they established the public policy in law that **outdoor** internally illuminated signs advertising liquor or beverages would be unlawful in New Hampshire. Using the rules of statutory construction words and phrases should be read in context and construed according to the rules of grammar and common usage when defining an “internally illuminated sign.”

With this understanding the statute does not parse the difference between a light bulb or a LED (light emitting diode) light source. If the light source is inside the sign or the power source is



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inside the sign then it is internally illuminated and thereby prohibited if the sign is outside the licensee's premise

An important additional statute to consider in this review is RSA 179:25. Section 1 indicates that *“[n]o brand advertising of liquor or beverages sold in this state shall be allowed through the use of internally illuminated signs outside the licensed premises. Brand advertising of liquor or beverages sold in this state shall be allowed through the use of internally illuminated signs inside the licensed premises. Notwithstanding the above, beverage manufacturers and wholesale distributors may advertise on the site of their licensed premises through the use of internally illuminated signs.”*

RSA 179:25 provides some exceptions to the general rule that prohibits the use of internally illuminated signs. For example internally illuminated signs may be used **inside** a licensed venue without limitation. Beverage manufacturers (RSA 178:12 and RSA 178:12-a) and wholesale distributors (RSA 178:16) may advertise by means of internally illuminated signs under certain conditions. (*see section IV.*)

Section II provided some express language on what is included and excluded from the prohibitions of the statute. *“[I]nternally illuminated signs shall include back lighted or similar signs but shall not include neon signs.”*

Section IV gives direction on how **beverage manufacturers** and the **wholesale distributors** may use internally illuminated signs. They may advertise a brand of beer they manufacture or sell at wholesale. 179:25, IV defines *“brand advertising” means advertising that includes a name, trademark, symbol, logo, slogan, or other distinguishing mark or device that identifies any product or manufacturer.*” Let’s look at some examples to apply the law.

1. **Wholesaler A sells Blue Beer (6 labels) and Black Beer (1 label).** The wholesaler may have an internally illuminated sign outside their licensed premise advertising the brand or brands they



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sell, (Blue Beer and Black Beer). The advertising may be by name or by logo (*see section IV above*). They may have as many internally illuminated signs outside of their premise as the brands they carry. This allowance is tempered by RSA 179:25, III which gives the city or town the final word on what can and can't be put up in that town or city. Wholesaler A may have signs for Blue Beer and Black beer because these are the manufacturer's brands. They may also advertise their six product labels. The statute does not place a limit on the number of signs (this would be a local ordinance issue) so in theory the wholesaler could have a total of 7 internally illuminated signs outside theory wholesale facility.

2. Beverage manufacturer A is named Super Brewery and they make "Super Beer." They may put up an internally illuminated sign on their licensed premise, subject to local sign ordinances, advertising they are the Super Brewery and a sign for Super Beer. So they could have 2 internally illuminated signs at their manufacturing facility.

It is important to note that RSA 179:25 does not include wine manufacturers or liquor manufacturers as a class of licensee who may use internally illuminated signage to promote their brands or labels outside their licensed premise. Internally illuminated signs may be used inside of the manufacturer's facility.

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. This is especially true if you are contemplating purchasing a sign.

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.