

Statutory Provisions Related to the Governance and Operation of the New Hampshire Liquor Commission

New Hampshire Revised Statutes Annotated Chapter 176: The Liquor Commission

N.H. R.S.A. § 176:1. Commission.

There shall be a state liquor commission under the executive direction of a liquor commissioner, who shall also be known as the chairman of the liquor commission, appointed by the governor with the consent of the council. The commissioner shall have significant business management experience and shall complete a criminal history records check prior to confirmation by the council. The liquor commissioner shall hold office for a term of 4 years. If a vacancy shall occur, it shall be filled for the remainder of the term. The commissioner may be removed by the governor and council for cause.

N.H. R.S.A. § 176:2. Liquor Commissioner; Compensation.

The annual salary of the commissioner shall be as specified in RSA 94:1-a, and the commissioner shall receive his or her reasonable expenses while traveling in the performance of his or her duties, provided that the commissioner shall not be allowed as expenses, travel between his or her place of residence and the commissioner's office in Concord, nor shall the commissioner be allowed board or lodging while in Concord. The commissioner shall serve as the representative to the National Alcoholic Beverage Control Association.

N.H. R.S.A. § 176:2-a. Deputy Commissioner.

I. The commissioner shall nominate a deputy commissioner for appointment by the governor with the consent of the council who shall be qualified to hold that position by reason of education and experience. The deputy commissioner shall hold office for a term of 4 years and may be reappointed. The deputy commissioner shall be subject to a background check by the state police prior to appointment.

II. If a vacancy shall occur in said office, it shall be filled for the remainder of the term. The deputy commissioner may be removed by the governor and council for cause.

III. The annual salary of the deputy commissioner shall be as specified in RSA 94:1-a.

IV. The deputy commissioner shall perform such duties as are assigned by the commissioner. The deputy commissioner shall assume the duties of the commissioner in the event that the commissioner is unable for any reason to perform such duties.

V. The deputy commissioner shall, subject to the supervision of the commissioner, exercise authority as required to ensure that the divisions and their directors are implementing the organizational goals and managing the work of the commission in an effective and efficient manner.

N.H. R.S.A. § 176:3. Duties.

The primary duties of the liquor commission shall be to:

- I. Optimize the profitability of the commission.
- II. Maintain proper controls.
- III. Assume responsibility for the effective and efficient operation of the commission.
- IV. Provide service to the customers of the commission, pursuant to this title.

N.H. R.S.A. § 176:4. Requirements.

The commissioner and deputy commissioner shall devote their entire time to the service of the commission. The commissioner and deputy commissioner shall not have any financial interest, direct or indirect, in the liquor or beverage business. The compensation and expenses of the commissioner and deputy commissioner and the expenses of the administration of this chapter shall be paid by the state on the warrant of the governor with the approval of the council.

N.H. R.S.A. § 176:6. Offices; Seal.

The commission shall be provided with suitable offices in the city of Concord. It shall adopt a proper seal.

N.H. R.S.A. § 176:7. Assistants and Employees.

The state liquor commission may employ such assistants as are, in its opinion, necessary for the proper transaction of its business, and fix their compensation, subject to the rules of the director of personnel. It may secure any necessary technical or professional assistance.

N.H. R.S.A. § 176:8. Divisions and Directors.

The commission shall have 3 divisions under the direction of unclassified division directors. The directors shall be nominated by the commissioner for appointment by the governor with the consent of the council and shall serve for terms of 4 years dependent upon maintaining good behavior and competence. There shall be a division of marketing, merchandising, and warehousing, a division of administration, and a division of enforcement and licensing. The director of the division of enforcement and licensing shall be subject to a background check by the state police prior to appointment.

N.H. R.S.A. § 176:9. Liquor Investigator; Training.

I. The commission may, subject to rules adopted by the director of personnel, employ and dismiss liquor investigators. Liquor investigators shall, under the direction of the commission, investigate any or all matters arising under this title.

II. Any new liquor investigator employed by the commission under this section after August 13, 1985, shall, within 6 months of employment, satisfactorily complete a preparatory police training program as provided by RSA 188-F:27, unless he has already completed such a program.

III. The commissioner, deputy commissioner, assistant, or liquor investigator may enter any place where liquor, beverages, or tobacco products are sold or manufactured, at any time, and may examine any license or permit issued or purported to have been issued under the terms of this title. They shall make complaints for violations of this title.

N.H. R.S.A. § 176:10. Preference Given.

Any person who served for not less than 90 days in the armed forces of the United States during “any war in which the United States was engaged, and received an honorable discharge from such service,” shall be given preference in appointment under the provisions of RSA 176:7, RSA 176:9, RSA 177:4, and RSA 179:59, if qualified for such positions.

N.H. R.S.A. § 176:11. Commission to Sell.

I. It shall be the duty of the commission to buy and have in its possession liquor for sale in the manner provided in this title. Such liquors shall be free from adulteration and misbranding within the meaning of the provisions of RSA 146. All liquors sold for medicinal use shall conform to the standards and tests for such liquors as laid down in the United States Pharmacopoeia, official at the time of sale. All purchases of liquor shall be made by the commission directly and not through the department of administrative services. The commission shall be subject to all the provisions so far as applicable of RSA 9.

II. In the event that the commission determines New Hampshire liquor revenues are being diverted by actions taken by persons holding either liquor and wine representative or liquor and wine vendor licenses who compete directly or indirectly with the commission for market share in this or other states, the commission may take such marketing or merchandising action, or both, as it deems necessary, including sanctions against products supplied by the competing entities.

N.H. R.S.A. § 176:12. New Hampshire Products.

The commission, wherever feasible, shall purchase and list for sale in all state stores the domestic liquor and wines manufactured or bottled in this state by a manufacturer.

N.H. R.S.A. § 176:13. Listing and Delisting of Products.

I. All decisions regarding listing and delisting of products for sale shall be made by the commission.

II. The commission shall adopt rules under RSA 541-A establishing procedures and criteria for listing and delisting of products for sale. These rules shall include procedures for appeal of commission decisions.

III. All requests for action regarding listing or delisting from vendors or their representatives shall be submitted to the commission, to the attention of the chairman.

N.H. R.S.A. § 176:14. Rulemaking.

The commission shall adopt rules, under RSA 541-A, relative to:

I. Procedures for regular and special meetings of the commission.

II. Procedures for responses to petitions on rulemaking.

III. Methods of complying with requests for information under RSA 91-A, including copying fees sufficient to cover the cost of copies.

IV. Declaratory ruling procedures.

V. Procedures for handling petitions from municipalities to revoke a liquor license.

VI. Listing and delisting products for sale.

VII. Liquor licenses, including:

(a) Requirements and restrictions for each type of license.

(b) Procedures and forms to apply for or renew a license.

(c) Safekeeping of licenses.

(d) Authorized expansion of a licensed facility and procedures for authorization.

(e) Procedures to approve exceptions of license requirements, restrictions, and limitations.

(f) Training and continuing education required or recommended for licensees.

VIII. Licensee operations, including:

(a) Procedures for on-premises and off-premises licensees to purchase wines and liquor.

(b) Credit and billing procedures, including fees for late payment.

(c) Bailment requirements, including fees.

(d) Restrictions on packaging, promotions, signage, and operating hours.

(e) Relations between types of licensees.

(f) Procedures for public sampling of liquor, wine, or beverages pursuant to RSA 179:44.

(g) Collection of additional fees required under RSA 178:6, VI, RSA 178:8, IV, and RSA 178:26.

IX. Requirements and procedures for direct shipments.

X. Any other matters necessary to implement their duties under this title. As a condition of the commission invoking its rulemaking authority under this paragraph, the liquor commission shall provide a written report detailing the necessity for the proposed rule as set forth in the rulemaking notice, to include any fiscal impact or policy implications related to the adoption of the proposed rule, to the chairpersons of the house and senate executive departments and administration committees, the chairpersons of the house and senate standing committees with jurisdiction over revenue collection, the joint legislative committee on administrative rules, and the chairperson of the fiscal committee of the general court.

N.H. R.S.A. § 176:15. Insurance.

The commission shall have power to insure the state liquor warehouse or warehouses and contents against fire and sprinkler damage and such insurance shall be purchased through the department of administrative services.

N.H. R.S.A. § 176:16. Funds.

I. Except as provided in paragraph II, the state treasurer shall credit all gross revenue derived by the commission from the sale of liquor, or from license fees, and interest received on such moneys, to a special fund, to be known as the liquor commission fund, from which the treasurer shall pay all expenses of the commission incident to the administration of this title. Any balance left in such fund after such expenses are paid shall be deposited in the general fund on a daily basis.

II. Notwithstanding any provision of law, or the designation of the funds allocated by the state to the liquor commission as the liquor commission fund, the general court shall retain budgeting authority and control over the liquor commission.

III. Fifty percent of the amount by which the current year gross profits exceed fiscal year 2001 actual gross profit, but not more than 5 percent of the current year gross profits derived by the commission from the sale of liquor and other revenues, shall be deposited into the alcohol abuse prevention and treatment fund established by RSA 176-A:1.

IV. Notwithstanding any other provision of law, if the expenditure of additional funds over budget estimates is necessary for the proper funding of retirement and health benefits for commission employees, the commission may request, with prior approval of the fiscal committee of the general court, that the governor and council authorize the transfer of funds from the liquor commission fund.

V. The commission may transfer funds totaling up to 5 percent of the operating budget in any fiscal year for any specific purposes to funds for other purposes within and among the appropriations for the operation of the commission. The commission shall report annually 60 days after the close of each fiscal year to the fiscal committee of the

general court all transfers accomplished under the provisions of this section. The provisions of this section shall not be subject to RSA 9:16-a, RSA 9:17-a, and RSA 9:17-c.

N.H. R.S.A. § 176:17. Purchases by the Liquor Commission.

The liquor commission shall purchase all liquor, wine, and beverages from primary sources. For the purposes of this title, primary source means the manufacturer or producer, whether or not it is within the state. If a primary source is not available, the commissioner may, if he or she feels it is in the best interests of the state, allow an exemption and shall explain why such exemption has been allowed.

N.H. R.S.A. § 176:18. Contracts Entered into by the Liquor Commission.

Contracts in excess of \$10,000 made or entered into by the liquor commission, including but not limited to contracts for warehousing, transportation, and advertising, shall be competitively bid, reviewed by the attorney general, and approved by the governor and council before becoming effective. This section shall not apply to leases of retail stores. If the commission uses competitive bidding, this section shall not apply to design, construction, renovation, relocation, and property management of retail stores, purchase of products for sale in retail stores, purchase of products for sale on a wholesale basis, or purchase of supplies pursuant to RSA 21-I:18, I(b).

New Hampshire Revised Statutes Annotated Chapter 177: State Liquor Stores

N.H. R.S.A. § 177:1. State Stores.

The commission may lease, purchase, and equip, in the name of the state, such stores, state-owned warehouses, supplies as defined in RSA 21-I:11, II(a), and other materials, goods, and services as are necessary for, incidental to, or related to the operation of the liquor commission retail and wholesale operations. The commission may lease, in the name of the state, space in state stores for the purpose of installing automated teller machines. No newly established state store shall be operated within 200 feet of any public or private school, church, chapel, or parish house.

N.H. R.S.A. § 177:3. Store Plan.

The state liquor commission shall develop and maintain a formal written store plan for its retail liquor stores. This plan shall establish goals and policies related to the number, size, and staffing patterns of state operated retail liquor stores to ensure the efficient and effective operation of the state store system. The plan shall be reviewed and revised as necessary and shall include, but not be limited to, policies related to:

I. The operational definition of a marginal store, identification of such stores, and specific plans to consolidate or otherwise improve the profitability of such stores.

II. The optimum size, location, and staffing pattern of stores to maximize their profitability. This shall include a plan to increase use of part-time employees to reduce store personnel costs and a formula for determining appropriate rental payments for leased stores.

III. Plans for the expansion of the existing store system where such expansion is justified.

N.H. R.S.A. § 177:4. Operation of State Stores; Salespersons.

The commission may in its discretion operate stores for the sale of liquor in such cities and towns as shall have accepted the provisions hereof as hereinafter provided, and, subject to the rules of the director of personnel, and within the limits of available appropriations and funds, may employ salespersons to sell liquor in said stores. Any salesperson employed for any store shall have been a resident of the state for at least 6 months prior to such employment. The salaries of such salespersons shall not be governed by the amount of sales. No salesperson employed to sell liquor under the provisions of this chapter shall sell liquor except such as may be legally obtained under the provisions of this title.

N.H. R.S.A. § 177:6. Liquor Dispensed Only Through Commission.

Except as provided in RSA 178:8, II and RSA 178:27, no liquor shall be sold in any state store, nor by any sales agent, nor by any person holding an on-premises or off-premises retail license under RSA 178, except that obtained from the commission.

N.H. R.S.A. §177:9. Agency Liquor Stores.

The commission may license persons to operate agency liquor stores on an annual or seasonal basis for the purposes of selling liquor in sealed bottles, containers or original packages to be consumed off the premises.

N.H. R.S.A. § 177:10. Rulemaking.

The commission shall adopt rules approved, under RSA 541-A, relative to the selection and operation of agency liquor stores. These rules shall apply equally to all stores, except those generally licensed under RSA 177:14 and shall include, but shall not be limited to the following:

- I. Location of agency liquor stores.
- II. The handling and sale of liquor.
- III. Storage facilities for liquor.
- IV. Hours of operation.
- V. The separation of liquor from other merchandise in the agency liquor stores.

VI. The size and nature of the facilities of agency liquor stores for different quantities of liquor to be sold.

VII. The definition of terms used in rulemaking for agency liquor stores.

VIII. Operation of agency liquor stores.

IX. Discount and compensation.

X. Closure and vacancy of agency liquor stores.

XI. Advertising and promotion.

XII. Pricing of liquor.

XIII. Selection of agency liquor stores.

XIV. Selection of applicant for agency liquor stores.

XV. Renewal of agency liquor stores.

XVI. Industry interest.

XVII. Applicants, stores, and employees.

XVIII. Special seasonal agency liquor stores.

N.H. R.S.A. § 177:11. Location of Agency Liquor Stores.

I. The commission may license an agency liquor store only when the following requirements are met:

(a) The proposed agency liquor store is located in a municipality which has voted in favor of the operation of state liquor stores under RSA 175:7.

(b) The proposed agency liquor store is located in a municipality where there is no state liquor store.

(c) The proposed agency liquor store shall not be within 10 road miles of an existing state liquor store or an existing agency liquor store.

II. The commission may not replace a state liquor store which closes with an agency liquor store, unless the state liquor store was closed under the provisions of RSA 177:2.

III. In the event that a proposed agency liquor store will replace a state liquor store, the commission shall make reasonable efforts to provide state employees other positions, if available.

III-a. In determining the location of a proposed agency store, the commission shall consider its effect on the economy, availability of liquor, and customers within the surrounding relevant market. For the purposes of this section, "surrounding relevant market" means the geographic area that is reasonably intended to be served by the agency store.

IV. The commission shall issue a license for an agency liquor store within a municipality by the following procedure:

(a) The commission shall, in accordance with RSA 541-A, give public notice that agency liquor stores may be established in a particular municipality to serve persons located in that municipality and in the surrounding relevant market. The public notice shall identify the surrounding relevant market that the agency store is intended to serve and all municipalities, or portions thereof, included therein. A copy of the public notice shall at the same time be forwarded by certified mail by the commission to the governing body of the municipality in which the agency store may be established and to the governing bodies of any additional municipalities located, in whole or in part, in the surrounding relevant market that the agency store is intended to serve. The commission shall request all parties in the municipality, interested in establishing an agency liquor store there, to apply to the commission.

(b) The commission shall provide all applicants with the necessary information for the establishment of agency liquor stores.

(c) Upon receipt of all applications for agency liquor stores licenses in a municipality, the commission shall notify the governing body of that municipality and the governing bodies of any additional municipalities located, in whole or in part, in the surrounding relevant market of the proposed location of each applicant and shall suspend all action on such applications for 30 days in order to allow the affected municipalities and any other interested person to submit written comments to the commission on the proposed location of a new agency store in a municipality.

(d) Upon the written request of the governing body of the municipality in which the proposed agency store may be located, or of the governing body of any municipality located in the surrounding relevant market as identified by the commission, that is received by the commission within 14 days of the date of the public notice forwarded to such a municipality under subparagraph (a), the commission shall in accordance with RSA 541-A publish notice and schedule a hearing on the proposed location of an agency store in such municipality. Any public hearing shall be held within 45 days of the close of the public comment period in the municipality in which the agency store may be located.

(e) The commission shall provide written notice by certified mail to all applicants, to the governing body of the municipality in which the agency store is to be located, and to the governing body of any other municipality located in the surrounding relevant market of the final selection of an applicant or applicants, and shall provide any applicant denied a license written notification of the reasons for the denial by certified mail to the mailing address given by the applicant in the application for an agency liquor store license.

(f) The commission shall issue a license to all persons qualifying under the commission's rules.

V. Any applicant aggrieved by a decision made by the commission may appeal the decision in accordance with RSA 541. For purposes of rehearing and appeal, the date of the written notice of final selection of an applicant or applicants shall constitute the decision of the commission.