HB 612-FN - AS INTRODUCED

2023 SESSION

23-0331
08/04

HOUSE BILL ***612-FN***

AN ACT relative to the fees for New Hampshire wine manufacturers.

SPONSORS: Rep. Potucek, Rock. 13; Rep. J. Nelson, Rock. 13; Sen. Birdsell, Dist 19

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill:

I. Allows wine manufacturers to give a bottle as a sample under certain conditions.

II. Changes the fee and tax structure on wine sold in state.

III. Exempts a certain volume of wine from taxes for home use.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 612-FN - AS INTRODUCED

23-0331
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the fees for New Hampshire wine manufacturers.

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

1 Wine Manufacturer License. Amend RSA 178:8, III-IV to read as follows:

III. Each wine manufacturer shall have the right to sell at retail or wholesale at its winery, and at retail at one wine manufacturer retail outlet, for off-premises consumption any of its wines. The wine manufacturer shall pay an annual fee of $216 to the commission for the wine manufacturer retail outlet. The wine manufacturer may transport wines it manufactures to its wine manufacturer retail outlet for sample or sale. Visitors of legal drinking age at the manufacturing location or wine manufacturer retail outlet may be provided with samples of wine manufactured by the licensee in this state for tasting. A wine manufacturer may either provide samples for free or for a fee which shall be limited to one 2-ounce sample per label or one [~~5~~] ***6***-ounce glass per person. At such times as food is available, a wine manufacturer may serve no more than 2 [~~5~~] ***6***-ounce glasses per person ***and full, opened bottles of wine to groups of 2 or more persons of legal drinking age*** in any areas approved by the commission. ***Notwithstanding any other provision of law, opened and unfinished bottles of wine provided as samples by the wine manufacturer may be packaged for transport from the premises, provided that the person is not in a state of intoxication as defined in RSA 507-F:1, IV and the bottle is removed and transported by being securely sealed and bagged by the manufacturer, either to be in conformance with any applicable local open container law for those patrons on foot, or transported as required by RSA 265-A:44, in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottles may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.*** For the purpose of this section, food and non-alcoholic beverages may be provided by a properly-licensed third party food vendor, prepared on or off the premises. Pursuant to rules adopted by the commission, a wine manufacturer may transport its products to a farmers' market or a wine festival licensed under RSA 178:31, and may sell such products at retail in the original container.

IV. Each wine manufacturer shall maintain records and prepare reports for the commission which shall indicate the [~~sales made under this section~~] ***number of gallons of wine sold within the state*** and shall pay to the commission monthly [~~a fee~~] ***a tax*** equal to [~~5 percent of such sales~~] ***$0.50 per gallon*** on or before the tenth day of the month following the sale. ***Wine sales consumed on premises under paragraph III shall be exempt from such tax and shall be subject to the tax on meals and rooms under RSA 78-A.***

2 New Paragraph; Wine Manufacturer License. Amend RSA 178:8 by inserting after paragraph VIII the following new paragraph:

IX. Wine manufactures may exempt up to 100 gallons per year for a household with one person and up to 200 gallons of wine per year for a household with 2 or more people from the tax in paragraph IV.

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

LBA
23-0331
Revised 1/23/23

HB 612-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the fees for New Hampshire wine manufacturers.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	$0	$0	$0
Funding Source:	[X] General Liquor Fund	[ ] Education	[ ] Highway	[X] Other -

METHODOLOGY:

This bill allows wine manufacturers to give a bottle as a sample under certain conditions, changes the fee and tax structure on wine sold in the State, and exempts a certain volume of wine from taxes for home use.

The Liquor Commission indicates this bill would change RSA 178:8, IV from a fee of 5% of wine sold to a tax of $.50 cents per gallon of wine sold within the State. In 2021 the Liquor Commission collected $367,096 from wine manufacturers based on the 5% of their sales. The Commission estimates in 2021, a tax rate of $.50 per gallon of wine sold would have generated revenue of $47,790, a decrease of $319,306 or 87%. The bill also would exempt wine sales made on a manufacturer's premises which would instead be subject to the meals and room tax. The Commission estimates this change would decrease Liquor revenue by another 1% with an offsetting increase to the meals and rooms tax revenue. In addition, the bill would add a new paragraph which provides that wine manufactures may exempt up to 100 gallons per year for a household with one person and up to 200 gallons of wine per year for a household with 2 or more people from the proposed tax. The Commission assumes this would reduce annual revenue to the Liquor Fund by an additional $450.

AGENCIES CONTACTED:

Liquor Commission

CONSENT CALENDAR

February 2, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Commerce and Consumer Affairs to which was referred HB 612-FN,

AN ACT relative to the fees for New Hampshire wine manufacturers. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Jane Beaulieu

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Commerce and Consumer Affairs**
Bill Number:	**HB 612-FN**
Title:	**relative to the fees for New Hampshire wine manufacturers.**
Date:	**February 2, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The committee heard testimony from small wine manufacturers requesting changes in the fee and tax structures on wine sold in-state and exemptions for a certain volume of wine from taxation. The Liquor Commission does not support the request at this time. In addition, a fiscal note was not provided. For these reasons, the committee recommends this bill as Inexpedient to Legislate.

Vote 20-0.

Rep. Jane Beaulieu
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Commerce and Consumer Affairs

HB 612-FN, relative to the fees for New Hampshire wine manufacturers. **INEXPEDIENT TO LEGISLATE.**

Rep. Jane Beaulieu for Commerce and Consumer Affairs. The committee heard testimony from small wine manufacturers requesting changes in the fee and tax structures on wine sold in-state and exemptions for a certain volume of wine from taxation. The Liquor Commission does not support the request at this time. In addition, a fiscal note was not provided. For these reasons, the committee recommends this bill as Inexpedient to Legislate. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

LBA
23-0331
Revised 1/23/23

HB 612-FN FISCAL NOTE
AS INTRODUCED

AN ACT relative to the fees for New Hampshire wine manufacturers.

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AGENCIES CONTACTED:

Liquor Commission

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB612-FN Date: 1/25/23

Committee: Commerce

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con

House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill HB612 on 2023-01-25

Support: 1 Oppose: 0 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Medeiros, Jesse	Plainfield, NH bgtrck458@gmail.com	A Member of the Public	Myself	Support	No	No	1/23/2023 11:22 AM

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 612-FN

BILL TITLE: **relative to the fees for New Hampshire wine manufacturers.**

DATE: **January 25, 2023**

LOB ROOM: **302-304** **Time Public Hearing Called to Order:** **10:35 a.m.**

Time Adjourned: **10:50 a.m.**

Committee Members: Reps. Hunt, Ammon, Beaulieu, Potucek, Terry, Post, Cole, Porcelli, Thackston, L. Walsh, Burroughs, Herbert, McAleer, Vincent, Filiault, Gibbs, Spier and J. Sullivan

Bill Sponsors:
Rep. Potucek **Rep. J. Nelson** **Sen. Birdsell**

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Potucek Introduced the Bill

*Kristin Appolo - Appolo Vineyards, Derry NH - Supports

Mark Armagarian and Matthew Culvert - NHL Commission
- What is the intent of sampling
- Sounds like a wine bar
- The vineyard can apply for a license to operate a restaurant & bar

Respectfully Submitted,

Rep jane Beaulieu, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 612-FN

BILL TITLE: relative to the fees for New Hampshire wine manufacturers.

DATE: February 1, 2023

Subcommittee Members: Reps. Hunt, Beaulieu, Osborne, Potucek, L. Walsh, Burroughs, Vincent and J. Sullivan

Comments and Recommendations:

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Rep. Beaulieu Seconded by Rep. Rep. J. Sullivan Vote: 7-0

Respectfully submitted,

Rep. John Hunt
Subcommittee Chairman

Testimony on House Bill 612-FN
Mike Appolo, Appolo Vineyards, Derry NH

Thank you for hearing my testimony today. I could not be there in person, so I've asked my daughter Kristen to read this testimony. I am asking that you hear and understand this with an open mind towards supporting local farming.

I realize some education is in order. Because the taxation and fee structure levied on wine producers is spread across multiple RSAs, many of my representative with whom I've discussed this legislation were unaware of the implications of the current law. One of the details is obfuscated in the current law by calling excise tax a "5% fee" in the RSA.

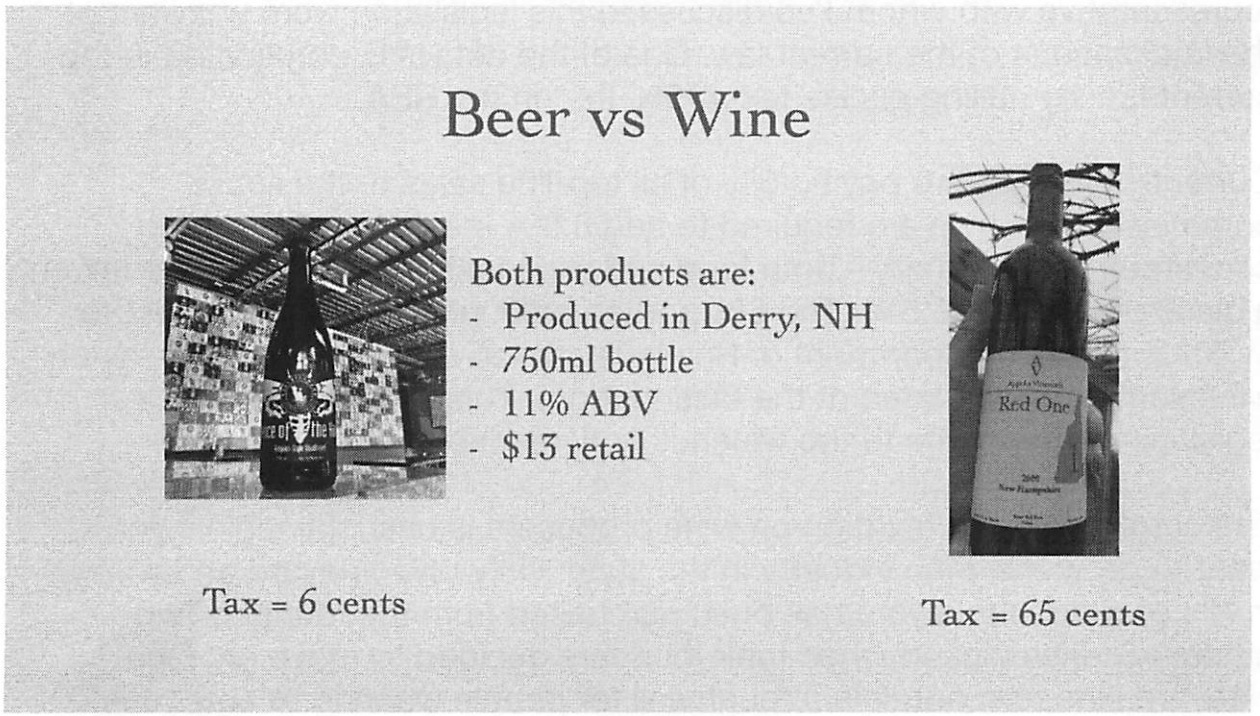
Currently wineries are paying 5% of all top-line sales to the liquor commission, and we are required to add 8.5% meals tax to anything consumed at the winery - both food and wine tastings. This sets the tax on a glass of wine at 13.5%. The 5% portion amounts to a hidden sales tax. In 2012, the NH Department of Revenue started demanding meals tax on wine samples consumed at the tasting room. This was without any legislation or recourse to the wineries now required to pay it.

The current state of taxation on wine producers is unsustainable if you want to grow the wine industry in the state. Only one vineyard and winery in NH of which I'm aware has been purchased from the founder. Two others wineries closed when their founders decided to move on. One vineyard was torn out. It is a tough sell for people wanting to enter this business.

The brewery business by contrast is thriving in the state because they are taxed at reasonable level. Does this mean we should tax breweries more? Definitely Not! They are providing full time employment for hundreds of people. If you eliminate winery catering and restaurant jobs, I would estimate between 50 and 75 full time employees are employed in NH wineries. Many of these are the owners themselves. I am the only full time person at my winery.

Also, by contrast, no significant raw materials for beer are grown in NH. Planting of wine grapes are expanding every year. The founders of several

of the largest wineries in the state have paved the way with wine styles and grape varieties that can grow here and support viable businesses. All of the varieties on my farm are grown without chemical sprays. In fact our winery was recognized recently as the first Sustainable Craft Beverage Winery in NH by the NHDES due to our environmental practices.
Some of this inequity between beer and wine has come about because the current RSAs for the wine industry are spread across multiple sections of RSA 178. The fee and tax schedule should be rationalized and made equitable for similar alcoholic beverages. Taxes should be listed as taxes. The RSA 178:8 "5% fee" is actually an excise tax.



For example, a 750ml bottle of beer at 11% alcohol by volume sold at $13 produced at a brewery in Derry is taxed at 6 cents. A 750ml bottle of wine at 11% alcohol by volume sold at $13 is taxed at 65 cents. The wine is grown on the same property as the winery, by the way. Wine is taxed as a percentage of bottle price. Beer is taxed by volume. You can see the more than 10x discrepancy in tax in the graphic. Our current most expensive wine ($30) has $1.50 in excise tax.

I would like to refer you to **RSA 425:2-a The Granite State Farm to Plate Food Policy and Principles**. Quotes:

> "Agriculture in New Hampshire represents a vital part of both the state's rural and urban economies and the larger food systems that connect it with the state's local and regional economies and the public."
>
> "Support of local food economies is vital to public health of our residents and to the viability and livability of our communities."
>
> "Recognizing that a broad array of entities and organizations are already working together to promote New Hampshire local and regional food systems and participants, including agricultural producers, processors, distributors, and consumers, the input of such groups is vital to the construction of a more diverse and productive set of New Hampshire food systems."

The legislature has gone to great lengths to support the NH dairy industry while significantly taxing the NH wine industry. Both wine growing and dairy businesses are agriculture. The tax structure in place for wine is weighing down an emerging business.

Wine is known worldwide as a prime agricultural product most able to reflect the place in which it has grown. It is a source of agri-tourism that brings thousands of people into our state. These agri-tourists spend money in restaurants, fueling stations, and other shops. And yes, they stop at the NH Liquor and Wine Outlets as well while they are here. Several NH wineries (including mine) have received international medals on wines grown and produced here. We are getting recognized.

I estimate that vineyards plantings planned this year in Rockingham county should increase by 20 or more acres. The founders of several of the older existing wineries have paved the way by figuring out what will grow here and what will sell as wines. Our best producing grape in Derry produces 5.5 tons of grapes per acre.

Grapevines are a perennial plant that sequesters carbon in the soil. It is a clean, green business. The public is thirsty for locally grown wines. I am

actively working with local fruit farmers to plant the varieties of grapes I can use to turn into wines. Increased production means more jobs for both farm and winery, lower carbon usage for wine production, and development of full career fields within the state. Carbon usage is decreased when grapes are grown closer to where they are turned into wine.

My daughters grew up on my farm in Derry. They helped to plant the grapevines there, and now both have part time jobs working in the winery. My daughter Kristen manages the office, Michaela is the assistant winemaker. My hope is that this business becomes multi-generational. This is a very difficult "sell" to the younger generation when it is taxed like no other business.

In other states, wine excise tax is levied by volume. In California, still wine is taxed at 20 cents per gallon and 30 cents per gallon for sparkling wines. Federal excise tax on wine for small producers is only 7 cents per gallon for still wine. My annual federal excise tax bill for wine is only about 20% of my current annual NH excise tax.

And because I cannot be at this testimony, I'm sure there will be some discussion of wineries competing with the NH Liquor and Wine Outlets. This is nothing new. The NH Liquor Commission is simultaneously:

- Our liquor and wine licensing agency
- Our liquor and wine enforcement agency
- Our largest competition
- Our largest wholesale account

Our winery currently has 4 wines distributed by the NH Liquor and Wine Outlets (NHLWO). For wines sold to the NHLWO stores, we give the commission a discount (margin of approximately 30% of the bottle price). There is no excise tax on wines sold to the Liquor Commission. There is no possible way for the NH Liquor Commission to list and distribute all of the wines sold in the state.

I'm sure there will be some discussion of direct shipment of wines into the state. All wineries selling and shipping directly to consumers into NH are required to have a NH Direct Shipper License. Wineries outside the state who ship direct are already required to pay a higher "fee" to the NH Liquor

Commission than NH wineries. Many of those same wineries are subject to excise tax in their own states, albeit at much lower rates than NH levies.

Having current limits of consumption in the RSA are not constructive. We are all now required to have food in order to serve more than a single wine by the glass. We have 15 wines on our menu. We could legally serve 2oz of each wine to a single person as a "tasting". That is 30oz of wine, more than a bottle. We would never do such a thing.

The staff is trained not to over serve customers and turn away intoxicated people arriving at the winery. It is the responsibility of each owner to ensure the rules are followed - the key one being that customers are not over served. Customers often arrive at our winery and have already been over served elsewhere. We turn them away and offer to call them an Uber or produce a designated driver. If you read our one star Google reviews, you'll see how unhappy some of them are. The limits should be reasonable ones - Two 6oz glasses of wine or a bottle for two people. Nearly identical pours of wine for a couple on a date. For people enjoying a farm setting such as ours, this makes them repeat customers.

I realize I haven't touched on some of the issues within HB 612 and also believe others should be discussed.

So to summarize my requests:

- Call a tax a tax. In the RSA, excise tax is currently called a 5% fee. NHLC auditing web page uses the term tax on their web page.
- Eliminate the double taxation on samples (any wine served) by removing the excise tax paid to the NHLC in favor of the Meals Tax
- Allow for couples or larger groups to enjoy a bottle of wine at a winery - to be at parity with neighboring states, especially MA
- Drop the excise tax on wine make it equitable with the brewing industry. Even $.50 / gallon is much lower than we are paying. 5% of top line sales is a hidden sales tax. The lower the number, the better.
- Exempt wine removed from bond for family use to be at parity with federal law

Other changes that were not included in the current draft bill:

- Please rename "Wine Manufacturer" to "Winery" in the RSAs
  - One must ferment wine in the state in order to bottle it or sell it. This is different than liquor manufacturer which is a very different sort of business. (For example Fabrizia brings in vodka and makes limoncello)
  - NH law is the only place I can find that calls a winery "wine manufacturer"
  - Federal regulators call my winery a winery
  - Everywhere else in the world a winery is a winery
- Move all fees and taxes into the wine law (RSA 178:8), labeling them appropriately

By supporting this legislation, you will be supporting NH farms and families.

Thank You.

Sincerely,

Mike Appolo
Appolo Vineyards
49 Lawrence Rd
Derry, NH 03038

Kate Frey

New Futures opposes the bill because of the increase in limits of sample sizes.

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 612-FN

BILL TITLE: relative to the fees for New Hampshire wine manufacturers.

DATE: February 2, 2023

LOB ROOM: 302-304

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Beaulieu Seconded by Rep. J. Sullivan Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jane Beaulieu, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:24:24 PM
Roll Call Committee Registers Report

2023 SESSION

Commerce and Consumer Affairs

Bill #: HB612-FN Motion: ITL AM #: _____ Exec Session Date: _____

Members	YEAS	Nays	NV
Hunt, John B. Chairman	✓		
Ammon, Keith Michael Vice Chairman	✓		
Osborne, Jason M.	✓		
Potucek, John M.	✓		
Terry, Paul A	✓		
Post, Lisa C.M.	✓		
Cole, Brian D	✓		
Porcelli, Susan M	✓		
Thackston, Dick H	✓		
Walsh, Lilli M	✓		
Burroughs, Anita D.	✓		
Herbert, Christopher J.	✓		
Beaulieu, Jane E. Clerk	✓		
McAleer, Chris R.	✓		
Vincent, Kenneth S.	✓		
Calabro, Karen E	✓		
Filiault, Shaun M	✓		
Gibbs, Merryl	✓		
Spier, Carry	✓		
Sullivan, Jared	✓		
TOTAL VOTE:	20	0	