Senate Commerce
March 4, 2025
2025-0734s
07/09

Amendment to SB 80-FN

Amend the bill by replacing section 1 with the following:

1 Notice to Liquor Commission. Amend RSA 78:23 to read as follows:

78:23 Notice to Liquor Commission. The commissioner shall provide notice to the liquor commission of ***a violation of this chapter by*** a retailer***,*** [~~whose license has been suspended or revoked by the commission~~] ***wholesaler, or manufacturer that results in an assessment, penalty, seizure, suspension or revocation.***

Amend RSA 178:19-a, VIII as inserted by section 6 of the bill by replacing it with the following:

VIII. Each retailer shall keep complete and accurate records of all tobacco products bought and sold in this state. Complete records shall be safely preserved for 3 years to ensure permanency and accessibility for inspection by the liquor commission.

Amend RSA 178:19-e, I as inserted by section 7 of the bill by replacing it with the following:

I. No tobacco products manufacturer shall engage in the business of selling or distributing tobacco products, including e-cigarettes, in this state, unless it is registered with the secretary of state, it has obtained a tobacco tax certificate from the department of revenue administration, and it is licensed as a tobacco products manufacturer in this state, as applicable.

Amend RSA 178:19-e, IV as inserted by section 7 of the bill by replacing it with the following:

IV. Each manufacturer shall keep complete and accurate records of all tobacco products manufactured, produced, imported, distributed, bought, and sold in this state. Complete records shall be safely preserved for 3 years to ensure permanency and accessibility for inspection by the liquor commission.

Amend RSA 178:19-f, I as inserted by section 7 of the bill by replacing it with the following:

I. No tobacco products wholesaler shall engage in the business of selling or distributing tobacco products, including e-cigarettes, in this state, unless it is registered with the secretary of state, it has obtained a tobacco tax certificate from the department of revenue administration, and it is licensed as a tobacco products wholesaler in this state, as applicable.

Amend section 7 of the bill by inserting after RSA 178:19-g the following new section:

178:19-h Notice to Department of Revenue Administration. The commissioner shall provide notice to the department of revenue administration of a violation of RSA 178:19-a, 178:19-b, 178:19-c, 178:19-e, or 178:19-f by a retailer, wholesaler, or manufacturer that results in an assessment, penalty, seizure, suspension or revocation.

Amend the bill by replacing all after section 9 with the following:

10 New Paragraph; Suspension or Revocation. Amend RSA 179:57 by inserting after paragraph I-a the following new paragraph:

I-b. License suspension for a violation of RSA 78:26 shall be as provided in RSA 78:26, VII.

11 Tobacco Tax; Licenses and Tobacco Tax Certificates Required. Amend RSA 78:6 - 78:9 to read as follows:

78:6 Licenses ***and Tobacco Tax Certificates*** Required.

I. No manufacturer or wholesaler shall engage in the business of selling or distributing tobacco products in this state, unless registered with the secretary of state***,*** [~~and~~] licensed as a manufacturer or wholesaler in this state ***under RSA 178 and holding a tobacco tax certificate issued under this chapter***, as applicable.

II. No retailer or sampler shall engage in the business of selling or distributing tobacco products in this state, unless licensed to sell or distribute tobacco products under RSA 178.

III. A wholesaler shall have a separate license ***and tobacco tax certificate*** for each location.

IV. The fees for [~~licenses and license~~] ***tobacco tax certificates and tobacco tax certificate*** renewals shall be:

(a) $100 for a manufacturer's [~~license~~] ***tobacco tax certificate***; and

(b) $250 for a wholesaler's [~~license~~] ***tobacco tax certificate***.

V. Each license ***and tobacco tax certificate*** shall be prominently displayed in the premises described in it.

VI. Licenses ***and tobacco tax certificates*** shall not be transferable.

VII. Any wholesaler or manufacturer that ceases business operations requiring a license ***or tobacco tax certificate*** under this chapter during the license ***or certificate*** period shall inform the department in writing and relinquish its license ***to the liquor commission and its tobacco tax certificate*** to the department within 30 days after ceasing business operations.

VIII. Each manufacturer, wholesaler, sampler, and retailer shall keep complete and accurate records of all tobacco stamps purchased and all tobacco products manufactured, produced, imported, distributed, bought, and sold in this state. Complete records shall be safely preserved for 3 years to insure permanency and accessibility for inspection by the commissioner.

IX. Any person who sells, offers for sale, or possesses with intent to sell in this state any tobacco products without the appropriate license ***and tobacco tax certificate***, as provided in this section or RSA 178, shall be subject to criminal penalties as provided in RSA 21-J:39.

X. Notwithstanding RSA 21-J:14, information regarding [~~licenses~~] ***tobacco tax certificates*** issued pursuant to this section, ***licenses issued pursuant to*** RSA 178 [~~as it pertains to licenses for the retail sale of tobacco products~~], and RSA 126-K[~~,~~] shall be public records.

78:7 Tobacco Product Sales Between Licensees ***and Certificate Holders***.

I. No manufacturer or wholesaler shall sell tobacco products in this state to any manufacturer, wholesaler, retailer, or sampler that does not possess an appropriate [~~license~~] ***tobacco tax certificate*** issued by the commissioner [~~or~~] ***and license issued*** by the liquor commission under RSA 178.

II. A manufacturer shall sell tobacco products, without indicia of tax paid under RSA 78:10 or RSA 78:14, as applicable, only to a wholesaler licensed by this state.

III. A wholesaler shall purchase tobacco products, without indicia of tax paid under RSA 78:10 or RSA 78:14, as applicable, only from a manufacturer or wholesaler licensed by this state ***under RSA 178 and holding a tobacco tax certificate issued under this chapter***.

IV. A wholesaler shall sell tobacco products to a retailer or sampler in this state only if it provides indicia of tax paid under RSA 78:10 or RSA 78:14, as applicable, to the purchaser ***under RSA 178 and holding a tobacco tax certificate issued under this chapter***.

V. No retailer or sampler shall purchase tobacco products without indicia of tax paid under RSA 78:10 or RSA 78:14, as applicable. A retailer shall not sell tobacco products without indicia of tax paid under RSA 78:10 or RSA 78:14, as applicable.

VI. A retailer shall neither purchase tobacco products from nor sell tobacco products to another retailer, unless the purchase or sale is a one-time transfer of the seller's entire tobacco product inventory and the seller discontinues the tobacco line of business. The selling retailer shall return its license to the liquor commission and shall file an inventory of the tobacco products transferred, along with indicia of tax paid, with the department, within 30 days of the transfer of the tobacco products.

VII. Any person who violates a provision of this section may be subject to tobacco products seizure and license suspension or revocation under this chapter, and criminal penalties under RSA 21-J:39.

78:8 [~~License~~] ***Tobacco Tax Certificate*** Application and Renewal.

I. Manufacturers and wholesalers intending to engage in the business of selling or distributing tobacco products in this state shall apply to the department providing the applicable fee as provided in RSA 78:6, IV, and all information required by the commissioner through rules adopted under RSA 541-A.

II. [~~Licenses~~] ***Tobacco tax certificates*** shall expire on June 30 in each even-numbered year.

III. Manufacturers and wholesalers in good standing with the department may renew their [~~licenses~~] ***tobacco tax certificates*** upon application and payment of the applicable fees. A manufacturer or wholesaler is not in good standing with the department if the manufacturer or wholesaler is delinquent in its payment of applicable fees, fines, or penalties resulting from violations of this chapter, delinquent in its payment of any taxes, penalties, or interest due under any tax administered by the department, or delinquent in its payment of applicable fees, fines, or penalties resulting from violation of RSA 126-K.

78:9 Denial of [~~License~~] ***Tobacco Tax Certificate*** Application.

I. The commissioner may deny a manufacturer's or wholesaler's application for a [~~license~~] ***tobacco tax certificate***, for any of the following reasons:

(a) The applicant's [~~license~~] ***tobacco tax certificate*** was revoked by the commissioner under RSA 78:20.

(b) The commissioner believes that the application is filed by a person as a subterfuge for the real person in interest whose [~~license~~] ***tobacco tax certificate*** was revoked by the commissioner under RSA 78:20.

(c) The applicant, or a person or entity that owns or has a right to control any interest in the applicant, is not in good standing with the department as described in RSA 78:8, III.

(d) The applicant, or a person or entity that owns or has a right to control any interest in the applicant, has been convicted of a crime provided for in this chapter, or in any other state for a crime related to tobacco tax, within a 2-year period prior to the date on which the application is filed.

(e) The applicant, or a person or entity that owns or has a right to control any interest in the applicant, has been convicted of a crime involving theft or fraud in this state or any other state, within a 2-year period prior to the date on which the application is filed.

(f) The commissioner, pursuant to rules adopted under RSA 541-A, determines that the applicant, or a person or entity that owns or has a right to control any interest in the applicant, is not financially responsible or otherwise not a suitable person to manufacture, or purchase or sell tobacco products at wholesale, in this state.

II. The commissioner shall notify the applicant of the denial in writing.

III. An applicant aggrieved by the denial of a license may petition for redetermination or reconsideration within 60 days after the commissioner issues the notice of denial in accordance with the procedures provided in RSA 21-J:28-b.

12 Indicia of Tax Paid-Cigarettes; Stamps. Amend RSA 78:10, V to read as follows:

V. A wholesaler or vending machine operator licensed under RSA 178 ***and holding a tobacco tax certificate*** may possess, with an intent to sell, cigarettes or little cigars bearing a foreign state's tax stamp or indicia only if the licensee is currently and legitimately doing business in that state.

13 Indicia of Tax Paid - Other Tobacco Products. Amend RSA 78:14, III to read as follows:

III. Indicia of tax paid includes, but is not limited to, all invoices from all wholesalers purchased from within the preceding 24 months. At a minimum, invoices shall contain the names and addresses of the seller and the purchaser, the license ***and tobacco tax certificate*** numbers of the seller and purchaser, the date of purchase of the product, the type and brand of each product, the quantity of each product, the purchase price of each product, and an affirmative statement from the wholesaler that all taxes on the product have been paid.

14 Enforcement; Documentation Required. Amend RSA 78:15, IV-VII to read as follows:

IV. Wholesalers, retailers, and samplers shall maintain their statements and records at the places of business identified in their [~~licenses~~] ***tobacco tax certificates*** for a period of 12 months from the date of manufacture, purchase, acquisition, or sale, whichever is later.

V. The records required of wholesalers shall include a written statement containing:

(a) The name and address of both the seller and the purchaser;

(b) The date of delivery;

(c) The quantity of tobacco products;

(d) The trade name and brand of the tobacco products;

(e) The price paid for each brand of tobacco products purchased; and

(f) Any other records or statements as the commissioner may reasonably require.

VI. Every manufacturer and wholesaler shall deliver with each sale or distribution of tobacco products a written statement, and retain a duplicate, containing:

(a) The name or trade name and address of both the seller and the purchaser;

(b) The date of delivery;

(c) The quantity of tobacco products; and

(d) The trade name or brand of the tobacco products, correctly itemizing the prices paid for each brand of tobacco products purchased.

VII. No [~~licensee~~] ***tobacco tax certificate holder*** shall issue or accept any written statement that the [~~licensee~~] ***certificate holder*** knows to contain any statement that falsely indicates the name of the customer, the type of merchandise, the prices, discounts, or the terms of sale. Nor shall any [~~licensee~~] ***certificate holder*** insert, in any invoice given or accepted, any statement that makes the invoice a false record of the transaction it represents. Nor shall any [~~licensee~~] ***certificate holder*** give or accept any invoice that withholds statements so that the invoice does not truly reflect the transaction it represents.

15 Enforcement; Suspension; Revocation; Penalties; Reinstatement. Amend RSA 78:19 - 78:22 to read as follows:

78:19 Administrative Hearings on [~~License~~] ***Tobacco Tax Certificate*** Suspension or Revocation and Seizure and Forfeiture of Contraband Tobacco Products.

I. Within 10 days after a seizure of tobacco products under RSA 78:18, the commissioner shall schedule and notice a hearing at which the owner shall have an opportunity to show cause as to why the seizure was inappropriate.

II. To suspend or revoke a [~~license~~] ***tobacco tax certificate*** under RSA 78:20, the commissioner shall provide the [~~licensee~~] ***certificate holder*** with notice and a hearing at which the [~~licensee~~] ***certificate holder*** shall have an opportunity to show cause as to why the suspension or revocation is inappropriate.

III. The commissioner shall issue a final order in writing following a hearing under paragraph I or II.

IV. Within 30 days of the notice of a final order by the commissioner, the [~~licensee~~] ***certificate holder***, owner, or other person, as applicable may appeal the final order by written application to the board of tax and land appeals. The board of tax and land appeals shall hear the appeal de novo.

78:20 Suspension or Revocation of [~~License~~] ***Tobacco Tax Certificate***.

I. The commissioner, after notice and hearing under RSA 78:19, may suspend for a period of time not to exceed 90 days, or revoke any [~~license~~] ***tobacco tax certificate*** issued under this chapter or [~~RSA 178 as it relates to licensure for the retail sale or sampling of tobacco products,~~] or uphold the denial of a [~~license~~] ***tobacco tax certificate*** for any one of the following reasons:

(a) The [~~licensee~~] ***certificate holder*** fails to file any return or report required by this chapter.

(b) The [~~licensee~~] ***certificate holder*** files a return, report, or affidavit required by this chapter, which is false.

(c) The [~~licensee~~] ***certificate holder*** fails to collect, truthfully account for, or pay over any tax due under this chapter.

(d) The [~~licensee~~] ***certificate holder***, or a person or entity that owns or has a right to control any interest in the [~~licensee~~] ***certificate holder***, has been convicted of, or has admitted to sufficient facts to support a finding of guilt of, any violation under this chapter, any violation under federal law where the conduct underlying the conviction or admission relates to tobacco products, or any violation of law involving dishonesty or fraud, within a 5-year period in the case of a misdemeanor or within a 10-year period in the case of a felony.

(e) Tobacco products without indicia of tax paid have been seized from the licensee's business premises and held by the department as contraband on one or more occasions during a 5-year period.

(f) The [~~licensee~~] ***certificate holder*** has refused to permit, hindered, or obstructed an examination, investigation, or search authorized under RSA 78:16.

(g) The [~~licensee~~] ***certificate holder***, or a person or entity that owns or has a right to control any interest in the [~~licensee~~] ***certificate holder***, is not a suitable person for licensure in New Hampshire, as determined by the commissioner pursuant to rules adopted under RSA 541-A.

(h) The certificate holder has had a license issued under RSA 178 suspended or revoked.

II. [~~License~~] ***Tobacco tax certificate*** suspension for a violation of RSA 78:26 shall be as provided in RSA 78:26, VII.

78:21 Administrative Penalties.

I. Administrative penalties for violation of RSA 78:26 shall be in accordance with RSA 78:26, VII.

II. In addition to, or in lieu of, a period of [~~license~~] ***tobacco tax certificate*** suspension, the commissioner may assess an administrative fine against any wholesaler who satisfies RSA 78:2, III, who has sold tobacco product without indicia of tax paid, or against any retailer who has purchased tobacco products without indicia of tax paid, as follows:

(a) First offense-$500.

(b) Second offense-$1,500.

(c) Third offense-$5,000.

78:22 Reinstatement After Revocation. The commissioner may reinstate a revoked [~~license~~] ***tobacco tax certificate*** if he or she is satisfied that the former [~~licensee~~] ***certificate holder*** will comply with the provisions of this chapter.

16 New Paragraph; Importation of Certain Tobacco Products Prohibited; Federal Requirements; Cigarettes and Other Tobacco Products; Placement of Labels; Penalty; Definition of License. Amend RSA 78:26 by inserting after paragraph IX the following new paragraph:

X. In this section, "license" means a license issued under RSA 178 and the tobacco tax certificate issued under this chapter.

17 Tobacco Tax; Rulemaking; Tobacco Tax Certificates. Amend RSA 78:27 to read as follows:

78:27 Rulemaking.

The commissioner shall adopt rules under RSA 541-A relative to the following:

I. The use, purchase, and purpose of tobacco stamps.

II. [~~License~~] ***Tobacco tax certificate*** application processes.

III. Documentation required to be maintained by [~~licensees~~] ***tobacco tax certificate holders***.

IV. Application of credits and refunds for taxes paid on other tobacco products.

V. Roll-your-own tobacco.

VI. Refund process for stamps on outdated, damaged, or unsaleable cigarettes.

VII. Documentation and filing requirements for [~~licensees~~] ***tobacco tax certificate holders*** with regard to the Master Settlement Agreement.

VIII. [~~Licenses~~] ***Tobacco tax certificates***, forms, reports, and returns.

IX. Hearings procedures.

X. Any other matter necessary to the proper administration and enforcement of this chapter.

18 Effective Date. This act shall take effect July 1, 2025.

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AMENDED ANALYSIS

This bill consolidates licensing, auditing, and enforcement responsibilities for wholesale and retail e-cigarettes sales under the liquor commission. The bill also provides for tobacco tax certificates to be issued by the department of revenue administration and licenses issued by the liquor commission.