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### **REGULATING GROWLERS**

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#### *The Effects of Expanded Retail Licenses*

Prepared for the New Hampshire House Commerce and Consumer  
Affairs Committee

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## **EXECUTIVE SUMMARY**

Growlers, refillable containers used for carrying draft beer, are difficult to regulate. That is because they often violate the current alcohol regulation system that prevents individual actors from participating in multiple points of the production to retail process. As a result, different states permit entities to fill growlers, ranging from only breweries under a certain size, to any licensed liquor retailer. Analysis of other states demonstrates that New Hampshire has comparatively strict growler laws—only entities with a brewpub or manufacturer license can fill the containers. This paper will analyze the potential costs and benefits that would result from less restrictive laws regulating growlers.

## **1. INTRODUCTION AND PURPOSE STATEMENT**

Growlers are reusable containers that may be filled and refilled with beer, thereby allowing consumers to purchase draft beer in larger quantities to be consumed at their leisure. Currently, New Hampshire strictly governs the use of growlers—only certain breweries under a certain size may fill them for consumers. This policy perspective stems from a longstanding set of rules governing alcoholic beverages known as the Three-Tiered System. This system separates the different parts of the beer-making industry, such as bottling or producing and retailing. Another significant contributor is a regulatory landscape made up of “upside down laws.” This classifies products as illegal until they are expressly made legal, which contrasts how government often regulates.<sup>1</sup>

Despite this current regulatory regime, many states, such as Vermont, Washington, and Arkansas, have more permissive growler laws. What results should legislators expect if the state of New Hampshire were to allow businesses with retail liquor licenses to fill growlers? Why have some states chosen to allow retailers to fill growlers? Does it have positive effects for small breweries and the local economy? Do growlers help the beer-related sectors of the economy because they allow small breweries to grow faster since they do not have to invest in expensive canning or bottling facilities? In neighboring Vermont, where growlers are more widely used, these small breweries produce almost three times as much beer as New Hampshire.<sup>2</sup> Do growlers have positive effects on the environment because they reduce waste from beer consumption?

Why have some other states (especially New Hampshire) declined to increase access to growlers? Does the care and cleaning of growlers pose health hazards? Presumably, any bill legalizing their use by retailers would include health and safety standards. What would these regulations entail? Do growlers compromise certain positive aspects of the Three-Tiered System of regulation by combining traditionally separate roles? Do more growlers mean more alcohol-related social problems or decreased tax revenues? Do growlers pose



a quality control issue for brewers? Understanding the potentially adverse consequences of such legislation is equally important.

By closely analyzing the potentially positive impacts of retail growler licenses and comparing them with potential negative consequences, as well as assessing the relevant stakeholders surrounding the issue, this report intends to provide legislators with additional information to make an informed decision about the future of growler retail licenses in the state of New Hampshire.

## **2. BACKGROUND INFORMATION**

To understand the challenges and opportunities that result from the growler industry, an understanding of the history of growlers is critical. Furthermore, analyzing products like propane tanks that are refillable helps provide context for any proposed laws that address the growler industry. To ensure that any modification in growler regulation complies with federal law, studying the three-tiered system is essential. The language of House Bill 353, which would have altered the regulation of growlers, is also relevant.

### *2.1 History of Growlers*

A growler is an airtight jug used for the transportation of beer without diminishing the quality of the beverage. The use of growlers dates back as far as the 1800s when families would transport beer in metal pails from local pubs to homes.<sup>3</sup> The sizzling release of carbonation upon opening the container created a thunderous sound, thus giving it the name “growler.”<sup>4</sup> The Prohibition era and its heavy alcohol regulations, however, caused a decline in the use of growlers as small breweries and pubs were forcefully closed.<sup>5</sup>

The past decade has seen a resurgence of growlers that is directly associated with the increasing attractiveness of craft beer. Today, the containers are typically recognized as sixty-four-ounce amber, green or clear glass containers with a small metal handle at the neck.<sup>6</sup> They may also be found in ceramic, cardboard, and even in stainless steel form for higher prices. Beer enthusiasts enjoy the use of growlers not only for their efficiency in transportation, but also for their ability to uphold the flavor of the beverage.

Moreover, there is a specific culture surrounding growlers. Beer lovers perceive growlers as a method of “collecting” their favorite beers, which may sometimes be limited in production, sale, and distribution. Also, it is not uncommon to bring growlers as a means of thanking a host at a dinner party, for example. It must be noted that the reusable nature of the growler automatically makes it a more environmentally friendly option as opposed to cans and bottles and therefore more attractive to certain consumers.<sup>7</sup>



## *2.2 Other Refillable Containers*

Propane tanks, like growlers, are refillable containers that can be reused for many years, depending on the design. The tanks are cylinders that can either be rented or bought from suppliers. Unlike growlers, propane tanks are largely sold in sizes that hold greater quantities than sixty-four ounces. They serve the purpose of powering appliances ranging from gas grills to entire homes and forklifts.<sup>8</sup>

The state of New Hampshire mandates that propane tank installations and repairs are only performed by those who are licensed to do so.<sup>9</sup> Moreover, there are certain distance from residence requirements, but there are no ownership licenses that restrict consumers from purchasing these tanks. For consumers such as construction professionals, however, credits and rebates are available from certain suppliers for electing to use propane.<sup>10</sup> One consideration is whether growlers should be approached in a similar fashion to propane tanks in that licenses are not limiting factors. Additionally, since growlers are more environmentally friendly offering tax credits for using them versus purchasing cans and bottles is an option policymakers may wish to consider.

## *2.3 The Three-Tiered System*

When the Twenty-First Amendment was ratified on December 5, 1933, the landscape of alcohol regulation changed significantly in the United States.<sup>11</sup> Instead of reverting to the way things were before the passage of the Eighteenth Amendment, the government began a process of building a regulatory apparatus that would eventually become the Three-Tiered System of today.

The piece of legislation most directly responsible for the way alcohol is handled today is The Federal Alcohol Administration Act.<sup>12</sup> The act contained a “tied-house provision,” which sought to prevent vertical integration in alcohol markets.<sup>13</sup> Preventing one entity from controlling the production, distribution, and sale of alcohol was deemed important because of trends in alcohol markets before prohibition. A National Commission on Law Observance and Enforcement, formed to study alcohol laws during Prohibition, found that this vertical integration had adverse economic and political effects.<sup>14</sup> Big businesses began to control a larger share of alcohol sales and either drove local producers and barkeepers out of business or else exerted significant control over them.<sup>15</sup> Liquor corporations also “became politically active,” by bankrolling the campaigns of saloon keepers (many of whom were employed by the corporations).<sup>16</sup> This money, combined with the fact that saloons served as meeting places, created a sort of ‘liquor coalition’ that sometimes “had a corrupting influence on legislation and municipal police.”<sup>17</sup> Understandably, the federal government wanted to prevent this from happening again.



The Three-Tiered System separates the alcohol industry into three different segments: production (which includes importing), wholesale distribution, and retail sales to the final consumers. The Federal Alcohol Administration Act makes it illegal for any entity engaged in one segment of alcohol provision to operate in any of the others.<sup>18</sup> For instance, it is illegal “for any person so engaged [in producing alcoholic beverages] to sell, offer or deliver for sale, contract to sell, or ship” alcoholic beverages.<sup>19</sup> The same applies for all the other possible combinations of the different tiers.

Each clause of the Federal Alcohol Administration Act includes the caveat that it applies only to “interstate or foreign commerce.”<sup>20</sup> The federal government is only allowed to regulate alcohol under the interstate commerce clause, the Twenty-First Amendment otherwise subjects the legality of alcoholic beverages to “the laws thereof” (referring to the individual states)<sup>21</sup> Each state has significant latitude to set its own internal liquor laws, provided none of the commerce crosses state lines.

Given that power, the relationship between liquor laws and the Three-Tiered System varies throughout the states. In “18 control states [including New Hampshire] . . . the government directly controls the distribution of alcoholic beverages.”<sup>22</sup> In some of those states, the state liquor entity ‘violates’ the Three-Tier System by both distributing and retailing alcohol. In New Hampshire, the Liquor Commission does both retail and wholesale business; it operates state liquor stores and distributes all the spirits in those stores.<sup>23</sup> Some, but not all, states also allow breweries below a certain size to retail their products directly to consumers.<sup>24</sup>

Growlers have an odd relationship with the Three-Tiered System because they often involve multiple tiers at once. Arkansas, which has relatively permissive growler laws provides two good examples. In one case, certain classes of brewers can sell growlers directly to retailers, allowing them to occupy the producer and retailer tiers of the system.<sup>25</sup> Even in a situation where a licensed retailer is filling a growler and selling it to a customer, a legal scenario in Arkansas, the retailer is still acting in two tiers.<sup>26</sup> That is because producers are traditionally responsible for ensuring that consumer-bound containers of alcohol are sanitary and properly labeled, a task now falling upon the retailer filling the growler.<sup>27</sup> Because growlers cross the traditional boundaries between the different tiers of the alcohol distribution system, their regulation is less straightforward.



## 2.4 House Bill 353

*“This bill permits a licensee to request a beer specialty license from the Liquor Commission which will allow the licensee to fill and sell standard refillable beer containers (i.e., growlers). Under the proposed bill, if a manufacturer objects to sales of its products in refillable containers from a licensee, the Commission shall notify the licensee, and the licensee shall not be permitted to fill any container with the objecting manufacturer's beer.”*

State representative Kermit Williams, who serves on the Commerce of Consumer Affairs Committee, is the primary sponsor of House Bill 353.<sup>28</sup> In his bill, he vouches for sixty-four-ounce amber glass growlers to be sold in off-premise retail stores that maintain an inventory of at least 200 different beer labels. Along with a \$240 fee, mandatory training regarding the sales, inspection, filling and cleaning of the containers will be enforced. Additionally, the bill includes requirements of tamper-sealing the growlers after filling them as well as adding alcohol consumption warnings, cleaning instructions, and New Hampshire identifiable labels.

Williams finds House Bill 353 to be a consumer-based bill as breweries will be able to sell their beer to populations across the state rather than just locally. By mandating a minimum beer label requirement, Williams believes that stations will only be implemented in beer specialist locations, producing effective and sanitary results. As of June 8th, 2017, the House refused to accept the latest bill as amended.

## 3. AREAS OF STUDY

To understand the potential consequences of changing growler regulations, this report will examine growler laws in other states and analyze the concerns that come from this policy.

### 3.1 Examining Growler Laws in Other States

Analyzing the status of growler laws in other states is critical to recognizing the potential costs and benefits of different forms of growler regulation. This analysis should guide lawmakers in crafting and modifying existing legislation on the regulation of growlers in New Hampshire.

#### 3.1.1 General Information

Currently, there are 36 states that allow the filling of growlers under a retailer license.<sup>29</sup> Among these are some of the top producers of craft beer. As of 2017, eight of the top ten





states in production of gallons per capita allow growler distribution under retailer licenses.<sup>30</sup> These states and rankings include: Vermont (1st), Pennsylvania (2nd), Oregon (4th), Delaware (6th), Montana (8th), Wisconsin (9th), and North Carolina (10th).<sup>31</sup>

State	Gallons per 21+ Adult	Growlers Permitted Under Retail Licenses
Vermont	19.8	yes
Pennsylvania	12.9	yes
Alaska	12.5	yes
Oregon	11.8	yes
Colorado	11.1	no
Delaware	11.1	yes
Maine	9.7	no
Montana	7.3	yes
Wisconsin	7.3	yes
North Carolina	5.4	yes

Figure 1: Growler Permitting under Retail Licenses<sup>32</sup>

Among the 14 states that ban retail growler sales, New Hampshire (17th) is joined by Colorado (5th), Maine (7th), California (15th), and Minnesota (16th).<sup>33</sup>

The off-premise growler laws vary widely by state, as they attempt to identify and enforce universal concerns. By comparing states, one can obtain a larger picture of various approaches to retail growler sales as demographics of retail growler

### 3.1.2 Types of Containers

House Bill 353, from the Commerce and Consumer Affairs Committee of New Hampshire, defines a growler for retail sale as a 64-ounce amber glass container that meets specifications established by the committee.<sup>34</sup> Such standards for growler sizes, however, vary widely between states, making it key in growler policy considerations.

For starters, the Department of Liquor Control of Vermont defines growlers as a container that is a bottle, can, keg or other receptacle containing malt or vinous beverage. While growler size is not specified, Vermont retailers mainly provide 64-ounce or 32-ounce refillable beer containers for purchase.

Other states such as Minnesota, North Carolina, and West Virginia specify the maximum volume of a growler to be 64 ounces. while Arkansas merely has a minimum capacity requirement of 32 ounces.<sup>35</sup>





Unlike House Bill 353, in some instances, states have allowed materials besides glass. North Carolina defines the refillable beer containers as “glass, ceramic, plastic, aluminum, or stainless steel “and Arkansas defines their growlers as any “glass, can, bottle, vessel, or receptacle of any material whatsoever.”<sup>36</sup> In addition, these states, along with California, specify mandatory sealing mechanisms to differentiate growlers from other open containers. Some valid seals include: flip-tops, screw-on lids, twist-type closures, cork stoppers, and plugs.

As refillable beer container makers have innovated, many producers have designed growlers in materials beyond glass. Such modernizations may be something to consider for future policy.

### *3.1.3 Distribution*

As for distribution, House Bill 353 would have permitted refillable beer container licenses to retail stores that contain at least 200 different beer labels, allowing them to fill and sell growlers.<sup>37</sup> Under the bill, requirements for growlers, as defined by the commission, must include alcohol consumption warnings, cleaning instructions, a New Hampshire logo design, and information about the location of New Hampshire brewers.

The Vermont Department of Liquor Control mandates that clean growlers must be available for sale by the retailer and bought in-store for an immediate fill. Outside refillable containers are not allowed to be filled in off-premise stores. While material is not specified, all labeling must contain the name of the retailer, product, alcohol by volume (ABV), name of manufacturer, and *best if consumed in 72 hours*.<sup>38</sup> In Burlington, for instance, The Growler Garage offers in-store 64-ounce or 32-ounce growlers that are available for purchase, containing their logo and the label specifications required by the state.

In California, retailers cannot fill or refill growlers themselves from their own stations. However, the California Alcoholic Beverage Control Act allows off-premise sites to sell growlers that are prefilled and shipped from the brewery. This means that retailers can purchase both from a licensed wholesaler or brewery prefilled growlers and provide them to customers. The system is similar to the canning or bottling process, but has allowed brewers to reach larger customer-bases under current retailer restrictions without the additional costs.

Both Arkansas and Minnesota include similar labeling requirements (i.e., ABV, name of producer), but also require a sealant such as an adhesive band, strip, or sleeve over the



closure of the container. Like wine bottle seals, the purpose of the strip is to reinforce the open container laws of each state in both motor vehicles and public.<sup>39</sup>

The state of Georgia statute specifies that retail growler remittances depend on individual municipal ordinances.<sup>40</sup> For instance in Peachtree City, a person or entity that holds both a current retail package license from the city and a valid current alcohol license from the state may sell specialty malt beverages in growlers, becoming a *Growler Retailer*.<sup>41</sup> However in Kennesaw, retailers must submit an application to the Business License Office and pay a \$200.00 per calendar fee to become a *Growler Establishment*, or a business that sells unbroken original containers or sealed growlers for consumption. The differing guidelines per each city designates the consumer responsible for knowing municipal ordinances of qualifying areas.

North Carolina allows both prefill, fill, and refill growler transactions to occur in off-premises retailers. However, like California, brewery permit holders may sell, deliver, and ship prefilled growlers for retailer consumption. Unlike the California, retail permit holders may also fill or refill containers.<sup>42</sup> If an establishment were to hold both a brewery permit and a retail permit, the institution may fill or refill growlers on demand with the beverage available for off-premises consumption.<sup>43</sup>

### *3.2 Economic Impacts of Retail Licenses*

While it is difficult to make a specific determination about how granting retail Growler licenses would affect the New Hampshire economy, the evidence suggests that there is a likely potential for economic benefits. These benefits come from the increased revenue for local breweries and lower start-up costs. A report from the Economic and Business Letters Journal found that legislation allowing for retail Growler licenses produced economic benefits for the surrounding region of a craft brewery. Specifically, the study concluded that the implementation of the law resulted in a \$2,286,982 increase in statewide hospitality and leisure wages.<sup>44</sup>

### *3.3 Budgetary Impacts of Retail Licenses*

House Bill 353 does not require an additional appropriation to the General Fund. While the legislation calls for an additional liquor examiner, who will “conduct initial site inspections” and facilitate the “training program” which will be approved by the Commission. The legislation estimates that \$112,499 will cover the total costs for the added employee in FY 2018. These additional costs will be covered by the \$240 fees paid to obtain the licenses. While other legislation regulating growler licenses could have different



fiscal impacts, House Bill 353 is revenue neutral, suggesting that it is likely that similar forms of regulation would not affect the general fund in a significant way.

### *3.4 Health and Safety Concerns*

Health and safety concerns should be at the forefront of any public policy decision regarding the regulation of alcohol. Concerns about the sanitation of the reusable growlers and the effects on drinking levels are put forward by opponents of this legislation.

#### *3.4.1 Sanitation Requirements in Other States*

Since growlers travel between private residences and filling stations, there is no positive way of ensuring the cleanliness of the container. With this, comes an increased concern for cross-contamination. The states examined have shown consistency in maintaining that refillable beer containers may only be filled by the licensee or the employees of the licensee. This is primarily to address the universal concerns by brewers or manufacturers of off-premise growlers not preserving the quality of their products. By minimizing filling error and granting the licensee or the employees of the licensee the right to refuse to fill any container that is not up to sanitation standards. Some states such as North Carolina depict in greater detail on how to properly clean, sanitize, fill, and seal growlers by various methods (e.g. three compartment sink, sanitizing machine) while others such as the Oregon Liquor Control Commission, for example, merely states that the growler should be “thoroughly cleaned, rinsed and dried to prevent contamination.”<sup>45</sup>

In Oregon, methods of maintaining cleanliness have been implemented under the Foodborne Illness Prevention Program under the Food Code. Some methods of preventing contamination include the exchange or sanitation of fill tubes; these tubes are typically used to minimize foam in the growler.<sup>46</sup> Additionally, there must be a sink dedicated to rinsing customer growlers that is separate from standard hand-washing sinks.<sup>47</sup> Risks of contamination are clearly very high, so Oregon has also enacted a “contamination-free” transfer process that prohibits contact between the tap filling station and the growler itself.<sup>48</sup>

In North Carolina on the other hand, more detailed measures have been taken in terms of tackling growler sanitation. For example, residual liquid must be drained prior to starting the filling process and cleaning temperature must be set at 110°F.<sup>49</sup> Chemical sanitizers must be used as detergent for both the growler and the cap.<sup>50</sup> There are many preventative measures being taken by North Carolina that New Hampshire legislature should adopt in order to ensure the health and safety of growler users.



### *3.4.2 Effects on Drinking*

The consumption of alcohol poses an inevitable public harm, but there is no evidence to suggest that allowing for retail growler licenses would exacerbate the public safety risks associated with drinking or the total consumption of beer. According to a report from the National Institute of Health, the “craft beer revolution” has corresponded with a decrease in total beer consumption in the United States.<sup>51</sup> While that does not fully address concerns that growlers could increase beer consumption, it does bolster the claim that it will not pose a negative impact. Modifications to existing growler laws are unlikely to cause any public safety concerns.

### *3.5 Environmental Impacts*

The ability of retailers to be licensed to have growlers will reduce the waste that comes from beer consumption, which bolsters the argument in favor of loosening growler regulations from an environmental perspective. There have been no significant studies demonstrating the extent to which these laws can benefit the environment, however.

## **4. CONCLUSION**

New Hampshire legislators have the clear authority to allow for retail growler licenses, so the question is whether they should pass such legislation and, if so, how specifically to regulate these licenses. From a public policy standpoint, there is no clear recommendation that this report offers. Instead, this report is intended to offer insight to legislators on what the costs and benefits are to changing regulations of growlers. Further, by studying the specific laws of other states, legislators have the opportunity to learn from success and failures of other states to craft laws that have the chance to be most effective in meeting the goals of legislators.



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<sup>46</sup> OAR 333-150-0000, CHAPTER 4-603.17, OR. Oregon Health Authority.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> “14B NCAC 15C .0307 Growlers, NC.” Alcoholic Control Commission.

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<sup>50</sup> Ibid.

<sup>51</sup> “Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977-2013.” National Institute of Alcohol Abuse and Alcoholism.

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