HOUSE BILL 1692-FN

AN ACT establishing a license for mushroom harvesters.


COMMITTEE: Environment and Agriculture

AMENDED ANALYSIS

This bill:

I. Establishes a license for wild mushroom identifiers, harvesters, and distributors.

II. Allows the department of health and human services to assess fines to people who distribute wild mushrooms without a license.

III. Requires the department of health and human services to develop a list of approved mushrooms for distribution as well as an educational curriculum for license applicants.

This bill was a request of the mushroom foraging study commission established in 2019, 35:2.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT establishing a license for mushroom harvesters.

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

1 New Subdivision; Wild Mushroom Harvesters. Amend RSA 143-A by inserting after section 20 the following new subdivision:

Wild Mushroom Harvesters

I. "Community supported agriculture" or "CSA" means a distribution system in which a farmer distributes produce directly to consumers.

II. "Department" means the department of health and human services.

III. "Distributor" means a person who purchases wild mushrooms from a harvester and sells to food establishments or direct to the public. Distributor shall not include food establishments.

IV. "Food establishment" means a food service establishment or retail food store licensed under RSA 143-A, as well as farmers market, farm stand, and CSA.

V. "Harvester" means a person who forages for and harvests wild mushrooms for sale to a distributor, food establishment, or to the public.

VI. "Identifier" means a person who identifies wild mushrooms collected by a harvester on behalf of a distributor or a food establishment.

VII. "Tier 1 mushroom" means a wild mushroom which is easily identified, that has no toxic look alikes, and which is unlikely to cause illness in humans.

VIII. "Tier 2 mushroom" means a wild mushroom which is difficult to identify, may have toxic look alikes, or may cause illness in some humans.

143-A:22 License Required.

I. No person shall identify, harvest, or offer wild mushrooms for sale unless he or she is licensed by the department.

II. A wild mushroom identifier, harvester, and distributor may receive a tier 1 license upon the following:

(a) Payment of a fee of $75 to the department.

(b) Fulfilling educational requirements approved by the department.

(c) Passing an exam on the tier 1 mushroom list approved by the department.

III. A wild mushroom identifier, harvester, and distributor may receive a tier 2 license upon the following:

(a) Payment of a fee of $75 to the department.
(b) Fulfilling educational requirements set by the department.

(c) Passing an exam on the tier 2 mushroom list approved by the department.

IV. Licenses shall be valid for 5 years from the date of issue. A person holding a valid mushroom identifier, harvester, and distributor license may renew such license after completion of an on-line renewal course and payment of a $30 fee.

V. A licensee may only identify, harvest, and sell mushrooms from the tier list corresponding to the tier license they hold, however a tier 2 licensee may also identify, harvest, and sell mushrooms from the tier 1 list.

VI. The department may revoke a license for good cause including, but not limited to, the harvest, distribution or sale of wild mushrooms in a manner not consistent with this chapter and the educational program required under this section, failure to keep records in accordance with this subdivision, or the sale of wild harvested mushrooms not included on the tier 1 or tier 2 lists.

VII. A licensed mushroom identifier, harvester, and distributor shall present his or her license to the purchaser of his or her mushrooms at the time of sale and to the department of health and human services or to the department of agriculture, markets, and food upon request.

VIII. A person harvesting wild mushrooms for personal use shall not require a license.

IX. A licensee may harvest from a property only with documented permission from the land owner or land manager.

143-A:23 Labeling Requirements; Recordkeeping.

I. All mushrooms harvested by a person licensed under this subdivision for sale shall be labeled with the following:

(a) The name, address, and license number of the licensed mushroom identifier, harvester, and distributor.

(b) The species of mushroom.

(c) The weight sold.

(d) The date of harvesting.

(e) The county of harvesting.

II. A copy of such label shall be retained by the licensed mushroom identifier, harvester, and distributor for one year, as well as information on the specific harvest location of all mushrooms harvested.

III. A copy of such label shall be retained by the food service establishment for 90 days.

IV. Such records shall be available for inspection upon request by the department of health and human services and the department of agriculture, markets, and food.

143-A:24 Sale of Wild Mushrooms. A licensed food service establishment or retail food store within the state may only sell wild mushrooms or food products made with wild mushrooms, identified, harvested, and distributed in accordance with this subdivision unless purchased from an out-of-state source approved by that state or country of origin. A licensed food service establishment
or retail food store purchasing or receiving wild mushrooms from a licensed wild mushroom
identifier, harvester, and distributor shall keep a record of all such transactions with the
information described in RSA 143-A:23 for no less than 90 days. Such records shall be available for
inspection upon request by the department of health and human services or the department of
agriculture, markets, and food. The department of health and human services shall add wild
mushrooms to the inspection requirements of licensed food establishments and retail food stores
including verifying that such wild mushrooms sold meet the requirements of this subdivision. The
department of agriculture, markets, and food may verify that wild mushrooms sold at farmers
markets and farmstands meet the requirements of this subdivision.

143-A:25 Revocation of License. A food service establishment or retail food store within this
state licensed under this chapter may have its license revoked under RSA 143-A:7 if the department
finds any of the following:

I. Records have not been kept in accordance with RSA 143-A:23 and RSA 143-A:24.

II. Purchasing or receiving wild mushrooms for use in food products from a person who is
not licensed under RSA 143-A:22 unless purchased from an out-of-state source approved by that
state or country of origin.

III. Purchasing or receiving wild mushrooms for use in food products that are not approved
as tier 1 or tier 2 mushrooms by the department, unless purchased from an out-of-state source
approved by that state or country of origin.

143-A:25 Penalty.

I. Any person who identifies, harvests, or distributes wild mushrooms without having a
license to do so as required by this subdivision may be subject to an administrative fine levied by the
commissioner of the department not to exceed $1,000 for each violation.

II. The department may issue a cease and desist order to any person selling mushrooms in
violation of this subdivision at a farm stand, farmers market, food service establishment, or retail
food store.

III. A food service establishment or retail food store within this state licensed under this
chapter that violates this subdivision may be subject to an administrative fine levied by the
department of health and human services not to exceed $1,000 per violation.

IV. A food service establishment or retail food store within this state licensed under this
chapter that distributes wild mushrooms in violation of this subdivision may be subject to an
administrative fine levied by the department of health and human services not to exceed $1,000 per
violation.

143-A:26 Duties; Department of Health and Human Services. The department shall:

I. Maintain a database of all wild mushroom identifier, harvester, and distributor licensees.
Such database shall be available to the public on the department's internet site.
II. Approve training courses and licensing exams for tier 1 and tier 2 mushroom identifier, harvester, and distributor licenses.

III. Develop an education and notification program for food service licensees on the wild mushrooms approved for harvest and sale on the tier 1 and tier 2 lists, including but not limited to photos of such mushrooms.

143-A:27 Rulemaking. The department shall adopt rules under RSA 541-A relative to:

I. The content of the required educational courses for persons applying for a tier 1 or tier 2 mushroom identifier, harvester, and distributor license, including identification of mushrooms, appropriate locations from which to harvest mushrooms, the safe handling and storage of mushrooms, record keeping requirements, and ethics of harvesting; and which shall contain no less than 12 hours of in-person instruction with a mandatory online preparation module.

II. The content of the required educational course for persons applying to renew a tier 1 or tier 2 mushroom harvester and distributor license.

III. The content of an abbreviated course which shall contain no less than 4 hours of in-person training which shall be offered for experienced identifiers, harvesters, and distributors who demonstrate competency to the department. Experienced identifiers, harvesters, and distributors may apply to the department for such course.

IV. A list of tier 1 mushrooms which are easy to identify, with no toxic look-alikes, and which are unlikely to cause illness in humans.

V. A list of tier 2 mushrooms which are more difficult to identity, which may have toxic look-alikes, or may make a small percentage of humans ill.

VI. The content and format of application forms, testing materials and procedures.

VII. The content of testing material and test taking procedures.

VIII. Evidence of licensure.

IX. The content of the database for mushroom identifier, harvester, and distributor licensees.

X. Qualifications for trainers and instructors for educational courses for tier 1 and tier 2 mushroom identifier, harvester, and distributor license.

XI. Amending the definition of “commodity” in department rules to include wild harvested mushrooms.

XII. A fine schedule for violations of this subdivision.

2 Effective Date. This act shall take effect January 1, 2021.
AN ACT establishing a certification for mushroom harvesters.

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

<table>
<thead>
<tr>
<th>STATE:</th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Appropriation</td>
<td>$0</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
<tr>
<td>Funding Source:</td>
<td>[ X ] General Revenue</td>
</tr>
</tbody>
</table>

METHODOLOGY:

The Department of Agriculture, Markets and Food identified three cost areas associated with meeting the requirements of the bill:

1. The addition of a mycologist position with sufficient knowledge to ensure a program that provides adequate public safety;
2. Development of a training program either in-house or in coordination with an identified partner, like UNH Cooperative Extension, and;
3. Establishment of a certification coordinator to oversee record keeping and reporting associated with licensure.

The mycologist position would need to have the knowledge and expertise to identify wild mushrooms, develop a new or assess existing training programs for mushroom identification, storage, handling, preparation, food safety, and to ensure that mushroom harvesting activities do not have unintended ecological impacts. This would include “Tier 2” mushrooms which may not be easily identifiable and may have serious health impacts up to and potentially including death. The mycologist position would communicate with other state agencies, the regulated industry, academics, purchasers of wild mushrooms, and the general public. The mycologist may need to develop a variety of training materials for the regulated industry as well as inspecting locations where wild mushrooms are sold. There currently are no mycology classifications in the State personnel system. The Department reviewed the existing job classification specifications for related positions and found the Microbiologist III position and the Forest Entomologist/Forest Pathologist position both involve aspects of the knowledge, skills, education, and responsibilities
that a mycologist would require. Both positions are labor grade 26, therefore labor grade 26 was used to estimate the costs the mycologist position. In addition to salary and benefit costs, the position would require office space, access to a computer, a telephone, standard office supplies, and funds for travel within the state. These expenses are estimated based on the per person costs for staff in the Division of Plant Industry.

<table>
<thead>
<tr>
<th>Mycologist Position</th>
<th>FY 2021*</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>$26,600</td>
<td>$55,600</td>
<td>$58,000</td>
</tr>
<tr>
<td>Benefits</td>
<td>$14,800</td>
<td>$31,200</td>
<td>$32,700</td>
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<td>Current Expenses</td>
<td>$600</td>
<td>$1,100</td>
<td>$1,100</td>
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<tr>
<td>Equipment</td>
<td>$1,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Office Space</td>
<td>$2,500</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Travel</td>
<td>$600</td>
<td>$1,200</td>
<td>$1,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$46,100</td>
<td>$94,100</td>
<td>$98,000</td>
</tr>
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</table>

*Since the bill is effective January 1, 2021, certain costs in FY 2021 reflect one-half of the annual amount.

The bill requires a training program that would incorporate online and classroom training. The closest existing program in the Department is pesticide applicator training which is overseen by the UNH Cooperative Extension. In that program, applicants pay the Cooperative Extension directly for training. The fees paid by applicants do not cover the entire cost of training and the Department supplies additional funding from the Integrated Pesticide Management Fund. The proposed training program includes an initial 12 hours of in-person instruction and an online preparation module. Fees for the courses and testing shall not exceed $275. Assuming the training would be provided through the Cooperative Extension, the Department does not expect the revenue generated from $275 per applicant would cover the training costs. The UNH continuing education tuition and fee rates for the summer session and up to 11 credits for an undergraduate NH resident are $459. The Department assumed the balance of $184 per person ($459 minus $275) would be a cost to the general fund because there is no existing fee-based program that could offset the cost of mushroom harvester training. The Department states the cost of in-house training, if developed by the Department, would be greater than training provided by the Cooperative Extension. Based these assumptions and enrollment in a similar program in Minnesota, the Department prepared the following estimates for the first few years of the training program:

<table>
<thead>
<tr>
<th>Training Program</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Applicants</td>
<td>5</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Course Training &amp; Testing Cost</td>
<td>$459</td>
<td>$459</td>
<td>$459</td>
</tr>
<tr>
<td>Total Training Cost</td>
<td>$2,295</td>
<td>$11,475</td>
<td>$6,885</td>
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<tr>
<td>Training &amp; Testing Fee</td>
<td>$275</td>
<td>$275</td>
<td>$275</td>
</tr>
<tr>
<td>Total Fees Collected</td>
<td>$1,375</td>
<td>$6,875</td>
<td>$4,125</td>
</tr>
<tr>
<td><strong>Net Cost of Training</strong></td>
<td><strong>$920</strong></td>
<td><strong>$4,600</strong></td>
<td><strong>$2,760</strong></td>
</tr>
</tbody>
</table>
The third cost identified by the Department is for a part-time certification coordinator. The wild mushroom certification program would require administrative support to maintain records, and to coordinate aspects of training, testing and licensure, and violations. The Department assumes such support would consist of a part-time (25%) coordinator position paid at labor grade 22. This assumption is based on the existing pesticides coordinator position, which is a labor grade 22. In addition to salary and benefits, the position would require office space, a computer with access to the Internet, a telephone and office supplies. Estimated other expenses were calculated based on current per person costs in Division of Plant Industry.

<table>
<thead>
<tr>
<th>Certification Coordinator</th>
<th>FY 2021*</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>$5,600</td>
<td>$11,700</td>
<td>$12,200</td>
</tr>
<tr>
<td>Benefits</td>
<td>$400</td>
<td>$900</td>
<td>$900</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$600</td>
<td>$1,100</td>
<td>$1,100</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Office Space</td>
<td>$2,500</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Travel</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$10,000</td>
<td>$18,700</td>
<td>$19,200</td>
</tr>
</tbody>
</table>

*Since the bill is effective January 1, 2021, certain costs in FY 2021 reflect one-half of the annual amount.

Regarding revenue in the first few years of the program the Department assumes:
- Commercial harvesting and distribution of wild mushrooms is not currently regulated, reliable estimates of the number of licensees and/or violations are not available.
- Most of the activity in the first year will be to build the program and little revenue will be generated.
- No more than 10 violations would occur in the first year of enforcement and violations will decline in future years due to training and enforcement activities.
- Based on information from Minnesota, there could be up to 50 licensees in the first 4 years of the program. More licenses would be issued in the early years of implementation than in future years after the program is established.

Based on the assumptions above, the Department provided the following revenue estimates.

<table>
<thead>
<tr>
<th>Revenue Estimates</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Violations</td>
<td>0</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Penalty Revenue ($1,000 per violation)</td>
<td>$0</td>
<td>$10,000</td>
<td>$7,000</td>
</tr>
<tr>
<td>Applicants</td>
<td>5</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Application Revenue ($25 per Applicant)</td>
<td>$125</td>
<td>$625</td>
<td>$375</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$125</td>
<td>$10,625</td>
<td>$7,375</td>
</tr>
</tbody>
</table>
The Department of Health and Human Services indicates any additional costs to the Department for inspection or enforcement and any revenue from fines are indeterminable. The Department has no information on the number of food establishments or retail stores that will offer to sell wild mushrooms.

AGENCIES CONTACTED:
Departments of Agriculture, Markets and Food and Health and Human Services