

SENATE BILL NO. 307—SENATOR DONDERO LOOP

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions related to the sale of alcoholic beverages. (BDR 52-945)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to alcoholic beverages; requiring a supplier of liquor to approve certain transactions related to the ownership of a wholesaler within a certain period of time under certain circumstances; prohibiting certain acts by suppliers with respect to wholesalers of liquor; authorizing a person who operates a brew pub to manufacture additional malt beverages for sale outside of this State; revising the criteria for the approval of a license to engage in certain activities related to alcohol; revising provisions governing certificates of compliance for suppliers; revising provisions governing the possession, sale and transportation of liquor; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth various requirements concerning a franchise between a
2 supplier and a wholesaler of malt beverages, distilled spirits and wines. (NRS
3 597.120-597.180) Existing law prohibits a supplier from unreasonably withholding
4 or delaying approval of any assignment, sale or transfer of stock of a wholesaler or
5 of all or any portion of a wholesaler’s assets, a wholesaler’s voting stock, the voting
6 stock of any parent corporation or the beneficial ownership or control of any other
7 entity owning or controlling the wholesaler if the person to be substituted under the
8 terms of the franchise meets certain reasonable standards. (NRS 597.157) **Section 1**
9 of this bill requires a supplier to approve any such transaction within 30 days after
10 receiving notice of the transaction if the person to be substituted under the terms of
11 the franchise meets certain reasonable standards.

12 Existing law prohibits a supplier, if more than one franchise for the same brand
13 of alcoholic beverage is granted to different wholesalers in this State, from
14 discriminating between such wholesalers with respect to the terms, provisions and



15 conditions of these franchises. (NRS 597.160) **Section 2** of this bill provides that
16 pricing and freight charges are terms of a franchise with respect to which a supplier
17 may not discriminate between such wholesalers.

18 **Section 3** of this bill prohibits a supplier from: (1) requiring a wholesaler to
19 accept delivery of an item if doing so would result in the inventory of a wholesaler
20 exceeding the amount of credit extended to the wholesaler by the supplier; (2)
21 requiring a wholesaler to make payments under terms that are materially different
22 from the payment terms applicable to payments made by the supplier; or (3)
23 entering into an agreement with a wholesaler which purports to waive the rights and
24 remedies of the wholesaler if the supplier retaliates against the wholesaler for
25 reporting a violation of law to the Department of Taxation.

26 Existing law regulates the operation of brew pubs in this State, including
27 limiting the amount of malt beverages which a person who operates one or more
28 brew pubs is authorized to manufacture per year to not more than 40,000 barrels.
29 (NRS 597.230) **Section 4** of this bill authorizes a person who operates one or more
30 brew pubs to manufacture and sell an additional 20,000 barrels of malt beverages to
31 a wholesaler located outside of this State, subject to such auditing as the
32 Department of Taxation establishes by regulation.

33 Existing law requires certain persons and businesses, including importers of
34 liquor, wholesale dealers of alcoholic beverages, winemakers, instructional wine-
35 making facilities, breweries, brew pubs and craft and estate distilleries to obtain a
36 state license or permit to engage in certain activities involving alcoholic beverages.
37 (NRS 369.180) Existing law further requires an application for a license for these
38 persons or businesses to be made to the board of county commissioners or the
39 governing body of the city in which the applicant maintains his or her principal
40 place of business. (NRS 369.190) **Section 5** of this bill requires the board of county
41 commissioners or the governing body of a city, in approving such an application, to
42 require satisfactory proof that the applicant is not in violation of the prohibition
43 against engaging in certain activities involving alcoholic beverages without a
44 license and that the applicant is not applying for a license for a business in which he
45 or she is prohibited by law from engaging.

46 **Section 6** of this bill revises terminology relating to applications for a
47 certificate of compliance by suppliers of liquor by replacing the term "vendor" with
48 "supplier."

49 Existing law prohibits a person from keeping or possessing for sale, furnishing
50 or selling, or soliciting the purchase or sale of any liquor in this State, or
51 transporting or importing or causing to be transported or imported any liquor in or
52 into this State for delivery, storage, use or sale unless the person complies with
53 the relevant provisions of law and holds the appropriate license, permit or certificate,
54 except for certain limited exceptions for liquor purchased for household or personal
55 use. (NRS 369.490) **Section 7** of this bill additionally requires a person to be duly
56 designated by the supplier of such liquor or to have purchased the liquor from
57 certain authorized sources. **Section 7** also revises an existing exception from
58 licensing requirements for consumers who import 1 gallon or less of alcoholic
59 beverage per month for household or personal use to provide that the exception
60 applies only if the person enters this State with such alcoholic beverage rather than
61 importing it.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 597.157 is hereby amended to read as follows:

2 597.157 1. A supplier shall ~~{not unreasonably withhold or~~
3 ~~delay approval of}~~ **approve** any assignment, sale or transfer of the
4 stock of a wholesaler or of all or any portion of a wholesaler's
5 assets, a wholesaler's voting stock, the voting stock of any parent
6 corporation or the beneficial ownership or control of any other
7 entity owning or controlling the wholesaler, including the
8 wholesaler's rights and obligations under the terms of a franchise,
9 ~~{whenever a}~~ **within 30 days after receiving notice of the**
10 **transaction if the** person to be substituted under the terms of the
11 franchise meets reasonable standards imposed upon the wholesaler
12 and any other wholesaler of the supplier of the same general class,
13 after consideration of the size and location of the marketing area of
14 the wholesaler.

15 2. Upon the death of a partner of a partnership that operates the
16 business of a wholesaler, a supplier shall not unreasonably withhold
17 or delay approval of maintaining the franchise between the supplier
18 and each surviving partner.

19 3. Upon the death of any owner, controlling shareholder or
20 operator of a wholesaler, a supplier shall not deny approval of any
21 transfer of ownership to a surviving spouse, child or grandchild of
22 the owner who has reached the age of majority at the time of death,
23 controlling shareholder or operator. Any subsequent transfer of
24 ownership by the spouse, child, grandchild, controlling shareholder
25 or operator is subject to the provisions of subsection 1.

26 4. In addition to the provisions of NRS 597.170, a supplier who
27 unreasonably delays or withholds consent **, fails to grant approval**
28 **in the time set forth in subsection 1** or unreasonably denies
29 approval of a sale, transfer or assignment of any ownership interest
30 in a wholesaler is liable to the wholesaler for the laid-in costs of
31 inventory of each affected brand of liquor and any diminution in the
32 fair market value of the business of the wholesaler in relation to
33 each affected brand. The damages recoverable pursuant to this
34 section include, without limitation, all reasonable costs of bringing
35 the action and attorney's fees. For the purpose of this subsection, the
36 fair market value of a business of a wholesaler includes, without
37 limitation, the good will of the business and its value as a going
38 concern, if any.

39 5. The provisions of this section may not be modified by
40 agreement. Any provision in an agreement is void if the provision
41 includes such a modification.



1 **Sec. 2.** NRS 597.160 is hereby amended to read as follows:

2 597.160 1. Except as otherwise provided in subsection 4, if
3 more than one franchise for the same brand or brands of malt
4 beverages, distilled spirits and wines, or all of them, is granted to
5 different wholesalers in this state, it is a violation of NRS 597.120 to
6 597.180, inclusive, for any supplier to discriminate between such
7 wholesalers with respect to any of the terms, provisions and
8 conditions of these franchises ~~§~~, *including, without limitation,*
9 *with respect to pricing or freight charges.*

10 2. Except as otherwise provided in this subsection and
11 notwithstanding the terms, provisions or conditions of any franchise,
12 a supplier shall not unilaterally terminate or refuse to continue any
13 franchise with a wholesaler or cause a wholesaler to resign from that
14 franchise unless the supplier has first established good cause for that
15 termination, noncontinuance or causing of that resignation. This
16 subsection does not apply to a supplier who sells less than 2,000
17 barrels of malt beverages, less than 250 cases of distilled spirits or
18 less than 2,000 cases of wine in this state in any calendar year, or
19 who operates a winery pursuant to NRS 597.240.

20 3. Except as otherwise provided in this subsection, a
21 wholesaler may, within 60 days after he or she receives a notice
22 required pursuant to NRS 597.155, correct any failure to comply
23 with the terms, provisions and conditions of the franchise alleged by
24 the supplier. This subsection does not apply to a supplier who sells
25 less than 2,000 barrels of malt beverages, less than 250 cases of
26 distilled spirits or less than 2,000 cases of wine in this State in any
27 calendar year, or who operates a winery pursuant to NRS 597.240.

28 4. Unless otherwise specified by contract between the supplier
29 and wholesaler, a supplier shall not grant more than one franchise to
30 a wholesaler for any brand of alcoholic beverage in a marketing
31 area.

32 **Sec. 3.** NRS 597.162 is hereby amended to read as follows:

33 597.162 A supplier shall not:

34 1. Prohibit a wholesaler from selling an alcoholic beverage of
35 any other supplier;

36 2. Prevent a wholesaler from using best efforts to sell, market,
37 advertise or promote an alcoholic beverage of any other supplier;

38 3. Provide any reward or penalty to, or in any other way
39 condition its relationship with, a wholesaler based upon the amount
40 of sales the wholesaler makes of an alcoholic beverage of any other
41 supplier;

42 4. Disapprove a wholesaler's selection of a general manager or
43 successor general manager based on the wholesaler's sales,
44 marketing, advertising, promotion or retail placement of an
45 alcoholic beverage of any other supplier;



1 5. Require a wholesaler to report to the supplier any of the
2 wholesaler's financial information associated with the purchase, sale
3 or distribution of an alcoholic beverage of any other supplier;

4 6. Fix or maintain the price at which a wholesaler may resell an
5 alcoholic beverage purchased from the supplier;

6 7. Require a wholesaler to pay to the supplier all or any portion
7 of the difference in the suggested retail price of an alcoholic
8 beverage and the actual price at which the wholesaler sells the
9 alcoholic beverage;

10 8. Require a wholesaler to accept delivery of any alcoholic
11 beverage or any other item that is not voluntarily ordered by the
12 wholesaler ~~for otherwise not required under the franchise between~~
13 ~~the supplier and wholesaler~~ or is in violation of any levels of
14 inventory that are mutually agreed upon in writing by the supplier
15 and wholesaler;

16 9. *Require a wholesaler to accept delivery of any alcoholic*
17 *beverage or any other item if accepting the delivery would result in*
18 *the inventory of the wholesaler exceeding the amount of credit*
19 *extended to the wholesaler by the supplier;*

20 10. Prohibit or restrain, directly or indirectly, a wholesaler
21 from participating in an organization that represents the interests of
22 wholesalers for any lawful purpose;

23 ~~10.~~ 11. Discriminate against, penalize or otherwise retaliate
24 against a wholesaler because the wholesaler raises, alleges or
25 otherwise brings to the attention of the Department of Taxation an
26 actual, potential or perceived violation of this chapter *or enter into*
27 *an agreement with a wholesaler which purports to waive any right*
28 *or remedy of the wholesaler pursuant to this subsection;* ~~11.~~

29 ~~11.~~ 12. Require a wholesaler to participate in or contribute to
30 any advertising fund or promotional activity that:

31 (a) Is not used for advertising or a promotional activity in the
32 marketing area of the wholesaler; or

33 (b) Requires a contribution by the wholesaler that exceeds any
34 amount specified for that purpose in the franchise ~~12.~~; *or*

35 13. *Require a wholesaler to make payments to the supplier*
36 *under terms which are materially different from the payment*
37 *terms applicable to the supplier when making payments to the*
38 *wholesaler.*

39 **Sec. 4.** NRS 597.230 is hereby amended to read as follows:

40 597.230 1. In any county, a person may operate a brew pub:

41 (a) In any redevelopment area established in that county
42 pursuant to chapter 279 of NRS;

43 (b) In any historic district established in that county pursuant to
44 NRS 384.005;



1 (c) In any retail liquor store as that term is defined in NRS
2 369.090; or

3 (d) In any other area in the county designated by the board of
4 county commissioners for the operation of brew pubs. In a city
5 which is located in that county, a person may operate a brew pub in
6 any area in the city designated by the governing body of that city for
7 the operation of brew pubs.

8 ↪ **[A] Except as otherwise provided in paragraph (e) of subsection**
9 **3, a** person who operates one or more brew pubs may not
10 manufacture more than 40,000 barrels of malt beverages for all the
11 brew pubs he or she operates in this State in any calendar year.

12 2. The premises of any brew pub operated pursuant to this
13 section must be conspicuously identified as a “brew pub.”

14 3. Except as otherwise provided in subsection 4, a person who
15 operates one or more brew pubs pursuant to this section may, upon
16 obtaining a license pursuant to chapter 369 of NRS and complying
17 with any other applicable governmental requirements:

18 (a) Manufacture and store malt beverages on the premises of one
19 or more of the brew pubs and:

20 (1) Sell and transport the malt beverages manufactured on
21 the premises to a person holding a valid wholesale wine and liquor
22 dealer’s license or wholesale beer dealer’s license issued pursuant to
23 chapter 369 of NRS.

24 (2) Donate for charitable or nonprofit purposes and, for the
25 purposes of the donation, transport the malt beverages manufactured
26 on the premises in accordance with the terms and conditions of a
27 special permit for the transportation of the malt beverages obtained
28 from the Department of Taxation pursuant to subsection 4 of
29 NRS 369.450.

30 (3) Transfer in bulk the malt beverages manufactured on the
31 premises:

32 (I) To a person holding a valid wholesale wine and liquor
33 dealer’s license or wholesale beer dealer’s license issued pursuant to
34 chapter 369 of NRS for the purpose of transferring in bulk the malt
35 beverages to an estate distillery for the purpose of distillation and
36 blending, which transfer is taxable only as provided in NRS
37 597.237; or

38 (II) If there is no wholesaler who is able or willing to
39 accept and transfer in bulk the malt beverages pursuant to sub-
40 subparagraph (I), to a person holding a valid license to operate an
41 estate distillery issued pursuant to chapter 369 of NRS for the
42 purpose of distillation and blending, which transfer is taxable only
43 as provided in NRS 597.237 and must be performed in accordance
44 with the terms and conditions of a special permit for the



1 transportation of the malt beverages obtained from the Department
2 of Taxation pursuant to subsection 4 of NRS 369.450.

3 (b) Manufacture and store malt beverages on the premises of
4 one or more of the brew pubs and transport the malt beverages
5 manufactured on the premises to a retailer, other than a person who
6 operates a brew pub pursuant to this section, that holds a valid
7 license pursuant to chapter 369 of NRS for the purpose of selling the
8 malt beverages at a special event in accordance with the terms and
9 conditions of a special permit for the transportation of the malt
10 beverages obtained from the Department of Taxation pursuant to
11 subsection 4 of NRS 369.450. For the purposes of this paragraph,
12 the person who operates one or more brew pubs shall not obtain
13 more than 20 such special permits for the transportation of the malt
14 beverages from the Department of Taxation pursuant to subsection 4
15 of NRS 369.450 within a calendar year.

16 (c) Sell at retail, not for resale, malt beverages manufactured on
17 or off the premises of one or more of the brew pubs for consumption
18 on the premises.

19 (d) Sell at retail, not for resale, in packages sealed on the
20 premises of one or more of the brew pubs, malt beverages, including
21 malt beverages in unpasteurized form, manufactured on the
22 premises for consumption off the premises.

23 *(e) In a calendar year, in addition to the amount of malt
24 beverages which may be manufactured pursuant to subsection 1,
25 manufacture and sell not more than 20,000 barrels of malt
26 beverages for all the brew pubs he or she operates in this State to a
27 wholesaler located outside of this State, subject to such periodic
28 auditing as the Department of Taxation shall require by
29 regulation.*

30 4. The amount of malt beverages sold pursuant to paragraphs
31 (b), (c) and (d) of subsection 3 must not exceed a total of 5,000
32 barrels in any calendar year. Of the 5,000 barrels, not more than
33 1,000 barrels may be sold in kegs.

34 **Sec. 5.** NRS 369.190 is hereby amended to read as follows:

35 369.190 1. An application for any of the licenses described in
36 NRS 369.180 must be made to:

37 (a) The board of county commissioners of the county in which
38 the applicant maintains his or her principal place of business if the
39 applicant does not maintain his or her principal place of business
40 within the boundaries of an incorporated city; or

41 (b) The governing body of the city in which the applicant
42 maintains his or her principal place of business if the applicant
43 maintains his or her principal place of business within the
44 boundaries of an incorporated city.

45 2. Each application must:



1 (a) Be made on such form as the Department prescribes.
2 (b) Include the name and address of the applicant. If the
3 applicant is:

4 (1) A partnership, the application must include the names
5 and addresses of all partners.

6 (2) A corporation, association or other organization, the
7 application must include the names and addresses of the president,
8 vice president, secretary and managing officer or officers.

9 (3) A person carrying on or transacting business in this state
10 under an assumed or fictitious name, the person making the
11 application must attach to the application:

12 (I) A certified copy of the certificate required by NRS
13 602.010 or any renewal certificate required by NRS 602.035.

14 (II) A certificate signed by an officer of the corporation or
15 by each person interested in, or conducting or carrying on such
16 business, or intending so to do, and acknowledged before a person
17 authorized to take acknowledgments of conveyances of real
18 property, indicating the name of the authorized representative whose
19 signature may be required on the license under the provisions of this
20 chapter.

21 (c) Specify the location, by street and number, of the premises
22 for which the license is sought.

23 (d) Be accompanied by the annual license fee required for the
24 particular license for which application is made.

25 3. The board of county commissioners or the governing body
26 of a city, as applicable, shall examine all applications filed with it,
27 and shall require satisfactory evidence that the applicant is ~~fit~~:

28 (a) A person of good moral character ~~fit~~;

29 (b) *Not acting in violation of NRS 369.180; and*

30 (c) *Not applying for a license for a business in which the*
31 *applicant is prohibited from engaging pursuant to NRS 369.382.*

32 **Sec. 6.** NRS 369.430 is hereby amended to read as follows:

33 369.430 1. By regulation, the Department shall prescribe the
34 form of application for and the form of a certificate of compliance,
35 which must be printed and distributed to exporters of liquor into this
36 State to assist them in legally exporting liquor into this State.

37 2. An intending importer may not legally receive or accept any
38 shipment of liquor except from a holder of a certificate of
39 compliance.

40 3. Before a person may engage in business as a supplier ~~fit~~ *of*
41 *liquor in this State*, the person must obtain a certificate of
42 compliance from the Department.

43 4. The Department shall grant a certificate of compliance to
44 any out-of-state ~~vendor of liquors~~ *supplier* who undertakes in
45 writing:



1 (a) To furnish the Department on or before the 10th day of each
2 month a report under oath showing the quantity and type of liquor
3 sold and shipped by the ~~{vendor}~~ *out-of-state supplier* to each
4 licensed importer of liquor in Nevada during the preceding month;

5 (b) That the ~~{vendor}~~ *out-of-state supplier* and all his or her
6 agents and any other agencies controlled by the ~~{vendor}~~ *out-of-*
7 *state supplier* will comply faithfully with all laws of this State and
8 all regulations of the Department respecting the exporting of liquor
9 into this State;

10 (c) That the ~~{vendor}~~ *out-of-state supplier* will make available
11 for inspection and copying by the Department any books,
12 documents and records, whether within or outside this State, which
13 are pertinent to his or her activities or the activities of his or her
14 agents or any other agencies controlled by the ~~{vendor}~~ *out-of-state*
15 *supplier* within this State and which relate to the sale and
16 distribution of his or her liquors within this State; and

17 (d) That the ~~{vendor}~~ *out-of-state supplier* will appoint a
18 resident of this State as his or her agent for service of process or any
19 notice which may be issued by the Department.

20 5. If any holder of a certificate of compliance fails to keep any
21 undertaking or condition made or imposed in connection therewith,
22 the Department may suspend the certificate and conduct a hearing,
23 giving the holder thereof a reasonable opportunity to appear and be
24 heard on the question of vacating the suspension order or order
25 finally revoking the certificate.

26 6. An applicant for a certificate of compliance must pay a fee
27 of \$50 to the Department for the certificate. On or before July 1 of
28 each year, the certificate holder must renew the certificate by
29 satisfying the conditions of the original certificate and paying a fee
30 of \$50 to the Department.

31 **Sec. 7.** NRS 369.490 is hereby amended to read as follows:

32 369.490 1. Except as otherwise provided in subsection 2 and
33 NRS 369.176, a person shall not directly or indirectly, himself or
34 herself or by his or her clerk, agent or employee, offer, keep or
35 possess for sale, furnish or sell, or solicit the purchase or sale of any
36 liquor in this State, or transport or import or cause to be transported
37 or imported any liquor in or into this State for delivery, storage, use
38 or sale therein, unless the person:

39 (a) Has complied fully with the provisions of this chapter; ~~{and}~~

40 (b) Holds an appropriate, valid license, permit or certificate
41 issued by the Department ~~{;}~~ *and*

42 (c) *Has been duly designated by the supplier of that liquor*
43 *pursuant to NRS 369.386 or purchased the liquor in compliance*
44 *with NRS 369.486.*



1 2. Except as otherwise provided in subsection 3, the provisions
2 of this chapter do not apply to a person:

3 (a) Entering this State with a quantity of alcoholic beverage for
4 household or personal use which is exempt from federal import
5 duty;

6 (b) ~~[Who imports]~~ *Entering this State with* 1 gallon or less of
7 alcoholic beverage per month from another state for his or her own
8 household or personal use;

9 (c) Who:

10 (1) Is a resident of this State;

11 (2) Is 21 years of age or older; and

12 (3) Imports 12 cases or less of wine per year for his or her
13 own household or personal use; or

14 (d) Who is lawfully in possession of wine produced on the
15 premises of an instructional wine-making facility for his or her own
16 household or personal use and who is acting in a manner authorized
17 by NRS 597.245.

18 3. The provisions of subsection 2 do not apply to a supplier,
19 wholesaler or retailer while he or she is acting in his or her
20 professional capacity.

21 4. A person who accepts liquor shipped into this State pursuant
22 to paragraph (b) or (c) of subsection 2 must be 21 years of age or
23 older.

24 **Sec. 8.** This act becomes effective on July 1, 2021.

