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# **Work Session Document**

## **Senate Committee on Taxation**

**May 8, 2003**

**AB 348  
AB 437**

## Assembly Bill No. 348

### Description

This bill establishes procedures for the Nevada Tax Commission to follow before adopting factors that are applied annually to the taxable value of improvements for property that has not been reappraised. If approved, the act is effective July 1, 2003, pursuant to Section 3.

### Testimony

The bill was requested by Assemblyman Carpenter on behalf of the Elko County Assessor. Mr. Carpenter indicated that the Elko County Assessor was unable to get answers that satisfied him with respect to the manner in which the factors were determined in a recent year. The Nevada Taxpayers Association and the Carson City Assessor also testified in favor of the bill. Dino Diciano testified on behalf of the Department of Taxation that the Tax Commission did not believe the bill was necessary. He indicated that the commission already provides the opportunity for assessors to come before the commission to express concerns with respect to the factors.

### Amendments

1. The Department of Taxation indicates that if the bill is processed, they would propose changing the reference to the publishers of the reference manuals used to determine the factors as the authors of those manuals instead. The department also indicated that they did not believe it was necessary to have the authors of the reference manuals present at the hearing.
2. The Department of Taxation has indicated that its major concerns with the bill relate to the possibility of having to conduct a separate Nevada Tax Commission hearing regarding the factors for improvements to real property. The department has indicated that its concerns with respect to the bill would be reduced if the dates in section 1 were amended as follows:
  - Subsection 1 – Change the date by which the department must provide the proposed factors to the assessors from July 1 to February 1.
  - Subsection 2 – Change the date by which the assessors must notify the commission that they approve or object to the proposed factors from September 1 to May 15.
  - Subsection 4 – Eliminate the date by which a hearing regarding any objections must be conducted and provide the hearing will be conducted at on of the commission's regularly scheduled meetings.
  - Subsections 3 and 5 – Eliminate the deadline for the adoption of the factors. There currently is no statutory deadline and it has not caused concerns.

See attached mark-up of section 1 of the bill.

Section 1. Chapter 361 of NRS is hereby amended by adding thereto a new section to read as follows:

*The factors for improvements required by subsection 5 of NRS 361.260 must be adopted pursuant to the following procedure:*

1. *On or before ~~July 1~~ February 1 of the year immediately preceding the year to which the factors will be applied, the ~~Nevada Tax Commission~~ department shall provide the proposed factors to each county assessor.*

2. *On or before ~~September 1~~ May 15 of the same year, each county assessor shall notify the Nevada Tax Commission that he either approves or objects to the proposed factors that are applicable to the county he represents.*

3. *~~If all the county assessors approve the factors, the Nevada Tax Commission shall proceed to adopt the factors on or before November 1 of that year.~~*

4. *If one or more of the county assessors notify the Nevada Tax Commission of an objection to the proposed factors that are applicable to the county they represent, the Nevada Tax Commission shall, at a regularly scheduled meeting of commission, hold a hearing on those proposed factors, ~~on or before October 1~~ April 15 of that year. At the hearing, the Nevada Tax Commission shall make every effort to reconcile the objection or objections of each county assessor, ~~including, without limitation, requesting that the publishers of any reference manual relied upon, in part or in whole, to determine the factors attend the hearing and provide the figures and other data used in determining the information contained in the publication.~~ and shall provide to those attending the hearing a copy of the published references and a description of the local indicators of value that were used by the department to establish the proposed factors.*

5. *~~On or before November 1 of the same year, the Nevada Tax Commission shall adopt the factors required by subsection 5 of NRS 361.260, giving due consideration to any unreconciled objection of one or more county assessors.~~*

## Assembly Bill No. 437

### Description

This bill amends the definition of "supplier" of liquor produced outside the United States to include only a brewer, distiller, manufacturer, producer, vintner, or bottler of liquor or his designated agent unless there is no such entity to sell the liquor to an importer into this state. If there is no such entity to sell the liquor to an importer into this state, then the owner of the liquor when it is first transported under the jurisdiction of the U.S. Government is the "supplier." The bill also includes the designated agent of a brewer, distiller, manufacturer, producer, vintner, or bottler of liquor within the definition of "supplier" for purposes of statutes that control the purchase of liquor by wholesalers and retailers.

### Testimony

The bill was requested by Assemblyman Christensen on behalf of Southern Wine and Spirits to conform statutes to the current practice in an effort to prevent people from buying overseas liquor products on the gray market and distributing them in the United States. Harvey Whittemore, representing Southern Wine and Spirits testified that the distribution of gray market liquors in Nevada was denying the producer of the liquor the right to market their products here. Gary E. Milliken, representing the Distilled Spirits Council of the U.S., also testified in favor of the bill.

### Amendments

1. Mr. Whittemore requested the following amendment to clarify the circumstances under which the owner of liquor when it is first transported to the United States can be considered a supplier of overseas liquor for the purposes of chapter 369 of NRS:

Amend section 1, page 2, by deleting lines 3, 4 and 5 and inserting:

***"the brewer, distiller, manufacturer, producer, vintner or bottler of the liquor, or a designated agent of such a person, has not designated an importer for the importation of the liquor into this state; or"***

The only time such a person would be considered a supplier is if the brewer, distiller, manufacturer, producer, vintner, or bottler of liquor, or a designated agent of one of those persons, has not designated an importer for the liquor in Nevada.

2. Mr. Whittemore also provided the attached comments in response to questions raised by Senator Neal and Senator Coffin with respect to the bill. The NRS provisions referenced in the attached comments are provided on the pages following the comments.

### ASSEMBLY BILL 437

Senator Neal asked whether it was unlawful for a retailer to substitute one brand of alcoholic beverage for a brand that was specifically requested by the customer. NRS 597.260 makes it unlawful for such improper substitution. NRS 228.380 provides that the office of the consumer's advocate may exercise the power of the attorney general with respect to enforcement of chapter 597.

Senator Neal's concerns about additional enforcement language could be easily addressed by adding a new section to the existing bill making it clear that the attorney general has the primary responsibility to enforce the provisions of NRS 369 dealing with alcoholic beverages and NRS 597.260. The Nevada Beer Wholesaler's Association ("NBWA") and Southern Wine & Spirits would strongly support the type of language proposed by Senator Neal.

Senator Coffin has asked whether modifications to NRS 369.4865 could be included in AB 437. Subject to the following comment, the NBWA would not object to the language proposed by Senator Coffin. The proposed amendment changing the definition of liquor should read as follows:

(b) "Liquor" shall not include beer unless the wholesale dealer otherwise agrees in writing with the non-restricted licensee that beer may be transferred by such non-restricted licensee.

**NRS 597.260 Penalty; civil liability.**

1. It is unlawful for a retailer of alcoholic beverages to substitute one brand of alcoholic beverage for a brand that has been specifically requested by the customer, unless the customer consents to the substitution. Any violation of this subsection by an employee must be attributed to the retailer.

2. A retailer who violates the provisions of subsection 1:

(a) For the first offense, is guilty of a misdemeanor and shall be fined an amount not to exceed \$1,000, plus the costs of prosecution. No sentence of incarceration may be imposed.

(b) For the second offense, is guilty of a gross misdemeanor and shall be fined an amount not to exceed \$2,000, plus the costs of prosecution. No sentence of incarceration may be imposed.

(c) For a third or subsequent offense, is guilty of a gross misdemeanor and shall be fined an amount equal to the costs of prosecution. The court shall impose no other criminal penalty, but shall, within 5 working days after the conviction, issue an order revoking the license to sell intoxicating liquor of the business and forward a certified copy of the order to the liquor board of county or governing body of the city, as applicable, which licensed the sale of liquor at the retailer's place of business. The board shall not reissue such a license for that place of business for a period of at least 1 year.

3. In addition to the criminal penalties set forth in this section, the retailer, upon conviction, is liable in civil suit to the customer and to the supplier and wholesaler of the requested alcoholic beverage for the damages which result from the substitution. The court shall award the prevailing party in such an action attorney's fees and his costs of the action.

4. As used in this section:

(a) "Alcoholic beverage" has the meaning ascribed to it in NRS 202.015.

(b) "Retailer" means the owner of a business where alcoholic beverages are sold by the drink. The term includes any person employed by the owner.

(c) "Supplier" has the meaning ascribed to it in NRS 597.140.

(d) "Wholesaler" has the meaning ascribed to it in NRS 597.150.

(Added to NRS by 1991, 360; A 1995, 1572)

**NRS 228.380 Authority to exercise power of attorney general in areas of consumer protection; exceptions; expenditures; limitations on powers relating to discretionary or competitive telecommunication services.**

1. Except as otherwise provided in this section, the consumer's advocate may exercise the power of the attorney general in areas of consumer protection, including, but not limited to, enforcement of chapters 90, 597, 598, 598A, 598B, 598C and 599B of NRS. The consumer's advocate may not exercise any powers to enforce any criminal statute set forth in chapters 90, 597, 598, 598A, 598B, 598C or 599B of NRS for any transaction or activity that involves a proceeding before the public utilities commission of Nevada if the consumer's advocate is participating in that proceeding as a real party in interest on behalf of the customers or a class of customers of utilities.

2. The consumer's advocate may expend revenues derived from NRS 704.033 only for activities directly related to the protection of customers of public utilities.

3. The powers of the consumer's advocate do not extend to proceedings before the public utilities commission of Nevada directly relating to discretionary or competitive telecommunication services.

(Added to NRS by 1981, 1676; A 1991, 66; 1997, 1970)



**NRS 369.4865 Authorized transfers between certain retail liquor stores holding nonrestricted licenses.**

1. A retail liquor store that holds a nonrestricted license may transfer an original package of liquor to another retail liquor store that holds a nonrestricted license, and that other retail liquor store may receive the original package of liquor pursuant to the transfer, if:

(a) Each retail liquor store:

(1) Holds its nonrestricted license for the purposes set forth in subsection 2 of NRS 463.0177; and

(2) Is in the marketing area of the wholesale dealer from which the original package of liquor was obtained by the initial retail liquor store;

(b) The initial retail liquor store:

(1) Obtained the original package of liquor in compliance with the provisions of this chapter;

(2) Is an affiliate of the retail liquor store that receives the transfer; and

(3) Does not charge the retail liquor store that receives the transfer for the original package of liquor;

(c) Immediately before the transfer, the original package of liquor is located at the initial retail liquor store; and

(d) Pursuant to the transfer, the original package of liquor is transported from the initial retail liquor store to the other retail liquor store.

2. A transfer authorized by this section shall not be deemed a sale.

3. A retail liquor store that transfers or receives an original package of liquor as authorized by this section:

(a) Shall not be deemed to be engaged in business as a wholesale dealer based upon the transfer authorized by this section.

(b) Notwithstanding the provisions of subsection 5 of NRS 369.450, may transport the original package of liquor from the initial retail liquor store to the other retail liquor store without a special permit for such transportation.

4. As used in this section:

(a) "Affiliate" has the meaning ascribed to it in NRS 463.0133.

(b) "Liquor" does not include beer.

(c) "Marketing area" has the meaning ascribed to it in NRS 597.136.

(d) "Nonrestricted license" has the meaning ascribed to it in NRS 463.0177.

(Added to NRS by 2001 Special Session, 164)

(Added to NRS by 1981, 1676; A 1991, 66; 1997, 1970)