

SENATE BILL NO. 233—SENATOR SCHNEIDER

MARCH 21, 2005

Referred to Committee on Taxation

SUMMARY—Makes various changes relating to alcoholic beverages. (BDR 52-154)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

~

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

AN ACT relating to alcoholic beverages; authorizing certain grocery stores to serve samples of alcoholic beverages on the premises of the grocery store; providing for the regulation of such grocery stores and for the issuance of annual permits by local governing bodies; authorizing the operation of instructional wine-making facilities; providing for the licensure and regulation of such facilities; restricting the use of wine produced at such facilities; exempting such wine from the excise tax on liquor; authorizing certain fees; providing remedies and penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regulates and establishes conditions and licensing requirements for the importation, sale and distribution of alcoholic beverages in the State. (NRS 369.010-369.550, 597.120-597.262)

This bill authorizes an operator of a grocery store to serve samples of alcoholic beverages on the premises of the store to a person of legal age. Convenience stores and stores at which the sale of food for consumption off premises is incidental to the principal purpose of the store are not authorized to serve samples of alcoholic beverages.

Existing law restricts a manufacturer, blender or bottler of alcoholic beverages from engaging or investing in a business that imports, wholesales or retails alcoholic beverages. (NRS 597.210) Existing law allows the operation of a winery in a county with a population of 100,000 or less (currently counties other than Clark and Washoe Counties). (NRS 597.240)



* S B 2 3 3 R 1 *

14 This bill authorizes a person to operate an instructional wine-making facility if
15 the person obtains a license from the Department of Taxation. This bill also
16 authorizes the licensee to engage in the process of wine making and to serve wine
17 by the glass for consumption on the premises of the facility.

18 This bill requires that the wine produced on the premises of the facility be used,
19 consumed or disposed of on the premises. A limited amount of the wine may be
20 distributed to a person participating in the wine-making process for that person's
21 household or personal use or as a gift under certain circumstances.

22 This bill makes it a misdemeanor to sell, offer to sell or solicit the purchase or
23 sale of wine produced on the premises of an instructional wine-making facility. It is
24 also a misdemeanor to use wine produced on the premises for any purpose other
25 than household or personal use or as a gift.

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

1 **Section 1.** Chapter 597 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *A person who operates a grocery store may serve*
4 *samples of alcoholic beverages on the premises of the grocery*
5 *store if the person:*

6 *(a) Is licensed to sell, at retail, alcoholic beverages on the*
7 *premises of the grocery store;*

8 *(b) Obtains an annual permit to serve such samples from the*
9 *local governing body that has jurisdiction to license and regulate*
10 *the sale of alcoholic beverages on the premises of the grocery*
11 *store;*

12 *(c) Purchases any alcoholic beverages used for such samples*
13 *from a wholesale dealer of alcoholic beverages who is licensed*
14 *under chapter 369 of NRS; and*

15 *(d) Complies with the requirements of this section.*

16 **2.** *A person who holds an annual permit issued pursuant to*
17 *this section may serve samples of alcoholic beverages on the*
18 *premises of the grocery store only to persons of legal age and only*
19 *in such quantities as are necessary to provide a sample or taste of*
20 *the alcoholic beverages.*

21 **3.** *Notwithstanding any other provision of law, a supplier,*
22 *manufacturer, importer or wholesale dealer of alcoholic beverages*
23 *may assist a person who operates a grocery store in serving*
24 *samples of alcoholic beverages pursuant to this section. The*
25 *assistance authorized by this subsection is limited to the pouring of*
26 *such samples or the provision of information, instruction or*
27 *education regarding the product being sampled, or any*
28 *combination of those tasks. The provision of such assistance does*
29 *not relieve the person who operates the grocery store from the*



responsibility of complying with all the requirements of this section.

4. A local governing body may:

(a) Charge a fee of not more than \$500 to issue an annual permit pursuant to this section.

(b) Adopt reasonable restrictions regarding the time, place, manner and frequency of the activities authorized by this section. Such restrictions must not prohibit or unreasonably interfere with the activities authorized by this section.

5. A person who serves samples of alcoholic beverages on the premises of a grocery store in violation of any provision of this section is guilty of a misdemeanor.

6. This section preempts any local charter, code, ordinance or regulation that is in conflict with the purposes and objectives of this section.

7. As used in this section:

(a) "Convenience store" means a store which is principally devoted to providing the public with a convenient location to purchase consumable products quickly and in which the area open to the public is less than 5,000 square feet.

(b) "Grocery store" means a store which is principally devoted to the sale of food for human consumption off the premises or which derives a substantial amount of its gross revenue from the sale of food for human consumption off the premises, regardless of whether the store is also devoted to or derives gross revenue from the sale of nonfood items. The term does not include:

(1) A convenience store.

(2) A store at which the sale of food for human consumption off the premises is incidental to the principal purpose of the store.

Sec. 3. 1. A person may operate an instructional wine-making facility if the person:

(a) Obtains a license for the facility pursuant to chapter 369 of NRS;

(b) Complies with the requirements of this section; and

(c) Complies with any other applicable governmental requirements for the operation of such a facility, including, without limitation, compliance with all applicable federal bonding, permitting and other requirements for the production, blending, treatment, storage and bottling of wine.

2. A person who is licensed to operate an instructional wine-making facility may:

(a) Engage in the process of wine making on the premises of the facility;



1 (b) Charge a fee to other persons of legal age for the purpose
2 of providing those persons with instruction and the opportunity to
3 participate directly in the process of wine making on the premises
4 of the facility; and

5 (c) Serve wine produced on the premises of the facility by the
6 glass for consumption on the premises of the facility.

7 3. Wine produced on the premises of an instructional wine-
8 making facility must be:

9 (a) Used, consumed or disposed of on the premises of the
10 facility; or

11 (b) Distributed from the facility to a person of legal age who
12 has participated directly in the process of wine making on the
13 premises of the facility for the person's own household or personal
14 use. That person:

15 (1) May distribute the wine to any other person of legal age
16 as a gift.

17 (2) Shall not remove from the facility:

18 (I) Any wine other than that which the person
19 participated directly in the process of making on the premises of
20 the facility.

21 (II) More than 60 gallons of wine during any period of
22 12 months.

23 4. Except as otherwise permitted by this section, if a person
24 knows or reasonably should know that wine was produced on the
25 premises of an instructional wine-making facility, the person shall
26 not:

27 (a) Directly or indirectly or through any other person, sell,
28 offer to sell or solicit the purchase or sale of such wine at
29 wholesale or retail; or

30 (b) Use such wine for any purpose other than for the person's
31 own household or personal use.

32 5. A person who violates any provision of this section is guilty
33 of a misdemeanor.

34 6. As used in this section:

35 (a) "Instructional wine-making facility" means any facility
36 that, for a fee, provides a person of legal age with instruction and
37 the opportunity to participate directly in the process of wine
38 making on the premises of the facility. The term does not include:

39 (1) A wine maker or winery that is licensed pursuant to
40 chapter 369 of NRS.

41 (2) A university, college or community college that is part
42 of the University and Community College System of Nevada or
43 any other postsecondary educational institution that is licensed by
44 a federal or state agency and is accredited by a nationally
45 recognized educational accrediting association.



(b) *“Process of wine making” means the usual and customary steps taken to produce wine. Such steps may include, without limitation:*

(1) *Growing, buying and importing agricultural products and ingredients.*

(2) *Selecting, preparing and processing agricultural products and ingredients.*

(3) *Barreling, fermenting, aging, filtering, bottling, labeling, racking, warehousing and storing.*

(4) *Importing bulk wine or juice from a bonded winery in another state, to be fermented into wine or, if already fermented, to be blended with other wine and aged in a suitable cellar.*

Sec. 4. NRS 597.200 is hereby amended to read as follows:

597.200 As used in NRS ~~597.210~~ **597.190** to 597.250, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires:

1. “Alcoholic beverage” means any malt beverage or spirituous, vinous or malt liquor which contains 1 percent or more ethyl alcohol by volume.

2. “Brew pub” means an establishment which manufactures malt beverages and sells those malt beverages at retail pursuant to the provisions of NRS 597.230.

3. “Engage in” includes participation in a business as an owner or partner, or through a subsidiary, affiliate, ownership equity or in any other manner.

4. *“Instructional wine-making facility” means an instructional wine-making facility operated pursuant to section 3 of this act.*

5. *“Legal age” means the age at which a person is legally permitted to purchase an alcoholic beverage pursuant to NRS 202.020.*

6. “Malt beverage” means beer, ale, porter, stout and other similar fermented beverages of any name or description, brewed or produced from malt, wholly or in part.

7. *“Wine” has the meaning ascribed to it in NRS 369.140.*

Sec. 5. NRS 597.210 is hereby amended to read as follows:

597.210 1. Except as otherwise provided in NRS 597.240, a person engaged in the business of manufacturing, blending or bottling alcoholic beverages shall not engage in the business of importing, wholesaling or retailing alcoholic beverages by investment, loan or extension of credit in excess of normal terms prevalent in the industry, unless he was so engaged on or before May 1, 1975, and then only to the extent so engaged.

2. This section does not:



(a) Preclude any person engaged in the business of importing, wholesaling or retailing alcoholic beverages from owning less than 2 percent of the outstanding ownership equity in any organization which manufactures, blends or bottles alcoholic beverages.

(b) Prohibit a person from operating a brew pub pursuant to NRS 597.230.

(c) Prohibit a person from operating an instructional wine-making facility pursuant to section 3 of this act.

Sec. 6. NRS 597.240 is hereby amended to read as follows:

597.240 **1.** A winery located in a county whose population is 100,000 or less, if it is federally bonded, may:

~~11-1~~ **(a)** Import wine or juice from a bonded winery in another state, to be fermented into wine or, if already fermented, to be mixed with other wine or aged in a suitable cellar, or both.

~~12-1~~ **(b)** Sell at retail or serve by the glass, on its premises and at one other location, wine produced, blended or aged by the winery. The amount of wine sold at a location other than on the premises of the winery may not exceed 50 percent of the total volume of the wine sold by the winery.

~~13-1~~ **(c)** Serve by the glass, on its premises, any alcoholic beverage.

2. *For the purposes of this section, an instructional wine-making facility is not a winery. This section does not prohibit a person from operating an instructional wine-making facility in any county.*

Sec. 7. NRS 597.250 is hereby amended to read as follows:

597.250 The license of any person who violates the provisions of NRS 597.210, 597.220 or 597.230 *or section 3 of this act* must be suspended or revoked in the manner provided in chapter 369 of NRS.

Sec. 8. NRS 597.262 is hereby amended to read as follows:

597.262 **1.** Except as otherwise provided in *this section and* NRS 228.380, the Attorney General ~~shall~~ *has primary jurisdiction to* enforce the provisions of NRS 597.120 to 597.260, inclusive, and shall cause appropriate legal action to be taken to enforce those provisions.

2. *The Attorney General has concurrent jurisdiction with the district attorneys of this State to enforce the provisions of sections 2 and 3 of this act.*

3. This section does not prohibit:

(a) A wholesaler from bringing an action against a supplier pursuant to NRS 597.170.

(b) A customer, supplier or wholesaler from bringing an action against a retailer pursuant to NRS 597.260.



1 **Sec. 9.** Chapter 369 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 10 and 11 of this act.

3 **Sec. 10. 1.** *As used in this chapter, "instructional wine-*
4 *making facility" means an instructional wine-making facility*
5 *operated pursuant to section 3 of this act.*

6 **2.** *For the purposes of this chapter:*

7 **(a)** *A person who operates an instructional wine-making*
8 *facility is not a wine maker or a supplier, brewer, distiller,*
9 *manufacturer, producer, vintner, bottler, wholesaler, wholesale*
10 *dealer, retailer or retail dealer of wine.*

11 **(b)** *An instructional wine-making facility is not a winery or a*
12 *retail liquor store.*

13 **Sec. 11. 1.** *No excise tax may be imposed upon wine*
14 *produced on the premises of an instructional wine-making facility*
15 *if the wine is used, consumed or disposed of on the premises of the*
16 *facility or distributed to persons for household or personal use in*
17 *the manner authorized by section 3 of this act.*

18 **2.** *If a person pays the tax on any wine which is exempt from*
19 *the tax pursuant to this section, the person may obtain a credit or*
20 *refund with respect to the tax so paid in the manner provided by*
21 *the Department.*

22 **Sec. 12.** NRS 369.180 is hereby amended to read as follows:

23 369.180 **1.** In addition to the limitations imposed by NRS
24 597.210 and 597.220, a person shall not:

25 ~~[1-]~~ **(a)** Import liquors into this State unless he first secures an
26 importer's license or permit from this State.

27 ~~[2-]~~ **(b)** Engage in business as a wholesale dealer of wines and
28 liquors in this State unless he first secures a wholesale wine and
29 liquor dealer's license from this State.

30 ~~[3-]~~ **(c)** Engage in business as a wholesale dealer of beer in this
31 State unless he first secures a wholesale beer dealer's license from
32 this State.

33 ~~[4-]~~ **(d)** Operate a winery in this State or export wine from this
34 State unless he first secures a wine-maker's license from this State.

35 ~~[5-]~~ **(e)** *Operate an instructional wine-making facility in this*
36 *State unless he first secures a license for the instructional wine-*
37 *making facility from this State.*

38 **(f)** Operate a brewery in this State unless he first secures a
39 brewer's license from this State.

40 ~~[6-]~~ **(g)** Operate a brew pub in this State unless he first secures a
41 brew pub's license from this State.

42 ~~[7-]~~ **2.** *A person who holds a license for an instructional*
43 *wine-making facility:*

44 **(a)** *May engage in any activity authorized by section 3 of this*
45 *act.*



(b) May not engage in any other activity for which a license is required pursuant to this chapter, unless the person holds the appropriate license for that activity.

3. As used in this section:

(a) "Brew pub" has the meaning ascribed to it in NRS 597.200.

(b) "Brewery" means an establishment which manufactures malt beverages but does not sell those malt beverages at retail.

(c) "Malt beverage" has the meaning ascribed to it in NRS 597.200.

Sec. 13. NRS 369.300 is hereby amended to read as follows:

369.300 The following is a schedule of fees to be charged for licenses:

Importer's wine, beer and liquor license	\$500
Importer's beer license	150
Wholesale wine, beer and liquor license	250
Wholesale beer dealer's license	75
Wine-maker's license	75
<i>License for an instructional wine-making facility</i>	<i>75</i>
Brew pub's license	75
Brewer's license	75

Sec. 14. NRS 369.490 is hereby amended to read as follows:

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

(a) Has complied fully with the provisions of this chapter; and

(b) Holds an appropriate, valid license, permit or certificate issued by the Department.

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

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

(b) Who imports 1 gallon or less of alcoholic beverage per month from another state for his own household or personal use;

~~for~~

(c) Who:

(1) Is a resident of this State;

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

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



1 (d) *Who is lawfully in possession of wine produced on the*
2 *premises of an instructional wine-making facility for his own*
3 *household or personal use and who is acting in a manner*
4 *authorized by section 3 of this act.*

5 3. The provisions of subsection 2 do not apply to a supplier,
6 wholesaler or retailer while he is acting in his professional capacity.

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

10 **Sec. 15.** This act becomes effective upon passage and
11 approval.



