

## Amendment No. 679

Senate Amendment to Assembly Bill No. 378

(BDR 32-894)

**Proposed by:** Senate Committee on Taxation**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

| ASSEMBLY ACTION |                          |      |                          | Initial and Date | SENATE ACTION |              |                          |      | Initial and Date         |       |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------|--------------------------|------|--------------------------|-------|
| Adopted         | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____            |               | Adopted      | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In    | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |               | Concurred In | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____ |
| Receded         | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |               | Receded      | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

JRS/TMC



Date: 5/15/2009

A.B. No. 378—Revises provisions governing distributors of intoxicating liquor.  
(BDR 32-894)



## ASSEMBLY BILL NO. 378—ASSEMBLYMAN OCEGUERA

MARCH 16, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing distributors of intoxicating liquor.  
(BDR 32-894)

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 liquor; authorizing a wholesale dealer to receive original packages of a brand of liquor from an affiliate of the wholesale dealer located outside this State under certain circumstances; prohibiting a supplier from unreasonably withholding or delaying its approval of certain decisions relating to a franchise with a wholesaler under certain circumstances; imposing other prohibitions on a supplier; providing a remedy for violations; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law sets forth the circumstances under which intoxicating liquor may be imported and sold in this State. (Chapter 369 of NRS) **Section 1** of this bill provides that a wholesale dealer of liquor who is a designated importer for a supplier may receive original packages of liquor from an affiliate of the wholesale dealer located outside this State if certain conditions are met. **Section 1** also provides that such an affiliate is not a supplier when the affiliate ships liquor to the wholesale dealer.

Existing law sets forth various requirements concerning a franchise between a supplier and a wholesaler of malt beverages, distilled spirits and wines. (NRS 597.120-597.180) **Section 3** of this bill prohibits a supplier from unreasonably withholding or delaying its approval of certain sales, assignments or transfers of an interest in a wholesaler's assets or of the substitution of a person under a franchise. **Section 3** provides for the liability of the supplier to a wholesaler if the supplier unreasonably withholds its consent in violation of **section 3**. **Section 4** prohibits a supplier from taking various other actions against a wholesaler.

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

**Section 1.** Chapter 369 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. If a supplier designates a wholesale dealer as the designated importer of a brand of liquor pursuant to NRS 369.386, the wholesale dealer may, without***

any additional designation or further consent from the supplier, receive original packages of that brand of liquor from an affiliate of the wholesale dealer located outside of this State if:

(a) The affiliate operates a warehouse outside this State from which the affiliate ships the liquor;

(b) The affiliate is licensed as a wholesaler for the liquor in the state from which the affiliate ships the liquor;

(c) The wholesale dealer registers the name and address of the affiliate's warehouse with the Department on a form prescribed by the Department; and

(d) As soon as practicable after receiving the liquor, the wholesale dealer reports the receipt of the liquor to the Department and pays all applicable excise taxes thereon pursuant to NRS 369.330.

2. A wholesale dealer may not receive more than 15 percent of the total amount of any brand of liquor imported into this State during a calendar year pursuant to this section. Any liquor received by the wholesale dealer from an affiliate pursuant to this section must be purchased in accordance with the terms and conditions of the wholesaler's franchise with the supplier.

3. A transfer of liquor pursuant to this section is not a purchase or sale of that liquor.

~~3.4.~~ 4. An affiliate of a wholesale dealer located outside this State who ships liquor pursuant to this section is not engaged in business as a supplier for purposes of this chapter and chapter 597 of NRS. The provisions of this subsection do not authorize a wholesale dealer to receive liquor from an affiliate who is a supplier, as defined in NRS 597.140, or the holder of a certificate of compliance issued pursuant to NRS 369.430.

~~4.5.~~ 5. As used in this section ~~the "affiliate"~~:

(a) "Affiliate" means a wholesale dealer or a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a wholesale dealer. As used in this subsection, paragraph, "control" means not less than 50 percent control, directly or indirectly, through one or more intermediaries.

(b) "Franchise" has the meaning ascribed to it in NRS 597.130.

Sec. 2. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. 1. A supplier shall not unreasonably withhold or delay his approval of any assignment, sale or transfer of the stock of a wholesaler or of all or any portion of a wholesaler's assets, a wholesaler's voting stock, the voting stock of any parent corporation or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of a franchise, whenever a person to be substituted under the terms of the franchise meets reasonable standards imposed upon the wholesaler and any other wholesaler of the supplier of the same general class, after consideration of the size and location of the marketing area of the wholesaler.

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

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

4. In addition to the provisions of NRS 597.170, a supplier who unreasonably delays or withholds his consent or unreasonably denies approval of a sale, transfer or assignment of any ownership interest in a wholesaler is liable to the wholesaler for the laid-in costs of inventory of each affected brand of liquor and any diminution in the fair market value of the business of the wholesaler in relation to each affected brand. The damages recoverable pursuant to this section include, without limitation, all reasonable costs of bringing the action and attorney's fees. For the purpose of this subsection, the fair market value of a business of a wholesaler includes, without limitation, the good will of the business and its value as a going concern, if any.

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

Sec. 4. A supplier shall not:

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

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

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

4. Require a wholesaler to accept delivery of any alcoholic beverage or any other item that is not voluntarily ordered by the wholesaler or otherwise not required under the franchise between the supplier and wholesaler or is in violation of any levels of inventory that are mutually agreed upon in writing by the supplier and wholesaler;

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

6. Require a wholesaler to participate in or contribute to any advertising fund or promotional activity that:

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

(b) Requires a contribution by the wholesaler that exceeds any amount specified for that purpose in the franchise.

Sec. 5. NRS 597.120 is hereby amended to read as follows:

597.120 As used in NRS 597.120 to 597.180, inclusive, **and sections 3 and 4 of this act**, unless the context otherwise requires, the words and terms defined in NRS 597.125 to 597.150, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NRS 597.170 is hereby amended to read as follows:

597.170 1. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for violation of NRS 597.120 to 597.180, inclusive, **and sections 3 and 4 of this act** and may recover the damages sustained by him, together with such costs of the action and reasonable attorney's fees as are authorized under NRS 18.110.

2. The remedies provided in NRS 597.120 to 597.180, inclusive, **and sections 3 and 4 of this act** are independent of and supplemental to any other remedy or remedies available to the wholesaler in law or equity.

Sec. 7. NRS 597.180 is hereby amended to read as follows:

597.180 In any action brought by a wholesaler against a supplier for termination or noncontinuance of, or causing to resign from a franchise in violation of NRS 597.120 to 597.180, inclusive, **and sections 3 and 4 of this act**, the supplier has the burden of establishing that he acted for good cause and that the wholesaler

1 did not act in good faith. It is a complete defense for the supplier to prove that the  
2 termination, noncontinuance or causing to resign was done in good faith and for  
3 good cause.

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

5 597.262 1. Except as otherwise provided in this section and NRS 228.380,  
6 the Attorney General has primary jurisdiction to enforce the provisions of NRS  
7 597.120 to 597.260, inclusive, and *sections 3 and 4 of this act and* shall cause  
8 appropriate legal action to be taken to enforce those provisions.

9 2. The Attorney General has concurrent jurisdiction with the district attorneys  
10 of this State to enforce the provisions of NRS 597.225 and 597.245.

11 3. This section does not prohibit:

12 (a) A wholesaler from bringing an action against a supplier pursuant to NRS  
13 597.170 ~~or~~ *or section 3 of this act.*

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