

SENATE BILL NO. 416—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 28, 2011

Referred to Committee on Revenue

SUMMARY—Provides for the regulation of certain marketing programs or promotions of liquor in retail establishments. (BDR 32-923)

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.

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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; providing for the licensing of liquor marketing companies in this State and imposing a fee for such licensure; prohibiting certain persons from having any ownership interest in such a company; providing for the regulation of certain marketing programs or promotions of liquor in retail establishments; repealing the provision authorizing a grocery store to serve samples of alcoholic beverages; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 3** of this bill requires that any marketing program or promotion of the
2 liquor of a supplier of liquor within or on the premises of an establishment of a
3 retailer of alcoholic beverages be conducted by and through a liquor marketing
4 company pursuant to a written agreement between the supplier and the liquor
5 marketing company. **Section 3** also requires a liquor marketing company to account
6 separately for all money received and expended with respect to each such
7 marketing program or promotion and authorizes the Department of Taxation to
8 audit any liquor marketing company to ensure its compliance. **Section 11** of this
9 bill repeals a conflicting provision of existing law which authorizes grocery stores
10 to serve samples of alcoholic beverages. **Section 4** of this bill prohibits a supplier or
11 distributor or a retailer of alcohol beverages in this State, or a subsidiary or affiliate
12 of a supplier or distributor or a retailer of alcohol beverages in this State, from
13 having any ownership interest in a liquor marketing company. **Section 5** of this bill
14 requires the licensing of liquor marketing companies in this State. **Section 6** of this
15 bill requires a liquor marketing company, as part of the application process for the



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issuance of a license, to disclose the name and address of each person with any ownership interest in the company, while **section 8** of this bill imposes a \$75 annual fee for licensure.

Existing law authorizes the Department to adopt regulations to carry out the provisions of this bill. (NRS 369.150) Existing law requires that an application for a license be made to the board of county commissioners of the county in which the applicant maintains his or her principal place of business but that the license be issued by the Department. (NRS 369.190, 369.200) Existing law authorizes the board of county commissioners, after notice and hearing, to recommend the temporary suspension or permanent revocation of a license upon a violation of any provision of this bill by a licensee (NRS 369.230), or to suspend or summarily revoke a license for an aggravated or flagrant violation of any such provision (NRS 369.280), subject to review by the Department. Existing law also provides that any violation of the provisions of this bill constitutes a misdemeanor (NRS 369.550) and provides for a civil action for damages for a violation of the licensing requirements set forth in **section 5** of this bill. (NRS 369.560)

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *As used in this chapter, "liquor marketing company" means a person licensed to conduct marketing programs or promotions of the liquor of a supplier within or on the premises of an establishment of a retailer of alcoholic beverages in this State.*

Sec. 3. 1. *Any marketing program or promotion of the liquor of a supplier within or on the premises of an establishment of a retailer of alcoholic beverages in this State may only be conducted by and through a liquor marketing company pursuant to a written agreement between the supplier and the liquor marketing company.*

2. *A liquor marketing company shall account separately for all money received and expended with respect to each such marketing program or promotion.*

3. *The Department may audit any liquor marketing company to ensure its compliance with the provisions of this section.*

Sec. 4. *A supplier or distributor or a retailer of alcohol beverages in this State, or a subsidiary or affiliate of a supplier or distributor or a retailer of alcohol beverages in this State, shall not have any ownership interest in a liquor marketing company.*

Sec. 5. NRS 369.180 is hereby amended to read as follows:

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

(a) Import liquors into this State unless the person first secures an importer's license or permit from this State.



(b) Engage in business as a wholesale dealer of wines and liquors in this State unless the person first secures a wholesale wine and liquor dealer's license from this State.

(c) Engage in business as a wholesale dealer of beer in this State unless the person first secures a wholesale beer dealer's license from this State.

(d) *Engage in business as a liquor marketing company in this State unless the person first secures a liquor marketing company's license from this State.*

(e) Operate a winery in this State or export wine from this State unless the person first secures a wine-maker's license from this State.

~~(e)(f)~~ (f) Operate an instructional wine-making facility in this State unless the person first secures a license for the instructional wine-making facility from this State.

~~(f)(g)~~ (g) Operate a brewery in this State unless the person first secures a brewer's license from this State.

~~(g)(h)~~ (h) Operate a brew pub in this State unless the person first secures a brew pub's license from this State.

2. A person who holds a license for an instructional wine-making facility:

(a) May engage in any activity authorized by NRS 597.245.

(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. 6. NRS 369.190 is hereby amended to read as follows:

369.190 1. An application for any of the licenses described in NRS 369.180 must be made to the board of county commissioners of the county in which the applicant maintains his or her principal place of business.

2. Each application must:

(a) Be made on such form as the Department prescribes.

(b) Include the name and address of the applicant. If the applicant is:

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

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



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

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

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

(4) A liquor marketing company, the application must include the name and address of each person with any ownership interest in the liquor marketing company.

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

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

3. The board of county commissioners shall examine all applications filed with it, and shall require satisfactory evidence that the applicant is a person of good moral character.

Sec. 7. NRS 369.210 is hereby amended to read as follows:

369.210 Every license issued under this chapter ~~[shall]~~ *must* set forth:

1. The name of the person to whom it is issued.

2. The location, by street and number, of the premises for which the license is issued.

3. ~~[The]~~ *Except for a liquor marketing company's license, the* particular class of liquor or liquors that the licensee is authorized to sell.

Sec. 8. 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>Liquor marketing company's license</i>	<i>75</i>
License for an instructional wine-making facility	75
Brew pub's license	75
Brewer's license	75



Sec. 9. NRS 369.560 is hereby amended to read as follows:

369.560 1. A wholesale dealer may bring an action in a court of competent jurisdiction against a retail liquor store and another wholesale dealer who knowingly transfer:

(a) An original package of liquor between marketing areas without the consent of the wholesale dealer as required by subsection 2 of NRS 369.4863; or

(b) An original package of beer between retail liquor stores without complying with the provisions of this chapter,

➔ and is entitled to an award of \$1,000 for each violation and may recover the damages sustained by him or her, together with such costs of the action and reasonable attorney's fees as authorized by NRS 18.110.

2. If any person knowingly violates any provision of NRS 369.180, 369.386, 369.388, 369.486, 369.487 or 369.488, a wholesale dealer, supplier, retailer, ~~retail~~ retail liquor dealer *or liquor marketing company* who is injured by the violation may bring an action in a court of competent jurisdiction against the person to recover:

(a) For the first violation, \$100 plus treble the actual damages sustained by him or her, together with such costs of the action and reasonable attorney's fees as authorized by NRS 18.110.

(b) For the second violation, \$250 plus treble the actual damages sustained by him or her, together with such costs of the action and reasonable attorney's fees as authorized by NRS 18.110.

(c) For the third and any subsequent violation, \$500 plus treble the actual damages sustained by him or her and punitive damages as the facts may warrant, together with such costs of the action and reasonable attorney's fees as authorized by NRS 18.110.

3. A director, officer, agent or employee or a person engaged in the sale or importation of liquor in this State who knowingly assists or aids in a violation of this chapter for which an action is authorized pursuant to this section is liable in such an action.

4. The remedies provided in this section are independent of and supplemental to any other remedy or remedies available to a person in law or equity.

Sec. 10. 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 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 NRS ~~597.225 and~~ 597.245.



- 1 3. This section does not prohibit:
- 2 (a) A wholesaler from bringing an action against a supplier
- 3 pursuant to NRS 597.157 or 597.170.
- 4 (b) A customer, supplier or wholesaler from bringing an action
- 5 against a retailer pursuant to NRS 597.260.
- 6 **Sec. 11.** NRS 597.225 is hereby repealed.

TEXT OF REPEALED SECTION

597.225 Requirements to serve samples of alcoholic beverages on premises of grocery store.

1. A person who operates a grocery store may serve samples of alcoholic beverages on the premises of the grocery store if the person:

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

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

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

(d) Complies with the requirements of this section.

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

3. Notwithstanding any other provision of law, a supplier, manufacturer, importer or wholesale dealer of alcoholic beverages may assist a person who operates a grocery store in serving samples of alcoholic beverages pursuant to this section. The assistance authorized by this subsection is limited to the pouring of such samples or the provision of information, instruction or education regarding the product being sampled, or any combination of those tasks. The provision of such assistance does 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 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.



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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. A local governing body may not charge any fee for issuing an annual permit pursuant to this section.

8. 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.

