

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Sixth Session
March 8, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m. on Tuesday, March 8, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblyman Harvey J. Munford, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Washoe County Assembly District
No. 30

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Cynthia Carter, Committee Manager
Mary Garcia, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dino DiCianno, Executive Director, Department of Taxation
Tom Young, Brewmaster, Great Basin Brewing Company
Alfredo Alonso, representing Southern Wine and Spirits and the Nevada Beer Wholesalers' Association

Chair Kirkpatrick:

[Roll was called.] We are going to go ahead and get started with a quick presentation from Mr. DiCianno, and then we will hear one bill.

Dino DiCianno, Executive Director, Department of Taxation:

The Chair has asked me to give you a brief overview of the three-tier system. You should have received two documents ([Exhibit C](#)) and ([Exhibit D](#)), and I will get to those shortly.

What is Nevada's three-tier system of liquor regulation? First of all, liquor is controlled for a number of reasons: to deny access to minors, to limit overconsumption, to ensure public safety via a clean supply, and to allow community control over the type and nature of liquor venues. Liquor is also regulated as an industry, both to compel the industry to meet public goals of the state and to ensure fair competition.

The classic model of liquor regulation is found in the three-tier system for supply and distribution, which Nevada has adopted. This structure was created after Prohibition in order to control alcohol as a commodity. The purpose was to eliminate what is commonly referred to as tied houses. Those were retailers that were owned by manufacturers and that served as aggressive sales outlets for those manufacturers. In other words, they tried to control the market.

In Nevada's three-tier system, beverage manufacturers, distributors, and retailers each occupy a different level. Manufacturers, more commonly known as breweries, vineyards, and distilleries, supply distributors, who are more commonly known as wholesalers. Those wholesalers, in turn, supply retailers. Those are the three tiers of the system.

Here is probably the most important thing about the three-tier system. Under current Nevada law, each tier or level of the system is independent of the others. That is the point. The system ensures accountability to the public, as well as the benefits of healthy competition.

I would like to draw your attention to the PowerPoint presentation ([Exhibit C](#)). The first slide covers the statement of legislative policy, which is found in Chapter 597 of *Nevada Revised Statutes*. The policy of this Legislature and the state is to ensure the orderly distribution and marketing of alcoholic beverages in this state in order to protect locally owned and operated business enterprises. It is also to protect those residents whose livelihoods and investments are dependent on their freedom to manage their businesses without economic and coercive control by nonresident suppliers of alcoholic beverages.

I am not going to go through each and every slide and document. I think this is self-explanatory. What I wanted to emphasize was the whole point of why we have a three-tier system, why Nevada complies with that system, and why you have this specific bill in front of you for discussion. If there are any questions, or if we need to go into how the excise tax is applied or what the distribution process is, we would be more than happy to respond to that.

Chair Kirkpatrick:

Does anybody have any questions?

Assemblywoman Benitez-Thompson:

When you say three-tier system, does that mean a person can only participate in one tier? They cannot be a manufacturer and a distributor?

Dino DiCianno:

That is correct.

Assemblywoman Pierce:

How much is our system like most other states?

Dino DiCianno:

Almost every other state has a three-tier system.

Chair Kirkpatrick:

Does anybody else have any questions? Mr. DiCianno, I appreciate you doing this because, at least for my first session, there was a bill to change the three-tier system. This room was standing room only. I wanted to be sure the Committee had a real understanding of how this works.

Dino DiCianno:

Thank you, Madam Chair. Just for clarification, there is an error on slide six ([Exhibit C](#)) that needs to be corrected. This slide talks about the liquor excise tax and how the excise tax rate depends on the level of alcohol content. On the one bullet covering the alcohol content of 0.5 percent to 14 percent, the tax rate should be 75 cents a gallon rather than 70 cents. I apologize for that.

Assemblyman Ellison:

How do you handle such things as the small places that brew beer? Do you license them? How is that done?

Dino DiCianno:

They are all licensed. It is important to understand there is also local authority, and the state authority and local authority dovetail. They need to have a local license as well as a state license. The Department does not get into the regulation of the business practices of those local small breweries. We are more concerned with the collection of the excise tax. The enforcement is done more at the local level and through the Office of the Attorney General.

Assemblyman Ellison:

I notice we are starting to see more of these small wineries and breweries throughout the state. I did not know if they were regulated through your Department.

Dino DiCianno:

They are regulated predominantly at the local level.

Assemblyman Livermore:

In today's society, home breweries are not unique. I am not talking about moonshine, but about people making beer in their homes. Is there any reference in this law to how much beer a home brewery can make before it becomes something different?

Dino DiCianno:

There is a limit to the amount someone can brew as a home brewer, but I do not know what that is off the top of my head. I will have to find that out.

Assemblyman Livermore:

That limit would probably limit their ability to share and to provide to others. If you go to their barbecue or they come to your barbecue, they might bring 10 or 20 bottles of home-brewed beer.

Dino DiCianno:

It is tied to the use either for family purposes or whatever. It is for personal use; they cannot go into the business of selling their home brew without being subject to the tax.

Assemblywoman Pierce:

You say you are concerned with the tax part of this. Who checks the alcohol content? There are microbrews selling five different levels of alcohol in a beer. Does anyone check to see if that is correct?

Dino DiCianno:

I am not an expert on this. I am sure there are federal guidelines and controls. We do not get involved in that. I am sure there are other people here in the audience who could provide better testimony, but there are federal rules and regulations.

Assemblywoman Pierce:

Okay, thank you.

Chair Kirkpatrick:

I think Mr. Nakamoto might be able to give you a more complete answer.

Michael Nakamoto, Deputy Fiscal Analyst:

With respect to the state tax on liquor, there really is no difference based on the amount of alcohol in a beer. All malt beverages are taxed at the same rate of 16 cents a gallon.

Assemblyman Stewart:

I am no great expert on alcohol, but as I recall, there is a winery in Pahrump, Nevada, and I believe they have a restaurant there also. How does that work? I believe they grow the grapes, make the wine, and even sell it there.

Dino DiCianno:

They do have the ability to sell it, but they need to have an intermediary to allow them to be able to retail their product. They can come up with some kind of business arrangement, but they cannot do it on their own.

Assemblyman Stewart:

So they can grow the grapes, but somebody has to distribute the wine back to them before they can sell the wine in their restaurant?

Dino DiCianno:
That is correct.

Assemblyman Stewart:

So, they can be the supplier and the retailer, but they need to have somebody else to distribute it.

Dino DiCianno:

No, they cannot be both the supplier and the retailer. They cannot do that.

Chair Kirkpatrick:

Maybe the wines they provide at the winery are similar, as in the wine tasting in Napa, California, but the vintner more than likely has somebody who manages the restaurant and a distributor who distributes his wine. Is that correct? [Mr. DiCianno indicated that was so.]

Mr. Goedhart, you live out there. Maybe you can enlighten us.

Assemblyman Goedhart:

I think what they do at the Pahrump winery is import the juice from California, since they do not grow the grapes there. Onsite, a vintner makes the wines, and then they sell them. It is the same thing Colby Frey does with the Churchill Vineyards in Churchill County.

Chair Kirkpatrick:

Are there any other questions? I have one question. Is there any truth to the rumor that liquor taxes always have to be paid by businesses within ten days? I keep hearing in the hotels that they have to pay their liquor taxes within ten days or they cannot keep going.

Dino DiCianno:

I do not believe that is correct.

Chair Kirkpatrick:

Okay, perfect. Does anybody else have any questions? Thank you, Mr. DiCianno; we appreciate it.

At this time, we will open the hearing on Assembly Bill 200. Good morning, Mrs. Smith.

Assembly Bill 200: Authorizes a brew pub to obtain a special permit to transport donated malt beverages under certain circumstances. (BDR 32-508)

Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:

I am here to present Assembly Bill 200. I have to say this may be the best bill of the session.

I am here with Mr. Tom Young, who is the owner of Great Basin Brewing Company, the original restaurant and brewery in Sparks. He just expanded during this recession with a second location in Reno. I will bet he can also answer your other question when his turn comes to testify.

Assembly Bill 200 is intended to provide an opportunity for owners of brew pubs to transport their own beer to a charitable function without needing to have it transported through the normal process. This goes back a year or so ago. I went into the restaurant to have a meal, and Tom came over to talk to me about what had happened at a big charity event that is held every year at John Ascuaga's Nugget Casino Resort in Sparks. The event is called the Brew HaHa, and it raises a lot of money for a local charity. They had encountered a problem in transporting their own beer to donate to that function. Then we found out that was a problem others have had as well.

After inquiring about this with the Department of Taxation, we felt the most logical thing to do was to clarify this in statute so they will be able to transport their own beer to a charitable event without having to deal with the transport provisions of the law. If you need to have someone transport the beer, then the charitable group wants the transport company to donate as well. That adds one more layer of trying to solicit another charitable contribution. I think you will hear from that group as well. Probably one of the reasons they support the bill is that they get urged to provide their services free of charge.

We may have some technical challenges. We are going to work through those to make sure the language is exactly right to accomplish our purpose. It is a very simple idea that they be allowed to transport the beer themselves. I will let Mr. Young tell his story.

I wanted to let you know I am working with the Office of the Attorney General on an amendment, that I will get to you later, that relates to the Four Loko beer. You probably remember what happened a few months ago with the beer with caffeine in it. How do we handle something like that when there are suppliers who have it in storage? We are trying to come up with something to take care of any issue like that. If you do not mind, Madam Chair, we will work with you and the Committee on that issue as well.

Thank you. I would like to introduce Tom Young to you so he can explain his situation and ask for your assistance.

Tom Young, Brewmaster, Great Basin Brewing Company:

Great Basin Brewing Company, in Sparks and Reno, is Nevada's oldest operating brewery, and we are proud to have been part of this community, this state, and the pioneering way of bringing fine beer back to the state. For many years, Great Basin and other breweries in the community have felt a great need to work to benefit our community to make it a better place for all of us. That means donating a lot of time, effort, and product to help various charities here. It is difficult for someone to solicit Great Basin Brewing Company and not walk away with at least a certificate for a lunch or dinner too.

Over the years, part of our business plan and business strength has been to continue doing this. We require all staff members to participate in community service in some regard, and we do all kinds of other projects. When the day is done, Tom feels better if he thinks we have done something to help our community. We have to remember that, back hundreds of years ago, this country was founded in pubs.

I was talking to Assemblywoman Smith one day, and I was livid because we had been subject to being arrested after donating to a charity. When those charity events come up, you tell your lovely spouse you are not going to go camping this weekend but, instead, are going to be supporting children with pediatric cancer, pouring your own product on your own time. Then the state comes around and says you have illegally transported this beer. Therefore, they are going to slap you with a big fine and confiscate the beer. I guess that was when I became a little angry.

When people come into the pub, I try to keep my discussions in a more humorous vein and not get political. I know they are coming in to relax. But when Mrs. Smith came in one day, I bent her ear a little too much. I felt guilty about that, but you must say that brew pubs break the three-tier system in state law.

The three-tier system was started after Prohibition, when the federal government was worried about what a few manufacturers might do. For instance, say Anheuser-Busch decided all of a sudden to own every single bar in St. Louis so they could have a monopoly. That is why they set up this three-tier system.

The advantage of that system to the state is that it helps, on beverages imported from out of state, to make sure the State of Nevada excise tax is paid. We have to pay this tax once a month, and that tax is paid upon production. As soon as we pay the excise tax, whether we transport our beer to a charitable event, or even if we were to sell it to another retailer—which we do

not do because it is illegal—the excise tax would have been paid to the state. There is no tax loss whatsoever.

The brewers and wineries in California have the right to distribute their product themselves to other bars and restaurants. That is an advantage Nevada does not have. The three-tier system is not necessarily ingrained, and, again, there is no tax advantage, since the brewer or wine maker actually pays the tax upon production.

The state would not be out any taxes if we were to transport this beer to a charitable event or another vendor because the tax has been paid. The advantage to the distributor comes when beverages are transported from another state. That way the state can then track that to make sure they actually collect the excise tax on beverages manufactured in another state or a different country.

This particular bill, A.B. 200, at least clears up that we can transport beer from our establishment to other locations. We find the language to be a bit confusing. Before we can fully endorse the bill, we need a little clarification on the meaning of some things such as the transport and permittee language.

I have met with some of the other brewers on this issue. I have a letter from Trent Schmidt, one of the co-owners of Silver Peak Restaurant and Brewery, and he has similar concerns. [The letter was not submitted for the record.] We want to gain rights and actually be able to transport our beer when it has no impact on the state and the tax situation instead of losing rights. The intent of this bill is to open things up for us and let us continue to do community service and operate our businesses more efficiently.

With that said, I appreciate the interest here.

Assemblywoman Neal:

I was listening to the story, but I do not quite understand. What was the problem you had with moving your liquor?

Tom Young:

This has happened more than once. We at Great Basin have been transporting our beer to private events for charity, for which Great Basin gets paid nothing. It is a community thing. One could argue there was an advertising aspect to it, but we do not look at it that way. The way we like to look at it is we want to wake up the next day thinking our business is making a profit and helping the community.

However, there is a confusing clause in the state regulations that says if someone transports beer in this state, they have to have a permit. The confusion lies in the way the law is written as to who can get this permit. It basically says a wholesale liquor distributor can get one for sure, but then the language goes on.

The way we interpret this is that we could actually get one too. Great Basin has a transportation permit, but I think we are the only brewery that has that, and I do not know exactly how that is administered.

It is a very confusing issue in the law. However, the state deemed we were illegally transporting beer. I have problems with that because there is no advantage to the state. The only income advantage for the state is in fines assessed to local breweries for participating in charitable events, since the tax is already paid.

However, the state, for whatever reason, decided to start enforcing this. The one incident that was the most blatant was at the Brew HaHa, the Sierra Arts Foundation's biggest fundraiser. An hour before, we got a call from the state asking who had transferred our beer to the Nugget. They said they were going to come confiscate our beer and give us a citation.

They called the Nugget. The charity was in a tizzy at that point. They did not want to lose this event an hour before it happened, so they wrote a letter saying they had transported the beer. That was not the truth, and I did not sign the letter. That was a bit of scrambling at the last minute.

The state agent elected not to appear at the event, but the next Monday, he realized there had been some illegal activity. He actually issued a citation to BJ's Restaurants, Incorporated, owner of BJ's Restaurant and Brewery in Reno.

At that point our distributor, Southern Wine and Spirits, who distributes our beer legally, got involved. The Nugget got involved, and I think other influences got involved, and they asked the state agency to back off because it was to no one's advantage to pursue this.

Chair Kirkpatrick:

I think this bill will clarify that. We should be glad our Department of Taxation is enforcing the laws as they know them. The bill makes this much clearer. I am sure the brew pubs would keep some records of this for tax purposes.

Tom Young:

Again, the tax is already paid. There is no tax advantage . . .

Chair Kirkpatrick:

Let me restate this. I am sure that when you give things away to charity, you have a budget and some paperwork showing the transaction, in case anybody was ever to question it.

Tom Young:

That is correct. That is a federal tax advantage to us because it is a loss of our product.

Chair Kirkpatrick:

Ms. Neal, did that help you?

Assemblywoman Neal:

I was trying to get an understanding of who was transporting the beer before, but it is obvious he just wants the freedom to move it himself. I just did not understand what the barriers were. Prior to this incident, everybody had been donating to charities, so what has been the issue?

Tom Young:

This is an interpretation of the state law.

Chair Kirkpatrick:

Let me try to clarify something for her first. This is why Mr. DiCianno showed you that three-tier system. The manufacturer has to have a distributor, or transporter, and then there is the retailer. I think that is why there is some confusion about whether or not they can transport it.

Tom Young:

At many brew pubs and wineries in California, people are both manufacturers and retailers. I think that is where the confusion comes in. The three-tier system is not in place in that case because being both the manufacturer and the retailer is two tiers of the three. However, they are allowed to do that.

We are not distributors, and that is what you were talking about. The problem we have with the distributor is that if we are doing an event on a Sunday afternoon, I have to prearrange this weeks in advance. The distributor has to call somebody in to go to the warehouse to pick up the beer on Sunday afternoon and participate in our charity. They may or may not want to participate, and that hampers our ability to donate to charitable events.

Assemblywoman Neal:

I am not moving in either direction. I just thought the purpose of the system was to promote competition so the distributor could still be part of the game of moving things around. If there was any kind of benefit or profit they could obtain, then it was like they had a carved-in rule within the statute. That was what I had understood, and that is why I was confused.

Tom Young:

Since this is all donation, there is no money for anyone. Transporting beer or wine to a charitable event costs distributors money as they would, in effect, be participating in the charity also. They may or may not wish to do that.

Assemblywoman Smith:

That was my point about current law adding one more layer of someone else who is asked to contribute. Mr. Young has been asked to donate his product. Then the charitable group has to ask the distributor, and the distributor has to be willing to come out on the weekend to do that job. There was some confusion when we originally went to the Department of Taxation and to the Legal Division of the Legislative Counsel Bureau. No one had thought this would be ironclad, as it is currently considered in the statute. This bill will certainly clarify that confusion. It eliminates the need to have a distributor. There are no taxes lost. It will be very clear.

Assemblyman Livermore:

My question concerns the event and the liability issue. As an independent operation, I assume you cover yourself for liability. Is there any liability to some unknown party involved in the event itself for consuming the malt beverage you produce?

Tom Young:

We still have to follow all state laws in terms of drinking age and over serving. Those issues are still in place, and there is liability in everything we do. Our liability insurance actually covers those two things. An instance has never come up where I have tested it, but I assume our insurance is adequate. The person who puts on the event generally has some sort of liability insurance also.

Assemblyman Livermore:

I just want to make sure that by providing you and the community with this opportunity, we do not create any unintended consequences. That is something we would rather not have happen.

Assemblyman Ellison:

You have already hit on this, but I still have to ask. If the problem is simply the transport, why do you not just pick it up at the plant and transport it yourself. Would that not end the problem?

Tom Young:

That is what we want to do. We want to be the one authorized to transport the beer. When we go to an event, there are some equipment issues—jockey boxes, carbon dioxide, and all those things that go with it—involved in setting up the display. We generally do it ourselves. We have thought of putting another layer in the process and requiring either the charitable organizers—who are trying to do their best—to run over and pick up the beer or have our distributor pick it up. I really do not see how that would be advantageous to anyone.

Chair Kirkpatrick:

Mr. Ellison, I can tell you that, having been a PTA mom for many years, I have worn more spaghetti sauce transporting it in the back of my car because I thought I could do it without any help. I would think the same would go for all the equipment and the liability issue. You want to make sure your product makes it from one end to the other. I think it is safer if you deliver it yourself because you know the desired temperature. You know about the health code violations possible in transporting your product in the wrong vehicles. I have been there and done that.

Tom Young:

With your spaghetti, if it is ice cold by the time you deliver it, the product is not being delivered in an admirable fashion. When it comes to our beer, since we are Nevada's oldest brewery and most award-winning by far, we want to be sure it is served at top quality at all times.

Chair Kirkpatrick:

That is correct. Do we have any other questions?

Assemblyman Stewart:

I have one comment. I think this shows the versatility of the bill's sponsor, coming from education advocate to brewery advocate.

Tom Young:

I think she is looking after the interest of the state in helping us help those in need.

Chair Kirkpatrick:

Are there any other questions? [There was no response.] Does anyone want to testify in support of A.B. 200?

Alfredo Alonso, representing Southern Wine and Spirits and the Nevada Beer Wholesalers' Association:

We support the bill as written. As a clarification, the reason you have these specific transfer provisions is because, in 2003, we had an issue with a large retailer who started warehousing the product in Las Vegas. Unfortunately, a lot of this product was then carried over county lines and often over jurisdictional lines with respect to wholesaler agreements with their brewers.

We wound up with a situation where, in some of the rural counties in particular, beer, wine, and other product was showing up on shelves in box stores. Unfortunately, the wholesalers were required to service it, but it was not their product. Ultimately, they bypassed what we felt was current law, so the issue had to be addressed.

It was an important issue at the time because, ultimately, the state does not benefit when there is no tracking of liquor coming in and out of the state. As you heard earlier from Mr. DiCianno, the Department of Taxation does an excellent and efficient job. In fact, he, in essence, has a skeleton crew running the Department with respect to these issues.

Other states that have opened up the three-tier system end up having to create a bureaucracy to monitor it. In Texas, if a barkeeper accidentally breaks a bottle, he has to note it so he does not get in trouble for it at the end of the day. He has to account for that bottle because he ultimately has to pay tax on it. I think Nevada has a very efficient system that we should be proud of.

The issue being discussed here is a unique one. There is no intent to keep the Great Basin Brewing Company from doing good works in the community. What they are doing is a wonderful thing, and we want to encourage that. In this case, there is a simple fix.

One reason this is a complicated matter is the case of *Granholm v. Heald*, 544 U.S. 460 (2005), which dealt with the direct sale of wine. While the Supreme Court opined that states could and should have a three-tier system and could regulate their liquor as they deemed fit, they could not pass a statute for entities in the state and not apply it to those out of the state.

That is why states have to be very careful. We are always very careful that whatever we do will apply to out-of-state breweries as well. You do not want

to open this up so just anybody can transport these beverages because then you start losing track of your sales.

We support this bill and Assemblywoman Smith's changes. If I can answer any questions, I would be glad to.

Chair Kirkpatrick:

Does anybody have any questions? [There was no response.] Is there anybody else who would like to testify in support of A.B. 200? [There was still no response.] Is there anybody in opposition to A.B. 200? [No one replied.] Is there anybody who is neutral on A.B. 200?

Dino DiCianno:

We are neutral with respect to the bill. This is a policy decision. We would be more than happy to put together the special movement permit, which is very easy to do. We will do whatever this body asks of us. Thank you.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? [There was no response.] Mrs. Smith, do you have any follow-up?

Assemblywoman Smith:

No, Madam Chair. I just appreciate your time this morning. Again, I think this is an important piece of legislation in that it does allow a great deal of charitable work to be done in our communities. I appreciate your attention to this bill.

Chair Kirkpatrick:

Thank you. We are going to close the hearing on Assembly Bill 200. Is there any public comment? [There was no response.] Is there anything from the Committee? [There was still no response.] There is no floor meeting today, which gives you an opportunity to take care of details for your bills. The sooner you can introduce them on the floor, the better it is for everybody. March 21 is the deadline.

With that, I will see you next Tuesday, March 15, at 9 a.m. We are adjourned [at 9:42 a.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: March 8, 2011

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Dino DiCianno	PowerPoint Presentation: "Alcohol Provisions, NRS 369 & 597"
	D	Dino DiCianno	Handout: "Intoxicating Liquor: Licenses and Taxes, NRS 369"