

ASSEMBLY BILL NO. 431—ASSEMBLYWOMAN
BUSTAMANTE ADAMS

MARCH 27, 2017

JOINT SPONSOR: SENATOR SETTELMAYER

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing alcoholic beverages.
(BDR 52-1018)

FISCAL NOTE: Effect on Local Government: No.
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; revising provisions governing brew pubs; revising provisions governing a supplier of alcoholic beverages; revising provisions authorizing the operation of wineries in this State; revising provisions prohibiting a wholesaler dealer of alcoholic beverages from investing money in a retail liquor store; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes a person who is licensed to operate a brew pub to
2 operate more than one such brew pub in a county but limits the person to
3 manufacturing not more than 15,000 barrels for all of the brew pubs the person
4 operates in that county in any calendar year. (NRS 597.230) **Section 4** of this bill
5 authorizes a person to operate one or more brew pubs in this State and increases the
6 number of barrels of malt beverages that such a person may manufacture for all the
7 brew pubs he or she operates in this State during a calendar year to 40,000 barrels.
8 **Section 4** additionally authorizes a person who operates one or more brew pubs in
9 this State to transport malt beverages to a licensed person for the purpose of selling
10 the malt beverages at a special event in this State. **Section 3.5** of this bill defines a
11 special event as an event that lasts not longer than 1 calendar day and that occurs at
12 a farmers' market or at an event designated as a county fair. **Section 4** further
13 prohibits a person who operates a brew pub from selling at retail more than 5,000
14 barrels of malt beverages per calendar year and provides that of the 5,000 barrels,
15 not more than 1,000 barrels may be sold in kegs.



Section 9.5 of this bill requires the Department of Taxation to adopt and enforce regulations necessary to monitor the quantity of malt beverages manufactured pursuant to **section 4**. **Section 10** of this bill specifies that a person licensed to operate a brew pub may not engage in any other activity not authorized pursuant to **section 4** for which a license is required unless the person holds the license for that activity.

Existing law authorizes a winery that is federally bonded and permitted by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury and that obtains a winemaker's license from this State to: (1) produce, bottle, blend and age wine in this State; and (2) sell at retail or serve by the glass on its premises and, if applicable, at one other location, any wine produced, blended or aged by the winery. (NRS 369.200, 597.240) Under federal regulations, an alternating proprietorship is the operation of one or more wineries by proprietors who use the same premises. (27 C.F.R. § 24.136) **Section 4.5** of this bill specifically authorizes operation of a winery by an alternating proprietorship of not more than four proprietors that are federally bonded and permitted and that obtain a winemaker's license from this State to operate a winery in this State.

Existing law defines the term "supplier" for the purposes of the regulation of alcoholic beverages and imposes certain requirements on a supplier of alcoholic beverages. (Chapters 369 and 597 of NRS) **Sections 1 and 9** of this bill include breweries, brew pubs and craft distilleries located in this State within the definition of "supplier" and, thus, impose on such breweries, brew pubs and craft distilleries the requirements of existing law applicable to a supplier. **Section 2** of this bill exempts certain smaller suppliers from the requirement to allow a wholesaler a period of 60 days to correct any failure to comply with the terms of a franchise agreement between the supplier and the wholesaler. **Section 3** of this bill revises certain prohibitions imposed on a supplier by prohibiting a supplier from engaging in certain conduct in relation to a wholesaler who sells, distributes, markets, advertises or promotes the alcoholic beverages produced by the supplier.

Existing law prohibits a wholesale dealer of alcoholic beverages from investing money, directly or indirectly in a retail liquor store. (NRS 369.485) **Section 12** of this bill prohibits the wholesale dealer from making such an investment through a subsidiary or agent.

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

Section 1. NRS 597.140 is hereby amended to read as follows:

597.140 "Supplier" means any person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, distiller, *craft distillery*, rectifier, brewer, *brew pub*, importer, vintner, broker or agent therefor, which distributes any or all of its brands of malt beverages, distilled spirits and wines, or all of them, through licensed wholesalers in this state.

Sec. 2. NRS 597.160 is hereby amended to read as follows:

597.160 1. Except as otherwise provided in subsection 4, if more than one franchise for the same brand or brands of malt beverages, distilled spirits and wines, or all of them, is granted to different wholesalers in this state, it is a violation of NRS 597.120 to 597.180, inclusive, for any supplier to discriminate between such



* A B 4 3 1 R 2 *

1 wholesalers with respect to any of the terms, provisions and
2 conditions of these franchises.

3 2. Except as otherwise provided in this subsection and
4 notwithstanding the terms, provisions or conditions of any franchise,
5 a supplier shall not unilaterally terminate or refuse to continue any
6 franchise with a wholesaler or cause a wholesaler to resign from that
7 franchise unless the supplier has first established good cause for that
8 termination, noncontinuance or causing of that resignation. This
9 subsection does not apply to a supplier who sells less than 2,000
10 barrels of malt beverages, less than 250 cases of distilled spirits or
11 less than 2,000 cases of wine in this state in any calendar year, or
12 who operates a winery pursuant to NRS 597.240.

13 3. ~~1A~~ *Except as otherwise provided in this subsection, a*
14 *wholesaler may, within 60 days after he or she receives a notice*
15 *required pursuant to NRS 597.155, correct any failure to comply*
16 *with the terms, provisions and conditions of the franchise alleged by*
17 *the supplier. This subsection does not apply to a supplier who sells*
18 *less than 2,000 barrels of malt beverages, less than 250 cases of*
19 *distilled spirits or less than 2,000 cases of wine in this State in any*
20 *calendar year, or who operates a winery pursuant to NRS 597.240.*

21 4. Unless otherwise specified by contract between the supplier
22 and wholesaler, a supplier shall not grant more than one franchise to
23 a wholesaler for any brand of alcoholic beverage in a marketing
24 area.

25 **Sec. 3.** NRS 597.162 is hereby amended to read as follows:

26 597.162 A supplier shall not:

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

29 2. *Prevent a wholesaler from using best efforts to sell,*
30 *market, advertise or promote an alcoholic beverage of any other*
31 *supplier;*

32 3. *Provide any reward or penalty to, or in any other way*
33 *condition its relationship with, a wholesaler based upon the*
34 *amount of sales the wholesaler makes of an alcoholic beverage of*
35 *any other supplier;*

36 4. *Disapprove a wholesaler's selection of a general manager*
37 *or successor general manager based on the wholesaler's sales,*
38 *marketing, advertising, promotion or retail placement of an*
39 *alcoholic beverage of any other supplier;*

40 5. *Require a wholesaler to report to the supplier any of the*
41 *wholesaler's financial information associated with the purchase,*
42 *sale or distribution of an alcoholic beverage of any other supplier;*

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



* A B 4 3 1 R 2 *

~~13-1~~ 7. 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;

~~14-1~~ 8. 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;

~~15-1~~ 9. Prohibit or restrain, directly or indirectly, a wholesaler from participating in an organization that represents the interests of wholesalers for any lawful purpose; ~~16-1~~

10. Discriminate against, penalize or otherwise retaliate against a wholesaler because the wholesaler raises, alleges or otherwise brings to the attention of the Department of Taxation an actual, potential or perceived violation of this chapter; or

~~16-1~~ 11. 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. 3.5. NRS 597.200 is hereby amended to read as follows:

597.200 As used in NRS 597.190 to 597.255, inclusive, 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. "Craft distillery" means an establishment which:

(a) Manufactures distilled spirits from agricultural raw materials through distillation; and

(b) Is authorized to sell those distilled spirits pursuant to the provisions of this chapter.

4. "Distillation" means the process of producing or purifying spirituous liquor by successive evaporation and condensation.

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

6. "Instructional wine-making facility" means an instructional wine-making facility operated pursuant to NRS 597.245.



* A B 4 3 1 R 2 *

7. "Legal age" means the age at which a person is legally permitted to purchase an alcoholic beverage pursuant to NRS 202.020.

8. "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.

9. *"Special event" means an event that:*

(a) *Lasts not longer than 1 calendar day; and*

(b) *Occurs at:*

(1) *A farmers' market, as defined in NRS 244.336; or*

(2) *An event designated as a county fair by a county fair and recreation board appointed pursuant to NRS 244A.599, 244A.601 or 244A.603.*

10. "Supplier" has the meaning ascribed to it in NRS 597.140.

~~10.1~~ 11. "Wine" has the meaning ascribed to it in NRS 369.140.

Sec. 4. NRS 597.230 is hereby amended to read as follows:

597.230 1. In any county, a person may operate a brew pub:

(a) In any redevelopment area established in that county pursuant to chapter 279 of NRS;

(b) In any historic district established in that county pursuant to NRS 384.005;

(c) In any retail liquor store as that term is defined in NRS 369.090; or

(d) In any other area in the county designated by the board of county commissioners for the operation of brew pubs. In a city which is located in that county, a person may operate a brew pub in any area in the city designated by the governing body of that city for the operation of brew pubs.

➔ A person who operates one or more brew pubs may not manufacture more than ~~15,000~~ 40,000 barrels of malt beverages for all the brew pubs he or she operates in ~~that county~~ this State in any calendar year.

2. The premises of any brew pub operated pursuant to this section must be conspicuously identified as a "brew pub."

3. ~~1A~~ Except as otherwise provided in subsection 4, a person who operates ~~1~~ one or more ~~brew~~ ~~pub~~ pubs pursuant to this section may, upon obtaining a license pursuant to chapter 369 of NRS and complying with any other applicable governmental requirements:

(a) Manufacture and store malt beverages on the premises of one or more of the brew ~~pub~~ pubs and:

(1) Sell and transport the malt beverages manufactured on the premises to a person holding a valid wholesale wine and liquor



dealer's license or wholesale beer dealer's license issued pursuant to chapter 369 of NRS.

(2) Donate for charitable or nonprofit purposes and *, for the purposes of the donation,* transport the malt beverages manufactured on the premises in accordance with the terms and conditions of a special permit for the transportation of the malt beverages obtained from the Department of Taxation pursuant to subsection 4 of NRS 369.450.

(b) *Manufacture and store malt beverages on the premises of one or more of the brew pubs and transport the malt beverages manufactured on the premises to a retailer, other than a person who operates a brew pub pursuant to this section, that holds a valid license pursuant to chapter 369 of NRS for the purpose of selling the malt beverages at a special event in accordance with the terms and conditions of a special permit for the transportation of the malt beverages obtained from the Department of Taxation pursuant to subsection 4 of NRS 369.450. For the purposes of this paragraph, the person who operates one or more brew pubs shall not obtain more than 20 such special permits for the transportation of the malt beverages from the Department of Taxation pursuant to subsection 4 of NRS 369.450 within a calendar year.*

(c) Sell at retail *, not for resale,* malt beverages manufactured on or off the premises *of one or more* of the brew ~~pub~~ pubs for consumption on the premises.

~~(c)~~ (d) Sell at retail *, not for resale,* in packages sealed on the premises of *one or more of* the brew ~~pub~~ pubs, malt beverages, including malt beverages in unpasteurized form, manufactured on the premises for consumption off the premises.

4. The amount of malt beverages sold pursuant to paragraphs (b), (c) and (d) of subsection 3 must not exceed a total of 5,000 barrels in any calendar year. Of the 5,000 barrels, not more than 1,000 barrels may be sold in kegs.

Sec. 4.5. NRS 597.240 is hereby amended to read as follows:

597.240 1. A winery that is federally bonded and permitted by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury *, including, without limitation, an alternating proprietorship of not more than four such wineries,* and that has been issued a winemaker's license pursuant to NRS 369.200 may:

(a) Produce, bottle, blend and age wine.

(b) Import wine or juice from a winery that is located in another state and that is federally bonded and permitted by the Alcohol and Tobacco Tax and Trade Bureau, to be fermented into wine or, if



1 already fermented, to be mixed with other wine or aged in a suitable
2 cellar, or both.

3 2. A winery that has been issued a winemaker's license
4 pursuant to NRS 369.200 on or before September 30, 2015, may:

5 (a) Sell at retail or serve by the glass, on its premises and at one
6 other location, wine produced, blended or aged by the winery. The
7 amount of wine sold at a location other than on the premises of the
8 winery may not exceed 50 percent of the total volume of the wine
9 sold by the winery.

10 (b) Serve by the glass, on its premises, any alcoholic beverage.

11 3. A winery that is issued a winemaker's license pursuant to
12 NRS 369.200 on or after October 1, 2015:

13 (a) If 25 percent or more of the wine produced, blended or aged
14 by the winery is produced, blended or aged from fruit grown in this
15 State, may sell at retail or serve by the glass, on its premises, wine
16 produced, blended or aged by the winery.

17 (b) If less than 25 percent of the wine produced, blended or aged
18 by the winery is produced, blended or aged from fruit grown in this
19 State, may sell at retail or serve by the glass, on its premises, not
20 more than 1,000 cases of wine produced, blended or aged by the
21 winery per calendar year.

22 4. The owner or operator of a winery shall not:

23 (a) Except as otherwise provided in paragraph (b) of subsection
24 2, sell alcoholic beverages on the premises of the winery other than
25 wine produced, blended or aged by the winery.

26 (b) Produce, blend or age wine at any location other than on the
27 premises of the winery.

28 5. The State Board of Agriculture may adopt regulations for
29 the purposes of ensuring that a winery is in compliance with any
30 requirements established by the Federal Government for labeling
31 bottles of wine produced, blended or aged by the winery.

32 6. For the purposes of this section, an instructional wine-
33 making facility is not a winery.

34 **Sec. 5.** Chapter 369 of NRS is hereby amended by adding
35 thereto the provisions set forth as sections 6 to 7.7, inclusive, of this
36 act.

37 **Sec. 6.** *As used in this chapter, "brew pub" has the meaning*
38 *ascribed to it in NRS 597.200.*

39 **Sec. 7.** *As used in this chapter, "brewery" means an*
40 *establishment which manufactures malt beverages but does not*
41 *sell those malt beverages at retail.*

42 **Sec. 7.3.** *As used in this chapter, "craft distillery" has the*
43 *meaning ascribed to it in NRS 597.200.*

44 **Sec. 7.7.** *As used in this chapter, "malt beverage" has the*
45 *meaning ascribed to it in NRS 597.200.*



* A B 4 3 1 R 2 *

Sec. 8. NRS 369.035 is hereby amended to read as follows:

369.035 1. As used in this chapter, “instructional wine-making facility” means an instructional wine-making facility operated pursuant to NRS 597.245.

2. For the purposes of this chapter:

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

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

Sec. 9. NRS 369.111 is hereby amended to read as follows:

369.111 As used in this chapter, “supplier” means, with respect to liquor which is brewed, distilled, fermented, manufactured, rectified, produced or bottled:

1. Outside the United States:

(a) The brewer, distiller, manufacturer, producer, rectifier, vintner or bottler of the liquor, or his or her designated agent; or

(b) The owner of the liquor when it is first transported into any area under the jurisdiction of the United States Government, if the brewer, distiller, manufacturer, rectifier, producer, vintner or bottler of the liquor, or a designated agent of such a person, has not designated an importer to import the liquor into this State;

2. Within the United States but outside this State, the brewer, distiller, manufacturer, rectifier, producer, vintner or bottler of the liquor, or his or her designated agent; or

3. Within this State, the *brewery, brew pub*, distiller, *craft distillery*, manufacturer, rectifier, producer or bottler of the liquor or his or her designated agent.

Sec. 9.5. NRS 369.150 is hereby amended to read as follows:

369.150 1. The Department is charged with the duty of administering the provisions of this chapter.

2. The Department shall:

(a) Prescribe and cause to be printed and issued free of charge all forms for applications and reports.

(b) Except as otherwise provided in NRS 369.430, issue free of charge all certificates and permits.

(c) Adopt and enforce all rules, regulations and standards necessary or convenient to carry out the provisions of this chapter.

(d) Adopt regulations to carry out the provisions of NRS 369.462 to 369.468, inclusive, 369.486 and 369.488.

(e) Adopt and enforce all rules, regulations and standards necessary or convenient to monitor or survey the quantity of malt beverages manufactured by a brew pub within a calendar year for compliance with NRS 597.230.



* A B 4 3 1 R 2 *

Sec. 10. 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) 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) 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) Operate a brewery in this State unless the person first secures a brewer's license from this State.

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

(h) Operate a craft distillery in this State unless the person first secures a craft distiller's license from this State.

2. *A person who holds a license for a brew pub:*

(a) *May engage in any activity authorized by NRS 597.230.*

(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. 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.

~~3.3~~ 4. A person who holds a license for a craft distillery:

(a) May engage in any activity authorized by NRS 597.235.

(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.

~~4. 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) "Craft distillery" has the meaning ascribed to it in NRS 597.200.~~



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

Sec. 11. NRS 369.382 is hereby amended to read as follows:
369.382 Except as otherwise provided in NRS 369.386, 369.415 , **597.230** and 597.235, a supplier shall not engage in the business of importing, wholesaling or retailing alcoholic beverages in this State.

Sec. 12. NRS 369.485 is hereby amended to read as follows:
369.485 1. The Legislature hereby declares:

(a) That it is a privilege to engage in the business of selling intoxicating liquor at the wholesale or retail level in this state;

(b) That the Legislature finds it necessary to impose certain restrictions on the exercise of such privilege; and

(c) That it is the policy of this state to preclude the acquisition or control of any retail liquor store by a wholesale liquor dealer.

2. As used in this section, unless the context requires otherwise:

(a) "Delinquent payment" means the failure of a retail liquor store to make payment to a wholesale dealer for liquor on or before the 15th day of the month following delivery by the wholesale dealer.

(b) "Payment" means the full legal discharge of the debt by the wholesale dealer's receipt of cash or its equivalent, including ordinary and recognized means for discharge of indebtedness excepting notes, pledges or other promises to pay at a future date. A postdated check, a check not promptly deposited for collection or a check dishonored on presentation for payment does not constitute payment.

(c) "Payment in cash" means the full legal discharge of the debt by delivery of cash, money order, certified check or a cashier's or similar bank officer's check.

3. A wholesale dealer shall not:

(a) Loan any money or other thing of value to a retail liquor store.

(b) Invest money, directly or indirectly, **including through a subsidiary or agent**, in a retail liquor store.

(c) Furnish or provide any premises, building, bar or equipment to a retail liquor store.

(d) Participate, directly or indirectly, in the operation of the business of a retail liquor store.

(e) Sell liquor to a retail liquor store except for payment on or before delivery or on terms requiring payment by the retail liquor store before or on the 10th day of the month following delivery of such liquor to it by the wholesale dealer.



1 (f) Sell liquor to a retail liquor store which is delinquent in
2 payment to such wholesale dealer except for payment in cash on or
3 before delivery.

4 4. On the 15th day of the month following the delivery of
5 liquor and on the 15th day of each month thereafter, the wholesale
6 dealer shall charge a retail liquor store which is delinquent a service
7 charge of 1.5 percent of the amount of the unpaid balance.

8 5. The Department may impose the following penalties on a
9 wholesale dealer who violates any of the provisions of this section
10 within any 24-month period:

11 (a) For the first violation a penalty of not more than \$500.

12 (b) For the second violation a penalty of not more than \$1,000.

13 (c) For the third and any subsequent violation a penalty of not
14 more than \$5,000 or by a license suspension, or by both such
15 penalty and suspension.

16 6. The Department may, upon its own motion, and shall, upon
17 the verified written complaint of any wholesale dealer, investigate
18 the possible violation of any of the provisions of this section by any
19 wholesale dealer.

20 **Sec. 13.** This act becomes effective upon passage and approval
21 for the purpose of adopting regulations and performing any other
22 administrative tasks that are necessary to carry out the provisions of
23 this act and on July 1, 2017, for all other purposes.

