

Amendment No. 418

Senate Amendment to Senate Bill No. 307	(BDR 52-945)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.



SENATE BILL NO. 307—SENATOR DONDERO LOOP

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions related to the sale of alcoholic beverages.
(BDR 52-945)

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 alcoholic beverages; requiring a supplier of liquor to approve certain transactions related to the ownership ***or assets*** of a wholesaler within a certain period of time under certain circumstances; prohibiting certain acts by suppliers with respect to wholesalers of liquor; authorizing a person who operates a brew pub to manufacture additional malt beverages for sale outside of this State; revising the criteria for the approval of a license to engage in certain activities related to alcohol; revising provisions governing certificates of compliance for suppliers; revising provisions governing the possession, sale and transportation of liquor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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) Existing law prohibits a supplier from unreasonably withholding or delaying approval of any assignment, sale or transfer of 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 if the person to be substituted under the terms of the franchise meets certain reasonable standards. (NRS 597.157) **Section 1** of this bill requires a supplier to approve any such transaction within 30 days after receiving notice of the transaction if the person to be substituted under the terms of the franchise meets certain reasonable standards.

~~[Existing law prohibits a supplier, if more than one franchise for the same brand of alcoholic beverage is granted to different wholesalers in this State, from discriminating between such wholesalers with respect to the terms, provisions and conditions of these franchises. (NRS 597.160) Section 2 of this bill provides that pricing and freight charges are terms of a franchise with respect to which a supplier may not discriminate between such wholesalers.]~~

Section 3 of this bill prohibits a supplier from: (1) requiring a wholesaler to ~~accept~~ ***keep a minimum inventory of [an] the alcoholic beverages of the supplier or any other*** item ~~[if doing so would result in the inventory of a wholesaler exceeding the amount of that exceeds the number of days of~~ credit extended to the wholesaler by the supplier; (2) requiring a wholesaler to make payments under terms that are materially different from the

payment terms applicable to payments made by the supplier; or (3) entering into an agreement with a wholesaler which purports to waive the rights and remedies of the wholesaler if the supplier retaliates against the wholesaler for reporting a violation of law to the Department of Taxation.

Existing law regulates the operation of brew pubs in this State, including limiting the amount of malt beverages which a person who operates one or more brew pubs is authorized to manufacture per year to not more than 40,000 barrels. (NRS 597.230) **Section 4** of this bill authorizes a person who operates one or more brew pubs to manufacture and sell an additional 20,000 barrels of malt beverages to a wholesaler located outside of this State, subject to such auditing as the Department of Taxation establishes by regulation.

Existing law requires certain persons and businesses, including importers of liquor, wholesale dealers of alcoholic beverages, winemakers, instructional wine-making facilities, breweries, brew pubs and craft and estate distilleries to obtain a state license or permit to engage in certain activities involving alcoholic beverages. (NRS 369.180) Existing law further requires an application for a license for these persons or businesses to be made to the board of county commissioners or the governing body of the city in which the applicant maintains his or her principal place of business. (NRS 369.190) **Section 5** of this bill requires the board of county commissioners or the governing body of a city, in approving such an application, to require satisfactory proof that the applicant is not in violation of the prohibition against engaging in certain activities involving alcoholic beverages without a license and that the applicant is not applying for a license for a business in which he or she is prohibited by law from engaging.

Section 6 of this bill revises terminology relating to applications for a certificate of compliance by suppliers of liquor by replacing the term "vendor" with "supplier."

Existing law prohibits a person from keeping or possessing for sale, furnishing or selling, or soliciting the purchase or sale of any liquor in this State, or transporting or importing or causing to be transported or imported any liquor in or into this State for delivery, storage, use or sale unless the person complies with the relevant provisions of law and holds the appropriate license, permit or certificate, except for certain limited exceptions for liquor purchased for household or personal use. (NRS 369.490) **Section 7** of this bill additionally requires a person to be duly designated by the supplier of such liquor or to have purchased the liquor from certain authorized sources. **Section 7** also revises an existing exception from licensing requirements for consumers who import 1 gallon or less of alcoholic beverage per month for household or personal use to provide that the exception applies only if the person enters this State with such alcoholic beverage rather than importing it.

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

Section 1. NRS 597.157 is hereby amended to read as follows:

597.157 1. A supplier shall ~~not unreasonably withhold or delay approval~~
~~of~~ *approve* 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~~ *within 30 days after*
receiving notice of the transaction if the 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 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 consent, *fails to grant approval in the time set forth in subsection 1* 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. 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 wholesalers with respect to any of the terms, provisions and conditions of these franchises [.] , including, without limitation, with respect to pricing or freight charges.~~

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

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

~~4. Unless otherwise specified by contract between the supplier and wholesaler, a supplier shall not grant more than one franchise to a wholesaler for any brand of alcoholic beverage in a marketing area.] (Deleted by amendment.)~~

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

597.162 A supplier shall not:

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

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

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

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

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

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

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;

8. Require a wholesaler to accept delivery of any alcoholic beverage or any other item that is not voluntarily ordered by the wholesaler ~~for 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;

9. ~~Require a wholesaler to~~ ~~accept delivery~~ ~~keep a minimum inventory of any alcoholic beverage of the supplier or any other item~~ ~~if accepting the delivery would result in the inventory of the wholesaler exceeding~~ ~~that exceeds the amount of~~ ~~number of days of credit extended to the wholesaler by the supplier;~~

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

~~10.~~ 11. 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 enter into an agreement with a wholesaler which purports to waive any right or remedy of the wholesaler pursuant to this subsection;~~ ~~or~~

~~11.~~ 12. 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 ~~or~~; ~~or~~

13. ~~Require a wholesaler to make payments to the supplier under terms which are materially different from the payment terms applicable to the supplier when making payments to the wholesaler.~~

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.

~~14.~~ ~~Except as otherwise provided in paragraph (e) of subsection 3,~~ a person who operates one or more brew pubs may not manufacture more than 40,000 barrels of malt beverages for all the brew pubs he or she operates in 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. Except as otherwise provided in subsection 4, a person who operates one or more brew 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 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.

(3) Transfer in bulk the malt beverages manufactured on the premises:

(I) 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 for the purpose of transferring in bulk the malt beverages to an estate distillery for the purpose of distillation and blending, which transfer is taxable only as provided in NRS 597.237; or

(II) If there is no wholesaler who is able or willing to accept and transfer in bulk the malt beverages pursuant to sub-subparagraph (I), to a person holding a valid license to operate an estate distillery issued pursuant to chapter 369 of NRS for the purpose of distillation and blending, which transfer is taxable only as provided in NRS 597.237 and must be performed 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 pubs for consumption on the premises.

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

(e) In a calendar year, in addition to the amount of malt beverages which may be manufactured pursuant to subsection 1, manufacture and sell ~~not more than~~ 20,000 barrels of malt beverages for all the brew pubs he or she operates in this State provided such barrels are sold to a wholesaler located outside of this State, subject to such periodic auditing as the Department of Taxation shall require by regulation.

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. 5. 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:

(a) The board of county commissioners of the county in which the applicant maintains his or her principal place of business if the applicant does not maintain his or her principal place of business within the boundaries of an incorporated city; or

(b) The governing body of the city in which the applicant maintains his or her principal place of business if the applicant maintains his or her principal place of business within the boundaries of an incorporated city.

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.

(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 or the governing body of a city, as applicable, shall examine all applications filed with it, and shall require satisfactory evidence that the applicant is ~~fit~~:

(a) A person of good moral character ~~fit~~;

(b) *Not acting in violation of NRS 369.180; and*

(c) *Not applying for a license for a business in which the applicant is prohibited from engaging pursuant to NRS 369.382.*

Sec. 6. NRS 369.430 is hereby amended to read as follows:

369.430 1. By regulation, the Department shall prescribe the form of application for and the form of a certificate of compliance, which must be printed and distributed to exporters of liquor into this State to assist them in legally exporting liquor into this State.

2. An intending importer may not legally receive or accept any shipment of liquor except from a holder of a certificate of compliance.

3. Before a person may engage in business as a supplier ~~fit~~ *of liquor in this State*, the person must obtain a certificate of compliance from the Department.

4. The Department shall grant a certificate of compliance to any out-of-state ~~vendor of liquors~~ *supplier* who undertakes in writing:

(a) To furnish the Department on or before the 10th day of each month a report under oath showing the quantity and type of liquor sold and shipped by the ~~vendor~~

1 *out-of-state supplier* to each licensed importer of liquor in Nevada during the
2 preceding month;

3 (b) That the ~~[vendor]~~ *out-of-state supplier* and all his or her agents and any
4 other agencies controlled by the ~~[vendor]~~ *out-of-state supplier* will comply
5 faithfully with all laws of this State and all regulations of the Department respecting
6 the exporting of liquor into this State;

7 (c) That the ~~[vendor]~~ *out-of-state supplier* will make available for inspection
8 and copying by the Department any books, documents and records, whether within
9 or outside this State, which are pertinent to his or her activities or the activities of
10 his or her agents or any other agencies controlled by the ~~[vendor]~~ *out-of-state*
11 *supplier* within this State and which relate to the sale and distribution of his or her
12 liquors within this State; and

13 (d) That the ~~[vendor]~~ *out-of-state supplier* will appoint a resident of this State
14 as his or her agent for service of process or any notice which may be issued by the
15 Department.

16 5. If any holder of a certificate of compliance fails to keep any undertaking or
17 condition made or imposed in connection therewith, the Department may suspend
18 the certificate and conduct a hearing, giving the holder thereof a reasonable
19 opportunity to appear and be heard on the question of vacating the suspension order
20 or order finally revoking the certificate.

21 6. An applicant for a certificate of compliance must pay a fee of \$50 to the
22 Department for the certificate. On or before July 1 of each year, the certificate
23 holder must renew the certificate by satisfying the conditions of the original
24 certificate and paying a fee of \$50 to the Department.

25 **Sec. 7.** NRS 369.490 is hereby amended to read as follows:

26 369.490 1. Except as otherwise provided in subsection 2 and NRS 369.176,
27 a person shall not directly or indirectly, himself or herself or by his or her clerk,
28 agent or employee, offer, keep or possess for sale, furnish or sell, or solicit the
29 purchase or sale of any liquor in this State, or transport or import or cause to be
30 transported or imported any liquor in or into this State for delivery, storage, use or
31 sale therein, unless the person:

32 (a) Has complied fully with the provisions of this chapter; ~~[and]~~

33 (b) Holds an appropriate, valid license, permit or certificate issued by the
34 Department ~~[; and]~~;

35 (c) *Has been duly designated by the supplier of that liquor pursuant to NRS*
36 *369.386 or purchased the liquor in compliance with NRS 369.486.*

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

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

41 (b) ~~[Who imports]~~ *Entering this State with* 1 gallon or less of alcoholic
42 beverage per month from another state for his or her own household or personal
43 use;

44 (c) Who:

45 (1) Is a resident of this State;

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

47 (3) Imports 12 cases or less of wine per year for his or her own household
48 or personal use; or

49 (d) Who is lawfully in possession of wine produced on the premises of an
50 instructional wine-making facility for his or her own household or personal use and
51 who is acting in a manner authorized by NRS 597.245.

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

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

3 **Sec. 8.** This act becomes effective on July 1, 2021.