

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R068-21

1. A clear and concise explanation of the need for the adopted regulation.

Pursuant to Senate Bill 307, enacted by the Nevada Legislature during the 81st Legislative Session (2021), the Department of Taxation is required to adopt regulations governing deliveries of liquor made by retail liquor stores or delivery support services acting on behalf of retail liquor stores. This Regulation is needed to comply with this statutory mandate. Specifically, SB 307 requires the Department's regulations to include the following:

- 1) A requirement for the retail liquor store or delivery support service to obtain proof via signature or other verification, that the person accepting the delivery is at least 21 years of age;
- 2) That any liquor deliveries originate from the premises of the retail liquor store during its operating hours;
- 3) The area in which deliveries must be made (taking into account relevant local jurisdictions and marketing areas of wholesaler of liquor to be delivered); and
- 4) Provisions to encourage local governments to adopt ordinances in coordination with the Department's regulations.

Outside the context of liquor delivery by retail liquor stores, existing law previously authorized owners of brew pubs in Nevada to manufacture 40,000 barrels of malt beverages. However, SB 307 authorizes owners of brew pubs to manufacture and sell an additional 20,000 barrels of malt beverages to a wholesaler located outside of Nevada, subject to auditing by the Department of Taxation. Section 9 of the regulation addresses this new requirement governing brew pubs which manufacture and sell malt beverages to wholesalers outside of Nevada, and requires the brew pub to maintain and produce necessary records to the Department confirming the malt beverage manufactured for the sale to a wholesaler outside of the state, including the kind and quantity shipped, name of the wholesaler, and the physical location where it is shipped.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, staff to the Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail:

<u>Date of Notice</u>	<u>Workshop/Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
03/04/22	Workshop	03/22/22	208
11/03/22	Adoption Hearing	12/05/22	208

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

3. The number of persons who:

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: March 22, 2022

- (a) Number in attendance: 14
- (b) Number testifying: 4
- (c) Written statements submitted: 1

Adoption Hearing date: December 5, 2022

- (a) Number in attendance: 4
- (b) Number testifying: 0
- (c) Written statements submitted: 1

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Comment at Workshop:

Name: **Ryan Saxe**

Telephone number: **702-405-8500**

Business address: **1835 Village Center Circle, Las Vegas, NV 89134**

Electronic mail address: **rsaxe@nvbusinesslaw.com**

Name of entity or organization represented: **Saltzman Mugan Dushoff (on behalf of Instacart)**

Comment at Workshop:

Name: **Scott Gilles**

Telephone number: **775-527-1373**

Business address: **401 S Curry Street, Carson City, NV 89703**

Electronic mail address: **scott@g3nv.com**

Name of entity or organization represented: **The Griffin Company (on behalf of Go Puff)**

Comment at Workshop:

Name: **Bryan Wachter**

Telephone number: **775-882-1700**

Business address: **410 S. Minnesota Street, Carson City, NV 89703**

Electronic mail address: **michael@alonsolawltd.com**

Name of entity or organization represented: **Retail Association of Nevada**

Comment at Workshop:

Name: **Michael Hillerby**

Telephone number: **775-852-3900**

Business address: **50 W. Liberty, Suite 700, Reno, NV 89501**

Electronic mail address: **mhillerby@kcnvlaw.com**

Name of entity or organization represented: **Kaempfer Crowell (on behalf of Door Dash and Albertsons)**

Written Statements

Name: **Ryan Bissett**

Telephone number: **512-542-0876**

Business address: **550 Bowie Street, Austin, TX 78703**

Electronic mail address: **ryan.bissett@wholefoods.com**

Name of entity or organization represented: **Whole Foods Market**

Written Statements

Name: **Vincent V. Queano**

Telephone number: **702-455-2963**

Business address: **500 South Grand Central Pky. 3rd Floor, Las Vegas, NV 89155**

Electronic mail address: **VincentQ@ClarkCountyNV.gov**

Name of entity or organization represented: **Clark County Board of Commissioners**

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected businesses and an explanation of how interested persons may obtain a copy of the summary.

Summary of public responses:

Ryan Bissett – Whole Foods Market

Submitted written comments prior to workshop.

- (Section 2) - Recommends a static delivery radius from point to origin.
- (Section 3) - Recommends exempting delivery drivers and couriers delivering on behalf of licensees from the requirement to obtain a valid education card.
- (Section 4 & 5) – Recommends a shorter retention period to be consistent with other states. In addition, would like to suspend or reprieve the requirement of the customers signature due to the pandemic.

Vincent V. Queano – Clark County Board of Commissioners

Submitted written comments prior to the adoption hearing.

- (Section 7) - Please clarify if a county or city must adopt this penalty structure to the exclusion of any other. Clark County Business License has a robust enforcement process in place which does not match this structure in penalty amount. We request the regulation allow for this section to be enforced according to current practices in alignment with all other liquor licensees in order to promote consistency across the industry and to reduce uncertainty in enforcement actions.

This structure does not allow for violations that have an increased risk to public health and safety to face increased enforcement action. We request to be able to issue enforcement action, including immediate license suspension, based on the severity of the violation to public health and safety, and not solely based on the number of the times the violation occurred and/or was substantiated.

- (Section 8) - Please clarify if the local jurisdiction is able to be more restrictive in its ordinance. We request that the local jurisdiction be able to be more restrictive in its ordinance than the language provides, specifically for areas in which liquor is able to be delivered to.

Summary of workshop discussion:

Michael Hillerby - Kaempfer Crowell (on behalf of Door Dash and Albertsons)

- 2(1b) – Sought confirmation that there would be no inappropriate “wandering” between the tiers and they are not going from retailer to retailer inappropriately.
- Section 6 – Supports the idea to add reasonable time to produce requested records.
- Section 8 – Questioned whether this section required local governments to adopt a liquor delivery ordinance if they don’t already have one, or if they do, must it be consistent with the state law of these regulations?

Scott Gilles - The Griffin Company (on behalf of Go Puff)

- Section 2(1b) the intent is to ensure the alcohol being delivered comes from a particular retailer instead of one retailer picking up orders from another retailer. Mr. Gilles wanted to make sure that this would not prevent a single retailer from making deliveries to multiple customers on a single trip.
- Section 3 (1b) and (4) – They are not opposed to some training requirements for deliverers but would like to discuss if such training is of the appropriate level. It is their understanding the training for the alcohol education card is typically used for individuals who work in a setting that serves alcohol.

Ryan Saxe - Saltzman Mugan Dushoff (on behalf of Instacart)

- Section 3 - Instacart and every other business they represent that are in the third-party delivery space, have their own internal training protocols which provides alcohol awareness training to their employees and they request to have the option to provide the details of the internal alcohol awareness program that's internal to each company instead of alcohol awareness training card.
- Also, the current provisions provide that the delivery can only be made to a location off the license premises, and wants to request that the language be amended to clarify that curb-side delivery is permitted as well, as it would be on the premises.
- Section 4 - Clarify for the purpose of the third-party delivery apps that the delivery of the liquor is not deemed a sale or a facilitation of sales.
- Section 6 - The on-demand language creates some concerns as to what that really means in practice and requests that it be changed from the requirement to be produced "on demand" to instead require those records to be produced upon "reasonably notice".
- Section 8 – Appreciate this section since the regulation for retail sales and delivery is not only handed by the state but local jurisdiction He asked if there is a possible time period when local jurisdictions would need to amend their codes to be consistent with these requirements.

Bryan Wachter - Retail Association of Nevada

- Section 2(3) – Stated concerns regarding marketing areas to properly educate the retailers.
- Section 3 – Requested clarification whether this was more a "TAM card" situation or additional training would be required on this process.
- Section 6 – Would prefer language to clarify that records do not need to be provided on-demand, but rather within a reasonable time.
- Section 7 – Sought clarification regarding whether penalties are applicable to the retailer or third-party service.

Summary of Public Comment at Adoption Hearing: Not Applicable

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The Department revised the language from the Revised-proposed version to address industry feedback that the regulation was not intended to interfere with lawful ordinances of local governments, including penalty structure.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects. The benefits of these regulations are that the industry along with the Department will be provided more clarity in implementing NRS Chapters 360, 369 and 597.

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the public. The benefits of these regulations are that the public along with the Department will be provided more clarity in implementing NRS Chapters 360, 369 and 597.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

- 9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The adopted permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The adopted permanent regulation does not include new fees or increase an existing fee.