

Amendment No. 541

Assembly Amendment to Assembly Bill No. 431 (BDR 52-1018)

Proposed by: Assembly Committee on Commerce and Labor

Amends: Summary: No Title: No 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.

ALA/WLK



Date: 4/23/2017

A.B. No. 431—Revises provisions governing alcoholic beverages. (BDR 52-1018)



ASSEMBLY BILL NO. 431—ASSEMBLYWOMAN
BUSTAMANTE ADAMS

MARCH 27, 2017

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.

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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; revising provisions governing brew pubs; revising provisions governing a supplier of alcoholic beverages; 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:

Existing law authorizes a person who is licensed to operate a brew pub to operate more than one such brew pub in a county but limits the person to manufacturing not more than 15,000 barrels for all of the brew pubs the person operates in that county in any calendar year. (NRS 597.230) **Section 4** of this bill ~~limits~~ **authorizes** a person ~~who operates~~ **to operate one or more** ~~in a brew pub to two locations for the~~ brew ~~pub~~ **pubs** in this State and increases the number of barrels of malt beverages that such a person may manufacture **for all the brew pubs he or she operates in this State** during a calendar year to ~~12,000~~ **40,000** barrels. **Section 4 additionally authorizes a person who operates one or more brew pubs in this State to transport malt beverages to a licensed person for the purpose of selling the malt beverages at a special event in this State. Section 3.5 of this bill defines a special event as an event that lasts no longer than 1 calendar day and that occurs at a farmers' market or at an event designated as a county fair. Section 4** further prohibits a person who operates a brew pub from selling at retail more than ~~12,000~~ **5,000** barrels of malt beverages per calendar year ~~for consumption off the premises of the brew pub~~ **and provides that of the 5,000 barrels, 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 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, ~~and~~ brew pubs **and craft distilleries** located in this State within the definition of "supplier" and, thus, impose on such breweries, ~~and~~ 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

30 in certain conduct in relation to a wholesaler who sells, distributes, markets, advertises or
31 promotes the alcoholic beverages produced by the supplier.

32 Existing law prohibits a wholesale dealer of alcoholic beverages from investing money,
33 directly or indirectly in a retail liquor store. (NRS 369.485) **Section 12** of this bill prohibits
34 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:

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

2 597.140 "Supplier" means any person, partnership, corporation or other form
3 of business enterprise engaged in business as a manufacturer, distiller, *craft*
4 *distillery*, rectifier, brewer, *brew pub*, importer, vintner, broker or agent therefor,
5 which distributes any or all of its brands of malt beverages, distilled spirits and
6 wines, or all of them, through licensed wholesalers in this state.

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

8 597.160 1. Except as otherwise provided in subsection 4, if more than one
9 franchise for the same brand or brands of malt beverages, distilled spirits and
10 wines, or all of them, is granted to different wholesalers in this state, it is a violation
11 of NRS 597.120 to 597.180, inclusive, for any supplier to discriminate between
12 such wholesalers with respect to any of the terms, provisions and conditions of
13 these franchises.

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

22 3. ~~1A~~ *Except as otherwise provided in this subsection, a wholesaler may,*
23 *within 60 days after he or she receives a notice required pursuant to NRS 597.155,*
24 *correct any failure to comply with the terms, provisions and conditions of the*
25 *franchise alleged by the supplier. This subsection does not apply to a supplier who*
26 *sells less than 2,000 barrels of malt beverages, less than 250 cases of distilled*
27 *spirits or less than 2,000 cases of wine in this State in any calendar year, or who*
28 *operates a winery pursuant to NRS 597.240.*

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

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

33 597.162 A supplier shall not:

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

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

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

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

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

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

6 ~~7.~~ **7.** Require a wholesaler to pay to the supplier all or any portion of the
7 difference in the suggested retail price of an alcoholic beverage and the actual price
8 at which the wholesaler sells the alcoholic beverage;

9 ~~8.~~ **8.** Require a wholesaler to accept delivery of any alcoholic beverage or
10 any other item that is not voluntarily ordered by the wholesaler or otherwise not
11 required under the franchise between the supplier and wholesaler or is in violation
12 of any levels of inventory that are mutually agreed upon in writing by the supplier
13 and wholesaler;

14 ~~9.~~ **9.** Prohibit or restrain, directly or indirectly, a wholesaler from
15 participating in an organization that represents the interests of wholesalers for any
16 lawful purpose; ~~10.~~

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

21 ~~11.~~ **11.** Require a wholesaler to participate in or contribute to any advertising
22 fund or promotional activity that:

23 (a) Is not used for advertising or a promotional activity in the marketing area of
24 the wholesaler; or

25 (b) Requires a contribution by the wholesaler that exceeds any amount
26 specified for that purpose in the franchise.

27 **Sec. 3.5. NRS 597.200 is hereby amended to read as follows:**

28 597.200 As used in NRS 597.190 to 597.255, inclusive, unless the context
29 otherwise requires:

30 1. "Alcoholic beverage" means any malt beverage or spirituous, vinous or
31 malt liquor which contains 1 percent or more ethyl alcohol by volume.

32 2. "Brew pub" means an establishment which manufactures malt beverages
33 and sells those malt beverages at retail pursuant to the provisions of NRS 597.230.

34 3. "Craft distillery" means an establishment which:

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

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

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

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

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

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

47 8. "Malt beverage" means beer, ale, porter, stout and other similar fermented
48 beverages of any name or description, brewed or produced from malt, wholly or in
49 part.

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

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

52 **(b) Occurs at:**

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

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

3 10. “Supplier” has the meaning ascribed to it in NRS 597.140.

4 ~~10.~~ 11. “Wine” has the meaning ascribed to it in NRS 369.140.

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

6 597.230 1. In any county, a person may operate a brew pub:

7 (a) In any redevelopment area established in that county pursuant to chapter
 8 279 of NRS;

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

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

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

15 ~~↳~~ A person who operates one or ~~more~~ brew pubs may not manufacture more
 16 than ~~15,000 20,000~~ 40,000 barrels of malt beverages for all the brew pubs he or
 17 she operates in ~~that county~~ this State in any calendar year.

18 2. The premises of any brew pub operated pursuant to this section must be
 19 conspicuously identified as a “brew pub.”

20 ~~3. A person who operates a brew pub pursuant to this section is limited to~~
 21 ~~two locations for the brew pub in this State.~~

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

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

28 (1) Sell and transport the malt beverages manufactured on the premises to a
 29 person holding a valid wholesale wine and liquor dealer’s license or wholesale beer
 30 dealer’s license issued pursuant to chapter 369 of NRS.

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

36 (b) Manufacture and store malt beverages on the premises of one or more of
 37 the brew pubs and transport the malt beverages manufactured on the premises to
 38 a retailer, other than a person who operates a brew pub pursuant to this section,
 39 that holds a valid license pursuant to chapter 369 of NRS for the purpose of
 40 selling the malt beverages at a special event in accordance with the terms and
 41 conditions of a special permit for the transportation of the malt beverages
 42 obtained from the Department of Taxation pursuant to subsection 4 of NRS
 43 369.450. For the purposes of this paragraph, the person who operates one or
 44 more brew pubs shall not obtain more than 20 such special permits for the
 45 transportation of the malt beverages from the Department of Taxation pursuant
 46 to subsection 4 of NRS 369.450 within a calendar year.

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

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

1 4. The amount of malt beverages sold ~~for consumption off the premises of~~
2 ~~the brew pub may~~ pursuant to paragraphs (b), (c) and (d) of subsection 3 must
3 ~~not exceed 12,000~~ a total of 5,000 barrels in any calendar year.

4 ~~5. As used in this section, the term "package" does not include a keg. Of~~
5 ~~the 5,000 barrels, not more than 1,000 barrels may be sold in kegs.~~

6 Sec. 5. Chapter 369 of NRS is hereby amended by adding thereto the
7 provisions set forth as sections 6 ~~and 7~~ to 7.7, inclusive, of this act.

8 Sec. 6. ~~"Brew"~~ As used in this chapter, "brew pub" has the meaning
9 ascribed to it in NRS 597.200.

10 Sec. 7. ~~"Brewery"~~ As used in this chapter, "brewery" means an
11 establishment which manufactures malt beverages but does not sell those malt
12 beverages at retail.

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

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

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

18 369.035 1. As used in this chapter, "instructional wine-making facility"
19 means an instructional wine-making facility operated pursuant to NRS 597.245.

20 2. For the purposes of this chapter:

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

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

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

27 369.111 As used in this chapter, "supplier" means, with respect to liquor
28 which is brewed, distilled, fermented, manufactured, rectified, produced or bottled:

29 1. Outside the United States:

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

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

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

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

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

43 369.150 1. The Department is charged with the duty of administering the
44 provisions of this chapter.

45 2. The Department shall:

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

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

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

52 (d) Adopt regulations to carry out the provisions of NRS 369.462 to 369.468,
53 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.

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.~~ 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. 5. 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) (b) "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;

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

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

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

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

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

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

16 3. A wholesale dealer shall not:

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

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

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

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

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

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

29 4. On the 15th day of the month following the delivery of liquor and on the
30 15th day of each month thereafter, the wholesale dealer shall charge a retail liquor
31 store which is delinquent a service charge of 1.5 percent of the amount of the
32 unpaid balance.

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

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

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

37 (c) For the third and any subsequent violation a penalty of not more than
38 \$5,000 or by a license suspension, or by both such penalty and suspension.

39 6. The Department may, upon its own motion, and shall, upon the verified
40 written complaint of any wholesale dealer, investigate the possible violation of any
41 of the provisions of this section by any wholesale dealer.

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