



STATE OF NEVADA
DEPARTMENT OF TAXATION

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Posted 11/3/22

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of

LCB File No. R068-21

Nevada Tax Commission

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m. on Monday, December 5, 2022**. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of the regulation that pertains to LCB File No. R068-21.

You may attend this meeting at either of the following physical locations:

Nevada Department of Taxation
700 E. Warm Springs Road, 1st Floor
Las Vegas, Nevada 89119

Nevada Department of Taxation
4600 Kietzke Lane, Suite L235
Reno, NV 89502

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

The need and purpose of the proposed permanent regulation (R068-21) establishes provisions governing the delivery of alcohol sold by retail liquor stores to consumers; requires brew pubs to maintain certain records related to the manufacture of malt beverages for sale to a wholesaler located outside this State; and provides other matters properly relating thereto.

Existing law authorizes a retail liquor store, or a delivery support service acting on behalf of a retail liquor store, to deliver liquor in its original package to a consumer in connection with the retail sale of such liquor if the delivery occurs in a jurisdiction in this State in which the retail

liquor store is licensed to sell liquor at retail. (NRS 369.489) **Section 2** of this regulation establishes requirements for such deliveries of liquor and the means through which a retail liquor store or its agent is authorized to accept an order for the sale and delivery of liquor. **Section 3** of this regulation establishes requirements for a person who makes such deliveries on behalf of a retail liquor store or a delivery support service acting on behalf of a retail liquor store. **Section 3** also requires any delivery of liquor to be made to a person who is 21 years of age or older at the address specified on the order as the delivery address and prohibits the delivery of liquor to a person who shows signs of intoxication.

Existing law defines a “sale” for the purposes of the provisions of law governing sales of intoxicating liquor. (NRS 369.100) **Section 4** of this regulation provides that the actions of a delivery support service acting on behalf of a retail liquor store to facilitate the sale of liquor by the retail liquor store is not a sale by the delivery support service.

Section 5 of this regulation requires a person who makes deliveries on behalf of a retail liquor store or delivery support service to maintain a delivery log which contains certain information for each delivery of liquor made. **Section 5** also prohibits the release of a delivery by a person who makes deliveries on behalf of a retail liquor store or delivery support service until the person is shown an acceptable form of identification showing that the person accepting the delivery is 21 years of age or older.

Section 6 of this regulation requires a retail liquor store to maintain certain delivery records for at least 4 years and to make such records available for inspection by the Department of Taxation upon reasonable notice.

Section 7 of this regulation authorizes the Department to impose certain penalties on a retail liquor store that violates the provisions of this regulation relating to liquor deliveries.

Section 8 of this regulation requires each county and city in this State to adopt ordinances governing liquor delivery which are consistent with existing law and this regulation.

Existing law regulates the operation of brew pubs in this State, including limiting the amount of malt beverage which a person who operates one or more brew pubs is authorized to manufacture per year to 40,000 barrels, plus an additional 20,000 barrels which may be manufactured and sold only to a wholesaler located outside of this State. (NRS 597.230)

Section 9 of this regulation requires a brew pub to maintain certain records necessary to determine the amount of malt beverage manufactured for sale to a wholesaler located outside of this State and to make those records available for inspection by the Department.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed permanent regulation by writing to the Nevada Department of Taxation, 1550 College Parkway, Ste 115, Carson City, Nevada 89706; or by calling the office at (775) 684-2059. The proposed permanent regulation is also available for review and download on the Department of Taxation website at <https://tax.nv.gov/> or on the Nevada Legislature website at <https://www.leg.state.nv.us/>.

3. Methods used in determining the impact on a small business

The agency used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes, which includes its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R068-21. The Department prepared a small business impact questionnaire that was forwarded to the Interested Parties List which is maintained by the Department.

The Department will continue to accept input on the impact of the proposed permanent regulation on small businesses through the regulatory process. No respondents indicated that this regulation would have a direct and significant economic burden upon a small business.

The Department held a workshop for concerned members of the public to state their concerns and submit correspondence regarding the regulation.

4. Estimated economic effect of regulation on businesses and the public

a. Adverse and beneficial effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated adverse economic effects on small businesses.

b. Immediate and long-term effects

Same as above

5. Cost for enforcement of the regulations

The proposed permanent regulation does not present any significant, foreseeable or anticipated cost or decrease in costs for enforcement.

6. Overlap or duplication of other state or local governmental agencies

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

7. Regulation required by federal law

Not Applicable

8. More stringent than federal regulations

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

9. New or increases in existing fees

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

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an

interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.



Yvonne Nevarez-Goodson, Chief Deputy Executive Director
November 3, 2022

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2096 no later than five working days prior to the meeting.

A copy of the Notice and the proposed permanent regulation to be adopted and/or amended is on file and has been posted at the following location: The Department of Taxation - 1550 College Parkway, Ste 115, Carson City, Nevada.

Members of the public may inspect these documents during regular business hours at the above location. Additional copies of the notice and proposed permanent regulation to be adopted and/or amended are available at the below locations.

The text of the proposed permanent regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Notice has been EMAILED/MAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Ste 235, Reno, Nevada; Department of Taxation - 700 E. Warm Springs Rd, Ste 200, Las Vegas, Nevada; The Legislative Building - Capitol Complex, Carson City, Nevada; The Nevada State Library -100 Stewart Street, Carson City, Nevada; The County Public Library's, Interested Parties Group, and the Mailing List maintained by the Department. Notice of this meeting was posted on the Department of Taxation website at <https://tax.nv.gov/>, on the Legislative website at <https://www.leg.state.nv.us/>, and the Nevada Public Notice Website at <https://notice.nv.gov/>.

DEPARTMENT PROPOSED AMENDMENT

November 3, 2022

REVISED PROPOSED REGULATION OF THE NEVADA TAX COMMISSION

LCB File No. R068-21

August 25, 2022

EXPLANATION – Matter in (1) blue bold italics is original language in LCB’s proposed regulation; (2) variations of green bold underlining is language proposed to be added to LCB’s proposed regulation; (3) red strikethrough is deleted language in LCB’s proposed regulation; and (4) Purple strikethrough is language proposed to be deleted in this revised proposed regulation.

AUTHORITY: §§ 1-5, 7 and 8, NRS 360.090, 369.150 and 369.489; § 6, NRS 360.090, 369.150, 369.489 and 369.550; § 9, NRS 360.090, 369.150 and 597.230.

A REGULATION relating to taxation; establishing provisions governing the delivery of alcohol sold by retail liquor stores to consumers; requiring brew pubs to maintain certain records related to the manufacture of malt beverages for sale to a wholesaler located outside this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a retail liquor store, or a delivery support service acting on behalf of a retail liquor store, to deliver liquor in its original package to a consumer in connection with the retail sale of such liquor if the delivery occurs in a jurisdiction in this State in which the retail liquor store is licensed to sell liquor at retail. (NRS 369.489) **Section 2** of this regulation establishes requirements for such deliveries of liquor and the means through which a retail liquor store or its agent is authorized to accept an order for the sale and delivery of liquor. **Section 3** of this regulation establishes requirements for a person who makes such deliveries on behalf of a retail liquor store or a delivery support service acting on behalf of a retail liquor store. **Section 3** also requires any delivery of liquor to be made to a person who is 21 years of age or older at the address specified on the order as the delivery address and prohibits the delivery of liquor to a person who shows signs of intoxication.

Existing law defines a “sale” for the purposes of the provisions of law governing sales of intoxicating liquor. (NRS 369.100) **Section 4** of this regulation provides that the actions of a delivery support service acting on behalf of a retail liquor store to facilitate the sale of liquor by the retail liquor store is not a sale by the delivery support service.

Section 5 of this regulation requires a person who makes deliveries on behalf of a retail liquor store or delivery support service to maintain a delivery log which contains certain information for each delivery of liquor made. **Section 5** also prohibits the release of a delivery

by a person who makes deliveries on behalf of a retail liquor store or delivery support service until the person is shown an acceptable form of identification showing that the person accepting the delivery is 21 years of age or older.

Section 6 of this regulation requires a retail liquor store to maintain certain delivery records for at least 4 years and to make such records available for inspection by the Department of Taxation upon reasonable notice.

Section 7 of this regulation authorizes the Department to impose certain penalties on a retail liquor store that violates the provisions of this regulation relating to liquor deliveries.

~~**Section 7** authorizes a county or city to implement the same penalties by ordinance.~~

Section 8 of this regulation requires each county and city in this State to adopt ordinances governing liquor delivery which are consistent with existing law and this regulation.

Existing law regulates the operation of brew pubs in this State, including limiting the amount of malt beverage which a person who operates one or more brew pubs is authorized to manufacture per year to 40,000 barrels, plus an additional 20,000 barrels which may be manufactured and sold only to a wholesaler located outside of this State. (NRS 597.230) **Section 9** of this regulation requires a brew pub to maintain certain records necessary to determine the amount of malt beverage manufactured for sale to a wholesaler located outside of this State and to make those records available for inspection by the Department.

Section 1. Chapter 369 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. 1. *A retail liquor store, or a delivery support service acting on behalf of a retail liquor store, may accept orders for and deliver liquor in its original package to a consumer pursuant to NRS 369.489, only if:*

(a) The liquor is not for resale;

(b) The original package of liquor originates from the premises of the retail liquor store making the sale;

(c) The liquor is sold by the retail liquor store ~~and the retail liquor store is licensed by the Department to sell liquor at retail;~~

(d) The retail liquor store has met all local licensing requirements to engage in business as a retailer of liquor in the jurisdiction where the retail liquor store is located and where the delivery occurs;

(e) The liquor was purchased by the retail liquor store from a wholesaler in compliance with the marketing area of the wholesaler;

(f) The delivery originates during the posted business hours of the retail liquor store; and

(g) In the case of a delivery support service acting on behalf of a retail liquor store, the delivery support service has entered into a written agreement with the retail liquor store to deliver liquor to consumers on behalf of the retail liquor store.

2. A retail liquor store or its agent may accept an order for the sale and delivery of liquor pursuant to this section and NRS 369.489 that is made in person, is submitted in writing or is made by telephone or through the Internet.

3. As used in this section, “marketing area” has the meaning ascribed to it in NRS 597.136.

Sec. 3. *1. A retail liquor store, or a delivery support service acting on behalf of a retail liquor store, shall ensure that any person making a delivery on behalf of the retail liquor store or delivery support service pursuant to NRS 369.489:*

(a) Is not less than 21 years of age; and

(b) Maintains the delivery log required by section 5 of this regulation.

2. A retail liquor store, or a delivery support service acting on behalf of a retail liquor store, shall make a delivery of liquor pursuant to NRS 369.489, only to a person at the address specified in the order as the delivery address who is 21 years of age or older. The address

specified in the order as the delivery address may be the designated pick-up area of the retail liquor store. If no person 21 years of age or older is present at the delivery address to accept the order, the retail liquor store, or delivery support service acting on behalf of the retail liquor store, shall retain possession of the liquor and return it to the retail liquor store.

3. A retail liquor store, or a delivery support service acting on behalf of a retail liquor store, shall not make a delivery of liquor to a person who appears to show signs of intoxication.

Sec. 4. Action taken by a delivery support service on behalf of a retail liquor store to facilitate a sale of liquor by the retail liquor store, including, without limitation, the soliciting or receiving of an order for liquor or the delivery of liquor on behalf of a retail liquor store, shall not be deemed a sale, as defined in NRS 369.100, by the delivery support service.

Sec. 5. 1. Each person who makes a delivery pursuant to NRS 369.489, on behalf of a retail liquor store, or delivery support service acting on behalf of a retail liquor store, shall maintain a delivery log which includes the following for each delivery of liquor made:

- (a) The name of the purchaser;*
- (b) The name and date of birth of the person who accepts delivery as shown on his or her form of identification shown pursuant to subsection 2;*
- (c) The street address of the delivery location;*
- (d) The time and date of the purchase and delivery; and*
- (e) The signature or other verification of the identity of the person who accepts the delivery.*

2. A person who makes a delivery pursuant to NRS 369.489, on behalf of a retail liquor store, or a delivery support service acting on behalf of a retail liquor store, shall not release the delivery until he or she has been shown an acceptable form of identification by the person who accepts delivery at the address listed on the order as the delivery address. Acceptable forms of identification are a valid driver's license, permanent resident card, tribal identification card or any other written or documentary evidence issued by a governmental entity indicating that the person is 21 years of age or older.

Sec. 6. A retail liquor store shall maintain the delivery orders, delivery logs, receipts and journals relevant to each delivery made by the retail liquor store, or delivery support service acting on behalf of the retail liquor store and preserve those records for at least 4 years. All such delivery orders, delivery logs, receipts and journals shall be exhibited at any time during business hours, upon reasonable notice, to the Department or any of its agents. Pursuant to NRS 369.550, any person preventing or interfering with such inspection shall be guilty of a misdemeanor.

Sec. 7. ~~[1.]~~ The Department may impose the following penalties on a retail liquor store that violates any of the provisions of sections 2 to 6, inclusive, of this regulation within any 24-month period:

- (a) 1. For the first violation, a penalty of not more than \$500.*
- (b) 2. For the second violation, a penalty of not more than \$1,000.*
- (c) 3. For the third and any subsequent violation, a penalty of not more than \$5,000*

or a license suspension, or both such penalty and suspension.

~~[2. A county or city may adopt by ordinance the penalties set forth in this section.]~~

Sec. 8. Each county and city in this State shall adopt ordinances regulating liquor delivery which are consistent with the provisions of NRS 369.489 and sections 2 to 7, inclusive, of this regulation. The provisions of sections 1 to 9, inclusive, of this Regulation are not intended to limit local governments from adopting ordinances as otherwise authorized under Nevada law.

Sec. 9. 1. A brew pub which manufactures and sells malt beverages to a wholesaler located outside of this State shall maintain such records as are necessary to determine the amount of malt beverages manufactured by the brew pub for sale to a wholesaler located outside of this State, including, without limitation, records documenting:

(a) The kind and quantity of malt beverages shipped in each order of malt beverages;
(b) The name of the wholesaler located outside of this State to whom each order of malt beverages was shipped; and

(c) The physical location to which each order of malt beverages was shipped and the date of shipping.

2. The records maintained pursuant to this section must be preserved for not less than 4 years.

3. A brew pub shall make the records maintained pursuant to this section available for inspection and auditing by the Department or any of its agents, on demand, at reasonable times during regular business hours.