

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R068-21

Filed December 29, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

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 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;

(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. *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:*

- 1. For the first violation, a penalty of not more than \$500.*
- 2. For the second violation, a penalty of not more than \$1,000.*
- 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.*

Sec. 8. *1. 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.*

2. Nothing in sections 2 to 8, inclusive, of this regulation shall be construed to prohibit a local government from adopting ordinances as otherwise authorized by 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.