

A photograph of a man in a dark shirt and shorts working in a warehouse, moving large metal kegs. The background shows stacks of boxes and other kegs, with another person visible in the distance.

# SILVER STATE ALCOHOL DISTRIBUTION: FROM GROWER TO CONSUMER

BY JESSE WADHAMS, ESQ.

Since the 21st Amendment repealed Prohibition in 1933, a three-tier system has been used to govern regulation of alcohol distribution.

In Nevada, the system is found at NRS 597.120 *Et Seq.* and regulates the manufacture and distribution of alcohol in the state.

The three-tier system developed throughout the United States to ensure that the excesses of the pre-Prohibition era could be avoided, and that the regulation and taxation of alcoholic beverages could be easily administered. While the 21st Amendment did allow individual states to regulate alcohol for themselves, the three-tier system was widely adopted due to its straightforward regulatory structure and ease of revenue collection.

In its most essential form, the three-tier system places manufacturers/producers (the wineries, breweries, distilleries and other manufacturers of the world) on one level, wholesalers and distributors on another, and retailers on a third. Broadly speaking, no entity is permitted to operate on any two levels. For example, a major brewery manufactures beer; that brewery will operate as a supplier and have a supplier's license (or more properly, a certificate of compliance).

Under this system, these suppliers (certificate-of-compliance-holders) can sell only to licensed importers/wholesalers located in Nevada. An

importer or wholesaler will have a license from the state, allowing both of these entities to have the first ownership possession in the state and, in turn, sell to either another wholesaler or to retail liquor stores. An importer or wholesaler is specifically prohibited from direct sale to the general public. (NRS 369.130). Importers, as different from wholesalers, can only bring the product into the state; they are not permitted to sell to retailers, only to licensed wholesalers. (NRS 369.488). A wholesaler can be a licensed importer, but an importer will not necessarily be a licensed wholesaler.

Further, retailers must purchase only from wholesalers (NRS 369.487), and may not legally purchase for resale from other retailers or directly from suppliers.

Alcoholic beverages may be transported into Nevada only by a licensed common carrier, a regularly operating contract carrier or licensed Nevada importer/wholesaler with a special permit for the transporting vehicle. Importation into Nevada must be made to the licensed importer/wholesaler warehouse. Wholesale

liquor business and storage must be conducted only from a licensed importer/wholesaler warehouse.

This three-tier-system prohibits a vertically integrated company. This helps provide a more even playing field for the various players in the marketplace. For example, a large winery or brewery cannot use its market clout to prohibit new entrants from gaining retail space in the liquor and grocery stores. The distributors help with compliance and revenue collection.

However, three distinct exceptions that allow a single entity to operate on all three levels are permitted under Nevada law. Brew pubs, craft distilleries, wineries and instructional wine-making facilities are all permitted to make and sell their own alcoholic products. Because these businesses blur the lines of the three-tier system, and manufacture and sell

at retail, these entities have special licensing and obligations under law.

First, a brew pub specifically operates under NRS 597.230. A brew pub, unlike a major brewery, crafts its own products and sells them on the premises to the general public. These brew pubs can operate in any county. Because of their special legal status, an operator of a brew pub is limited to the manufacture of 15,000 barrels of malt beverage per county in which it operates. See NRS 597.230(1)(d).

The limitations on a brew pub prohibit the concept of a tied house. In the U.K., for example, it is common to have pubs with a contract

to buy all, or most, of its beer from a particular brewery. Brew pubs in Nevada are limited when it comes to the amount of beer they can produce in a year.

Additionally, they may sell and transport the malt beverages manufactured on the premises under a special permit obtained from the Department of Taxation. They may also sell their products both on-sale and off-sale at retail. NRS 597.230(3), *Et seq.*

Similarly, the newest special licensee (NRS 597.235), a craft distillery, may operate on multiple tiers. A licensee may manufacture spirits from agricultural raw materials through distillation and blend, age, store and bottle the spirits so manufactured. A craft distillery is limited to a

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*continued on page 24*



# SILVER STATE ALCOHOL DISTRIBUTION

combined total of 10,000 cases of spirits per year in-state, and not more than a combined total of 20,000 cases of spirits for export. NRS 597.235(2)(b) and (c).

Craft distilleries may serve samples of the spirits they manufacture at a limit of two ounces, per person, per day. NRS 597.235(2)(d); and they may sell their spirits on-sale and off-sale, limited to two bottles per person, per month. NRS 597.235(2)(e).

The third special license for a winery is specifically limited to counties other than Washoe or Clark. Under NRS 597.240, a winery may import wine or juice from a bonded winery in another state, to be fermented into wine or, if already fermented, to be mixed with other wine, aged in a suitable cellar or both. The licensee may sell at retail or serve by the glass on its premises and at one

other location, wine produced, blended or aged by the winery; it may also serve by the glass, on its premises, any alcoholic beverage. NRS 597.240(1)(c).

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A fourth type of license (NRS 597.245) is also available, though it differs in some significant ways from the previous three. An instructional wine-making facility may make wine on the premises and charge a fee to persons of legal age, for the purpose of providing those persons with instruction and the opportunity to participate directly in the process of wine-making on the premises of the facility; it may then serve wine produced on the premises of the facility by the glass for consumption on the premises of the facility.

This license is separate and distinct from the winery license of NRS 597.240.

Nevada law goes so far as to define the wine-making process, which includes growing, buying and importing agricultural products and ingredients: selecting, preparing and processing agricultural products and ingredients; barreling, fermenting, aging, filtering, bottling, labeling, racking, warehousing and storing; and importing bulk wine or juice, from a bonded winery in another state, to be fermented into wine or, if already fermented, to be blended with other wine and aged in a suitable cellar.

Wine produced on the premises of an NRS 597.245 instructional wine-making facility must be used, consumed or disposed of on the premises of the facility or distributed from the facility to a person of legal age who has participated directly in the process of wine making on the premises of the facility for the person's own household or personal use.



People who make wine may then gift that wine to others, but they are limited to gifting no more than 60 gallons of that wine per year. This applies only to the wine they participated in making. NRS 597.245(3)(b), *Et seq.*

During the 2015 Legislative Session, bills have already been introduced to permit wineries in Nevada's urban counties, to permit brew pubs to manufacture unlimited barrels of beer, and to modify the limits on craft distilleries. Assembly Bill 4 would open both Washoe and Clark counties to wineries and also allow a winery to operate an instructional wine-making facility. Senate Bill 139 would completely remove the limitation on the number of barrels of beer a brew pub can produce in a year. And Assembly Bill 186 would increase the amount of product that can be manufactured, increase the amount of product to be sold at retail and allow an additional location for retail sale (such as a farmers' market). Additional bills modifying Nevada's liquor laws may be introduced as the 2015 session continues. More information on these bills and others can be found at the Nevada Legislature's website. **NL**

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