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AN OPEN LETTER TO ALL RETAILERS, WHOLESALERS AND SUPPLIERS OF INTOXICATING LIQUORS IN NEVADA

This letter is a reminder about the laws in Nevada concerning the activities of all parties engaged in the sale of intoxicating liquors in Nevada. The Nevada Attorney General directs this letter to all relevant parties, including Nevada retail liquor stores, or "retailers," wholesalers, and liquor suppliers, who are subject to certain provisions of NRS Chapters 369,[1] 597, and 598. It is important that all Nevada wholesalers, retailers and liquor suppliers know and respect their legal obligations. Nevada law requires the following:

1. No Loans from Wholesaler to Retailer. A wholesaler shall not "loan any money *or other thing of value* to a retail liquor store. (emphasis added)"[2]
2. No Investments by Wholesaler in Retailer. A wholesaler shall not "invest money, directly or indirectly, in a retail liquor store."[3]
3. No Complimentary Furnishings from Wholesaler to Retailer. A wholesaler shall not "furnish or provide any premises, building, bar or equipment to a retail liquor store."[4]
4. No Joint Operation of a Retailer's Business. A wholesaler shall not "participate, directly or indirectly, in the operation of the business of a retail liquor store."[5]
5. Adherence to Strict Payment Terms. A wholesaler may not give one retailer preferable payment terms over another retailer. All sales by a wholesaler to a retailer must be paid by the retailer "on or before delivery or on terms requiring payment by the retail liquor store before or on the 10th day of the month following delivery of such liquor to it by the wholesale dealer."[6] Further, if a retailer becomes delinquent in payment to the wholesaler, the wholesaler shall cease further sales to that retailer during any

[1] Pubs, taverns, restaurants, grocery stores, convenience stores, liquor stores and all other establishments where beers, wines and liquors are sold to customers, either by the drink or in original packages, qualify as "retail liquor stores" under NRS 369.090.
[2] NRS § 369.485(3)(a) (emphasis added).
[3] NRS § 369.485(3)(b).
[4] NRS § 369.485(3)(c).
[5] NRS § 369.485(3)(d).
[6] NRS § 369.485(3)(e).

delinquency.[7] Finally, during any delinquency, the wholesaler is required to charge a delinquent retailer a monthly service charge of 1.5 percent of the unpaid balance.[8]

6. No Substitution of Brands. If a customer specifically requests one brand of alcoholic beverage, a retailer or its employees may not substitute a different brand without the customer's consent.[9]

7. No Boycotts of Other Suppliers. A supplier "shall not prohibit a wholesaler from selling an alcoholic beverage of any other supplier."[10]

8. No Resale Price Maintenance. A supplier "shall not fix or maintain the price at which a wholesaler may resell an alcoholic beverage purchased from the supplier." [11]

9. Profit Splitting. A supplier shall not "require a wholesaler to pay to the supplier all or any portion of the difference in the suggested retail price of an alcoholic beverage and the actual price at which the wholesaler sells the alcoholic beverage."[12]

10. No Delivery of Unwanted or Unnecessary Inventory. A supplier shall not "require a wholesaler to accept delivery of any alcoholic beverage or any other item that is not voluntarily ordered by the wholesaler or otherwise not required under the franchise between the supplier and wholesaler or is in violation of any levels of inventory that are mutually agreed upon in writing by the supplier and wholesaler." [13]

11. No Excessive or Unauthorized Advertisements or Promotions at Wholesaler's Expense. A supplier may not (i) require contributions by the wholesaler that are not used for advertising or a promotional activity in the marketing area of the wholesaler, or (ii) require contributions by the wholesaler that exceeds any amount specified for that purpose in the franchise.[14]

12. Strict Adherence to Product Price. A supplier "shall not require a wholesaler to increase his or her payment to the supplier for any product of that supplier after the product is delivered to the wholesaler."[15]

13. No Discrimination Among Wholesalers. A supplier shall not "discriminate between such wholesalers with respect to any of the terms, provisions and conditions of these franchises."[16]

14. Deceptive Trade Practices. A person engages in a deceptive trade practice when in the course of his or her business or occupation he or she knowingly violates a state or federal statute[17] or regulation relating to the sale or lease of goods or services or uses coercion, duress or intimidation in a transaction.

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[7] NRS § 369.485(3)(f).
[8] NRS § 369.485(4).
[9] NRS § 597.260(1).
[10] NRS § 597.162(1)
[11] NRS § 597.162(2)
[12] NRS § 597.162(3)
[13] NRS § 597.162(4)
[14] NRS § 597.162(6)
[15] NRS § 597.165
[16] NRS § 597.160(1)
[17] NRS § 598.0923(3)

Suppliers, wholesalers and retailers need to be aware of these restrictions because some may attempt to gain a competitive edge by offering incentives or terms that are illegal. Agreeing to such terms would be a disservice to all that honor the law. It is alleged that some retailers may be imposing various conditions on the wholesaler in order obtain the retailer's business, but the wholesaler may not be able to honor these conditions if they are illegal.

NRS 597.190 states that it is the policy of the Legislature to insure the orderly distribution and marketing of alcoholic beverages in this state in order to protect locally owned and operated business enterprises and those residents whose livelihoods and investments are dependent on their freedom to manage their businesses without economic and coercive control by others in the industry.

To the degree that some suppliers, wholesalers and retailers may not previously have been fully aware of these requirements, we hope this letter has been informative. All suppliers, wholesalers and retailers should also be aware that failure to comply with these requirements may, among other things, constitute a deceptive trade practice and/or unfair trade practice under Nevada law.

The Nevada Attorney General's Office is charged with enforcing Nevada Revised Statutes ("NRS") 597.120 through NRS 597.260 (Nevada's franchise law governing the relationship between alcohol supplier and wholesaler) and NRS Chapter 598 (concerning deceptive trade practices). NRS 597.262(1) provides the Attorney General with primary jurisdiction to enforce the provisions of NRS 597.120 to 597.260 and requires appropriate legal action to be taken to enforce those provisions.

This office also has a duty to investigate and prosecute deceptive trade practices in Nevada. The remedies available to the Nevada Attorney General include criminal prosecution, civil prosecution, and injunctive relief, including the ability to suspend a company's ability to conduct business in the State of Nevada.[18] The Nevada Attorney General does not provide legal advice to private parties. If any supplier, wholesaler or retailer has any questions about this letter, the statutes referenced herein or their applicability to a retailer's business, please contact a Nevada licensed attorney who is familiar with Nevada's liquor and trade practice laws.

[18] NRS 598.0963 and NRS 598.0999.