

Fundamentals of Nevada Winery Law

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In the past, Nevada has had few wineries, but this situation is changing. While Nevada's hot and arid climate limits the ability to successfully grow grapes for wine, Nevada state law has also acted to limit the scope of winery activity in the state. As a result, until recently there were only four licensed wineries operating in Nevada.

Recent changes to Nevada law have made the prospect of opening and operating a winery in Nevada more attractive. Since the passage of Nevada Assembly Bill 4 (AB 4) in 2015, there have already been at least two new Nevada wineries that have obtained licenses and started operating. AB 4 made several changes to Nevada winery law, creating new opportunities for wineries to operate in the state.

Licensing Requirements for a Nevada Winery

A business wishing to operate a winery in Nevada must first obtain permits and licenses from various government agencies, including:

- The U.S. Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB);
- The Nevada State Department of Taxation (DOT); and
- The licensing and/or sheriff's department of the locality in which the winery is located. The process and timing of applying for and obtaining approval of the necessary licenses will depend on various factors, including the location of the winery and its ownership and management.

Federal law prohibits a person from producing wine without having first obtained a "basic permit" from the TTB.¹ Moreover, no winery may bottle wine without having first obtained a Certificate of Label Approval (COLA) from the TTB.² A basic permit application must include certain corporate documentation identifying the ownership and management of the business, and it must include personal applications for all individuals with more than 10 percent ownership in the winery. The TTB may initiate an on-site inspection of the proposed premises and operations prior to issuance of the basic permit. The average processing time for approval of a basic permit for a winery is three to four months. Upon receiving its basic permit, a winery may then apply for its COLAs. COLAs for labels that comply with federal regulations are usually issued and approved within two weeks.

In Nevada, a winery must be licensed both by the DOT and the locality in which the winery is situated. The DOT requires that the state winery license application be approved by the local governing body in which the winery is situated, i.e., the local city council or the board of county commissioners, as appropriate.³

Each locality has different requirements with regard to what a business must obtain before its governing body will sign the state application, including zoning and the approval of ownership and management of the proposed winery. Because of Nevada's history with organized crime, many Nevada localities have extensive suitability application requirements for liquor license applicants. The investigations to determine suitability can take sometimes as long as six months or longer to process. Once the locality approves the state license application, the DOT will issue the state license within a couple weeks of

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receiving the application, the applicable license fees and bond, and a copy of the winery's TTB basic permit.

Although AB 4 did not make any changes to the license or permit requirements of a winery, it did change the scope of a Nevada winery's permitted operations.



Pre-AB 4 Nevada Law Governing Wineries

Nevada's "tied-house" laws generally prohibit a manufacturer of alcoholic beverages from engaging in the business of selling alcoholic beverages at retail.⁴ In Nevada, a licensed winery is one of the few limited exceptions to that prohibition. In fact, prior to enactment of AB 4, a winery was permitted to sell any type of alcoholic beverage by the glass for on-premises consumption — a winery could have a full bar.

Prior to enactment of AB 4, wineries could only be located in rural counties (all but Clark and Washoe counties), but they could sell an unlimited amount of wine produced, blended or aged by the winery at retail, including wine made from fruit grown outside of Nevada, on the winery premises and at one other location, provided that the wine sold at a location other than on the premises of the winery does not exceed 50 percent of the total volume of the wine sold by the winery.

Changes to Nevada Winery Law Pursuant to AB 4

AB 4 made various changes to Nevada Revised Statutes Chapter 597 concerning wineries.⁵ First, the bill

expanded where a winery could operate in the state by permitting wineries in populous Clark and Washoe counties. Second, AB 4 expressly permitted wineries to "produce, bottle, blend and age wine." Finally, AB 4 added restrictions concerning the wine and other alcoholic beverages a winery can sell at retail.

Allowing wineries to operate in Clark and Washoe counties is an important change that has created new interest in opening Nevada wineries, including the possibility of opening a winery on the Las Vegas Strip. A typical bar or restaurant selling wine at retail is required to purchase the wine from a licensed Nevada wholesale distributor.⁶ A winery, however, may sell certain amounts of wine it produces at retail without the need to purchase the product from a wholesale distributor.⁷

A Nevada winery is permitted to sell certain amounts of wine it "produced, blended or aged" at retail. Nevada law does not clearly define or limit the scope of what it means to produce, blend or age wine.⁸ A Nevada winery is also expressly permitted "to import wine or juice from a winery that is located in another state ... to be fermented into wine or, if already fermented, to be mixed with other wine or aged in a suitable cellar, or both."⁹ AB 4 has therefore made it possible for a Nevada winery to import wine or grape juice directly from an out-of-state winery into Nevada to be fermented and "aged in a suitable cellar" for an undefined period of time and then sold at retail to customers in Clark or Washoe counties.

AB 4 added certain limitations as well. Notably, AB 4 limited the amount of wine a licensed winery may sell at retail if less than 25 percent of the wine was produced from fruit grown outside Nevada.¹⁰ If 25 percent or more of the wine produced, blended or aged by the winery is from fruit grown in Nevada, there are no limitations on the amount of wine that may be sold at retail. If less than 25 percent of the wine produced, blended or aged by the winery is from Nevada fruit, the winery may not sell more than 1,000 cases of wine at retail per calendar year, including in bottles for off-premises consumption and by the glass for on-premises consumption.

Additionally, AB 4 changed Nevada law so that any winery licensed after September 2015 is not permitted to sell other alcoholic beverages at retail or sell its wine at a second location.

Previously, a Nevada winery was permitted to sell unlimited amounts of its product at retail, but only in a rural county. By permitting wineries to operate in the most populous areas of the state, AB 4 has injected new interest in the operation of wineries in Nevada. The state's climate may still not be the most conducive to growing grapes to be fermented into wine. However, a Nevada winery is not required to grow its own grapes. In fact, it is expressly permitted to import juice or wine from other states to be blended or aged and then sold at retail. The new ability of a winery to operate in Clark and Washoe counties has created interest in new and exciting business endeavors. **NL**

1. 27 C.F.R. § 1.21(a).
2. 27 C.F.R. § 4.30(a).
3. NRS 369.190(3).
4. NRS 597.210(1)(a).
5. See NRS 597.240.
6. NRS 369.487.
7. NRS 597.240(3).
8. See *id.* at (1)(a).
9. *Id.* at (1)(b).
10. *Id.* at (3).

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