

This Bill, originally introduced as clauses 2 to 16 of the Sale of Liquor Amendment Bill 1981, was ordered to be printed as a separate Bill with the addition of the new title, enacting words, and Short Title shown below.

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 22 July 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr McLay

SALE OF LIQUOR AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to make provision for a wine distributor's licence and to amend the Sale of Liquor Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 77—3B

1. Short Title—(1) This Act may be cited as the Sale of Liquor Amendment Act (No. 2) 1981, and shall be read together with and deemed part of the Sale of Liquor Act 1962 (hereinafter referred to as the principal Act).

New

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(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

Wine Distributor's Licence

2. Wine distributor's licence—The principal Act is hereby amended by inserting, after section 66, the following section: 10

“66A. (1) A wine distributor's licence shall authorise the licensee to sell or deliver wine to the holder of any other licence under this Act or to a chartered club or to a licensing trust, at any time on any day other than a day (*in*) on which 15 licensed premises are required to be closed for the sale of liquor, (*every class of liquor specified in the licence,*) from any premises specified in the licence, for consumption off those premises only. 20

New

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“(2) Notwithstanding anything in subsection (1) of this section, where pursuant to his licence the holder of a wine distributor's licence sells any wine to the holder of any other licence under this Act or to a chartered club or to a licensing trust, the holder of the wine distributor's licence may arrange 25 for delivery of the wine to be made by the maker or importer of the wine from the place and in the manner permitted by the licence held by the maker or importer in that behalf, as if the sale had been made by the maker or importer; and where delivery is so made the sale and delivery shall be deemed for 30 the purposes of this Act to have been made by the holder of the wine distributor's licence and in the manner specified in subsection (1) of this section.”

3. Heading and new sections inserted in principal Act—The principal Act is hereby amended by inserting, after section 106, the following heading and sections:

“Wine Distributor’s Licence

5 “106A. **Application for wine distributor’s licence**—
(1) Every application for a wine distributor’s licence shall be

made, in the prescribed form, by the person who intends to
sell or deliver (*liquor*) wine pursuant to the licence if the
application is granted, and shall be filed with the Secretary of
10 the Licencing Control Commission.

“(2) If the applicant is a person other than a body
corporate, the application shall be accompanied by—

“(a) A statutory declaration made by the applicant—

15 “(i) Giving particulars of any experience that he
has had in the conduct of any business (including
any experience as an employee in any capacity in
respect of any such business); and

20 “(ii) Stating whether or not he has had any
convictions recorded against him for any offences
against this Act or the Licensing Act 1908, and
giving particulars of any such convictions; and

“(b) Not less than 2 testimonials as to the character and
reputation of the applicant.

25 “(3) If the applicant is a body corporate other than a
private company, the application shall be accompanied by a
statutory declaration made by a responsible officer of the
body corporate stating whether or not it has had any
convictions recorded against it for any such offences, and
giving particulars of any such convictions.

30 “(4) If the applicant is a private company within the
meaning of the Companies Act 1955, the following provisions
shall apply:

35 “(a) The application shall be accompanied by the statutory
declaration referred to in subsection (3) of this
section, and by a statement specifying the name,
address, and occupation of every director of the
company, and of every person by whom or on
whose behalf more than 25 percent of the shares in
the capital of the company is held:

40 “(b) The Commission may require that any such director
or shareholder shall make and furnish a statutory
declaration and supply testimonials in the same

manner as if he were an applicant to whom subsection (2) of this section applies.

“(5) The application, and every declaration, testimonial, and statement shall be filed in duplicate.

“(6) The application shall also be accompanied by— 5

“(a) A statement of the address of the applicant’s principal place of business and the addresses of all other premises from which he proposes to sell or deliver wine pursuant to the licence, and of the general nature of the business operation proposed to be conducted pursuant to the licence; and 10

Struck Out

“(b) A statement of the class or classes of liquor in respect of which authority to sell and deliver liquor pursuant to the licence is sought; and 15

“(c) Such other particulars as may be required by regulations made under this Act.

“(7) Public notice of every application made under this section shall be given by the applicant.

“(8) The notice shall specify the name, address, and occupation of the applicant, and the address of his principal place of business in respect of which the application is made and the addresses of all other premises from which he proposes to sell or deliver wine pursuant to the licence, and shall state that any person who wishes to object to the issue of a licence to the applicant may, not later than 14 days after the first publication of the notice, file notice of his objection, and of the grounds thereof, with the Secretary of the Commission. 25

“106B. **Secretary of Commission to obtain reports—**

(1) The Secretary shall forthwith send a copy of every such application, declaration, and statement, and the original testimonials, to the member of the Police in charge of the police station nearest to the applicant’s principal place of business, and shall request that a Police report be made. 30

“(2) It shall be the duty of the Police to inquire into and report to the Commission on every such application. 35

“(3) The Secretary shall also forthwith send particulars of the application to an Inspector with a request that the Inspector report to the Commission on the application.

“106c. **Objections**—(1) Objections to the grant of a wine distributor’s licence may be made by any person.

“(2) Every objection shall be made by notice in writing filed with the Secretary of the Commission within 14 days after the first publication of the notice of the making of the application, or within such further time as the Chairman of the Commission may allow.

“(3) The grounds on which any such objection may be made are that the applicant—

- “(a) Has been convicted of an offence against this Act or the Licensing Act 1908; or
- 15 “(b) Is not a suitable person to hold the licence having regard to his character or lack of experience in the conduct of any business (including any experience as an employee in any capacity in respect of any such business).

20 “106d. **Circumstances to be taken into account**—(1) In determining whether to grant any application for a wine distributor’s licence the Commission shall have regard to—

- “(a) The general nature of the business operation proposed to be conducted pursuant to the licence;
- 25 “(b) The experience of the applicant in the conduct of any business and his character, and any convictions of the applicant for offences against this Act or the Licensing Act 1908;
- “(c) Such other considerations as the Commission thinks
- 30 fit to take into account.

“(2) It shall not be a ground for refusing an application for a wine distributor’s licence that—

- “(a) The grant of the application might have a prejudicial effect on the business conducted pursuant to any other wine distributor’s licence or other licence under this Act or on the business of any licensing trust; or
- “(b) The existing demand is already being adequately met; or
- 40 “(c) The applicant is engaged or proposes to engage in the sale of other goods as well as (*liquor*) wine.

New

“(2A) The Commission shall refuse to grant an application for a wine distributor’s licence unless it is satisfied that the applicant’s predominant purpose in seeking the licence is to conduct business in the wholesale distribution of wine and not to facilitate the purchase of wine for retail sale or supply by the applicant. 5

“(3) Subject to subsection (2A) of this section, the Commission shall grant an application for a wine distributor’s licence unless it is satisfied, having regard to the provisions of subsection (1) of this section, that it should not do so. 10

“106E. **Hearing**—(1) The Commission shall hold a public sitting to consider the application, after giving public notice, and also notice to the applicant and to any person who has filed a notice of objection, of the time and place fixed for the sitting. 15

“(2) After hearing the applicant and all other interested parties, the Commission shall determine the application.

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“(3) On the grant of any application, the Commission may impose such conditions, not inconsistent with this Act or any regulations made under this Act, as it thinks fit.

New

“(3) On the grant of any application, the Commission— 25
 “(a) Shall specify all the premises from which wine may be sold or delivered pursuant to the licence:
 “(b) May impose a condition that the holder of the licence shall keep such records, and file with the Commission such returns, relating to the sale and delivery of wine pursuant to the licence as the Commission may specify: 30
 “(c) May impose such other conditions, not inconsistent with this Act or any regulations made under this Act, as it thinks fit. 35

“(4) The application may be granted subject to compliance by the applicant with any specified conditions within such period as the Commission may prescribe, or within such further period or periods as it may from time to time allow.

5 “(5) If any condition specified by the Commission is not complied with within the period so prescribed or allowed by the Commission, or within such further time as the Commission may allow, the Commission may cancel the grant.

10 “(6) The Commission may from time to time, on the application of the holder of any wine distributor’s licence, vary the licence by adding *(any other class of liquor that)* or removing the address of any premises from which wine may be sold or delivered pursuant to the licence.

15 “106F. **Issue of wine distributor’s licence—**

(1) Whenever the Commission grants any application for a wine distributor’s licence, it shall, on being satisfied that the conditions (if any) specified by the Commission under section 106E of this Act have been complied with, issue a certificate
20 authorising the Licensing Committee of the licensing district in which the applicant has his principal place of business to issue a licence.

“(2) Where the principal place of business is situated in a licensing trust district or a suburban licensing trust area, the
25 certificate shall be issued to the Licensing Committee of an adjoining licensing district.”

4. Offences by holder of wine distributor’s licence—

The principal Act is hereby amended by inserting, after section 252A (as inserted by section 14 (1) of the Sale of
30 Liquor Amendment Act 1970), the following section:

“252B. (1) Every holder of a wine distributor’s licence commits an offence and is liable to a fine not exceeding \$500 who—

35 “(a) Sells or exposes or keeps for sale, or delivers, any liquor *(of a class that he is not authorised by his licence to sell or deliver)* other than wine; or

New

“(aa) Sells or delivers any wine from any premises not specified in his licence; or

“(b) Sells or delivers any (liquor) wine to any person other than the holder of any licence under this Act or to a chartered club or to a licensing trust; or

“(c) Sells or exposes for sale or delivers any (liquor) wine, or keeps open any premises for the sale of (liquor) wine, on any day on which licensed premises are required to be closed for the sale of liquor. 5

“(2) Nothing in sections 243 to 249, 257, and 259 to 261 of this Act shall apply to premises in respect of which a wine distributor’s licence is in force or to the holder of any such licence.” 10

Consequential Provisions Relating to Wine Distributors’ Licences

New

4A. Interpretation—Section 2 of the principal Act is hereby amended by repealing paragraph (c) of the definition of the term “licensed premises” (as substituted by section 9 (1) of the Sale of Liquor Amendment Act 1980), and substituting the following paragraph: 15

“(c) In relation to any other kind of licence, means the premises in which liquor may be sold pursuant to the licence;— but does not include any premises from which wine may be sold or delivered pursuant to a wine distributor’s licence:”.

5. Functions of Commission—Section 10 (1) of the principal Act is hereby amended by inserting, after paragraph (c) (as substituted by section 5 (2) of the Sale of Liquor Amendment Act (No. 2) 1971), the following paragraph: 25

“(ca) To grant wine distributors’ licences:”.

6. Exclusion of licensing trust districts—Section 29 (2) of the principal Act (as substituted by section 13 (1) of the Sale of Liquor Amendment Act 1980) is hereby amended by inserting, after the words “other than any”, the words “wine distributor’s”. 30

7. Kinds of licences—Section 54 (2) of the principal Act (as substituted by section 14 (1) of the Sale of Liquor Amendment Act 1980) is hereby amended by inserting in paragraph (a), the following paragraph:

5 “(aa) Wine distributors’ licences:”.

8. Purchases by holders of club licences—Section 67B (7) (c) of the principal Act (as inserted by section 4 (1) of the Sale of Liquor Amendment Act 1980) is hereby amended by inserting, after the word “tavernkeeper’s”, the words “or
10 wine distributor’s”.

9. What licences may be renewed—Section 123 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) Wine distributors’ licences:”.

15 **10. Renewal of wine distributor’s licence**—Section 126 of the principal Act (as amended by section 19 (2) of the Sale of Liquor Amendment Act 1980) is hereby amended by adding the following subsection:

20 “(8) The Committee may decline to renew any wine distributor’s licence if it is satisfied—

“(a) That the licensee has failed to conduct (*his business*) the wholesale distribution of wine pursuant to the licence in a proper manner; or

25 “(b) That the licensee has been convicted of any offence against this Act, or has committed a breach of any condition of his licence; or

“(c) That the licensee has been convicted of any offence referred to in paragraph (d), or of a kind described in paragraph (f), of subsection (6) of this section;
30 or

“(d) That the licensee has failed to fulfil his responsibilities under section 196 of this Act.”

11. Responsibilities of holder of wine distributor’s licence—Section 196 of the principal Act is hereby amended
35 by inserting, before the word “wholesale”, the words “wine distributor’s or”.

12. Cancellation or suspension of wine distributor's licence—(1) The principal Act is hereby amended by inserting, after section 213A (as substituted by section 37 (1) of the Sale of Liquor Amendment Act 1980), the following section:

“213B. (1) An Inspector or any member of the Police may at any time apply in the prescribed form to the Commission for the cancellation or suspension of any wine distributor's

licence on any one or more of the following grounds:

“(a) That the licensee has failed to conduct (*his business*) the wholesale distribution of wine pursuant to the

licence in a proper manner; or

“(b) That the licensee has been convicted of any offence against this Act, or has committed a breach of any condition of his licence; or

“(c) That the licensee has been convicted of any offence referred to in paragraph (d), or of a kind described in paragraph (f), of section 126 (6) of this Act; or

“(d) That the licensee has failed to fulfil his responsibilities under section 196 of this Act.

“(2) The provisions of subsections (2) to (9) of section 213 of this Act, so far as they are applicable and with the necessary modifications, shall apply to every application for the cancellation or suspension of a licence under this section.”

(2) Section 213 (1) of the principal Act (as substituted by section 37 (1) of the Sale of Liquor Amendment Act 1980) is hereby amended by omitting the words, “hotelkeeper's, tourist-house keeper's, tavernkeeper's, wholesale, airport, or ship licence”, and substituting the words “licence other than a hotel premises, tavern premises, tourist-house premises, food and entertainment, club, or wine distributor's licence”.

13. Inspection of records of credit sales or deliveries by holders of wine distributors' licences—Section 222 of the principal Act (as substituted by section 24 (1) of the Sale of Liquor Amendment Act (No. 2) 1971) is hereby amended by inserting in subsection (1), before the word “wholesale”, the words “wine distributor's or”.

14. Appeal to High Court where decision on ground of character—Section 227 (1) of the principal Act (as amended by section 47 of the Sale of Liquor Amendment Act 1980) is hereby amended—

“(a) By inserting in paragraph (b), after the words “or subsection (7)”, the words “or subsection (8)”:

“(b) By inserting in paragraph (c), after the words “or section 213A”, the words “or section 213B”.

5 **15. Appeals to High Court against certain decisions of Commission**—Section 229 of the principal Act is hereby amended by inserting, after subsection (4B) (as inserted by section 11 of the Sale of Liquor Amendment Act 1970), the following subsection:

10 “(4c) Where the Commission—

“(a) Under section 106E of this Act, refuses to grant an application for a wine distributor’s licence; or

“(b) Under section 213B of this Act, suspends or cancels any such licence,—

15 the applicant, or, as the case may require, the licensee may appeal to the High Court against the Commission’s decision.”

16. Fees—Section 286 (2) of the principal Act is hereby amended by inserting, after paragraph (g) (as substituted by section 58 (1) of the Sale of Liquor Amendment Act 1980), the following paragraph:

“(ga) For every wine distributor’s licence, and every renewal thereof, \$150:”.

New

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Wholesale and Wine Reseller’s Licences

17. Wholesale licence—(1) Section 67 of the principal Act is hereby amended by repealing subsection (2A) (as inserted by section 14 of the Sale of Liquor Amendment Act 1965), and substituting the following subsection:

30 “(2A) Notwithstanding anything in the foregoing provisions of this section, where pursuant to his licence the holder of a wholesale licence sells any beer or stout or any wine to the holder of any other licence under this Act or to a chartered club or to a licensing trust, the holder of the wholesale licence
35 may arrange for delivery to be made by the maker or importer of the liquor from a place and in the manner permitted by the licence held by the maker or importer in that behalf, as if the sale had been made by the maker or importer; and where delivery is so made the sale and delivery shall be deemed for

New

the purposes of this Act to have been made by the holder of the wholesale licence from the premises described in his licence and in the manner specified in this section.”

(2) Section 14 of the Sale of Liquor Amendment Act 1965 is hereby consequentially revoked. 5

18. Wine reseller’s licence—Section 156 (3) of the principal Act is hereby amended by repealing the proviso, and substituting the following proviso:

“Provided that the holder of a wine reseller’s licence may arrange for delivery to be made by the maker or importer of the wine from the place and in the manner permitted by the licence held by the maker or importer in that behalf, as if the sale had been made by the maker or importer of the wine; and where delivery is so made the sale and delivery shall be deemed for the purposes of this Act to have been made by the holder of the wine reseller’s licence from the place and in the manner specified in the wine reseller’s licence.” 10 15

19. Wholesale licence holder may apply for variation of hours—The principal Act is hereby amended by inserting, after section 221A (as substituted by section 22 (1) of the Sale of Liquor Amendment Act 1976), the following section: 20

“221AA. (1) In this section, unless the context otherwise requires,—

“‘Usual hour’, in relation to the closing of wholesale premises, means 7 o’clock in the evening: 25

“‘Wholesale premises’, or ‘premises’, means premises in respect of which a wholesale licence is in force:

“References to the opening or closing of wholesale premises are references to the opening or closing of those premises for the sale or delivery of liquor to the public on any day other than a day on which licensed premises are required to be closed for the sale of liquor to the public. 30

“(2) Notwithstanding anything in this Act, but subject to the provisions of this section, the holder of a wholesale licence may from time to time apply in writing to the Licensing Committee for an order fixing hours other than the usual hours for the closing of the wholesale premises for the sale or delivery of liquor to the public. 35 40

New

“(3) The applicant shall forthwith send a copy of the application to the local authority in whose district the premises are situated.

5 “(4) An order under this section may make provision for the closing of the premises after the usual hour of closing on any day (not being a day on which the premises are required to be closed for the sale of liquor), but not later than 9 o’clock in the evening.

10 “(5) No such order shall provide for the keeping open of the premises for the sale or delivery of liquor to the public for more than 11 hours on any day.

“(6) In determining whether or not to grant an application under this section the Committee shall—

15 “(a) Consider any report submitted by the Police and any submissions made by any interested persons; and

“(b) Have regard to—

“(i) The requirements of the public in the area for the supply of liquor in wholesale quantities; and

20 “(ii) The degree, if any, to which granting the application is likely to have any prejudicial effect on the residents in the immediate neighbourhood of the premises; and

“(iii) Such other matters as it considers relevant.

25 “(7) On granting any application under this section the Committee may attach such conditions as it thinks fit.

“(8) The provisions of subsections (7), (8), and (12) to (18) of section 221A of this Act, so far as they are applicable and with any necessary modifications, shall apply to every
30 application and order made under this section.”
