

WINE MAKERS LEVY BILL

EXPLANATORY NOTE

THIS Bill provides for the payment of levies by grape wine makers in respect of all wine manufactured by them in any year. The levies are to be paid to the Wine Institute of New Zealand Incorporated, and are to be used by it for the promotion, development, and organisation of the grape wine making industry in New Zealand.

Clause 1 relates to the Short Title and application of the Bill. The first levies payable under the Bill will be in respect of wine manufactured during 1976.

Clause 2 defines terms used in the Bill.

Clause 3 provides that every wine maker shall pay the following levies to the Institute:

- (a) The membership fee of the Institute. At present this is set at \$50 a year under the rules of the Institute:
- (b) An annual grape wine makers levy prescribed by the Minister of Agriculture and Fisheries, and based on the total amount of wine manufactured by each wine maker during the year ended with the last day of September in each preceding year.

Clause 4 empowers the Minister to prescribe the rate of grape wine makers levy after having regard to the recommendations of the Institute. The rate of levy is to be notified by notice in the *Gazette*.

Clause 5 provides for the appointment of a trustee to assess and collect levies. All information coming to the trustee is to remain confidential to him and, except for the aggregate amount of all wine manufactured, is not to be disclosed to the Institute or to any other person (see *clause 6 (3)* of the Bill).

Clause 6 provides that each wine maker is to make a return to the trustee by the last day of February in each year showing the total amount of wine manufactured by the wine maker during the year ended with the last day of the preceding September.

Clause 7 provides for the trustee to advise the Institute of the aggregate amount of all wine manufactured in New Zealand.

Clause 8 empowers the trustee to assess and collect the levies, and to remit them to the Institute.

Clause 9 prescribes the purposes for which levies may be spent by the Institute. The purposes generally relate to the promotion, development, and organisation of the wine making industry.

Clause 10 provides that any person, who, being liable to pay a levy to the Institute, is not for the time being in arrears with the payment of the levy, is to be entitled to become a member of the Institute on his making an application in writing to the Institute for the purpose. The clause also deals with certain other matters regarding membership of the Institute.

Clause 11 provides for the imposition of a special levy on members of the Institute. The special levy is to be prescribed by the Minister by notice in the *Gazette* on the recommendation of the Institute after the prior approval of at least three-quarters of the votes cast at a meeting called to consider the levy.

Clauses 12 to 15 relate to annual accounts, the appointment of auditors, and the provision of an annual report to the Minister, to members, and to any other person who pays a levy under the Bill.

Clause 16 provides that no change or amendment to the rules of the Institute shall be valid without first obtaining the consent of the Minister.

Clauses 17 and 18 relate to offences and penalties.

Clause 19 provides for the Bill to be administered in the Ministry of Agriculture and Fisheries.

Clause 20 makes miscellaneous amendments relating to grape wine licences in the Sale of Liquor Act 1962.

Hon. Mr MacIntyre

WINE MAKERS LEVY

ANALYSIS

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A BILL INTITULED

An Act to authorise the levying of grape wine makers to provide money for the promotion, development, and improvement of the grape wine making industry

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

1. **Short Title and application**—(1) This Act may be cited as the Wine Makers Levy Act 1976.

10 (2) The annual levies imposed pursuant to section 3 of this Act shall first apply after the commencement of this Act to every wine maker who held a grape wine licence as at the commencement of this Act and in respect of all wine manufactured during the year ending with last day of Sep-
15 tember 1976.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Grape wine licence” means a grape wine licence issued under the Sale of Liquor Act 1962:

“Institute” means the Wine Institute of New Zealand Incorporated; and, where appropriate, includes the Executive Committee of the Institute: 5

“Licensing Committee” means the Licensing Committee established under the Sale of Liquor Act 1962 for the licensing district in which the winery is situated: 10

“Membership fee” means the annual membership fee of the Institute as determined from time to time under the rules of the Institute:

“Minister” means the Minister of Agriculture and Fisheries: 15

“Officer” means any member of the Executive Committee of the Institute and any employee of the Institute:

“Trustee” means a trustee appointed under section 5 of this Act: 20

“Wine” means liquor made from grapes grown in New Zealand fermented to an alcoholic beverage and of a strength not exceeding 40 percent of proof spirit:

“Wine maker” means any person who, in any year, is the holder of a grape wine licence: 25

“Winery” means any premises used by a wine maker.

3. Annual levies—For the purposes of this Act and in accordance with its provisions, every wine maker shall pay the following levies:

- (a) The membership fee: 30
- (b) An annual grape wine makers levy, the rate of which is for the time being prescribed by the Minister pursuant to section 4 of this Act.

4. Minister may prescribe rates of levy—(1) Subject to the provisions of this Act, the Minister may from time to time after having regard to the recommendations of the Institute on the matter, prescribe by notice in the *Gazette* the rate of grape wine makers levy to be paid by wine makers for the purposes of this Act. 35

(2) The rate of grape wine makers levy shall be calculated in respect of every hectolitre or part of every hectolitre of wine manufactured by each wine maker during the year ended with the last day of September immediately preceding
5 the date on which liability for the payment of the levy is imposed.

(3) The rate of grape wine makers levy shall be notified in the *Gazette* at least 14 days before it is to come into force.

(4) Any notice under subsection (1) of this section may in
10 like manner be amended or revoked at any time.

5. Power to appoint trustee to collect levies—(1) As soon as practicable after the commencement of this Act, any person may, subject to his concurrence, be appointed by the Minister, on the advice of the Institute, as a trustee for the
15 purpose of receiving any levies payable under this Act.

(2) For the purpose of remunerating any trustee appointed under subsection (1) of this section, the Institute may permit him to retain such percentage of every levy collected by him as may be agreed upon by him and the Institute and
20 approved by the Minister. The percentage shall not in any case be more than 5 percent of the amount of levies collected.

(3) Any trustee appointed under this section shall hold office at the pleasure of the Minister; and any new trustee shall be appointed in the same manner as the trustee first
25 appointed.

6. Return of wine production—(1) Every holder of a grape wine licence shall furnish to the trustee, by the last day of February in any year on a form provided by the Institute for the purpose, a return showing the total amount of wine
30 manufactured by the holder during the year ended on the last day of September of the previous year.

(2) The return shall be verified by statutory declaration or by such other means as the trustee thinks fit.

(3) Subject to sections 7 and 8 (3) of this Act, information
35 supplied to the trustee under subsection (1) of this section by a wine maker shall be confidential to the trustee and shall not be disclosed to the Institute or its officers or, without lawful excuse, to any other person.

(4) Immediately on ceasing, for any reason, to be a trustee
40 for the purposes of this Act, any returns or other records in the possession of the trustee shall be given to the new trustee (if any) or, if this is not practicable or expedient, given to the Director-General of Agriculture and Fisheries who shall give them to the new trustee.

7. Trustee to advise Institute of aggregate wine production—The trustee shall, by the 15th day of March in any year, advise the Institute in writing of the aggregate amount of wine manufactured during the year ending with the preceding 30th day of September as disclosed by the returns filed under section 6 of this Act. 5

8. Trustee to assess and receive amounts due—(1) Following notification by the Minister in the *Gazette* of the rates of grape wine makers levy under section 4 of this Act, the trustee shall assess the amount of grape wine makers levy and the membership fee due and payable by every wine maker, and shall notify the wine maker accordingly on a form to be provided for the purpose by the Institute. 10

(2) Amounts assessed under subsection (1) of this section shall be paid by the last day of May in any year by each wine maker to the trustee, who shall notify the Institute and the Licensing Committee that payment has been made under this Act. 15

(3) In any case where an amount due under subsection (2) of this section has not been paid by the due date, the trustee shall inform the Institute of the name of the wine maker and the money payable; and the amount shall be recoverable in any Court of competent jurisdiction as a debt due to the Institute. 20

(4) All levies received by the trustee shall be remitted to the Institute by the last day of April in any year or by such other date as may be agreed between the trustee and the Institute. 25

9. Expenditure of annual fees and levies—(1) The money received by the Institute from levies imposed under this Act or from any other source shall be spent by the Institute for the promotion, development, and organisation of the wine making industry. 30

(2) Subject to subsection (1) of this section, the money collected from annual levies or from any other source may from time to time be spent by the Institute for all or any of the following purposes: 35

- 5 (a) The investigation and testing of equipment, materials, plant, processes, and procedures likely to contribute to the development of the wine making industry; and the purchase of any such equipment, materials, and plant for experimental purposes:
- (b) The investigation, testing, and development of internal and overseas markets for wine:
- 10 (c) Notwithstanding section 5 (a) of the Incorporated Societies Act 1908, the allocation of grants to any association for its purposes (being purposes connected with the promotion, development, or organisation of the wine making industry) of such sums as the Institute may from time to time decide:
- 15 (d) The allocation of grants to any person, institution, or body conducting research into or in connection with the making, processing, distributing, storing, or marketing of wine:
- (e) The publication from time to time of information relating to the activities of the Institute or generally relating to matters of interest to wine makers:
- 20 (f) The provision of general advisory services to members in respect of the processing, distributing, storing, and marketing of grapes and wine:
- (g) The giving of assistance and advice to members on technical, administrative, and financial matters:
- 25 (h) The acquisition of land and premises (whether by purchase, lease, or otherwise) for the purposes of the Institute:
- (i) The erection of premises for the purposes of the Institute, and the maintenance, alteration, improvement, or decoration of the Institute's premises:
- 30 (j) The holding of lectures, seminars, exhibitions, or public meetings for the purpose of disseminating information relating to the growing, processing, distributing, storing, and marketing of grapes and wine:
- 35 (k) The payment of honoraria to officers of the Institute, the payment of salaries, wages, and superannuation to its employees, and the payment of travelling and accommodation expenses to any of them in connection with the carrying out of their duties:
- 40 (l) The payment of expenses incurred in connection with—
 - (i) The day to day administration of the Institute:

- (ii) Meetings of persons conducting the affairs of the Institute, or meetings of any committee appointed by the Institute:
- (iii) Any general conference of wine makers:
- (iv) The establishment of the Institute: 5
- (m) Such other purposes in furtherance of the interests of wine makers as the Institute thinks fit and may be approved by the Minister.

10. Membership of Institute—(1) Notwithstanding anything to the contrary in the rules of the Institute, but subject to subsection (3) of this section, every person who, being liable to pay a levy under this Act to the Institute, is not for the time being in arrears with the payment of the levy shall be entitled, by virtue of that fact and without payment of any other fee,— 15

- (a) In the case of any such person who is not already a member of the Institute, to become a member on his making written application to the Institute for the purpose; or
- (b) In the case of any such person already being a member of the Institute, to continue to be a member. 20

(2) Nothing in this section shall preclude the Institute from admitting to membership in accordance with its rules any person other than one who is entitled to be a member of the Institute by virtue of subsection (1) of this section. 25

(3) Every person who is a member of the Institute shall, subject to his fulfilling his obligations as a member, be entitled to all the benefits of membership of the Institute conferred on members by its rules, including the right to vote at any general meeting of the Institute. 30

11. Special levy—(1) Notwithstanding section 9 (1) of this Act and in addition to the levies payable under section 3 of this Act, the Minister may, by notice in the *Gazette*, prescribe a special levy of such amounts or rates, for such purposes, and on such terms as may have been recommended to him by the Institute pursuant to a resolution passed in accordance with the rules of the Institute at an annual conference or meeting or at a special conference or meeting called for the purpose. 35

(2) No such resolution shall be submitted to the Minister unless it was carried at the conference or meeting by at least three-quarters of the votes cast. 40

(3) Every resolution recommending that the Minister prescribe a special levy shall specify—

- (a) The amounts or rates of the proposed special levy;
- (b) The purpose for which the money yielded from the
5 levy may be spent;
- (c) The method by which the levy is to be assessed and collected.

(4) The money received by the Institute pursuant to this section shall be spent only for the purpose for which the
10 levy was imposed.

(5) The Institute shall, where necessary, assess in accordance with the amounts or rates of special levy prescribed by the Minister under this section the levy payable by each wine maker who is a member of the Institute, and
15 shall then notify him of the assessment.

(6) Within 28 days of his being given notice of the assessment, or within such extended period as the Institute may allow, the wine maker shall pay the levy assessed to the Institute.

(7) When any special levy becomes due and payable it shall thereupon constitute a debt to the Institute and shall be recoverable accordingly by the Institute in any Court of competent jurisdiction.

12. Annual accounts, etc.—(1) The Institute shall at all
25 times ensure that full and correct records of all its financial transactions, assets, liabilities, and funds are kept.

(2) The Executive Officer of the Institute or some other fit person appointed by the Institute shall keep all records and books of account.

(3) At the end of each financial year, the Institute shall
30 prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at the last day of that year. Every such balance
35 sheet shall give a true and fair view of the state of affairs of the Institute as at the end of its financial year, and every such income and expenditure account shall give a true and fair view of the income and expenditure for that year.

13. Auditors and auditing of accounts—(1) The Institute shall, at its annual general meeting, appoint a member or
40 members of the New Zealand Society of Accountants to hold office until its next annual general meeting as its auditor or auditors for the purpose of auditing its accounts.

(2) No person who is an officer, member, or employee of the association shall be capable of being appointed as an auditor under this section.

(3) In the event of there being a vacancy in the office of auditor due to death, resignation, removal from office for misconduct, or inability to act, the Executive Committee of the Institute may appoint a person qualified to hold office as auditor under subsection (1) of this section to fill the vacancy until the next annual general meeting of the Institute. While any such vacancy continues the surviving 5
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(4) The remuneration of any auditor appointed under subsection (1) of this section shall be fixed by the Institute at its annual general meeting. The remuneration of any auditor appointed under subsection (3) of this section shall 15
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(5) As soon as practicable after the end of each financial year the Executive Committee of the Institute shall cause the income and expenditure account and the balance sheet for that year to be sent to the auditor or auditors who shall 20
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audit and report on those documents. The auditor or auditors shall, on completion of the audit, return the audited income and expenditure account and balance sheet to the Executive Committee, which shall then cause those documents and the report of the auditor or auditors to be submitted to 25
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(6) All the provisions of section 166 of the Companies Act 1955 (which section relates to auditors' reports and auditors' rights of access to books of account and to attend 30
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(7) Any unqualified person who acts as auditor of the Institute commits an offence and is liable on summary conviction to a fine not exceeding \$200. 40

14. Copy of accounts to be sent to Minister and members—

(1) The Institute shall, within 3 months after the expiration of each financial year or within such extended period as the Minister may allow, provide the Minister with a report on its proceedings and activities during that financial year. There shall be annexed to the report copies of the income and expenditure account and balance sheet of the Institute together with a copy of the report of the auditor or auditors on them.

(2) Within 3 months after the expiration of its financial year, the Institute shall send to each of its members and to each person (not being a member) who has paid a levy under this Act a copy of the report sent to the Minister under subsection (1) of this section, together with a copy of its income and expenditure account and balance sheet for that year and a copy of the report of the auditor or auditors in respect of them.

15. Financial provisions to apply notwithstanding anything to the contrary in Institute's rules—The provisions of sections 12 to 14 of this Act shall apply to the Institute notwithstanding anything to the contrary in its rules.

16. Change of rules of Institute—Notwithstanding the provisions of the Incorporated Societies Act 1908 or of any rule of the Institute, no change or amendment to the rules of the Institute shall be valid without first obtaining the consent or the Minister.

17. Offences by officers of Institute—Every officer of the Institute commits an offence, and is liable on summary conviction to a fine not exceeding \$200, who—

- (a) Fails, without reasonable excuse, to take all reasonable steps to secure compliance by the Institute with any requirement imposed on it by this Act; or
- (b) Wilfully does any act in contravention of the provisions of this Act, or in any case where the Institute contravenes any such provision, connives at the contravention.

18. Offences in respect of returns—(1) Every wine maker commits an offence, and is liable on summary conviction to a fine not exceeding \$200, who—

- (a) Without reasonable excuse, fails to make a return required by this Act to the trustee before the period during which it is to be made expires; or
 - (b) Makes any return which to his knowledge is false in any material particular; or 5
 - (c) Fraudulently avoids or attempts to avoid paying money payable by him pursuant to this Act.
- (2) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect 10 on the part of, any director, manager, secretary, or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 15

19. Act to be administered by Ministry of Agriculture and Fisheries—The Schedule to the Ministry of Agriculture and Fisheries Act 1953 (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972, and amended by section 61 (1) of the Wool Marketing Corporation Act 1972 and section 36 of the Plant Varieties Act 1973) is hereby further amended by inserting in their appropriate alphabetical order the words “The Wine Makers Levy Act 1976”. 20

20. Amendments to Sale of Liquor Act 1962—(1) Section 153 (1) of the Sale of Liquor Act 1962 is hereby amended by omitting from paragraph (c) the word “application.”, and substituting the words “application; and”. 25

(2) The said section 153 (1) is hereby further amended by adding the following paragraph: 30

“(d) That, in the case of the renewal of a grape wine licence, the applicant has paid any levy payable pursuant to the Wine Makers Levy Act 1976.”.

(3) Section 153 (6) of the Sale of Liquor Act 1962 is hereby amended by inserting, after paragraph (b), the following paragraph: 35

“(ba) In the case of an application for the renewal of a grape wine licence, specify the total quantity of wine manufactured by the applicant during the period of 12 months ending with the last day of 40 September immediately preceding the date of the application.”.

(4) Section 153 (8) of the Sale of Liquor Act 1962 is hereby amended—

- (a) By omitting the words “wine maker’s licence”, and substituting the words “fruit wine licence”:
- 5 (b) By omitting the words “, subject to the provisions of paragraph (c) of subsection (1) of this section in the case of a licence to which that paragraph applies”.