

House of Representatives

Supplementary Order Paper

Tuesday, 17 July 2012

Alcohol Reform Bill

Proposed amendments

Te Ururoa Flavell, in Committee, to move the following amendments:

Clause 2

After *subclause (2A)* (after line 4 on page 19), insert:

- (2B) **Part 2A** comes into force on the day 2 years after the date on which this Act receives the Royal assent.

New Part 2A

After *clause 11* (line 7 on page 35), insert:

Part 2A **Advertising and sponsorship**

Subpart 1—Advertising and sponsorship

11A Advertising of alcohol products

- (1) Subject to **subsections (2) to (5)** and to **section 11B**, no person may publish, or arrange for any other person to publish, any alcohol product advertisement in New Zealand.
- (2) Nothing in **subsection (1)** applies to any price list given to retailers of alcohol products.
- (3) Nothing in **subsection (1)** applies to any advertisement included in any book, magazine, or newspaper printed outside New Zealand, or in any radio or television transmission originating outside New Zealand, or in any film or video recording made outside New Zealand, unless—
 - (a) the principal purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of alcohol products; or

- (b) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in New Zealand; or
 - (c) in the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience.
- (4) Nothing in **subsection (1)** applies to the publication by an alcohol products manufacturer of an alcohol product advertisement in a magazine that is intended for distribution only to employees of the manufacturer.
- (5) Nothing in **subsection (1)** applies to—
- (a) the exhibition, in any museum or art gallery, of any work or artefact:
 - (b) the dissemination, broadcasting, or exhibition of any film, video recording, or sound recording, where—
 - (i) that film, video recording, or sound recording was made before the commencement of **this Part**; and
 - (ii) the alcohol product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or a depiction of, an alcohol product trade mark that is only an incidental part of that film, video recording, or sound recording.

11B Exemptions for on-licence premises

Despite **section 11A**, a holder of an on-licence may do either or both of the following things:

- (a) display, inside that licence holder's place of business, any notice identifying the alcohol products that are available for purchase in that place and indicating their price:
- (b) display the licence holder's name or trade name on the exterior of the licence holder's place of business, including a name containing any word or expression signifying that any alcohol product is available in that place for purchase, provided the name does not include the trade mark of an alcohol product or the company name of an alcohol products manufacturer.

11C Use of trade marks, etc, on goods other than alcohol products, or in relation to sponsored events

- (1) No person may use, otherwise than in a private capacity, an alcohol product trade mark—

- (a) on any article other than an alcohol product or a package or container in which an alcohol product is sold or shipped; or
- (b) for the purpose of advertising or identifying to the public—
 - (i) any article other than an alcohol product; or
 - (ii) any service, activity, or event; or
 - (iii) any scholarship, fellowship, or other educational benefit.
- (2) **Subsection (1)** applies even though that person would be, but for this Act, entitled to use the trade mark on that article or for that purpose.
- (3) Where a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any alcohol product, that company name must not be used, other than in a private capacity, for the purpose of advertising or identifying to the public—
 - (a) any article other than an alcohol product; or
 - (b) any service, activity, or event; or
 - (c) any scholarship, fellowship, or other educational benefit
- (4) **Subsection (3)** applies even though that person would be, but for this Act, entitled to use that trade mark or company name for that purpose.
- (5) A person must not distribute, sell, or offer or expose for sale any article, other than an alcohol product or a package or container in which an alcohol product is sold or shipped, that bears a trade mark of an alcohol product that is sold in New Zealand.

11D Organising or promoting activity using trade mark, etc, of alcohol products

A manufacturer, importer, distributor, or retailer of alcohol products must not—

- (a) organise or promote any organised activity that is to take place, in whole or in part, in New Zealand; or
- (b) make any financial contribution towards any organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in New Zealand; or
- (c) make any financial contribution to any person in respect of—
 - (i) the organisation or promotion, by that person, of; or
 - (ii) the participation, by that person, in—
any organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in New Zealand—

where that organised activity involves the use, in the name of that activity, or on any article other than an alcohol product, of an alcohol product trade mark, or of a company name or any part of a company name included in that alcohol product trade mark.

Subpart 2—Offences in respect of advertising and sponsorship

11E Offences in respect of advertising and sponsorship

- (1) Every person who, without reasonable excuse, publishes any advertisement for an alcohol product in contravention of **section 11A** commits an offence and is liable,—
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
 - (b) in any other case, to a fine not exceeding \$10,000.
- (2) Every person who, without reasonable excuse, uses any trade mark or company name in contravention of **subsection (1) or subsection (2) of section 11C**, or who distributes, sells, or offers or exposes for sale any article in contravention of **subsection (3)** of that section commits an offence and is liable,—
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
 - (b) in any other case, to a fine not exceeding \$10,000.
- (3) Every manufacturer, importer, distributor, or retailer of alcohol products who, in contravention of **section 11D**, organises or promotes any organised activity, or makes any financial contribution towards any organised activity, or makes any financial contribution to any other person in respect of the organisation or promotion by that other person of, or the participation by that other person in, any organised activity, commits an offence and is liable,—
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
 - (b) in any other case, to a fine not exceeding \$10,000.

Clause 35

Delete *clause 35(1)(b)* (lines 13 to 17 on page 45).

New clause 35B

After *clause 35A* (after line 14 on page 47), insert:

35B No additional off-licences to be issued to certain premises

An off-licence must not be issued to retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is ex-

pected to be earned from the sale of alcohol for consumption somewhere else unless the following conditions are met:

- (a) the premises is replacing another identical or larger premises in the same territorial authority (a relocation); and
- (b) the premises is not located within a 5 km radius of any existing off-licence retail premises where at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for consumption somewhere else.

New heading and new clause 43A

After *clause 43* (line 20 on page 51), insert:

Minimum price of alcohol

43A Minimum price of alcohol

- (1) Alcohol must not be sold or supplied at a price below its minimum price on any licensed premises.
- (2) Where alcohol is supplied together with other products or services for a single price, **subparagraph (1)** applies as if the alcohol were supplied on its own for that price.
- (3) The minimum price of alcohol is to be calculated according to the following formula:

$$\text{MPU} \times \text{S} \times \text{V} \times 100$$

where—

MPU is the minimum price per unit (expressed as a decimal)

S is the strength of the alcohol (expressed as a decimal)

V is the volume of alcohol in litres (expressed as a decimal)

- (4) The Governor-General may from time to time, on the recommendation of the Minister, specify by Order in Council the minimum price per unit for the purposes of **subparagraph (3)**.
- (5) For the purposes of **subparagraph (3)**, where—
 - (a) the alcohol is contained in a bottle or other container; and
 - (b) the bottle or other container is marked or labelled in accordance with the relevant labelling provisions, the strength is taken to be the alcoholic strength by volume as indicated by the mark or label.
- (6) The Governor-General may specify by Order in Council, on the recommendation of the Minister, the enactments which are relevant labelling provisions for the purposes of **subparagraph (5)**.

Clause 44

Replace *clause 44(1)* (lines 23 to 30 on page 51) with:

- (1) The default national maximum trading hours—
 - (a) are the hours between 10 am and 3 am on the next day with a one-way door restriction between the hours of 1 am and 3 am for the sale of alcohol for consumption on premises for which an on-licence or a club licence is held;
 - (b) are the hours between 10 am and 10 pm on any day for the sale of alcohol for consumption on premises for which an off-licence is held.

New clause 58A

After *clause 58* (after line 31 on page 58), insert:

58A Display of alcohol in grocery stores and supermarkets generally prohibited

- (1) The holder of an off-licence issued for premises described in **section 59(2)** must not allow any part of an alcohol product or package at the outside of or inside the grocery store or grocery shop to be for any reason visible—
 - (a) from the outside of the place; or
 - (b) from an area inside the place to which members of the public are allowed access.
- (2) **Subsection (1)** does not, however, apply to an alcohol product or alcohol package that is visible only to the extent that it is necessary for it to be delivered to a grocery store or supermarket.

Clause 100(1)

After *paragraph 100(1)(j)* (after line 10 on page 82), insert:

- (k) whether schools are located near any proposed premises.

Clause 105A

Delete *clause 105A* (line 17 on page 86 to line 6 on page 87).

Clause 177(1)

Replace *clause 177(1)* (lines 8 to 10 on page 127) with:

- (1) Each licensing committee consists of 4 members of whom—
 - (a) 3 are appointed by the territorial authority for that territorial authority's district; and
 - (b) 1 is appointed by local iwi or hapū, as applicable.

Clause 177(3)

In *clause 177(3)*, after “members” (line 14 on page 127), insert “appointed by the territorial authority for that district”.

Clause 177

After *clause 177(4)* (after line 22 on page 127), insert:

- (5) No person can be appointed under **subsection (1)(b)** if that person—
 - (a) has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.

Clause 179

After *clause 179(4)* (after line 34 on page 128), insert:

- (4A) **Subsections (1) to (4)** do not apply to members of licensing committees appointed by local iwi or hapū.

Clause 181(3)

In *clause 181(3)*, after “committee” in the first place where it appears (line 9 on page 131), insert “appointed by that territorial authority”.

New clause 230A

After *clause 230* (after line 28 on page 161), insert:

230A Sale of alcohol at below minimum price

- (1) The licensee or a manager of any licensed premises who sells alcohol to any person at any time below the minimum price commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of the licensee, to either or both of the following:
 - (i) a fine not exceeding \$20,000;
 - (ii) the suspension of the licensee’s licence for a period of not more than 7 days;
 - (b) in the case of a manager, a fine not exceeding \$20,000.
- (3) A person who is not a licensee or manager of licensed premises and who sells alcohol at below minimum price commits an offence.
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to a fine not exceeding \$2,000.

Clause 267

In *clause 267(1)(a)* (line 25 on page 182), after “**section 230**”, insert “, **230A**”.

In *clause 267(1)(b)* (line 27 on page 182), after “**section 222(2)**”, insert “, **230A**”.

Explanatory note

This Supplementary Order Paper amends the Alcohol Reform Bill by adding new Part 2A to ban alcohol advertising and sponsorship with the exemption of on-licence establishments (such as bars and restaurants). The ban is intended to come into force in 2 years, and to achieve de-normalisation of the drinking culture by removing the glamour promoted by advertising and sponsorship of events.

Clause 35(1)(b) is deleted and new clause 35B inserted to implement a “sinking lid” on off-licences that sell mainly alcohol (“liquor stores”), while allowing relocations of existing premises. This clause aims to move towards one liquor store per 5 km by attrition.

New provisions are added to set a minimum price per unit of alcohol and to outline the offences relating to the sale of alcohol below the minimum price by new clauses 43A and 230A and by amending clause 267.

The provisions relating to the default maximum trading hours are amended from 8 am to 4 am on the next day to 10 am to 3 am on the next day, and to add a default one-way door policy between 1 am and 3 am for on-licences.

The Bill is also amended by inserting new clause 58A which prohibits all display and advertising of alcohol in grocery stores and supermarkets and by omitting clause 105A which mandates restricted areas for displaying alcohol in grocery stores and supermarkets.

Clause 100 is amended by adding the proximity to a school to those matters the licensing authority or licensing committee must take into account when deciding whether to issue a licence.

The provisions relating to the appointment of licensing committees within territorial authorities are amended so as to provide for the appointment of members by local iwi or hapū.
