

Sale and Supply of Alcohol (Cellar Door Tasting) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Sale and Supply of Alcohol (Cellar Door Tasting) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This is a Member's bill in the name of Stuart Smith MP. It would amend the Sale and Supply of Alcohol Act 2012. The bill aims to simplify the rules that apply to winery cellar doors and make it easier for them to charge for the samples they serve to visitors. The bill would allow winery cellar doors to concurrently hold both an off-licence and an on-licence.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Title of the bill

We have proposed changing the title of the bill to the Sale and Supply of Alcohol (Winery Cellar Door Tasting) Amendment Bill, to better reflect the contents and scope of the bill.

Definitions of “winery” and “winery cellar door”

The bill as introduced would define “winery” as a person whose business is, or includes:

- producing and selling grape wine products, or
- selling grape wine or grape wine products that have been produced on that person’s behalf.

Some submitters were concerned that this definition could unintentionally capture more retailers than intended. At the most extreme, it was suggested, it could capture bottle stores and supermarkets, who could have wine produced on their behalf, for their own brand of wine.

We agree with submitters that bottle stores and supermarkets should not be captured by the definition of “winery”. It is not the intention of this legislation to enable opportunistic bars to operate as tasting venues to avoid the protections otherwise found in the Act. Therefore, we recommend amending clause 4 to amend the definition so that a person selling grape wine is not covered by the bill merely because the wine is made on a person’s behalf. We recommend providing for a definition of “winery cellar door”, and amending paragraph (b) of the definition. This change would cover winery cellar doors that sell grape wine made from produce harvested from land occupied by the person who operates the cellar door (regardless of whether the cellar door is situated on the land). This would cover “off-site” growers.

Size of samples

The bill would allow wineries to charge for samples at winery cellar doors, when the wine has been produced at that winery’s premises. In the bill as introduced (clause 6, proposed new section 17(2)(b)(iii) of the Act), samples could not exceed 40 millilitres each.

We gave thought to the appropriateness of the proposed limit. We heard from submitters in the industry that the standard size for samples is 30 millilitres. Submitters also told us that few wineries actually measure the sample size. They suggested having a limit above 30 millilitres would mean that operators would not be breaking the law if they accidentally overpoured. We agree with submitters, but also think that a limit lower than 40 millilitres for samples would help to minimise alcohol-related harm. This allows for a margin of error in the standard 30 millilitre pour, minimising alcohol-related harm.

We recommend amending clause 6, proposed section 17(2)(b)(iii), to enable winery cellar doors to sell grape wine samples for consumption on the premises, provided that each sample is no more than 35 millilitres.

Provision of snack food

We considered how wineries’ host responsibility would be affected if they were to sell wine samples. Currently, winery cellar doors usually limit the number of free samples they provide for cost reasons. However, by enabling wineries to charge to

recover their costs the bill would remove this incentive. Ensuring that some food is available would help to minimise the potential harm from excessive consumption of alcohol.

Some submitters expressed concern about the costs associated with host responsibility requirements to provide food. Wineries told us that they predominantly want to sell wine and not have to comply with host responsibility requirements. We considered the compliance and cost implications of providing snacks. We received advice that this would be reasonable, between \$300 and \$600 every three years.

On balance, we recommend inserting clause 8, to insert new section 62A in the Act. New section 62A would require snack food to be available when samples are sold from winery cellar doors. Our intention is that, when a winery cellar door is open for the sale of wine samples, a reasonable range of snack food would be made available for sale and consumption at the winery cellar door. Snack food would have to be sold at reasonable prices and within a reasonable time of being ordered. This would help to minimise harm and would be less costly for winery cellar doors than implementing host responsibility requirements.

Provision of water

We recommend inserting new clause 9, to amend section 116(2)(c) of the Act. The amendment would make it a compulsory condition of off-licences that drinking water must be freely available to customers at a designated place on the premises while grape wine is being sold as a sample. There is already such a requirement in section 116(2)(c) for when alcohol is being supplied free as a sample.

Ineffectual clauses should be removed

As introduced, clauses 5 and 8 provide for any transitional, savings, and related provisions in the Act that might be necessary for the bill's operation. However, no such provisions are proposed, so those clauses would have no legal effect. Therefore, we recommend removing clauses 5 and 8.

Differing view

Some members were concerned that this bill favoured producers of grape wine over other artisan producers of other alcoholic beverages such as fruit wine, beer, cider, and distilled spirits. Those members would have expanded the scope of this bill to include any cellar door tasting of those other beverages. The majority disagreed and considered that the ability to charge for tastings for an off-licence holder should be extended only to producers of grape wine at this stage. Other members agreed that the bill as introduced is consistent with the intention of the member in charge of the bill.

Appendix

Committee process

The Sale and Supply of Alcohol (Cellar Door Tasting) Amendment Bill was referred to the Justice Committee of the 53rd Parliament on 1 August 2023. The committee called for submissions on the bill with a closing date of 14 September 2023. It received and considered submissions from 72 interested groups and individuals.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We heard oral evidence from 12 submitters.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Stuart Smith and Celia Wade Brown participated in our consideration of this bill.

Related resources

The documents received as advice and evidence are available on the Parliament website.

**Sale and Supply of Alcohol (Cellar Door Tasting)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Stuart Smith

Sale and Supply of Alcohol (Cellar Door Tasting) Amendment Bill

Member's Bill

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Schedule	5
New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Sale and Supply of Alcohol (Winery Cellar Door Tasting) Amendment Act **2022**.

2 Commencement

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This Act comes into force on the day after ~~the date on which it receives the~~ Royal assent.

3 Principal Act

This Act amends the Sale and Supply of Alcohol Act 2012 (~~the principal Act~~).

4 Section 5 amended (Interpretation)

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In section 5(1), insert in its appropriate alphabetical order:

~~**winery** means a person whose business is, or includes,—~~

~~(a) producing and selling grape wine or grape wine products; or~~

~~(b) selling grape wine or grape wine products that have been produced on that person's behalf~~

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~~**winery cellar door** means retail premises operated by a winery where grape wine is available for sale that has been made—~~

~~(a) on the premises; or~~

~~(b) from produce harvested from the land on which the premises are situated; or~~

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~~(c) by, or on behalf of, the winery operating the premises~~

winery cellar door means retail premises operated by a person for the purposes of selling grape wine (as defined in section 58(3)) that is made by or on behalf of that person—

(a) on those retail premises; or

(b) from produce harvested from land occupied by that person

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5 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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6 Section 17 amended (Off-licences: sale and supply on licensed premises)

Replace section 17(2) with:

- (2) While the premises an off-licence is held for are open for the sale of alcohol for consumption somewhere else, the licensee can also do one or both of the following:—
- (a) supply alcohol free, as a sample, for consumption on the premises; ~~or~~
 - (b) ~~supply alcohol in exchange for payments~~ sell alcohol, as a sample, for consumption on the premises, if—
 - (i) the premises are a winery cellar door; and
 - (ii) the alcohol sample is grape wine (as defined in section 58(3)); and
 - (iii) each sample contains no more than 4035 millilitres of wine.
- 7 **Section 32 amended (Kinds of premises for which off-licences may be issued)** 10
- After section 32(1)(f), insert:
- (g) ~~for premises that (in the opinion of the licensing authority or licensing committee concerned) are a winery cellar door~~ premises (or part of the premises) that are a winery cellar door, whether or not an on-licence is held for the same premises (or part of the premises). 15
- 8 **New section 62A inserted (Snack food to be available when samples sold from winery cellar doors)**
- After section 62, insert:
- 62A Snack food to be available when samples sold from winery cellar doors** 20
- (1) This section applies to a person who—
- (a) holds an off-licence in respect of a winery cellar door; and
 - (b) sells grape wine, as a sample, for consumption at the winery cellar door.
- (2) The person must ensure that, at all times when the winery cellar door is open for the sale of grape wine as described in **subsection (1)(b)**, a reasonable range of snack food is available for sale and consumption at the winery cellar door— 25
- (a) at reasonable prices; and
 - (b) within a reasonable time of being ordered.
- (3) In this section,— 30
- grape wine** has the meaning given in section 58(3)
- snack food** has the meaning given in section 33(1).
- 9 **Section 116 amended (Particular discretionary conditions, and other compulsory conditions: off-licences)**
- In section 116(2)(c), replace “supplied free as a sample” with “supplied free or sold, as a sample,”. 35

8 ~~New Schedule 1AA inserted~~

Insert the ~~Schedule 1AA~~ set out in the ~~Schedule~~ of this Act as the first schedule to appear after the last section of the principal Act.

Schedule
New Schedule 1AA inserted

s 8

Schedule 1AA
Transitional, savings, and related provisions

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s 6A

Part 1
**Provisions relating to Sale and Supply of Alcohol (Cellar Door
Tasting) Amendment Act 2022**

1 Provisions relating to Act as enacted

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There are currently no provisions relating to the Act as enacted.

Legislative history

22 September 2022
1 August 2023

Introduction (Bill 173–1)
First reading and referral to Justice Committee