

SENATE No. 104

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to Craft Brewers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>2/1/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/1/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/14/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/5/2019</i>

SENATE No. 104

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 104) of Joseph A. Boncore, Jason M. Lewis, Mike Connolly, Cindy F. Friedman and other members of the General Court for legislation relative to Craft Brewers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to Craft Brewers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 138 of the General Laws is hereby amended by striking out section
2 25E and inserting in place thereof the following section:

3 Section 25E. It shall be an unfair trade practice for any manufacturer, winegrower,
4 farmer-brewer, importer or wholesaler of any alcoholic beverages, to refuse to sell, except for
5 good cause shown, any item having a brand name to any licensed wholesaler to whom such
6 manufacturer, winegrower, farmer, brewer, importer or wholesaler has made regular sales of
7 such brand item during a period of six months preceding any refusal to sell.

8 Any manufacturer, importer or wholesaler shall forward a notice in writing to the
9 wholesaler, to whom it has sold any brand item, prior to discontinuing sales to such wholesaler
10 of such brand item and shall forward a copy of said notice to the commission. The notice of
11 discontinuance of sale shall be furnished by the manufacturer, importer or wholesaler to the
12 wholesaler being discontinued at least 120 days before the effective date of such discontinuance.

13 The notice shall state the specific grounds for such discontinuance. Either party may appeal to
14 the commission for a hearing on the notice of discontinuance and the commission shall make a
15 determination after hearing on the issue of good cause for discontinuance. Upon application by
16 the wholesaler to the commission, the commission shall order the manufacturer, importer or
17 wholesaler giving notice of refusal to sell to continue to make sales in the regular course to such
18 wholesaler pending determination by the commission on the merits of said appeal. The
19 commission shall after notice to all parties and hearing, make a determination on the issue of
20 good cause and grant such relief as may be appropriate under the circumstances. Good cause as
21 used herein shall be limited to the following conduct:

22 (a) disparagement of the product so as to impair the reputation of the brand owner or the
23 brand name of any product,

24 (b) unfair preferment in sales effort for brand items of a competitor,

25 (c) failure to exercise best efforts in promoting the sale of any brand item,

26 (d) engaging in improper or proscribed trade practices, or

27 (e) failure to comply with the terms of sale agreed upon between the supplier and
28 wholesaler.

29 The preceding two paragraphs of this Section 25E shall not apply to the relationship
30 between a small brewer and a wholesaler, which may be discontinued as established by contract
31 or through the process described in the below paragraphs of this section. For purposes of this
32 Section 25E, a manufacturer of malt beverages licensed under this chapter, farmer-brewer brewer
33 licensed under this chapter, or manufacturer of malt beverages located outside of the

34 Commonwealth that holds a certificate of compliance to sell malt beverages to wholesalers in
35 this state, shall be referred to generically as a “supplier” and collectively as “suppliers.” For
36 purposes of this Section 25E, a “small brewer” shall mean a supplier whose total global malt
37 beverage sales do not exceed six million barrels in a calendar year. In calculating a small
38 brewer’s annual global sales, the sales of a controlled group, as such term is defined in 26 U.S.C.
39 § 5051(a)(5)(A) & (B) or a successor provision, shall count as the sales of a single entity. Any
40 dispute concerning whether a supplier is or is not a small brewer within the meaning of this
41 section 25E shall be determined by final binding arbitration, which either the supplier or the
42 wholesaler may request within thirty (30) days of a supplier claiming rights as a small brewer.
43 The arbitration shall be conducted in accordance with arbitration process established below.
44 Nothing in this Section 25E shall be construed to expand or diminish the rights or obligations
45 established by a small brewer’s contract with a wholesaler, provided, however, that a small
46 brewer also may elect at any time to refuse to sell to any wholesaler in accordance with the
47 following paragraph.

48 To initiate a small brewer’s non-contractual right to refuse to sell as established under the
49 immediately preceding paragraph, the small brewer shall provide the wholesaler with written
50 notice of the refusal to sell, which written notice shall identify the successor wholesaler or
51 wholesalers who will begin servicing the affected territory (the “successor wholesaler” or
52 “successor wholesalers”). Upon any refusal to sell under this paragraph, the successor
53 wholesaler(s) shall compensate the affected wholesaler in an amount as described below to the
54 wholesaler in the terminated wholesaler’s territory. A small brewer’s refusal to sell may take
55 effect according to the time frames established in subparagraphs (a)-(c) regardless of whether the
56 successor wholesaler has yet compensated the affected wholesaler, and provided that nothing

57 shall prohibit the small brewer from immediately appointing the successor wholesaler(s) in the
58 affected territory and authorizing such successor(s) to begin distributing and selling the small
59 brewer's products in the affected territory immediately. If the successor wholesaler(s) and the
60 affected wholesaler cannot agree to the fair market value compensation due to the affected
61 wholesaler within the applicable notice period established below, either the affected wholesaler
62 or any successor wholesaler may request that the amount of compensation be determined by final
63 binding arbitration conducted in accordance with the arbitration process established below.

64 (a) Small brewers that sell 5,000 barrels (for purposes of this Section 25E a barrel equals
65 31 U.S. gallons) or less of malt beverages in a calendar year may refuse to sell to a wholesaler
66 effective upon thirty (30) days' notice and without cause upon by providing written notice of its
67 refusal to sell to the wholesaler. The wholesaler shall have thirty (30) days to transfer all malt
68 beverage brands at the direction of the small brewer for no less than the total cost of 50% of the
69 fair market value of the wholesaler's rights to sell and distribute the brand(s) of the terminating
70 small brewer. These provisions governing small brewers selling 5,000 barrels or less of malt
71 beverages in a calendar year shall be effective seven years from or initiation of the small brewer-
72 wholesaler relationship.

73 (b) Small brewers that sell between 5,001 and 350,000 barrels of malt beverages in a
74 calendar year may refuse to sell to a wholesaler effective upon forty-five (45) days and without
75 cause by providing written notice of its refusal to sell to the wholesaler. The wholesaler shall
76 have forty-five (45) days to transfer all malt beverage brands at the direction of the small brewer
77 for the total cost of the fair market value of the wholesaler's rights to sell and distribute the
78 brand(s) of the terminating small brewer

79 (c) Small brewers that sell between 350,001 and six million barrels of malt beverages in
80 the previous calendar year may refuse to sell to a wholesaler upon sixty (60) days written notice
81 and without cause by providing written notice of its refusal to sell to the wholesaler. The
82 wholesaler shall have sixty (60) days to transfer all malt beverage brands at the direction of the
83 supplier for no less than the total cost of 110% of the fair market value of the wholesaler's rights
84 to sell and distribute the brand(s) of the terminating small brewery.

85 (d) In the case of any refusal to sell by a small brewer, the wholesaler's right to obtain
86 compensation as outlined in the preceding three subparagraphs shall represent the wholesaler's
87 sole and exclusive remedy for its loss of a small brewer's brand distribution rights.

88 Arbitrations under this Section 25E shall be conducted before a single impartial arbitrator
89 selected by the parties or, if they cannot agree to an arbitrator within thirty (30) days, selected by
90 the nearest office of the American Arbitration Association or its successor organization. The
91 commercial arbitration rules of the American Arbitration Association or its successor
92 organization shall govern the arbitration. The arbitration proceeding shall conclude not later than
93 ninety (90) days after the date of the notice of intent to arbitrate is transmitted to the other party,
94 unless the parties agree to extend the time by mutual agreement or the arbitrator extends the time
95 for good cause shown. An arbitrator's award in any arbitration held pursuant to the immediately
96 preceding paragraph with regard to fair market value shall be monetary only and shall not enjoin
97 or compel conduct. Any arbitration held pursuant to this Section shall be in lieu of all other
98 remedies and procedures. The costs of the arbitrator and any other costs of the arbitration shall
99 be equally divided by the parties engaged in the arbitration. Each party shall bear all other
100 expenses related to the arbitration, provided that the arbitrator may award the prevailing party in
101 the dispute as to whether a small brewer relationship exists its costs and reasonable attorneys'

102 fees for good cause shown. The arbitrator shall render a written decision not later than thirty (30)
103 days after the conclusion of the arbitration proceeding, unless the parties agree to extend the time
104 by mutual agreement or the arbitrator extends the time for good cause shown. The arbitrator's
105 decision shall be final and binding and may be enforced by commencing a civil action in any
106 court of competent jurisdiction. Any party duly notified of an arbitration involving its rights that
107 fails to participate in an arbitration proceeding held pursuant to this paragraph waives all rights it
108 would have had in the arbitration and is considered to have consented to the determination of the
109 arbitrator."

110 SECTION 2. This Act shall apply to all relationships between a small brewer and a
111 wholesaler existing as of the effective date of this act and all agreements and relationships
112 entered into after the effective date.