

SENATE No. 2841

Senate, July 23, 2020 -- Text of the Senate Bill relative to craft brewers (being the text of Senate, No. 2829, printed as amended)

The Commonwealth of Massachusetts

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

An Act relative to craft brewers.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith further regulate commerce of alcoholic beverages, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 inserting after
2 section 25E the following section:-

3 Section 25E½. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:-

5 “Affected wholesaler”, a wholesaler whose right to distribute any brand of malt
6 beverages has been terminated pursuant to subsection (b).

7 “Brewery”, an entity that: (i) is authorized to sell malt beverages to wholesalers in the
8 commonwealth; and (ii) produced less than 250,000 barrels, or 3,445,000 case equivalents, of
9 malt beverages in the 12-month period immediately preceding the date of the written notice of
10 termination of the right to distribute any brands of malt beverages required by subsection (c);

11 provided, however, that a "brewery" shall include all of the brands and labels owned by the
12 entity or any brewery affiliated with the entity by common ownership, directly or indirectly, of
13 not less than 7.5 per cent of the ownership interest.

14 "Fair market value", the price that the affected wholesaler's business that is related to the
15 terminated brands of the brewery would sell for in an arms-length transaction between a willing
16 buyer and a willing seller as of the date the notice of termination was received by the affected
17 wholesaler under paragraph (1) of subsection (c) with neither being required to act and both
18 having reasonable knowledge of all relevant facts.

19 "Malt beverages", all products that are malt beverages as defined in section 1 or are
20 determined to be beer or malt beverages under federal law or the laws of the commonwealth.

21 "Barrel", 31 gallons and a case equivalent of 2.25 gallons; provided, however, that for the
22 purposes of this section, the volume produced under contract by a brewery shall be calculated
23 towards the volume of the agent brewery for whom the volume is produced and not towards the
24 volume of brands of the contracted brewery; and provided further, that volume shall not be
25 counted towards the agent brewery and contracted brewery.

26 (b) Notwithstanding section 25E, a brewery may, without good cause, terminate the right
27 of a licensed wholesaler to whom such brewery has made regular sales of malt beverages to
28 distribute such malt beverages, subject to the provisions of this section.

29 (c) (1) A brewery shall not terminate the right to distribute of an affected wholesaler
30 without providing not less than 30 days' written notice and full compensation as specified in this
31 section; provided, however, that in order to prevent a brewery from terminating the right to
32 distribute prior to receipt of full compensation, the affected wholesaler and brewery shall

33 continue their relationship with similar effort as prior to the notice of termination. Written notice
34 from a brewery of a termination of the right to distribute shall identify the successor wholesaler
35 who will begin servicing the affected territory.

36 (2) Upon a termination of the right to distribute pursuant to this section, the affected
37 wholesaler shall sell and the brewery or the successor wholesaler shall purchase the affected
38 wholesaler's merchantable inventory and current sales and marketing materials.

39 (d) The brewery shall cause to be paid to the affected wholesaler, as sole and exclusive
40 compensation for termination of the right to distribute the brands of the brewery, an amount
41 equal to the laid-in cost of the merchantable inventory plus the laid-in cost of the current sales
42 and marketing material plus the fair market value of the distribution rights for the brands that are
43 being terminated by the brewery. Nothing in this section shall prevent a successor wholesaler
44 from paying the compensation to the affected wholesaler directly or from compensating a
45 brewery for any compensation paid by the brewery under this section.

46 (e) (1) A dispute as to whether an entity is a brewery under this section shall be
47 determined by the alcoholic beverages control commission; provided, however, that a request for
48 such determination by the brewery or the affected wholesaler shall be made within 15 days of
49 either party claiming rights under this section. The commission shall issue a written decision that
50 explains the commission's reasoning not more than 30 days after receiving a request for a
51 determination under this subsection. The commission may award the prevailing party reasonable
52 attorney's fees.

53 (2) If the brewery and the affected wholesaler cannot agree on the compensation due to
54 the affected wholesaler under subsection (d) within the 30 days of the brewery's notice of its

55 termination of the affected wholesaler's right to distribute, the affected wholesaler or the brewery
56 may request that the amount of compensation be determined by final and binding arbitration
57 conducted in the commonwealth, applying the laws of the commonwealth and pursuant to
58 subsection (f).

59 (f) (1) Any arbitration under this section shall be administered by and shall apply the
60 commercial arbitration rules of the American Arbitration Association or its successor
61 organization. Arbitrations shall be conducted before a panel of 3 arbitrators who shall serve as
62 neutral, independent and impartial arbitrators. Within 15 days after the commencement of
63 arbitration, each party shall select 1 person to act as arbitrator and the 2 selected arbitrators shall
64 select a third arbitrator within 30 days of notice of the arbitration being filed. If any of the 3
65 arbitrators are not selected within 30 days after notice of the arbitration being filed, the nearest
66 office of the American Arbitration Association or its successor organization shall select the
67 vacant arbitrators.

68 (2) The arbitration proceeding shall conclude not later than 60 days after the date of the
69 notice of intent to arbitrate is provided to the other party, unless the parties agree to extend the
70 arbitration by agreement or the arbitration panel extends the arbitration for good cause, subject to
71 agreement by both parties. An arbitration held pursuant to this section shall be in lieu of all other
72 remedies and procedures. The costs of the arbitrators and any other costs of the arbitration shall
73 be equally divided by the parties engaged in the arbitration. Each party shall bear all other
74 respective expenses related to the arbitration. The panel of arbitrators shall render a written,
75 reasoned decision not later than 30 days after the conclusion of the arbitration proceeding, unless
76 the parties agree to extend the time for a decision by agreement.

77 (3) Any party duly notified of an arbitration involving its rights that fails to participate in
78 an arbitration proceeding held pursuant to this section shall be considered to have waived all
79 rights it would have had in the arbitration and to have consented to the determination of the panel
80 of arbitrators.

81 SECTION 2. Said chapter 138 of the General Laws is hereby further amended by adding
82 the following section:-

83 Section 79. If any provision of this chapter 138, or its application to any person or
84 circumstance, is determined by a court to be invalid or unconstitutional, the remaining provisions
85 shall be construed in accordance with the intent of the general court to further limit rather than to
86 expand commerce in alcoholic beverages, to enhance strict regulatory control over taxation,
87 distribution and sale of alcoholic beverages through the Massachusetts regulatory system
88 imposed by this chapter upon beer and malt beverages