

HOUSE No. 3782

The Commonwealth of Massachusetts

PRESENTED BY:

Mike Connolly

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 providing for relief for restaurants and bars.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/20/2023</i>

HOUSE No. 3782

By Representative Connolly of Cambridge, a petition (accompanied by bill, House, No. 3782) of Mike Connolly relative to the sale of food and alcoholic beverages by restaurants and bars and for the establishment of a special commission (including members of the General Court) of the promotion and discounted sale of alcoholic beverages. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act providing for relief for restaurants and bars.

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 40A of the General Laws is hereby amended by inserting after
2 section 9C the following section:-

3 Section 9D. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Commission”, the alcoholic beverages control commission, established in section 70 of
6 chapter 10.

7 “Outdoor table service”, restaurant service that includes food prepared on-site and under
8 a food establishment permit issued by a municipal authority pursuant to 105 CMR 590.00 that is
9 served to seated diners outside the restaurant building envelope, whether on a sidewalk, patio,
10 deck, lawn, parking area or other outdoor space.

11 (b) Notwithstanding any other section of this chapter, any special permit, variance or
12 other approval issued thereunder or any general or special law to the contrary, a city or town may
13 approve a request for expansion of outdoor table service, including in the description of licensed
14 premises as described in subsection (c), or an extension of an earlier granted approval issued
15 under section 4 of the governor's COVID-19 Order No. 35 or section 1 of the governor's
16 COVID-19 Order No. 50. Before approving the request, the mayor, board of selectmen or other
17 chief executive officer, as established by charter or special act, shall establish the process for
18 approving the requests. The process shall not be required to comply with the notice and
19 publication provisions of section 11. An approval pursuant to this section may be exercised
20 immediately upon filing of notice thereof with the city or town clerk, without complying with
21 any otherwise applicable recording or certification requirements.

22 (c) Pursuant to subsection (b), a local licensing authority may grant approval for a change
23 in the description of the licensed premises for the purpose of permitting outdoor alcohol service
24 as the local licensing authority deems reasonable and proper, and issue an amended license to
25 existing license holders, without further review or approval from the commission prior to
26 issuance. Upon approval of an amended license, the local licensing authority shall provide notice
27 of the amended license to the commission. Nothing in this section shall prevent the commission
28 from exercising the commission's enforcement authority over an amended license.

29 (d) Before approving any request to extend an earlier granted approval issued under
30 section 4 of the governor's COVID-19 Order No. 35 or section 1 of the governor's COVID-19
31 Order No. 50, a city, town or local licensing authority may modify the scope of the approval as
32 the city, town or local licensing authority deems proper and appropriate including, but not

33 limited to, modifying the terms of an earlier granted approval to address potential issues with
34 snow removal, pedestrian traffic or similar concerns.

35 SECTION 2. Chapter 93 of the General Laws is hereby amended by adding the following
36 section:-

37 Section 115. (a) As used in this section, the following words shall, unless the context
38 clearly requires otherwise, have the following meanings:-

39 "Covered establishment", a restaurant or other eating or drinking establishment offering
40 same-day food or drink for sale in a single commercial transaction through any third-party
41 delivery service platform, with fewer than 25 retail locations within the commonwealth.

42 "Customer", an individual using a third-party delivery service platform to place an online
43 order.

44 "Online order", an order for food or drinks placed by a customer through a third-party
45 delivery service platform for pickup or delivery in the commonwealth.

46 "Purchase price", the menu price publicly offered on the third-party delivery service
47 platform by a covered establishment, not including any taxes, gratuities or other fees that may
48 make up the total cost charged to the customer for an online order.

49 "Third-party delivery service company", a corporation, partnership, sole proprietorship or
50 other entity qualified to do business in the commonwealth that is engaged in facilitating same-
51 day delivery or pickup of food and beverages through a third-party delivery service platform for
52 20 or more separately owned and operated covered establishments.

53 "Third-party delivery service platform", any online-enabled application, software,
54 website or system offered or utilized by a third-party delivery service company to facilitate the
55 sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food
56 and beverages from, covered establishments.

57 (b) Notwithstanding any general or special law to the contrary, no third-party delivery
58 service company shall charge a covered establishment a delivery fee per online order for the use
59 of its services and fees, other than a delivery fee, that totals more than 15 per cent of the
60 purchase price of the online order. No third-party delivery service company shall reduce the
61 compensation rates paid to the delivery service driver, or garnish gratuities, as a result of this
62 section.

63 (c) This section shall preempt, supersede or nullify any inconsistent, contrary or
64 conflicting local law, ordinance, rule or regulation relating to third-party delivery service
65 platforms and third-party delivery service companies fees, including with respect to any
66 agreements with covered establishments using third-party delivery service companies.

67 (d) A violation of this section shall be an unfair and deceptive trade practice in violation
68 of chapter 93A.

69 SECTION 3. Chapter 138 of the General Laws is hereby amended by inserting after
70 section 12C the following 2 sections:-

71 Section 12D. Notwithstanding any provision of this chapter or any other general or
72 special law to the contrary, an establishment licensed to sell alcoholic beverages or only wines
73 and malt beverages on-premises may sell wine or malt beverages only for off-premises
74 consumption subject to the following conditions: (i) the wine or malt beverage shall not be sold

75 to a person under 21 years of age; provided, however, that any delivery of wine or malt
76 beverages for off-premises consumption shall not be made without verification that the person
77 receiving the order has attained 21 years of age; (ii) the wine shall be sold in its original, sealed
78 container and the malt beverage shall be sold in a sealed container; (iii) the wine or malt
79 beverage shall be sold as part of the same transaction as the purchase of food; provided,
80 however, that any order that includes wine or malt beverages shall be placed not later than the
81 hour of which the establishment is licensed to sell alcohol or 12:00 midnight, whichever time is
82 earlier; (iv) a customer shall be limited to 192 ounces of malt beverage and 1.5 liters of wine per
83 transaction; and (v) the wine or malt beverages shall be sold at the same price for on-premises
84 consumption and for off-premises consumption.

85 Section 12E. (a) As used in this section, the following words shall, unless the context
86 clearly requires otherwise, have the following meanings:-

87 “Mixed drink”, distilled spirits and mixers that are combined on a licensed premises and
88 sold in a sealed container; provided, however, that the volume of distilled spirits and mixers
89 contained in said mixed drinks shall be of the same proportion as if it was served for on-premises
90 consumption.

91 “Sealed container”, a packaged container with a secure lid or cap designed to prevent
92 consumption without removal of the lid or cap; provided, however, if the packaged container has
93 a lid with sipping holes or an opening for straws said container shall be covered or affixed with
94 an additional seal; provided, further, that said lid, cap or seal are affixed in such a way to prevent
95 reopening without it being obvious that said lid, cap or seal was removed or broken, which may
96 include tape or a sticking adhesive, before sale.

97 (b) Notwithstanding any general or special law to the contrary, an establishment licensed
98 to sell alcoholic beverages for on-premises consumption may sell mixed drinks for off-premises
99 consumption subject to the following conditions: (i) the mixed drink shall not be sold to a person
100 under 21 years of age; provided, that any delivery of mixed drinks for off-premises consumption
101 shall not be made without verification that the person receiving the order has attained 21 years of
102 age; (ii) the mixed drink shall be sold in a sealed container; (iii) the mixed drink shall be sold as
103 part of the same transaction as the purchase of food; provided, however, that any order that
104 includes mixed drinks shall be placed not later than the hour of which the establishment is
105 licensed to sell alcohol or 12:00 A.M., whichever time is earlier; (iv) a customer is limited to 64
106 fluid ounces of mixed drinks per transaction; and (v) if the mixed drink in a sealed container is to
107 be transported by a motor vehicle, either by delivery or pick-up, the driver of a motor vehicle
108 shall transport the mixed drink in the trunk of the motor vehicle or some other area that is not
109 considered the passenger area, as defined by section 24I of chapter 90.

110 SECTION 4. (a) There shall be a special legislative commission established pursuant to
111 section 2A of chapter 4 of the General Laws to examine repealing restrictions on the offer and
112 sale of discounted alcoholic beverages by persons licensed pursuant to chapter 138 of the
113 General Laws.

114 (b) The special legislative commission shall consist of: the house and senate chairs of the
115 joint committee on community development and small businesses, who shall serve as co-chairs;
116 1 member of the house of representatives, to be appointed by the speaker of the house of
117 representatives; 1 member of the senate, to be appointed by the senate president; 1 person with
118 experience or expertise related to alcohol licensing, to be appointed by the governor; 4 members
119 of geographically-diverse business improvement districts, as defined in section 1 of chapter 400

120 of the General Laws, main streets organizations or chambers of commerce, jointly appointed by
121 the co-chairs; the president and chief executive officer of The Massachusetts Restaurant
122 Association, Inc. or their designee; 1 person with industry expertise in alcohol distribution,
123 jointly appointed by the co-chairs; 1 member of Massachusetts Citizens for Happy Hour; and the
124 executive director of the Massachusetts affiliate of Mothers Against Drunk Driving or their
125 designee.

126 (c) The special legislative commission shall: (i) review and evaluate state and federal
127 laws, regulations and legal advisories regarding the promotion and discounted sale of alcoholic
128 beverages, including those in the state of Illinois; (ii) analyze how changes to the Massachusetts
129 laws might aid restaurants and bars in their economic recovery from the effects of the COVID-19
130 pandemic; (iii) examine how any proposed

131 changes may be enacted with a primary focus on public safety, including but not limited
132 to the incorporation of ride sharing services and other technology, messaging and training; (iv)
133 assess changing trends in the workplace, including the likelihood of expanded “work-from-
134 home” policies and how current trends may impact future business patterns at restaurants and
135 bars; (v) consider the needs of different regions of the commonwealth and different types of
136 restaurants and bars within the context of the overall hospitality industry; and (vi) assess the
137 potential impacts casinos have on the alcohol sales of nearby restaurant and bar.

138 (d) Not later than April 1, 2024, the commission shall submit a report of its findings,
139 including recommendations for legislation, if any, with the clerks of the house of representatives
140 and the senate.

141 SECTION 5. Sections 1 and 3 shall take effect on April 1, 2024.