

HOUSE No. 267

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

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 small brewers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/15/2013</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/28/2013</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>1/16/2013</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/18/2013</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>1/28/2013</i>
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>	
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/24/2013</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>	<i>1/31/2013</i>
<i>John Hart, Jr.</i>	<i>First Suffolk</i>	<i>1/30/2013</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/1/2013</i>

<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/28/2013</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>1/28/2013</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/24/2013</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>	<i>1/29/2013</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2013</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/24/2013</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>	<i>1/31/2013</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	
<i>Bradford Hill</i>	<i>4th Essex</i>	
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>2/1/2013</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>James M. Murphy</i>	<i>4th Norfolk</i>	
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>	
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>Martha M. Walz</i>	<i>8th Suffolk</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/31/2013</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/30/2013</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>	<i>1/30/2013</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>	
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/29/2013</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/29/2013</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/30/2013</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	
<i>Benjamin Swan</i>	<i>11th Hampden</i>	
<i>Denise Andrews</i>	<i>2nd Franklin</i>	
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>	
<i>Randy Hunt</i>	<i>5th Barnstable</i>	
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	

<i>John P. Fresolo</i>	<i>16th Worcester</i>	
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	
<i>Aaron Vega</i>	<i>5th Hampden</i>	
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>1/30/2013</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>1/31/2013</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>1/30/2013</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/30/2013</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>	<i>1/30/2013</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/1/2013</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>	
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>1/30/2013</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2013</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>	
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	
<i>Donald Humason</i>		
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>1/31/2013</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>	
<i>Stephen M. Brewer</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>2/1/2013</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>	
<i>Eugene L. O'Flaherty</i>	<i>2nd Suffolk</i>	
<i>John H. Rogers</i>	<i>12th Norfolk</i>	
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>	
<i>Geoff Diehl</i>	<i>7th Plymouth</i>	

HOUSE No. 267

By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 267) of Alice Hanlon Peisch and others relative to small brewers of alcoholic beverages. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1897 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to small 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, as appearing in the 2010 Official Edition,
2 is hereby amended by striking out section 25E as appearing in the 2010 Official Edition, and
3 inserting in place thereof the following section:

4 Section 25E. Refusal to sell brand name alcoholic beverages to wholesalers as unfair
5 trade practice; exception for good cause; discontinuance notice and procedure. It shall be an
6 unfair trade practice and therefore unlawful for any manufacturer, winegrower, farmer-brewer,
7 importer or wholesaler of any alcoholic beverages, to refuse to sell, except for good cause
8 shown, any item having a brand name to any licensed wholesaler to whom such manufacturer,
9 winegrower, farmerbrewer, importer or wholesaler has made regular sales of such brand item
10 during a period of six months preceding any refusal to sell.

11 Any manufacturer, importer or wholesaler shall forward a notice in writing to the
12 wholesaler, to whom it has sold any brand item, prior to discontinuing sales to such wholesaler
13 of such brand item and shall forward a copy of said notice to the commission. The notice of
14 discontinuance of sale shall be furnished by the manufacturer, importer or wholesaler to the
15 wholesaler being discontinued at least one hundred and twenty days before the effective date of
16 such discontinuance. The notice shall state the specific grounds for such discontinuance. Either
17 party may appeal to the commission for a hearing on the notice of discontinuance and the

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

- 25 (a) disparagement of the product so as to impair the reputation of the brand owner or the
26 brand name of any product,
- 27 (b) unfair preferment in sales effort for brand items of a competitor,
- 28 (c) failure to exercise best efforts in promoting the sale of any brand item,
- 29 (d) engaging in improper or proscribed trade practices, or
- 30 (e) failure to comply with the terms of sale agreed upon between the supplier and
31 wholesaler.

32 The prior two paragraphs of this section 25E shall not apply to a “small brewer
33 relationship,” which may be discontinued as established by contract or through the process
34 described below. For purposes of this paragraph, a “small brewer relationship” shall mean any
35 relationship between a manufacturer of malt beverages licensed under this Chapter, a farmer-
36 brewer licensed under this Chapter, or a manufacturer of malt beverages located outside of the
37 Commonwealth that holds a certificate of compliance permitting it to sell malt beverages to
38 wholesalers in this state (collectively such manufacturer or farmer-brewer referenced as a
39 “supplier” below) and a wholesaler if the sales of products to the wholesaler by the supplier do
40 not exceed 20% of the wholesaler’s total sales in the prior calendar year preceding any refusal to
41 sell. In calculating a supplier’s sales to a wholesaler or a wholesaler’s total sales, the sales by a
42 supplier or wholesaler in a “controlled group,” as such term is defined in 26 U.S.C. §
43 5051(a)(2)(B) or a successor provision, shall count as the sales of a single entity. Any dispute
44 concerning whether a supplier-wholesaler relationship is or is not a small brewer relationship
45 within the meaning of this Section 25E shall be determined by final binding arbitration, which
46 either the supplier or the wholesaler in the relationship may request within thirty (30) days of
47 either party claiming rights under a small brewer relationship. The arbitration shall be conducted
48 in accordance with arbitration process established below. Nothing in this Section 25E shall be
49 construed to expand or diminish the rights or obligations established by contract in a small
50 brewer relationship provided, however, that a supplier in a small brewer relationship also may
51 elect at any time to refuse to sell to any wholesaler in accordance with the following paragraph.

52 To initiate a supplier's non-contractual right to refuse to sell as established under the
53 immediately preceding paragraph, the supplier in a small brewer relationship shall provide the
54 wholesaler with not less than thirty (30) days written notice of the refusal to sell, which written
55 notice shall identify the successor wholesaler(s) who will begin servicing the affected territory
56 (the "successor wholesaler"). Upon any refusal to sell under this paragraph of Section 25E, the
57 successor wholesaler(s) shall compensate the affected wholesaler in an amount equal to the fair
58 market value of the supplier's distribution rights granted to the wholesaler in the terminated
59 wholesaler's territory. Supplier's refusal to sell may take effect following the notice period in
60 supplier's notice, which shall not be less than thirty (30) days, regardless of whether the
61 successor wholesaler has compensated the affected wholesaler. If the successor wholesaler(s)
62 and the affected wholesaler can not agree to the fair market value compensation due to the
63 affected wholesaler within the thirty (30) days following the supplier's notice of its refusal to
64 sell, either the affected wholesaler or any successor wholesaler may request that the amount of
65 compensation be determined by final binding arbitration conducted in accordance with the
66 arbitration process established below.

67 Arbitrations under this Section 25E shall be conducted before a single impartial arbitrator
68 selected by the parties or, if they cannot agree to an arbitrator within thirty (30) days, selected by
69 the nearest office of the American Arbitration Association or its successor organization. The
70 commercial arbitration rules of the American Arbitration Association or its successor
71 organization shall govern the arbitration. The arbitration proceeding shall conclude not later than
72 ninety (90) days after the date of the notice of intent to arbitrate is transmitted to the other party,
73 unless the parties agree to extend the time by mutual agreement or the arbitrator extends the time
74 for good cause shown. An arbitrator's award in any arbitration held pursuant to the immediately
75 preceding paragraph with regard to fair market value shall be monetary only and shall not enjoin
76 or compel conduct. Any arbitration held pursuant to this Section 25E shall be in lieu of all other
77 remedies and procedures. The costs of the arbitrator and any other costs of the arbitration shall
78 be equally divided by the parties engaged in the arbitration. Each party shall bear all other
79 expenses related to the arbitration, provided that the arbitrator may award the prevailing party in
80 the dispute as to whether a small brewer relationship exists its costs and reasonable attorney's
81 fees for good cause shown. The arbitrator shall render a written decision not later than thirty
82 (30) days after the conclusion of the arbitration proceeding, unless the parties agree to extend the
83 time by mutual agreement or the arbitrator extends the time for good cause shown. The
84 arbitrator's decision shall be final and binding and may be enforced by commencing a civil
85 action in any court of competent jurisdiction. Any party duly notified of an arbitration involving
86 its rights that fails to participate in an arbitration proceeding held pursuant to this paragraph
87 waives all rights it would have had in the arbitration and is considered to have consented to the
88 determination of the arbitrator."

89 SECTION 2. The legislature intends that this Act apply to all small brewer relationships
90 existing as of its effective date, and all agreements and relationships entered into after its
91 effective date.

92 SECTION 3. This Act shall take effect on the date of enactment.