

HOUSE No. 225

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to franchise laws..

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 2006 Official Edition,
2 is hereby amended by striking out section 25E as appearing in the 2004 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; discontinue notice and procedure.

6 As used herein the following terms shall have the following definitions: “brand name
7 alcoholic beverages” means any alcoholic beverage marketed under a brand name; “person”
8 includes an individual, corporation, partnership, joint venture, organization and any other form of
9 entity; “supplier” means any person selling brand name alcoholic beverages to wholesalers in the
10 commonwealth; “successor supplier” means any person that succeeds by any means to a
11 supplier’s ability to sell brand name malt beverages to wholesalers in the commonwealth.

12 It shall be an unfair trade practice and therefore unlawful for any supplier, or successor
13 supplier of any brand name alcoholic beverages, to refuse to sell, except for good cause shown,

any item having a brand name to any licensed wholesaler that has made regular purchases of that brand of alcoholic beverages during the period of six months preceding any refusal to sell.

Any supplier or successor supplier shall provide a notice in writing to the wholesaler to whom it, or in the case of a successor supplier, its predecessor, has sold any brand item prior to discontinuing or refusing to make sales to such wholesaler of any item of the same brand, and shall at the same time provide a copy of the notice to the commission. The notice shall be furnished by the supplier, or successor supplier to the affected wholesaler at least one hundred and twenty days before the effective date of discontinuance or refusal to sell. The notice shall state the specific grounds for discontinuance or refusal to sell. Either party may apply to the commission for a hearing on the notice of discontinuance or refusal to sell, and the commission shall make a determination after hearing on the issue of good cause for discontinuance or refusal to sell. Upon application by the wholesaler to the commission, the commission shall order the supplier or successor supplier giving notice to make sales in the regular course to the wholesaler pending determination by the commission of the merits of the application. The commission shall after notice to all parties and hearing, make a determination on the issue of good cause and grant such relief as may be appropriate under the circumstances. Good cause as used herein shall be limited to the following:

disparagement of the product so as to impair the reputation of the brand owner or the brand name of any product,

unfair preferment in sales effort for brand items of a competitor

failure to exercise best efforts in promoting the sale of any brand item,

engaging in improper or proscribed trade practices, or

failure to comply with the terms of sale agreed upon between the supplier and wholesaler.

A successor supplier shall be deemed to have assumed its predecessor's obligations under this section and any written agreement governing the relationship between a successor supplier's predecessor and a wholesaler. A successor supplier shall be deemed to have refused to sell brand name alcoholic beverages to a wholesaler if it sells such beverages to a new wholesaler for resale within the same territory. A successor supplier may refuse to sell brand name malt beverages, to a wholesaler that has made regular purchases of that brand of alcoholic beverages during the period of six months preceding any refusal to sell if it does so within a period of six months after the successor supplier begins selling the brand name malt beverages in the commonwealth, provided that a successor supplier or another wholesaler pays the affected wholesaler the fair market value of the distribution rights which will be lost or diminished by reason of the successor supplier's refusal to sell, including the value of the wholesaler's good will associated with the brands in issue within thirty days after the refusal to sell.

In the event that a successor supplier and an affected wholesaler are unable to agree to the compensation to be paid under the preceding paragraph within thirty days after the refusal to sell, the issue shall be submitted forthwith to binding arbitration by a neutral arbitrator under the commercial rules of the American Arbitration Association. The cost of the arbitrator shall be equally divided between the affected wholesaler and the successor supplier, but each shall bear their own attorney's fees and costs. The award of the arbitrator shall be confirmed and reduced to a judgment in accordance with the law of the commonwealth.