

HOUSE No. 182

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

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 franchise laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Binienda</i>	<i>17th Worcester</i>	

HOUSE No. 182

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 182) of John J. Binienda relative to alcoholic beverage franchise laws. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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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 Chapter 138 of the General Laws, as appearing in the 2010 Official Edition, is hereby
2 amended by inserting at the end of Section 25E the following paragraphs:

3 Notwithstanding the above, a successor to a brewer, farmer-brewer, or beer importer,
4 who acquires all or substantially all of the stock or assets of said brewer, farmer-brewer, or beer
5 importer through merger or acquisition, or who acquires or is the assignee of a particular product
6 or brand of beer from another brewer, farmer-brewer, or beer importer, with the brewer, farmer-
7 brewer, or beer importer retaining no control of the successor (an “Event of Succession”), may
8 within thirty (30) days of the date of the merger, acquisition, purchase, or assignment, give
9 written notice (“Notice”) of its intent to cease sale to the licensed wholesaler to whom such
10 brewer, farmer-brewer, or beer importer had previously sold, with a copy of said Notice to the
11 commission provided however that the successor complies with the following provisions:

12 (i) In the event that the successor and the licensed wholesaler do not agree that an
13 Event of Succession has occurred, the successor and licensed wholesaler shall appeal to the
14 commission for a hearing on said issue within thirty (30) days of the licensed wholesaler’s
15 receipt of Notice from the successor, and the commission shall hold a hearing on said issue
16 within sixty (60) days of Notice and the commission’s determination shall be final and binding
17 on said issue.

18 (ii) If Notice is not received by the licensed wholesaler within the aforementioned
19 thirty (30) day period, it shall be an unfair trade practice and unlawful for the successor to refuse
20 to sell, expect for good cause shown, any item having a brand name to any licensed wholesaler to

21 whom such predecessor brewer, farmer-brewer, or beer importer has made regular sales of such
22 brand item during a period of six (6) months preceding the Event of Succession.

23

24 (iii) If the successor and licensed wholesaler agree that an Event of Succession has
25 occurred or the commission after a hearing has determined that an Event of Succession has
26 occurred, the licensed wholesaler shall sell and the successor shall repurchase the licensed
27 wholesaler's products and sales aids at the laid-in-cost to the wholesaler including freight and
28 cartage and the successor shall also compensate the licensed wholesaler for the diminished value
29 of the licensed wholesaler's business that is related to the products or brands no longer to be sold
30 to said licensed wholesaler. The successor shall continue to sell to the licensed wholesaler until
31 the licensed wholesaler shall be paid for the inventory and diminished value.

32 (iv) In the event that the successor and licensed wholesaler do not agree on the value
33 of the inventory or the diminished value of the licensed wholesaler's business, said issue shall be
34 submitted to binding arbitration by a single arbitrator of the American Arbitration Association
35 ("AAA") of no less than ten (10) years' experience according to the AAA Commercial
36 Arbitration Rules. The arbitration shall be venued in the county in which the licensed
37 wholesaler's business office is located. A hearing on said issue shall be concluded within six (6)
38 months of the Event of Succession. The cost of the arbitration shall be equally divided by the
39 successor and the licensed wholesaler but each shall bear their own attorneys' fees and costs.
40 The arbitration award shall be confirmed and reduced to a judgment in accordance with the law
41 of the commonwealth and shall be binding, final, and not subject to appeal. The successor shall
42 continue to sell to the licensed wholesaler until the licensed wholesaler shall be paid for the
43 inventory and diminished value. If the successor does not pay the licensed wholesaler within
44 thirty (30) days of the issuance of the arbitration award, it shall be an unfair trade practice and
45 unlawful for the successor to refuse to sell, except for good cause shown, to the licensed
46 wholesaler.