

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

<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</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>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>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</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>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>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</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>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</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>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>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</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>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>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.