

HOUSE No. 245

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>1/15/2015</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>8/21/2019</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>8/21/2019</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>8/21/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>8/21/2019</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>8/21/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>8/21/2019</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/22/2015</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>8/21/2019</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>8/21/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>8/21/2019</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>8/21/2019</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>8/21/2019</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>8/21/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>8/21/2019</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>8/21/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>8/21/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>8/21/2019</i>

<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>8/21/2019</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>8/21/2019</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>8/21/2019</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>8/21/2019</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>8/21/2019</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>8/21/2019</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>8/21/2019</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>8/21/2019</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>	<i>8/21/2019</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>8/21/2019</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>8/21/2019</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>8/21/2019</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>	<i>8/21/2019</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/2/2015</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/30/2015</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>2/2/2015</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/30/2015</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	<i>2/3/2015</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/30/2015</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/31/2015</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>2/4/2015</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/4/2015</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>2/3/2015</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>8/21/2019</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>8/21/2019</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>8/21/2019</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>8/21/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>8/21/2019</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>8/21/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>8/21/2019</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>2/2/2015</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>	<i>2/2/2015</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>8/21/2019</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>2/4/2015</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2015</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/3/2015</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>8/21/2019</i>

<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>8/21/2019</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>8/21/2019</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	<i>8/21/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>8/21/2019</i>
<i>James M. Kelcourse</i>	<i>1st Essex</i>	<i>2/3/2015</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>	<i>8/21/2019</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>8/21/2019</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>8/21/2019</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>	<i>2/4/2015</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	<i>2/3/2015</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	<i>2/4/2015</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/3/2015</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>8/21/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>8/21/2019</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>8/21/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>8/21/2019</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>8/21/2019</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>8/21/2019</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>8/21/2019</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>8/21/2019</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>	<i>8/21/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>8/21/2019</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/4/2015</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>2/4/2015</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>8/21/2019</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>8/21/2019</i>
<i>Anthony W. Petruccelli</i>	<i>First Suffolk and Middlesex</i>	<i>2/4/2015</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/4/2015</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>8/21/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/5/2015</i>

HOUSE No. 245

By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 245) of Alice Hanlon Peisch and others relative to small brewers of alcoholic beverages. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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, is hereby amended by striking out section
2 25E and inserting in place thereof the following section:

3 Section 25E. It shall be an unfair trade practice for any manufacturer, winegrower,
4 farmer-brewer, importer or wholesaler of any alcoholic beverages, to refuse to sell, except for
5 good cause shown, any item having a brand name to any licensed wholesaler to whom such
6 manufacturer, winegrower, farmerbrewer, importer or wholesaler has made regular sales of such
7 brand item during a period of six months preceding any refusal to sell.

8 Any manufacturer, importer or wholesaler shall forward a notice in writing to the
9 wholesaler, to whom it has sold any brand item, prior to discontinuing sales to such wholesaler
10 of such brand item and shall forward a copy of said notice to the commission. The notice of
11 discontinuance of sale shall be furnished by the manufacturer, importer or wholesaler to the
12 wholesaler being discontinued at least 120 days before the effective date of such discontinuance.

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

22 (a) disparagement of the product so as to impair the reputation of the brand owner or the
23 brand name of any product,

24 (b) unfair preferment in sales effort for brand items of a competitor,

25 (c) failure to exercise best efforts in promoting the sale of any brand item,

26 (d) engaging in improper or proscribed trade practices, or

27 (e) failure to comply with the terms of sale agreed upon between the supplier and
28 wholesaler.

29 The preceding two paragraphs of this section shall not apply to a small brewer
30 relationship, which may be discontinued as established by contract or through the process
31 described below. For purposes of this paragraph, a small brewer relationship shall mean any
32 relationship between a manufacturer of malt beverages licensed under this chapter, a farmer-
33 brewer licensed under this chapter, or a manufacturer of malt beverages located outside of the

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

49 To initiate a suppliers non-contractual right to refuse to sell as established under the
50 immediately preceding paragraph, the supplier in a small brewer relationship shall provide the
51 wholesaler with not less than thirty (30) days written notice of the refusal to sell, which written
52 notice shall identify the successor wholesaler who will begin servicing the affected territory (the
53 successor wholesaler). Upon any refusal to sell under this paragraph, the successor wholesaler
54 shall compensate the affected wholesaler in an amount equal to the fair market value of the
55 suppliers distribution rights granted to the wholesaler in the terminated wholesalers territory.
56 Suppliers refusal to sell may take effect following the notice period in suppliers notice, which

57 shall not be less than 30 days, regardless of whether the successor wholesaler has compensated
58 the affected wholesaler. If the successor wholesalers and the affected wholesaler cannot agree to
59 the fair market value compensation due to the affected wholesaler within the thirty (30) days
60 following the suppliers notice of its refusal to sell, either the affected wholesaler or any successor
61 wholesaler may request that the amount of compensation be determined by final binding
62 arbitration conducted in accordance with the arbitration process established below.

63 Arbitrations under this section shall be conducted before a single impartial arbitrator
64 selected by the parties or, if they cannot agree to an arbitrator within 30 days, selected by the
65 nearest office of the American Arbitration Association or its successor organization. The
66 commercial arbitration rules of the American Arbitration Association or its successor
67 organization shall govern the arbitration. The arbitration proceeding shall conclude not later than
68 90 days after the date of the notice of intent to arbitrate is transmitted to the other party, unless
69 the parties agree to extend the time by mutual agreement or the arbitrator extends the time for
70 good cause shown. An arbitrators award in any arbitration held pursuant to the immediately
71 preceding paragraph with regard to fair market value shall be monetary only and shall not enjoin
72 or compel conduct. Any arbitration held pursuant to this section shall be in lieu of all other
73 remedies and procedures. The costs of the arbitrator and any other costs of the arbitration shall
74 be equally divided by the parties engaged in the arbitration. Each party shall bear all other
75 expenses related to the arbitration, provided that the arbitrator may award the prevailing party in
76 the dispute as to whether a small brewer relationship exists its costs and reasonable attorneys
77 fees for good cause shown. The arbitrator shall render a written decision not later than 30 days
78 after the conclusion of the arbitration proceeding, unless the parties agree to extend the time by
79 mutual agreement or the arbitrator extends the time for good cause shown. The arbitrators

80 decision shall be final and binding and may be enforced by commencing a civil action in any
81 court of competent jurisdiction. Any party duly notified of an arbitration involving its rights that
82 fails to participate in an arbitration proceeding held pursuant to this paragraph waives all rights it
83 would have had in the arbitration and is considered to have consented to the determination of the
84 arbitrator."

85 SECTION 2. This Act shall apply to all small brewer relationships existing as of the
86 effective date of this act and all agreements and relationships entered into after the effective date.