

HOUSE No. 2823

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Mahoney

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 to promote economic development and market access for emerging businesses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>

<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Thomas M. Petrolati</i>	<i>7th Hampden</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>

<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>John C. Velis</i>	<i>4th Hampden</i>

HOUSE No. 2823

By Mr. Mahoney of Worcester, a petition (accompanied by bill, House, No. 2823) of John J. Mahoney and others relative to promoting emerging breweries. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote economic development and market access for emerging businesses.

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. Section 10A of chapter 23A of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the word “companies”, in line 7, the
3 following words: ; provided further, such agricultural items shall include cereal grains, malted
4 grains, hops, fruits, flowers, plants, vegetables, or pure juices from fruits, vegetables or plants,
5 herbs, other natural flavoring materials or extracts derived from infusions, percolations, or
6 maceration of such materials.

7 SECTION 2. Chapter 138 of the General Laws is hereby amended by inserting after
8 section 25E the following section:

9 Section 25E ½. (a) Notwithstanding the provisions of section 25E of this chapter, an
10 Emerging Brewery may, without good cause shown, terminate the right to distribute any brands
11 of malt beverages for any licensed wholesaler to whom such Emerging Brewery has made
12 regular sales of such brands of malt beverages, subject to the provisions of this section.

13 For purposes of this section, an Emerging Brewery shall mean any entity that (1) is
14 authorized to sell malt beverages to wholesalers in the commonwealth, hereinafter referred to in
15 this section as a “Brewery”, (2) is privately owned and operated, (3) is managed only by the
16 owners of the Brewery, and (4) directly or indirectly, produced less than 30,000 barrels, also
17 measured as 413,340 case equivalents, of malt beverages in the 12-month period immediately
18 preceding the date of the written notice of termination of the right to distribute any brands of
19 malt beverages required by this section.

20 For purposes of this section, an Emerging Brewery shall also include: (1) an officer or
21 director of an Emerging Brewery, and (2) an affiliate of such Emerging Brewery, regardless of
22 whether the affiliation is corporate or by management, direction, or control.

23 For purposes of calculating the volume of production for the purposes of this section, an
24 Emerging Brewery shall include the volume of products that are malt beverages as defined in
25 section 1 of this chapter or are determined to be malt beverages for the purpose of federal or state
26 law and produced by (1) the Emerging Brewery, (2) an officer or director of such Emerging
27 Brewery, and (3) an affiliate of such Emerging Brewery, regardless of whether the affiliation is
28 corporate or by management, direction, or control.

29 For the purposes of this section, a barrel shall be 31 U.S. gallons and a case equivalent
30 shall be 2.25 U.S. gallons. For the purposes of this section the volume produced under contract
31 by a Brewery shall be calculated in the volume of the agent Brewery for whom the volume of
32 brands is produced, and not in the volume of brands produced by the contracted Brewery.

33 (b) (1) No termination of the right to distribute shall be effective until the wholesaler
34 being terminated has received both written notice and full compensation as specified in this

35 section. An Emerging Brewery shall provide the wholesaler with not less than 90 days written
36 notice of the termination of the right to distribute, which written notice shall identify the
37 successor wholesaler who will begin servicing the affected territory.

38 (2) Upon any termination of the right to distribute pursuant to this section, the
39 wholesaler shall sell and the Emerging Brewery or the wholesaler newly assigned to distribute
40 the brands being terminated shall repurchase the wholesaler's inventory, and sales and marketing
41 materials.

42 (c) (1) The Emerging Brewery shall cause to be paid to the affected wholesaler, as
43 full compensation for termination of the right to distribute the brands of an Emerging Brewery,
44 an amount not less than the laid-in cost of the inventory plus the laid-in cost of the sales and
45 marketing material plus the fair market value of the distribution rights for the brands which are
46 being terminated by the Emerging Brewery.

47 (2) For the purposes of this section, "fair market value" shall mean the price that the
48 wholesaler's business that is related to the terminated brands of the Emerging Brewery would
49 sell for in an arms length transaction between a willing buyer and a willing seller as of the date
50 the notice was received by the wholesaler being terminated under section (b)(1) of this section,
51 with neither being required to act, and both having reasonable knowledge of the relevant facts.

52 (d) (1) Any dispute whether a Brewery is an Emerging Brewery within the meaning
53 of this section shall be determined by the alcoholic beverages control commission, which either
54 the Emerging Brewery or the wholesaler may request within 90 days of either party claiming
55 rights under this section. The commission shall issue a decision within 90 days of receipt of any

56 request to determine this issue. The commission may award the prevailing party its attorneys fees
57 regarding the issue of whether a Brewery is an Emerging Brewery.

58 (2) If the Emerging Brewery and the affected wholesaler cannot agree on the
59 compensation due to the affected wholesaler under Subsection (c) above within the 90 days
60 following the Emerging Brewery notice of its termination of the right to distribute any brands of
61 malt beverages, either the affected wholesaler or the Emerging Brewery may request that the
62 amount of compensation be determined by final binding arbitration conducted in the
63 Commonwealth, applying the laws of the Commonwealth according to the arbitration process
64 below.

65 (e) (1) Arbitrations under this section shall be administered by the American
66 Arbitration Association or its successor organization. The commercial arbitration rules of the
67 American Arbitration Association or its successor organization shall govern the arbitration.
68 Arbitrations shall be conducted before a panel of 3 arbitrators. Within 15 days after the
69 commencement of arbitration, each party shall select one person to act as arbitrator, and the two
70 so selected shall select a third arbitrator within 30 days of the commencement of the arbitration.
71 If any arbitrator is not selected within 45 days after notice of the arbitration being filed, such
72 arbitrators shall be selected by the nearest office of the American Arbitration Association or its
73 successor organization. All arbitrators shall serve as neutral, independent and impartial
74 arbitrators.

75 (2) The arbitration proceeding shall conclude not later than 90 days after the date of the
76 notice of intent to arbitrate is transmitted to the other party, unless the parties agree to extend the
77 time by agreement or the arbitrator extends the time for good cause shown. Any arbitration held

78 pursuant to this section shall be in lieu of all other remedies and procedures. The costs of the
79 arbitrators and any other costs of the arbitration shall be equally divided by the parties engaged
80 in the arbitration. Each party shall bear all other expenses related to the arbitration. The panel of
81 arbitrators shall render a written, reasoned decision not later than 30 days after the conclusion of
82 the arbitration proceeding, unless the parties agree to extend the time by agreement or the
83 arbitrators extend the time for good cause shown.

84 (3) The arbitration decision shall be subject to judicial review pursuant to chapter 30A.
85 Any arbitration decision issued under this section may be enforced by commencing a civil action
86 in any court of competent jurisdiction in Massachusetts.

87 (4) Any party duly notified of an arbitration involving its rights that fails to participate in
88 an arbitration proceeding held pursuant to this section waives all rights it would have had in the
89 arbitration and is considered to have consented to the determination of the panel of arbitrators.

90 SECTION 3. Chapter 138 of the Massachusetts General Laws as appearing in the 2012
91 Official Edition is hereby amended by adding the following section:-

92 Section 79. If any provision of the Chapter 138 of the Massachusetts General Laws, or its
93 application to any person or circumstance, is determined by a court to be invalid or
94 unconstitutional, the remaining provisions shall be construed in accordance with the intent of the
95 legislature to further limit rather than to expand commerce in alcoholic beverages, to enhance
96 strict regulatory control over taxation, distribution and sale of alcoholic beverages through the
97 three-tier regulatory system imposed by the Massachusetts liquor control act upon all alcoholic
98 beverages including malt beverages.