

SENATE No. 141

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 the sale of alcoholic beverages.

PETITION OF:

NAME:

Michael O. Moore

DISTRICT/ADDRESS:

Second Worcester

SENATE No. 141

By Mr. Moore, a petition (accompanied by bill, Senate, No. 141) of Michael O. Moore for legislation relative to the sale of alcoholic beverages. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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

An Act relative to the sale of alcoholic beverages.

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 of Chapter 138 of the General Laws is hereby amended by adding the following
2 definitions: --

3 “Cost” is defined as net cost appearing on the invoice for said alcoholic beverage. The
4 use of any device, promotion or scheme which results in the sale of alcoholic beverages at less
5 than invoiced cost is prohibited.

6 “Discount” is an inducement or allowance to purchase a product which is reflected on the
7 wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is
8 completed. A discount is reflected in the cost of the product on which it is given, as it relates to
9 the retailer's sale price for purposes of this section discounts may include quantity discounts;

10 “Rebate” is an inducement or allowance to purchase a product which is not reflected on
11 the wholesaler's invoice at the time the sale of the subject alcoholic beverages to a retailer is
12 completed, but which is payable no less than 30 days and no more than 90 days after the

13 payment for the product on which it is given. A rebate is not reflected in the cost of the product
14 on which it is given, as it relates to the retailer's sale price for purposes of this section.

15 “Retail Incentive Program (RIP)” is a form of rebate in which a wholesaler provides a
16 financial incentive to a retailer to purchase a specific quantity of alcoholic beverages in one
17 purchase transaction and places no other obligation on the retailer. A purchase transaction is a
18 single order and a single delivery of a specific quantity of a specific alcoholic beverage or
19 combination of beverages, as reflected on a single wholesaler's invoice.

20 SECTION 2. Section 25A of Chapter 138 of the General Laws is hereby amended by
21 adding at the end thereof the following: --

22 No holder of a license issued under M.G.L. c. 138, s. 15 shall sell or offer to sell any
23 alcoholic beverages at a price less than invoiced cost.

24 No manufacturer, supplier, importer, brand registrant, wholesaler, or distributor
25 privileged to engage in the commerce of any alcoholic beverage into or within the
26 Commonwealth shall, directly or indirectly, be a party to, or assist in, any transaction or sale, or
27 contract to sell which discriminates against purchaser competitors, in that:

28 i. There is a different price or are different credit terms for different purchasers of
29 alcoholic beverages of the same brand or trade name of like age, quality and quantity (including
30 but not limited to proof and size); or

31 ii. Is a discount, rebate, allowance or advertising service granted to a purchaser over and
32 above any discount, rebate, allowance, or advertising service available at the time of such
33 transaction to competitors with respect to a sale of alcoholic beverages of the same brand or trade

34 name of like age, quality and quantity. A wholesaler, however, may exclude retail cooperatives
35 from a RIP program without the prior approval of the Commission so long as the RIP program
36 complies with (d) below. A wholesaler wishing to exclude retail cooperatives from a RIP
37 program that does not comply with Subsection (d) below shall first petition the Commission and
38 seek approval of its program. This petition may include one or more such proposed programs
39 and shall be submitted to the Commission at least 75 days in advance of the date on which the
40 program(s) is proposed to appear on the Current Price List. Such program(s) shall not appear on
41 the Current Price List without the Commission's prior approval. The petition shall include the
42 following information upon which the Commission shall decide:

- 43 1. A detailed description of the proposed program(s);
- 44 2. A detailed description of how individual retail licensees will be able to participate in
45 the program(s);
- 46 3. A detailed explanation of why the program(s) will not destabilize the marketplace,
47 including, but not limited to, the creation of destructive price wars, or unduly increase the
48 consumption of alcoholic beverages; and
- 49 4. Any other information the Commission deems necessary from a specific petitioner.

50 (b). Alcoholic beverages in any part of the Commonwealth at prices lower than those
51 charged by that person or entity elsewhere in the Commonwealth for the purpose of destroying
52 competition, or eliminating a competitor in the Commonwealth.

53 (c). Alcoholic beverages at unreasonably low prices for the purposes of destroying
54 competition, or eliminating a competitor.

55 (d). The provisions of the foregoing shall not prevent differentials which make only due
56 allowance for actual differences in the cost of manufacture, sale or delivery resulting from
57 differing methods or quantities in which alcoholic beverage products are sold or delivered to, or
58 paid for by, purchasers including discounts for prompt payment.

59 (e). Except as approved by the Commission under (b) 1 ii above, a retail incentive
60 program (RIP) rebate shall conform to the following requirements:

61 1. All wholesalers participating in such programs shall provide the rebate in the form of a
62 monetary payment, payable only by business checks issued by the participating wholesalers;

63 2. No RIP rebate shall be offered on a quantity in excess of 50 cases. For every RIP
64 rebate, there shall be a corresponding small quantity RIP rebate on the same product(s), for a
65 quantity that is 5 cases or less. The minimum quantity of any RIP rebate shall be 1 bottle;

66 3. RIP rebates may be based on a combination of various sizes and products. Provided,
67 however, that no single RIP rebate shall exceed \$1,000;

68 (f). Nothing in this regulation shall be deemed to limit the number of single RIP rebates
69 which can be earned for qualifying purchases; if a wholesaler wishes to offer a RIP rebate using
70 any formula or dollar amount other than that specified in this Subsection (d), it shall obtain the
71 written approval of the Commission prior to offering such RIP rebate and prior to publication
72 thereof in the wholesaler's Marketing manual and Current Price List applicable to the period
73 during which the RIP rebate will be offered; All wholesalers and all retailer participating in such
74 programs shall keep a separate, complete and accurate accounting of all such rebates disbursed
75 or received and all documents that reflect same; all wholesalers participating in such programs
76 shall publish the details in its Marketing Manual and its Current Price List. If the Division

77 investigates and or prosecutes any discount, rebate, allowance or advertising service offered by
78 any manufacturer, supplier, importer, brand registrant, wholesaler, or distributor, the party
79 offering it must make a prima facie showing that the program is consistent with the applicable
80 statutes and regulations.

81 (2) Donations of alcoholic beverages by licensees for the purpose of having the same
82 used as prizes in any game of chance are prohibited.

83 (3) No licensee shall buy or sell, or offer or contract to buy or sell, any alcoholic
84 beverages on consignment or under conditional sale or with the privileges of return or on any
85 basis otherwise than a sale or purchase in good faith. Nothing in this chapter shall prohibit the
86 return, or acceptance of the return, of alcoholic beverages for ordinary and usual commercial
87 reasons arising after the merchandise has been sold.

88 (4) No Hotel, Restaurant, Club, Tavern or "Package Goods" Store shall buy, or contract
89 to buy, any alcoholic beverages from any Manufacturer or Wholesaler and Importer on
90 consignment or under conditional sale or with the privilege of return or on any basis otherwise
91 than a sale in good faith; provided however, that the provisions of this chapter shall not prohibit
92 the return of alcoholic beverages for ordinary and usual commercial reasons arising after the
93 alcoholic beverages have been purchased.