

HOUSE No. 4767

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 2, 2020.

The committee on Ways and Means, to whom was referred the message from His Excellency the Governor recommending legislation relative to making appropriations for the fiscal year 2020 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4354), reports, in part, recommending that the accompanying bill ought to pass (House, No. 4767).

For the committee,

AARON MICHLEWITZ.

HOUSE No. 4767

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act addressing challenges faced by food and beverage establishments resulting from the COVID-19 pandemic.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to forthwith provide economic support and regulatory relief to food and beverage establishments, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. The General Court hereby finds and declares that:

2 (1) on January 30, 2020, the World Health Organization designated the Coronavirus
3 Disease 2019, hereinafter COVID-19, outbreak as a Public Health Emergency of International
4 Concern; and

5 (2) COVID-19 is a highly contagious, and at times fatal, respiratory disease; and

6 (3) on March 10, 2020, pursuant to Executive Order No. 591, the Governor declared
7 a state of emergency in the Commonwealth to respond to the COVID-19 outbreak; and

8 (4) on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by
9 the World Health Organization; and

10 (5) on March 23, 2020, the Governor issued COVID-19 Order No. 13, Assuring
11 Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces,
12 and Prohibiting Gatherings of More than 10 People ordering all non-essential workplaces and
13 facilities closed and prohibiting public and private gatherings of more than 10 people through
14 April 7, 2020; and

15 (6) the worldwide outbreak of COVID-19 and the effects of its extreme risk of
16 person-to-person transmission significantly affect the life and health, as well as the economy,
17 and is a disaster that impacts the health, security, safety and convenience of the public; and

18 (7) on March 27, 2020 the President of the United States declared that beginning on
19 January 20, 2020 and continuing a major disaster exists in the Commonwealth of Massachusetts
20 and ordered Federal assistance to supplement Commonwealth, tribal, and local recovery efforts
21 in areas of the Commonwealth affected by the COVID-19 pandemic; and

22
23 (8) on March 31, 2020, April 28, 2020 and May 15, 2020, pursuant to Executive
24 Orders No. 21, 30 and 32, respectively, which extended the period for which COVID-19 Order
25 No. 13 would continue to restrict operation of business and organizations that do not provide
26 COVID-19 essential services; and

(9) a sustained trend of improvement in public health data will permit a continuing, carefully phased relaxation of restrictions that COVID-19 Order No. 13 placed on businesses and other organizations; and

(10) the federal Centers for Disease Control have advised COVID-19 is spread mainly by person to person contact and the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing personal contact with environments where this potentially deadly virus may be transmitted; and

(11) the restaurant industry has been significantly impacted by COVID-19 and the social distancing required to limit its spread; and

(12) the preservation and fiscal stability of the restaurant industry is critical to the economic security and cultural vitality of the commonwealth and is the fundamental policy objective of this act.

SECTION 2. Section 13 of chapter 53 of the acts of 2020 is hereby amended by inserting after the word “emergency” the following words:- or until February 28, 2021, whichever is later.

SECTION 3. (a) Notwithstanding chapter 62C of the General Laws or any other general or special law to the contrary, in order to address disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19 and the effects of the governor’s March 10, 2020 declaration of a state of emergency, a vendor who has made any sale subject to the tax imposed on the sale of meals by chapters 64H and 64L of the General Laws from June 1, 2020 to December 31, 2020 may delay the filing of the returns and payment of taxes required pursuant to section 16 of said chapter 62C; provided, that if a vendor delays the filing of said return and payment of said taxes, the vendor shall file the return and make the payment of taxes required for

the period of June 1, 2020 to August 31, 2020, on or before September 20, 2020 and for the period of September 1, 2020 to December 31, 2020, on or before January 20, 2021.

(b) If a vendor delays the filing of returns and payment of taxes pursuant to subsection (a), the commissioner of revenue shall waive: (i) any late-file or late-pay penalties imposed pursuant to section 33 of said chapter 62C and (ii) any interest that accrues as a result of any late payments pursuant to section 32 of said chapter 62C.

(c) Nothing in this section shall be construed to waive any late-file, late-pay penalties or interest for a vendor who fails to file returns or make payment of taxes on or before the date set pursuant to subsection (a). Notwithstanding subsection (a), if a vendor fails to file returns and make payment of taxes on or before the date set pursuant to subsection (a), the payment shall accrue interest from the date the return was required to be filed pursuant to section 16 of said chapter 62C.

(d) The commissioner of revenue may promulgate guidance on the implementation of this section.

SECTION 4. (a) In this section, unless the context clearly requires otherwise, “outdoor table service” shall mean a service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area or other outdoor space, which may include, but is not limited to, service that is provided under awnings or table umbrellas or other cover from the elements; provided, however, that at least 50 per cent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

(b) Notwithstanding chapter 40A of the General Laws, or any special permit, variance or other approval thereunder, or any other general or special law to the contrary, a city or town may approve requests for the expansion of outdoor table service, including changing the description of a licensed premise, as described in section 5; provided, however, prior to such approval, the chief executive officer of the city or town, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, as established by charter or special act, shall establish the process for approving such requests; provided further, that said process need not comply with the notice and publication provisions set forth in section 11 of said chapter 40A. Said approval may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.

SECTION 5. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Commission”, the alcohol beverages control commission, established in section 70 of chapter 10 of the General Laws.

“Local licensing authorities”, as defined in section 1 of chapter 138 of the General Laws.

(b) Notwithstanding any general or special law to the contrary, in order to address disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19 and the effects of the governor’s March 10, 2020 declaration of a state of emergency, local licensing authorities in any city or town that vote to authorize the granting of licenses for the sale of all alcoholic beverages or only wines and malt beverages, pursuant to section 12 of said chapter 138, may, after compliance with notice and hearing requirements pursuant to section 15A of said chapter 138, grant approval for a change in the description of a licensed premises for the purpose

of permitting outdoor alcohol service as the local licensing authorities may deem reasonable and proper and issue an amended license to existing license holders for said purpose, without further review or approval by the commission.

(c) Upon approval of an amended license, the local licensing authorities shall forward notice of the amended license to the commission.

(d) The commission shall, within 10 days of the passage of this act, promulgate regulations consistent with this section and issue updated guidance to local licensing authorities.

(e) Nothing in this section shall prevent the commission from exercising its statutory or regulatory enforcement authority over any such amended license granted.

SECTION 6. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Mixed drink”, a sealed container that holds distilled spirits and mixers that are combined on a licensed premises; provided, however, that the volume of distilled spirits and mixers contained in said mixed drinks shall be of the same proportion as if it was served for on-premises consumption.

“Sealed container”, a packaged container with a secure lid or cap designed to prevent consumption without removal of the lid or cap; provided, however, if the packaged container has a lid with sipping holes or an opening for straws said container shall be covered or affixed with an additional seal, which may include tape or a sticking adhesive, before sale.

(b) Notwithstanding any general or special law to the contrary, in order to address disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19 and

the effects of the governor’s March 10, 2020 declaration of a state of emergency, an establishment licensed to sell alcoholic beverages for on-premises consumption may, during the March 10, 2020 state of emergency or until February 28, 2021, whichever is later, sell mixed drinks for off-premises consumption subject to the following conditions: (i) the mixed drink shall not be sold to a person under 21 years of age; provided, that any delivery of mixed drinks for off-premises consumption shall not be made without verification that the person receiving the order has attained 21 years of age; (ii) the mixed drink shall be sold in a sealed container; (iii) the mixed drink shall be sold as part of the same transaction as the purchase of food; provided, however, that any order that includes mixed drinks shall be placed not later than the hour of which the establishment is licensed to sell alcohol or 12:00A.M., whichever time is earlier; (iv) a customer is limited to 64 fluid ounces of mixed drinks per transaction; and (v) if the mixed drink in a sealed container is to be transported by a motor vehicle, either by delivery or pick-up, the driver of a motor vehicle shall transport the mixed drink in the trunk of the motor vehicle or some other area that is not considered the passenger area, as defined by section 24I of chapter 90 of the General Laws.

SECTION 7. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Covered establishment”, a restaurant or other eating or drinking establishment offering same-day food or drink for sale in a single commercial transaction through any third-party delivery service platform, from 1 or more retail locations within the commonwealth.

“COVID-19 emergency”, the state of emergency declared by the governor on March 10, 2020 in order to address the outbreak of the 2019 novel coronavirus, also known as COVID-19.

135 “Customer”, an individual using a third-party delivery service platform to place an online
136 order.

137 “Online order”, an order for food or drinks placed by a customer through a third-party
138 delivery service platform provided by a third-party delivery service company for pickup or
139 delivery in the commonwealth.

140 “Purchase price”, the menu price publicly offered on the third-party delivery service
141 platform by a covered establishment. The purchase price shall not include any taxes, gratuities or
142 other fees that may make up the total cost charged to the customer for an online order.

143 “Third-party delivery service company”, a corporation, partnership, sole proprietorship or
144 other entity qualified to do business in the commonwealth that is engaged in facilitating same-
145 day delivery or pickup of food and beverages through a third-party delivery service platform for
146 20 or more separately owned and operated covered establishments.

147 “Third-party delivery service platform”, any online enabled application, software,
148 website or system offered or utilized by a third-party delivery service company to facilitate the
149 sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food
150 and beverages from, covered establishments.

151 (b) Notwithstanding any general or special law to the contrary, no third-party delivery
152 service company, from the effective date of this act and for a period of 45 days after the
153 termination of the COVID-19 emergency, shall charge a covered establishment a fee per online
154 order for the use of its services that totals more than 15 per cent of the purchase price of the
155 online order.

156 (c) This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting
157 local law, ordinance, rule or regulation relating to third-party delivery service platforms and
158 third-party delivery service companies fees, including with respect to any agreements with
159 covered establishments using third-party delivery service companies.

160 (d) A violation of this section shall be an unfair and deceptive trade practice in violation
161 of chapter 93A of the General Laws.

162 SECTION 8. Any approvals issued pursuant to section 4 shall automatically revert back
163 to their status prior to the approval of the change for expansion of outdoor table service on
164 November 30, 2020.

165 SECTION 9. Amended licenses issued by local licensing authorities pursuant to section 5
166 shall automatically revert back to their status prior to the approval of the change in the
167 description of a licensed premises on November 30, 2020.

168 SECTION 10. Section 3 shall take effect on June 1, 2020.