

HOUSE No. 4774

House bill No. 4767, as changed by the House committee on Bills in the Third Reading and as amended and passed to be engrossed by the House. June 3, 2020.

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

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

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

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

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

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

40 SECTION 3. (a) Notwithstanding chapter 62C of the General Laws or any other general
41 or special law to the contrary, in order to address disruptions caused by the outbreak of the 2019
42 novel coronavirus, also known as COVID-19 and the effects of the governor’s March 10, 2020
43 declaration of a state of emergency, a vendor who has made any sale subject to the tax imposed
44 on the sale of meals by chapters 64H and 64L of the General Laws from June 1, 2020 to
45 December 31, 2020 may delay the filing of the returns and payment of taxes required pursuant to
46 section 16 of said chapter 62C; provided, that if a vendor delays the filing of said return and
47 payment of said taxes, the vendor shall file the return and make the payment of taxes required for
48 the period of June 1, 2020 to August 31, 2020, on or before September 20, 2020 and for the
49 period of September 1, 2020 to December 31, 2020, on or before January 20, 2021.

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

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

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

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

69 (b) Notwithstanding chapter 40A of the General Laws, or any special permit, variance or
70 other approval thereunder, or any other general or special law to the contrary, a city or town may
71 approve requests for the expansion of outdoor table service, including changing the description

72 of a licensed premises, as described in section 5; provided, however, prior to such approval, the
73 chief executive officer of the city or town, as defined in clause Fifth B of section 7 of chapter 4
74 of the General Laws, as established by charter or special act, shall establish the process for
75 approving such requests; provided further, that said process need not comply with the notice and
76 publication provisions set forth in section 11 of said chapter 40A. Said approval may be
77 exercised immediately upon filing of notice thereof with the city or town clerk, without
78 complying with any otherwise applicable recording or certification requirements.

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

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

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

84 (b) Notwithstanding any general or special law to the contrary, in order to address
85 disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19 and
86 the effects of the governor’s March 10, 2020 declaration of a state of emergency, local licensing
87 authorities in any city or town that vote to authorize the granting of licenses for the sale of
88 alcoholic beverages for on-premises consumption may grant approval for a change in the
89 description of a licensed premises for the purpose of permitting outdoor alcohol service as the
90 local licensing authorities may deem reasonable and proper and issue an amended license to
91 existing license holders for said purpose, without further review or approval by the commission.

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

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

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

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

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

104 “Sealed container”, a packaged container with a secure lid or cap designed to prevent
105 consumption without removal of the lid or cap; provided, however, if the packaged container has
106 a lid with sipping holes or an opening for straws said container shall be covered or affixed with
107 an additional seal; provided further, that said lip, cap or seal are affixed in such a way to prevent
108 reopening without it being obvious that said lip, cap or seal was removed or broken, which may
109 include tape or a sticking adhesive, before sale.

110 (b) Notwithstanding any general or special law to the contrary, in order to address
111 disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19 and
112 the effects of the governor’s March 10, 2020 declaration of a state of emergency, an
113 establishment licensed to sell alcoholic beverages for on-premises consumption may, during the
114 March 10, 2020 state of emergency or until February 28, 2021, whichever is later, sell mixed
115 drinks for off-premises consumption subject to the following conditions: (i) the mixed drink shall

116 not be sold to a person under 21 years of age; provided, that any delivery of mixed drinks for off-
117 premises consumption shall not be made without verification that the person receiving the order
118 has attained 21 years of age; (ii) the mixed drink shall be sold in a sealed container; (iii) the
119 mixed drink shall be sold as part of the same transaction as the purchase of food; provided,
120 however, that any order that includes mixed drinks shall be placed not later than the hour of
121 which the establishment is licensed to sell alcohol or 12:00A.M., whichever time is earlier; (iv) a
122 customer is limited to 64 fluid ounces of mixed drinks per transaction; and (v) if the mixed drink
123 in a sealed container is to be transported by a motor vehicle, either by delivery or pick-up, the
124 driver of a motor vehicle shall transport the mixed drink in the trunk of the motor vehicle or
125 some other area that is not considered the passenger area, as defined by section 24I of chapter 90
126 of the General Laws.

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

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

132 “COVID-19 emergency”, the state of emergency declared by the governor on March 10,
133 2020 in order to address the outbreak of the 2019 novel coronavirus, also known as COVID-19.

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

136 “Delivery fee,” a fee charged by a third-party delivery service for providing a covered
137 establishment with a service that delivers food from such establishment to customers. The term

138 does not include any other fee that may be charged by a third-party delivery service to a covered
139 establishment, such as fees for listing or advertising the covered establishment on the third-party
140 delivery service platform or fees related to processing the online order.

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

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

147 “Third-party delivery service company”, a corporation, partnership, sole proprietorship or
148 other entity qualified to do business in the commonwealth that is engaged in facilitating same-
149 day delivery or pickup of food and beverages through a third-party delivery service platform for
150 20 or more separately owned and operated covered establishments.

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

155 (b) Notwithstanding any general or special law to the contrary, no third-party delivery
156 service company, from the effective date of this act and for a period of 45 days after the
157 termination of the COVID-19 emergency, shall charge a covered establishment a delivery fee per
158 online order for the use of its services and fees other than a delivery fee that totals more than 15
159 per cent of the purchase price of the online order in the aggregate; provided, however, that no

160 third-party delivery service company shall charge a covered establishment any fee or fees other
161 than a delivery fee for the use of their services greater than 5 per cent of the purchase price of
162 such online order.

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

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

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

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

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