HOUSE . . . . . No. 5249

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:–

SECTION 1. Chapter 138 of the General Laws is hereby amended by inserting after section 25E the following sections:-

Section 25E½. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:-

“Affected wholesaler”, a wholesaler whose right to distribute any brand of malt beverages has been terminated pursuant to subsection (b).

“Brewery”, an entity that: (i) is authorized to sell malt beverages to wholesalers in the commonwealth; and (ii) produced less than 250,000 barrels, or 3,445,000 case equivalents, of malt beverages in the 12-month period immediately preceding the date of the written notice of termination of the right to distribute any brands of malt beverages required by subsection (c); provided, however, that a "brewery” shall include all of the brands and labels owned by the entity or any brewery affiliated with the entity by common ownership, directly or indirectly, of not less than 7.5 per cent of the ownership interest.

"Fair market value", the price that the affected wholesaler's business that is related to the terminated brands of the brewery would sell for in an arms-length transaction between a willing buyer and a willing seller as of the date the notice of termination was received by the affected wholesaler under paragraph (1) of subsection (c) with neither being required to act and both having reasonable knowledge of all relevant facts.

"Malt beverages", all products that are malt beverages as defined in section 1 or are determined to be beer or malt beverages under federal law or the laws of the commonwealth.

"Barrel", 31 gallons and a case equivalent of 2.25 gallons; provided, however, that for the purposes of this section, the volume produced under contract by a brewery shall be calculated towards the volume of the agent brewery for whom the volume is produced and not towards the volume of brands of the contracted brewery; and provided further, that volume shall not be counted towards the agent brewery and contracted brewery.

(b) Notwithstanding section 25E, a brewery may, without good cause, terminate the right of a licensed wholesaler to whom such brewery has made regular sales of malt beverages to distribute such malt beverages, subject to the provisions of this section.

(c) (1) A brewery shall not terminate the right to distribute of an affected wholesaler without providing not less than 30 days' written notice and full compensation as specified in this section; provided, however, that in order to prevent a brewery from terminating the right to distribute prior to receipt of full compensation, the affected wholesaler and brewery shall continue their relationship with similar effort as prior to the notice of termination. Written notice from a brewery of a termination of the right to distribute shall identify the successor wholesaler who will begin servicing the affected territory.

(2) Upon a termination of the right to distribute pursuant to this section, the affected wholesaler shall sell and the brewery or the successor wholesaler shall purchase the affected wholesaler's merchantable inventory and current sales and marketing materials.

(d) The brewery shall cause to be paid to the affected wholesaler, as sole and exclusive compensation for termination of the right to distribute the brands of the brewery, an amount equal to the laid-in cost of the merchantable inventory plus the laid-in cost of the current sales and marketing material plus the fair market value of the distribution rights for the brands that are being terminated by the brewery. Nothing in this section shall prevent a successor wholesaler from paying the compensation to the affected wholesaler directly or from compensating a brewery for any compensation paid by the brewery under this section.

(e) (1) A dispute as to whether an entity is a brewery under this section shall be determined by the alcoholic beverages control commission; provided, however, that a request for such determination by the brewery or the affected wholesaler shall be made within 15 days of either party claiming rights under this section. The commission shall issue a written decision that explains the commission’s reasoning not more than 30 days after receiving a request for a determination under this subsection.

(2) If the brewery and the affected wholesaler cannot agree on the compensation due to the affected wholesaler under subsection (d) within the 30 days of the brewery’s notice of its termination of the affected wholesaler’s right to distribute, the affected wholesaler or the brewery may request that the amount of compensation be determined by final and binding arbitration conducted in the commonwealth, applying the laws of the commonwealth and pursuant to subsection (f).

(f) (1) Any arbitration under this section shall be administered by and shall apply the commercial arbitration rules of the American Arbitration Association or its successor organization. Arbitrations shall be conducted before a panel of 3 arbitrators who shall serve as neutral, independent and impartial arbitrators. Within 15 days after the commencement of arbitration, each party shall select 1 person to act as arbitrator and the 2 selected arbitrators shall select a third arbitrator within 30 days of notice of the arbitration being filed. If any of the 3 arbitrators are not selected within 30 days after notice of the arbitration being filed, the nearest office of the American Arbitration Association or its successor organization shall select the vacant arbitrators.

(2) The arbitration proceeding shall conclude not later than 60 days after the date of the notice of intent to arbitrate is provided to the other party, unless the parties agree to extend the arbitration by agreement or the arbitration panel extends the arbitration for good cause, subject to agreement by both parties. An arbitration held pursuant to this section shall be in lieu of all other remedies and procedures. The costs of the arbitrators and any other costs of the arbitration shall be equally divided by the parties engaged in the arbitration. Each party shall bear all other respective expenses related to the arbitration. The panel of arbitrators shall render a written, reasoned decision not later than 30 days after the conclusion of the arbitration proceeding, unless the parties agree to extend the time for a decision by agreement.

(3) Any party duly notified of an arbitration involving its rights that fails to participate in an arbitration proceeding held pursuant to this section shall be considered to have waived all rights it would have had in the arbitration and to have consented to the determination of the panel of arbitrators.

Section 25E¾. Notwithstanding section 6 of chapter 4 of the General Laws, the provisions of section 25E½ shall not be severable. If any provision of said section 25E½ shall be adjudged unconstitutional or invalid said section 25E ½ shall be invalid.

If any other provision of this chapter, or its application to any person or circumstance, is adjudged unconstitutional or invalid, the remaining provisions shall be construed in accordance with the intent of the general court to further limit rather than to expand commerce in alcoholic beverages, to enhance strict regulatory control over taxation, distribution and sale of alcoholic beverages through the regulatory system imposed by this chapter upon beer and malt beverages.