

SENATE No. 104

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 Craft Brewers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>2/1/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/1/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/14/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/5/2019</i>

SENATE No. 104

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 104) of Joseph A. Boncore, Jason M. Lewis, Mike Connolly, Cindy F. Friedman and other members of the General Court for legislation relative to Craft Brewers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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

An Act relative to Craft Brewers.

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. Chapter 138 of the General Laws is hereby amended by striking out section
2 25E and inserting in place thereof the following section:

3 Section 25E. It shall be an unfair trade practice for any manufacturer, winegrower,
4 farmer-brewer, importer or wholesaler of any alcoholic beverages, to refuse to sell, except for
5 good cause shown, any item having a brand name to any licensed wholesaler to whom such
6 manufacturer, winegrower, farmer, brewer, importer or wholesaler has made regular sales of
7 such brand item during a period of six months preceding any refusal to sell.

8 Any manufacturer, importer or wholesaler shall forward a notice in writing to the
9 wholesaler, to whom it has sold any brand item, prior to discontinuing sales to such wholesaler
10 of such brand item and shall forward a copy of said notice to the commission. The notice of
11 discontinuance of sale shall be furnished by the manufacturer, importer or wholesaler to the
12 wholesaler being discontinued at least 120 days before the effective date of such discontinuance.

The notice shall state the specific grounds for such discontinuance. Either party may appeal to the commission for a hearing on the notice of discontinuance and the commission shall make a determination after hearing on the issue of good cause for discontinuance. Upon application by the wholesaler to the commission, the commission shall order the manufacturer, importer or wholesaler giving notice of refusal to sell to continue to make sales in the regular course to such wholesaler pending determination by the commission on the merits of said appeal. The commission shall after notice to all parties and hearing, make a determination on the issue of good cause and grant such relief as may be appropriate under the circumstances. Good cause as used herein shall be limited to the following conduct:

(a) disparagement of the product so as to impair the reputation of the brand owner or the brand name of any product,

(b) unfair preferment in sales effort for brand items of a competitor,

(c) failure to exercise best efforts in promoting the sale of any brand item,

(d) engaging in improper or proscribed trade practices, or

(e) failure to comply with the terms of sale agreed upon between the supplier and wholesaler.

The preceding two paragraphs of this Section 25E shall not apply to the relationship between a small brewer and a wholesaler, which may be discontinued as established by contract or through the process described in the below paragraphs of this section. For purposes of this Section 25E, a manufacturer of malt beverages licensed under this chapter, farmer-brewer brewer licensed under this chapter, or manufacturer of malt beverages located outside of the

Commonwealth that holds a certificate of compliance to sell malt beverages to wholesalers in this state, shall be referred to generically as a “supplier” and collectively as “suppliers.” For purposes of this Section 25E, a “small brewer” shall mean a supplier whose total global malt beverage sales do not exceed six million barrels in a calendar year. In calculating a small brewer’s annual global sales, the sales of a controlled group, as such term is defined in 26 U.S.C. § 5051(a)(5)(A) & (B) or a successor provision, shall count as the sales of a single entity. Any dispute concerning whether a supplier is or is not a small brewer within the meaning of this section 25E shall be determined by final binding arbitration, which either the supplier or the wholesaler may request within thirty (30) days of a supplier claiming rights as a small brewer. The arbitration shall be conducted in accordance with arbitration process established below. Nothing in this Section 25E shall be construed to expand or diminish the rights or obligations established by a small brewer’s contract with a wholesaler, provided, however, that a small brewer also may elect at any time to refuse to sell to any wholesaler in accordance with the following paragraph.

To initiate a small brewer’s non-contractual right to refuse to sell as established under the immediately preceding paragraph, the small brewer shall provide the wholesaler with written notice of the refusal to sell, which written notice shall identify the successor wholesaler or wholesalers who will begin servicing the affected territory (the “successor wholesaler” or “successor wholesalers”). Upon any refusal to sell under this paragraph, the successor wholesaler(s) shall compensate the affected wholesaler in an amount as described below to the wholesaler in the terminated wholesaler’s territory. A small brewer’s refusal to sell may take effect according to the time frames established in subparagraphs (a)-(c) regardless of whether the successor wholesaler has yet compensated the affected wholesaler, and provided that nothing

shall prohibit the small brewer from immediately appointing the successor wholesaler(s) in the affected territory and authorizing such successor(s) to begin distributing and selling the small brewer's products in the affected territory immediately. If the successor wholesaler(s) and the affected wholesaler cannot agree to the fair market value compensation due to the affected wholesaler within the applicable notice period established below, either the affected wholesaler or any successor wholesaler may request that the amount of compensation be determined by final binding arbitration conducted in accordance with the arbitration process established below.

(a) Small brewers that sell 5,000 barrels (for purposes of this Section 25E a barrel equals 31 U.S. gallons) or less of malt beverages in a calendar year may refuse to sell to a wholesaler effective upon thirty (30) days' notice and without cause upon by providing written notice of its refusal to sell to the wholesaler. The wholesaler shall have thirty (30) days to transfer all malt beverage brands at the direction of the small brewer for no less than the total cost of 50% of the fair market value of the wholesaler's rights to sell and distribute the brand(s) of the terminating small brewer. These provisions governing small brewers selling 5,000 barrels or less of malt beverages in a calendar year shall be effective seven years from or initiation of the small brewer-wholesaler relationship.

(b) Small brewers that sell between 5,001 and 350,000 barrels of malt beverages in a calendar year may refuse to sell to a wholesaler effective upon forty-five (45) days and without cause by providing written notice of its refusal to sell to the wholesaler. The wholesaler shall have forty-five (45) days to transfer all malt beverage brands at the direction of the small brewer for the total cost of the fair market value of the wholesaler's rights to sell and distribute the brand(s) of the terminating small brewer

(c) Small brewers that sell between 350,001 and six million barrels of malt beverages in the previous calendar year may refuse to sell to a wholesaler upon sixty (60) days written notice and without cause by providing written notice of its refusal to sell to the wholesaler. The wholesaler shall have sixty (60) days to transfer all malt beverage brands at the direction of the supplier for no less than the total cost of 110% of the fair market value of the wholesaler's rights to sell and distribute the brand(s) of the terminating small brewery.

(d) In the case of any refusal to sell by a small brewer, the wholesaler's right to obtain compensation as outlined in the preceding three subparagraphs shall represent the wholesaler's sole and exclusive remedy for its loss of a small brewer's brand distribution rights.

Arbitrations under this Section 25E shall be conducted before a single impartial arbitrator selected by the parties or, if they cannot agree to an arbitrator within thirty (30) days, selected by the nearest office of the American Arbitration Association or its successor organization. The commercial arbitration rules of the American Arbitration Association or its successor organization shall govern the arbitration. The arbitration proceeding shall conclude not later than ninety (90) days after the date of the notice of intent to arbitrate is transmitted to the other party, unless the parties agree to extend the time by mutual agreement or the arbitrator extends the time for good cause shown. An arbitrator's award in any arbitration held pursuant to the immediately preceding paragraph with regard to fair market value shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this Section shall be in lieu of all other remedies and procedures. The costs of the arbitrator and any other costs of the arbitration shall be equally divided by the parties engaged in the arbitration. Each party shall bear all other expenses related to the arbitration, provided that the arbitrator may award the prevailing party in the dispute as to whether a small brewer relationship exists its costs and reasonable attorneys'

102 fees for good cause shown. The arbitrator shall render a written decision not later than thirty (30)
103 days after the conclusion of the arbitration proceeding, unless the parties agree to extend the time
104 by mutual agreement or the arbitrator extends the time for good cause shown. The arbitrator's
105 decision shall be final and binding and may be enforced by commencing a civil action in any
106 court of competent jurisdiction. Any party duly notified of an arbitration involving its rights that
107 fails to participate in an arbitration proceeding held pursuant to this paragraph waives all rights it
108 would have had in the arbitration and is considered to have consented to the determination of the
109 arbitrator."

110 SECTION 2. This Act shall apply to all relationships between a small brewer and a
111 wholesaler existing as of the effective date of this act and all agreements and relationships
112 entered into after the effective date.