

HOUSE No. 318

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

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 wines and malt beverages by food stores.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>2/16/2021</i>

HOUSE No. 318

By Mr. Cahill of Lynn, a petition (accompanied by bill, House, No. 318) of Daniel Cahill relative to the sale of wines and malt beverages by food stores. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to the sale of wines and malt beverages by food stores.

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, as appearing in the 2018 Official Edition,
2 is hereby amended by inserting, after section 15A, the following:-

3 Section 15B. Grant of food store licenses for the sale of wines and malt beverages not to
4 be consumed on premises; operation of subject premises; regulation of packaging

5 (a) Local licensing authorities that have been authorized to grant licenses under section
6 15 of this chapter are hereby authorized to grant an additional class of licenses, known as a food
7 store license, for the sale of wines and malt beverages not to be consumed on the premises.

8 (b) Except as otherwise provided, a food store license shall in every way be treated as a
9 license granted under section 15 of this chapter and shall be governed by all the statutes and
10 regulations applicable thereto.

(c) No application for the issuance, transfer, or annual renewal of a food store license shall be granted under this section unless the applicant demonstrates that the subject premises:

(1) is a permanent non-mobile establishment within the geographic jurisdiction of the local licensing authority;

(2) regularly stocks and sells to consumers various types of perishable or nonperishable foods, not to be consumed on the premises, in at least three of the following four staple food categories: (i) vegetable or fruit products; (ii) meat, poultry, or fish products; (iii) dairy products or plant-based substitutes; and (iv) bread or cereal products;

(3) has adopted an age verification and employee training policy satisfying the minimum requirements of section 15C of this chapter; and

(4) dedicates not more than 35% of the total interior selling area accessible to customers, as measured in square feet of floor space on the horizontal plane, for the display of wines and malt beverages to be sold under the authority of a food store license, provided that such dedicated display area need not be contiguous but shall not in any case exceed 10,000 square feet in the aggregate.

(d) Notwithstanding section 33 of this chapter and section 5 of chapter 136, the sale of wines and malt beverages shall be permitted under this section during those hours which the subject premises may otherwise lawfully conduct business with consumers in that city or town, provided that a local licensing authority may uniformly prohibit the sale of wines and malt beverages under this section between the hours of 11:00 p.m. and 8:00 a.m., or may uniformly require that such sales occurring between said hours shall be made as part of a transaction that

includes one or more nondurable consumer goods not subject to regulation as alcoholic beverages under this chapter.

(e) The commission may uniformly prohibit the sale of some or all types of wines and malt beverages under this section where any single container within the package holds more than 100 fluid ounces or less than 10 fluid ounces, provided that such sale of wines and malt beverages shall otherwise be permitted where the package consists or is comprised of:

(1) one or more manufacturer-sealed containers meeting the standards set forth at section 5.47a of title 27 of the code of federal regulations; or

(2) any refillable and re-sealable container commonly known as a growler, which container may be refilled on the premises by a duly authorized and trained employee, provided that such container once refilled shall be re-sealed by said employee and shall remain sealed while on the premises.

(f) The commission shall, after notice and hearing under chapter 30A, promulgate such regulations as are necessary to implement this section.

Section 15C. Age verification and employee training policy; adoption and enforcement by subject premises as condition of food store license

(a) Every premises licensed under section 15B of this chapter shall adopt and enforce an age verification and employee training policy for the prevention of the unlawful sale of alcoholic beverages to persons under 21 years of age, which policy shall require the presentation of a reliable form of identification by all customers for all purchases of alcoholic beverages, regardless of the actual or apparent age of the customer.

(b) For purposes of this section, a reliable form of identification shall mean such forms of identification for which the subject premises has implemented reasonable measures by which to verify the validity and authenticity thereof with respect to the presenting customer, consistent with the preceding subsection, and shall include without limitation those forms of identification that may be reasonably relied upon for purposes of the second paragraph of section 34B of this chapter, provided that the scope and effect of said paragraph shall not in any way be modified or expanded by the requirements of this section.

(c) Nothing in this section shall prohibit the subject premises from adopting and enforcing additional age verification and employee training policies beyond the requirements of this section, nor in any way limit the applicability of section 69 of this chapter, nor otherwise be construed as affirmatively requiring the sale of an alcoholic beverage to any customer.

(d) The commission shall, after notice and hearing under chapter 30A, promulgate such regulations as are necessary to implement this section.

Section 15D. Form of application for food store licenses; collection and disposition of application fees

(a) Applications for the issuance, transfer, or annual renewal of a food store license under section 15B of this chapter shall be made to the local licensing authority upon standard forms issued and maintained by the commission, provided that each such application granted by the local licensing authority shall be subject to approval by the commission to ensure compliance with this chapter before the license may be issued, transferred, or annually renewed.

(b) At the discretion of the commission, and as reflected by the form of application issued and maintained under the preceding subsection, an applicant may be required to demonstrate that

the subject premises complies with subsection (c) of said section 15B through such manner of commonly available documentary evidence as may be specified by the commission, provided that, in the alternative to any such discretionary requirement, a rebuttable presumption of such compliance sufficient for the submission of a facially complete application shall arise:

(1) in the case of an application for the issuance or transfer of a food store license, if the applicant submits:

(i) with respect to paragraphs (c)(1) and (c)(4) of said section 15B, a sufficiently detailed floorplan of the subject premises;

(ii) with respect to paragraph (c)(2) of said section 15B, evidence that the subject premises is an authorized “retail food store” under section 3(o)(1) of the federal Food and Nutrition Act of 2008, as amended; and

(iii) with respect to paragraph (c)(3) of said section 15B, a copy of all applicable written policies then in effect; or

(2) in the case of an application for the annual renewal of a food store license, if the applicant submits under the pains and penalties of perjury an affirmation of such compliance.

(c) A local licensing authority may, upon its grant of an application for the issuance, transfer, or annual renewal of a food store license, require that the applicant pay to the local licensing authority a fee in an amount to be determined by the local licensing authority, which amount shall be uniformly applied and shall not exceed 110% of the equivalent local fee imposed for licenses granted under section 15 of this chapter.

(d) Upon approval by the commission of an application for the issuance, transfer, or annual renewal of a food store license, but before such approval may take effect, the applicant shall be required to pay to the commission:

(1) in the case of an application for the issuance or transfer of a food store license, a fee in the amount of \$5,000; or

(2) in the case of an application for the annual renewal of a food store license, a fee in the amount of \$5,000 plus 0.25% of gross receipts from any wines and malt beverages sold at the subject premises over the 12 full calendar months immediately preceding the expiration date of the current license, provided that the total amount due under this paragraph shall not exceed \$10,000 per annual renewal.

(e) For purposes of section 27 of this chapter, fees payable:

(1) to a local licensing authority under subsection (c) of this section shall be treated as fees for a license authorized to be granted by the local licensing authority; and

(2) to the commission under subsection (d) of this section, except as provided by section 2JJJJ of chapter 29, shall be treated as fees for a license authorized to be granted by the commission.

(f) The commission shall, after notice and hearing under chapter 30A, promulgate such regulations as are necessary to implement this section.

Section 15E. Number of food store licenses; holding or controlling multiple licenses

(a) Food store licenses authorized to be granted in a city or town under section 15B of this chapter shall be in addition to those licenses otherwise authorized to be granted under

sections 15 and 17 of this chapter, and shall not be counted as a license for purposes of determining the number of licenses available to be issued under said sections 15 and 17.

(b) The number of food store licenses that may be issued shall be determined at the discretion of each local licensing authority and may be revised by notification to the commission not more frequently than once per calendar quarter, provided that the number of food store licenses:

(1) newly issued, in any one year, shall not be more than twice the total number of licenses authorized to be granted in that city or town under sections 15 and 17 of this chapter, rounded down to the nearest whole number; and

(2) issued or available to be issued, overall, shall not be less than half the total number of licenses authorized to be granted in that city or town under sections 15 and 17 of this chapter, rounded up to the nearest whole number.

(c) A local licensing authority shall not deny an application for the issuance, transfer, or annual renewal of a food store license on the basis that the applicant holds or controls multiple licenses granted under sections 15 or 15B of this chapter, provided that no application for the issuance or transfer of a food store license shall be granted if as a result the applicant would hold or control more than 15 food store licenses in any one county of the commonwealth.

(d) The commission shall, after notice and hearing under chapter 30A, promulgate such regulations as are necessary to implement this section.

Section 15F. Effect of food store licenses on proximate competing premises

(a) Upon the issuance or transfer of a food store license to a premises not previously in the business of selling alcoholic beverages to consumers, the operator of any proximate competing premises lawfully conducting business at the time of such issuance or transfer may apply for a small business support grant from the fund established by section 2JJJJ of chapter 29 and administered by the commission in accordance with this section.

(b) For purposes of this section, a proximate competing premises means a permanent non-mobile establishment then currently licensed under section 15 of this chapter, where said license is held or controlled by an employer not required to offer earned paid sick time under section 148C of chapter 149, provided that said establishment is located:

(1) within 2,500 feet of the premises for which the food store license has been issued or transferred, in the case of a city; or

(2) within 5,000 feet of the premises for which the food store license has been issued or transferred, in the case of a town.

(c) Applicants deemed to be a proximate competing premises by the commission shall be eligible to receive not more than ten consecutive annual payments in the nature of a small business support grant, provided that each such payment shall be in an amount determined by the commission:

(1) by dividing the balance of the fund by the total number of food store licenses serving as the basis for at least one grant application by a proximate competing premises; and

(2) by further dividing the quotient from the preceding paragraph, for each such food store license, by the total number of proximate competing premises that applied for a grant with respect to that particular food store license.

(d) Nothing in this section shall prohibit one qualified applicant from receiving more than one small business support grant from the fund, where said applicant meets the definition of a proximate competing premises with respect to more than one food store license.

(e) A local licensing authority shall not deny an application for the issuance, transfer, or annual renewal of a food store license on the basis of limiting competition with or proximity to any other premises licensed under this chapter, nor on the basis that the subject premises may have been eligible for a different class of license granted under this chapter, provided that nothing in this subsection shall require a local licensing authority to grant an application for the issuance or transfer of a food store license where the sale of wines and malt beverages would be inconsistent with a valid municipal zoning law enacted under chapter 40A and effective at the time such application was made, provided further that such application shall not be precluded where the subject premises obtains a variance or exemption from the municipal zoning law in question, including for the continuance of a preexisting nonconforming use.

(f) The commission shall, after notice and hearing under chapter 30A, promulgate such regulations as are necessary to implement this section.

SECTION 2. Section 25A of said chapter 138 is hereby amended by inserting, after the final paragraph, the following:-

(c) Notwithstanding the preceding subsections, and for the purpose of attaining a quantity discount offered by a wholesaler licensed under section 18, any person or entity that holds or controls one or more licenses issued under sections 15 and 15B may either:

(1) enter into a cooperative agreement with one or more other persons or entities, not to exceed 15 parties in total, each holding or controlling not more than 15 licenses issued under said sections 15 and 15B, to make joint purchases of alcoholic beverages in larger quantities than might otherwise be purchased, provided that nothing in this paragraph shall authorize the distribution of alcoholic beverages to anyone except the parties to any such agreement according to their respective share of the joint purchase as attributed to each licensed premises; or

(2) make a combined purchase of alcoholic beverages for two or more of its own licenses issued under said sections 15 and 15B, provided that the number of licenses for which any one combined purchase may be made under this paragraph shall not exceed the aggregate number of licenses for which a joint purchase may be made through a cooperative agreement under the preceding paragraph.

SECTION 3. Section 25A of said chapter 138 is hereby further amended by striking out the words “No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall-- (a) Discriminate” and inserting in place thereof the following:-

(a) No licensee authorized under this chapter to sell alcoholic beverages to wholesalers or retailers shall discriminate

SECTION 4. Section 25A of said chapter 138 is hereby further amended by striking out the words “; All price lists” and inserting in place thereof the following:-

196 . (b) All price lists

197 SECTION 5. Section 15C of said chapter 138, as enacted by section 1 of this Act, is
198 hereby amended by striking out subsection (a) and inserting in place thereof the following:-

199 (a) Every establishment licensed under section 15B of this chapter shall adopt and
200 enforce an age verification and employee training policy for the prevention of the unlawful sale
201 of alcoholic beverages to persons under 21 years of age, which policy shall require:

202 (1) the presentation of a reliable form of identification by all customers for all purchases
203 of alcoholic beverages, regardless of the actual or apparent age of the customer; and

204 (2) the verification of such identification by means of an optical barcode scanner or
205 magnetic card reader, or such other comparable technology as may be approved by the
206 commission, provided that the commission shall establish alternative measures of verification for
207 those forms of identification, if any, upon which a licensee may reasonably rely for purposes of
208 the second paragraph of section 34B but which are not capable of verification by technological
209 means that are both commercially available and practically applied for the intended use.

210 SECTION 6. Section 34B of said chapter 138 is hereby amended by inserting, in the
211 second paragraph, after the words “military identification card” the following:-

212 or an out of state license that has been validated by the means described by paragraph
213 (a)(2) of section 15C

214 SECTION 7. Section 34B of said chapter 138 is hereby further amended by striking out,
215 in the second paragraph, the words “a liquor purchase identification card, or an identification

card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight” and inserting in place thereof the following:-

particular forms of identification named in this paragraph

SECTION 8. Section 15E of said chapter 138, as enacted by section 1 of this Act, is hereby amended by striking out, in subsection (c), the word “county” and inserting in place thereof the following:- city or town

SECTION 9. Section 20 of said chapter 138, as so appearing, is hereby amended by inserting, after the final paragraph, the following:-

A person or entity making a combined purchase of alcoholic beverages under paragraph (c)(2) of section 25A is hereby permitted under this section to store such alcoholic beverages at a licensed and bonded warehouse, provided that nothing in this paragraph shall authorize the resale of such alcoholic beverages other than at retail by the licensed establishment to a consumer in the normal course of business.

SECTION 10. Chapter 29 of the General Laws, as so appearing, is hereby amended by inserting, before section 3, the following:-

Section 2JJJJ. There shall be established and set upon the books of the commonwealth a separate fund, which shall consist of all fees collected by the alcoholic beverages control commission under section 15D of chapter 138. Amounts credited to the fund shall be available, without further appropriation, to the commission for the payment of small business support grants as provided by section 15F of said chapter 138.

SECTION 11. For the avoidance of doubt and without limitation to the general provisions of section 15E of chapter 138 of the General Laws, as enacted by this Act, a food store license shall not be subject to the second sentence of section 15 of chapter 138, and shall not be considered a license issued under said section 15 for purposes of determining the number of marijuana retailers that may be approved in any city or town under section 3 of chapter 94G.

SECTION 12. The commission shall maintain a ratio of at least one investigator per 250 outstanding licenses issued under said chapter 138 by a local licensing authority.

SECTION 13. The commission shall establish a working group consisting of designated representatives of each of the three tiers of the beverage alcohol marketplace, respectively, including, for the retail tier, a representative of food stores and a representative of package stores; of consumer advocates; of local licensing authorities; of the governor; of the attorney general; and of the treasurer. The working group shall study and make findings as to the types and varieties of packaged alcoholic beverages stocked and sold by the various classes of off-premises licensees within the commonwealth, for the purpose of recommending the maintenance or modification of public policies to encourage market efficiency and discourage market dominance in any tier of the beverage alcohol marketplace. The working group shall be convened within 6 months from the enactment of this Act, and shall issue a report of its findings and recommendations to the commission within 18 months thereafter.

SECTION 14. Sections 5 through 8 of this Act, inclusive, shall take effect on January 1, 2023.