

HOUSE No. 253

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>1/18/2023</i>

HOUSE No. 253

By Representative Cahill of Lynn, a petition (accompanied by bill, House, No. 253) 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-Third General Court
(2023-2024)**

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 2020 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.

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

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

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

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

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

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

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

34 (e) The commission may uniformly prohibit the sale of some or all types of wines and
35 malt beverages under this section where any single container within the package holds more than
36 100 fluid ounces or less than 10 fluid ounces, provided that such sale of wines and malt
37 beverages shall otherwise be permitted where the package consists or is comprised of:

38 (1) one or more manufacturer-sealed containers meeting the standards set forth at section
39 5.47a of title 27 of the code of federal regulations; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (2) in the case of an application for the annual renewal of a food store license, a fee in the
101 amount of \$5,000 plus 0.25% of gross receipts from any wines and malt beverages sold at the
102 subject premises over the 12 full calendar months immediately preceding the expiration date of
103 the current license, provided that the total amount due under this paragraph shall not exceed
104 \$10,000 per annual renewal.

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

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

108 (2) to the commission under subsection (d) of this section, except as provided by section
109 2JJJJ of chapter 29, shall be treated as fees for a license authorized to be granted by the
110 commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194 SECTION 4. Section 25A of said chapter 138 is hereby further amended by striking out
195 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

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

218 particular forms of identification named in this paragraph

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

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

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

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

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

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

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

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

254 SECTION 14. Sections 5 through 8 of this Act, inclusive, shall take effect on
255 January 1, 2024.