

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 protection of small businesses and workers.

PETITION OF:

NAME:

William N. Brownsberger

DISTRICT/ADDRESS:

Suffolk and Middlesex

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court (2025-2026)

An Act relative to the protection of small businesses and workers.

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. Section 2 of chapter 93 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting after the definition of "Demand" the following 3
3 definitions:-

4 "Monopoly power", the power to control prices or exclude competition. A firm has
5 monopoly power if the firm is able to profitably raise prices substantially above the competitive
6 level for a significant period of time. A firm also has monopoly power if the firm can exclude
7 competitors.

8 "Monopsony", a market condition where only one buyer exists.

9 "Monopsony power", where an individual buyer is able to influence demand and price for
10 a good or service.

11 SECTION 2. Said section 2 of said chapter 93, as so appearing, is hereby further
12 amended by striking out the definition of "New England".

13 SECTION 3. Said section 2 of said chapter 93, as so appearing, is hereby further
14 amended by striking out, in lines 17 and 18, the words “; provided, however, that trade or
15 commerce shall not include the conveyance, transfer or use of real property”.

16 SECTION 4. Section 4 of said chapter 93, as so appearing, is hereby amended by
17 inserting, after the final paragraph, the following new paragraph:-

18 Every contract, agreement, arrangement or combination shall be against public policy and
19 unlawful if:

20 (i) it establishes or maintains a monopoly or monopsony in the conduct of any business,
21 trade or commerce or in the furnishing of any service in the commonwealth;

22 (ii) it restrains or may restrain competition or the free exercise of any activity in the
23 conduct of any business, trade or commerce or in the furnishing of any service in the
24 commonwealth; or

25 (iii) it restrains or may restrain, for the purpose of establishing or maintaining a
26 monopoly or monopsony or unlawfully interfering with the free exercise of any activity in the
27 conduct of any business, trade or commerce or in the furnishing of any service in the
28 commonwealth, any business, trade or commerce or the furnishing of any service.

29 SECTION 5. Said chapter 93 is hereby further amended by striking out section 5, as so
30 appearing, and inserting in place the following section:-

31 Section 5. (a) It shall be unlawful for any person or persons to monopolize or
32 monopsonize, or attempt to monopolize or monopsonize, or combine or conspire with any other

33 person or persons to monopolize or monopsonize any business, trade or commerce or the
34 furnishing of any service in the commonwealth.

35 (b)(1) It is unlawful for any person or persons with a dominant position in the conduct of
36 any business, trade or commerce, in any labor market, or in the furnishing of any service in this
37 commonwealth, to abuse the dominant position.

38 (2) In any action brought under this subsection, a person's dominant position may be
39 established by direct evidence, indirect evidence, or a combination of the two. Examples of
40 direct evidence include, but are not limited to, reduction in output or in quality of goods or
41 services, the imposition of supracompetitive prices, or the ability to force, induce or otherwise
42 coerce a supplier to offer a lower price, discount, advertising allowance or other service than
43 what the supplier offers others. In labor markets, examples of direct evidence of a dominant
44 position include, but are not limited to, the imposition of sub-competitive wages or working
45 conditions; the repeated violation of laws protecting workers such as labor laws, wage-and-hour
46 laws and workplace health and safety laws; or the interference with, restraint of or coercion of
47 workers in the exercise of their full freedom of association to obtain acceptable terms and
48 conditions of employment, including through self-organization, designation of workplace
49 representatives and engagement in concerted activities for the purposes of collective bargaining
50 or other mutual aid or protection. Direct evidence of dominant position includes conduct that is
51 carried out directly or indirectly through another entity or person such as an independent
52 contractor or other intermediary.

53 (3) A person's dominant position may also be established by indirect evidence such as the
54 person's share of a relevant market. A person who has a share of 40 per cent or greater of a

55 relevant market as a seller shall be presumed to have a dominant position in that market under
56 this subsection. A person who has a share of 30 per cent or greater of a relevant market as a
57 buyer shall be presumed to have a dominant position in that market under this subsection. When
58 determining a relevant market, courts shall examine factors including, but not limited to, industry
59 or public recognition of the market as separate and distinct, the product's peculiar characteristics
60 and uses, unique protection facilities, distinct customers, distinct prices, sensitivity to price
61 changes and specialized vendors.

62 (4) If direct evidence is sufficient to demonstrate that a person has a dominant position or
63 has abused such a dominant position, no court shall require definition of a relevant market in
64 order to evaluate the evidence, find liability or find that a claim has been stated under this
65 subsection.

66 (5) In any action brought under this subsection, abuse of a dominant position may
67 include, but is not limited to, conduct that tends to foreclose or limit the ability or incentive of
68 one or more actual or potential competitors to compete, such as leveraging a dominant position
69 in one market to limit competition in a separate market; refusing to deal with another person with
70 the effect of unnecessarily excluding or constraining actual or potential competitors; coercing the
71 purchaser of one product, service or contract into purchasing or obtaining a separate and distinct
72 product, service or contract; or engaging in, or coercing a third party into, an exclusive
73 agreement or contract that serves to foreclose or increase costs for a competitor. In labor
74 markets, abuse may include, but is not limited to, imposing restraints, direct or indirect, on the
75 mobility of workers between employers or on the ability of workers to seek employment from
76 multiple employers; restricting the freedom of workers and independent contractors to disclose

77 wage and benefit information; and wage discrimination based on any undisclosed or hidden
78 considerations.

79 (c)(1) Except as provided in paragraph (2) of this subsection, the following restraints are
80 presumed to be illegal when engaged in by a firm in a dominant position:

81 (i) any restraint that requires another person to deal exclusively or primarily with the firm
82 imposing the restraint or another person specified by that firm or any restraint that has the
83 necessary effect of requiring another person to deal exclusively or primarily with the firm
84 imposing the restraint or another person specified by that firm;

85 (ii) any restraint that conditions the sale or purchase of any product or services on an
86 agreement to sell or purchase another product or service;

87 (iii) any restraint on a person's ability to engage in a profession, trade or business of any
88 kind, including any restraint on a person's ability to employ another person;

89 (iv) any restraint on the prices or wages offered by another firm;

90 (v) any restraint on another firm's right to independently decide whether to recognize a
91 union of its employees or to otherwise agree to negotiate with its employees collectively over
92 terms and conditions of employment;

93 (vi) any restraint that the attorney general, through regulation or rulemaking, determines
94 poses a substantial risk of harming competition that is not already presumed illegal; and

95 (vii) any additional restraint that the attorney general determines, through rulemaking,
96 generally serves no legitimate business purpose that cannot be achieved in some less restrictive
97 way.

98 (2) Paragraph (1) of this subsection shall not apply if the defendant establishes, by clear
99 and convincing evidence, that the pro-competitive benefits of the challenged conduct: (i) are
100 achievable only through that conduct; and (ii) outweigh that conduct's harm to competition. The
101 harm to competition in one market from the challenged conduct may not be offset by purported
102 benefits in a separate market; and the harm to a person or persons from the challenged conduct
103 may not be offset by purported benefits to another person or persons.

104 (d)(1) The attorney general shall issue guidance on how it will achieve the purposes of
105 subsection (b). The attorney general may issue other guidance with respect to subsection (b).

106 (2) Nothing in this section shall be deemed to diminish the jurisdiction of the department
107 of public utilities.

108 SECTION 6. Section 10 of said chapter 93, as so appearing, is hereby amended by
109 striking out the first paragraph and inserting in place thereof the following paragraph:-

110 Any person who knowingly violates sections 4 or 5 with specific intent to injure any
111 person, or knowingly aids or participates in such violation with specific intent to injure any
112 person, is guilty of a felony, and on conviction thereof, shall be punished by a fine not exceeding
113 \$100,000,000 if a corporation, or, if any other person, by a fine not exceeding \$100,000 or by
114 imprisonment not exceeding 1 year, or both.

115 SECTION 7. Said chapter 93 is hereby further amended by inserting after section 13, as
116 so appearing, the following section:-

117 Section 13A. In any action alleging a violation of a provision of this Act, the attorney
118 general and private litigants shall recover reasonable fees and costs for its expert witnesses and
119 consultants if the attorney general or private litigants prevail in such action.