

HOUSE No. 182

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

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 passage of the accompanying:

An Act relative to franchise laws.

PETITION OF:

NAME:

John J. Binienda

DISTRICT/ADDRESS:

17th Worcester

HOUSE No. 182

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 182) of John J. Binienda relative to alcoholic beverage franchise laws. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

An Act relative to franchise laws.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 138 of the General Laws, as appearing in the 2010 Official Edition, is hereby
2 amended by inserting at the end of Section 25E the following paragraphs:

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4 Notwithstanding the above, a successor to a brewer, farmer-brewer, or beer importer, who
5 acquires all or substantially all of the stock or assets of said brewer, farmer-brewer, or beer
6 importer through merger or acquisition, or who acquires or is the assignee of a particular product
7 or brand of beer from another brewer, farmer-brewer, or beer importer, with the brewer, farmer-
8 brewer, or beer importer retaining no control of the successor (an “Event of Succession”), may
9 within thirty (30) days of the date of the merger, acquisition, purchase, or assignment, give
10 written notice (“Notice”) of its intent to cease sale to the licensed wholesaler to whom such
11 brewer, farmer-brewer, or beer importer had previously sold, with a copy of said Notice to the
12 commission provided however that the successor complies with the following provisions:

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14 (i) In the event that the successor and the licensed wholesaler do not agree that an Event of
15 Succession has occurred, the successor and licensed wholesaler shall appeal to the commission
16 for a hearing on said issue within thirty (30) days of the licensed wholesaler’s receipt of Notice
17 from the successor, and the commission shall hold a hearing on said issue within sixty (60) days
18 of Notice and the commission’s determination shall be final and binding on said issue.

19
20 (ii) If Notice is not received by the licensed wholesaler within the aforementioned thirty (30)
21 day period, it shall be an unfair trade practice and unlawful for the successor to refuse to sell,
22 expect for good cause shown, any item having a brand name to any licensed wholesaler to whom
23 such predecessor brewer, farmer-brewer, or beer importer has made regular sales of such brand
24 item during a period of six (6) months preceding the Event of Succession.

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26 (iii) If the successor and licensed wholesaler agree that an Event of Succession has occurred
27 or the commission after a hearing has determined that an Event of Succession has occurred, the
28 licensed wholesaler shall sell and the successor shall repurchase the licensed wholesaler's
29 products and sales aids at the laid-in-cost to the wholesaler including freight and cartage and the
30 successor shall also compensate the licensed wholesaler for the diminished value of the licensed
31 wholesaler's business that is related to the products or brands no longer to be sold to said
32 licensed wholesaler. The successor shall continue to sell to the licensed wholesaler until the
33 licensed wholesaler shall be paid for the inventory and diminished value.

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35 (iv) In the event that the successor and licensed wholesaler do not agree on the value of the
36 inventory or the diminished value of the licensed wholesaler's business, said issue shall be
37 submitted to binding arbitration by a single arbitrator of the American Arbitration Association
38 ("AAA") of no less than ten (10) years' experience according to the AAA Commercial
39 Arbitration Rules. The arbitration shall be venued in the county in which the licensed
40 wholesaler's business office is located. A hearing on said issue shall be concluded within six (6)
41 months of the Event of Succession. The cost of the arbitration shall be equally divided by the
42 successor and the licensed wholesaler but each shall bear their own attorneys' fees and costs.
43 The arbitration award shall be confirmed and reduced to a judgment in accordance with the law
44 of the commonwealth and shall be binding, final, and not subject to appeal. The successor shall
45 continue to sell to the licensed wholesaler until the licensed wholesaler shall be paid for the
46 inventory and diminished value. If the successor does not pay the licensed wholesaler within
47 thirty (30) days of the issuance of the arbitration award, it shall be an unfair trade practice and
48 unlawful for the successor to refuse to sell, except for good cause shown, to the licensed
49 wholesaler.

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