HOUSE DOCKET, NO. 2594 FILED ON: 1/20/2011

HOUSE . . . . . No. 1871

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 further regulating unfair trade practices in the sale of alcoholic beverages to wholesalers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John J. Binienda	*17th Worcester*
John P. Fresolo	*16th Worcester*

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HOUSE . . . . . No. 1871

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 1871) of John J. Binienda and John P. Fresolo relative to further regulating unfair trade practices in the sale of alcoholic beverages to wholesalers. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *4743* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act further regulating unfair trade practices in the sale of alcoholic beverages to wholesalers.

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

Chapter 138 of the General Laws is hereby amended by inserting at the end of section 25E the following paragraphs:

Notwithstanding any provisions of any agreement between a supplier of malt beverages and a wholesaler to the contrary, a successor by any means to the ability to sell a malt beverage brand item to wholesalers in the commonwealth may, pursuant to the notice and procedure set forth above, during the period of six months after it acquires the ability to sell such brand item to wholesalers in the commonwealth, refuse to sell such brand item to a wholesaler that has made regular purchases of that brand item during the period of six months preceding any refusal to sell only if the following conditions are met: (1) the commission determines in accordance with the procedure set forth in this section either that the successor supplier has good cause as provided in this section or that the obligation of its predecessor under this section may not be imputed to the successor; and (2) except in the case of discontinuance or refusal to sell because of good cause as defined in (a) through (d) above or failure to pay timely for malt beverages as provided in the terms of sale agreed upon between supplier and wholesaler, the successor wholesaler of the brand item has paid the affected wholesaler the fair market value of the distribution rights that will be lost or diminished by reason of the successor suppliers refusal to sell, including the value of the affected wholesalers good will associated with the brands in issue as of the date upon

18 which the successor supplier acquires the ability to sell the brand item to wholesalers within the
19 commonwealth.

20 In the event that a successor wholesaler of the brand item and an affected wholesaler are
21 unable to agree to the compensation to be paid under the preceding paragraph within thirty days
22 after notice of the refusal to sell, the issue shall be submitted within 10 days after expiration of
23 the thirty days, to binding arbitration by a neutral arbitrator under the commercial rules of the
24 American Arbitration Association. The cost of the arbitrator shall be equally divided between
25 the affected wholesaler and the successor wholesaler of the brand item, but each shall bear their
26 own attorneys fees and costs. The arbitration award shall be confirmed and reduced to a
27 judgment in accordance with the law of the commonwealth and shall be binding, final, and not
28 subject to appeal. If the successor wholesaler does not pay the arbitrated award to the affected
29 wholesaler within 20 days of issuance of the decision, the successor supplier shall continue to
30 make sales to the affected wholesaler until the arbitrated award is paid with interest accrued
31 thereon at the statutory rate from the date of the decision and the affected wholesalers'
32 reasonable attorney's fees and costs.