

HOUSE No. 225

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 bill:

An Act relative to franchise laws.

PETITION OF:

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 205 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 SECTION 1. Chapter 138 of the general laws, as appearing in the 2006 Official Edition,
2 is hereby amended by striking out section 25E as appearing in the 2004 Official Edition, and
3 inserting in place thereof the following section:

4 “Section 25E. Refusal to sell brand name alcoholic beverages to wholesalers as unfair
5 trade practice; exception for good cause; discontinue notice and procedure.

6 As used herein the following terms shall have the following definitions: “brand name
7 alcoholic beverages” means any alcoholic beverage marketed under a brand name; “person”
8 includes an individual, corporation, partnership, joint venture, organization and any other form of
9 entity; “supplier” means any person selling brand name alcoholic beverages to wholesalers in the
10 commonwealth; “successor supplier” means any person that succeeds by any means to a
11 supplier’s ability to sell brand name malt beverages to wholesalers in the commonwealth.

12 It shall be an unfair trade practice and therefore unlawful for any supplier, or successor
13 supplier of any brand name alcoholic beverages, to refuse to sell, except for good cause shown,
14 any item having a brand name to any licensed wholesaler that has made regular purchases of that
15 brand of alcoholic beverages during the period of six months preceding any refusal to sell.

16 Any supplier or successor supplier shall provide a notice in writing to the wholesaler to
17 whom it, or in the case of a successor supplier, its predecessor, has sold any brand item prior to
18 discontinuing or refusing to make sales to such wholesaler of any item of the same brand, and
19 shall at the same time provide a copy of the notice to the commission. The notice shall be
20 furnished by the supplier, or successor supplier to the affected wholesaler at least one hundred

21 and twenty days before the effective date of discontinuance or refusal to sell. The notice shall
22 state the specific grounds for discontinuance or refusal to sell. Either party may apply to the
23 commission for a hearing on the notice of discontinuance or refusal to sell, and the commission
24 shall make a determination after hearing on the issue of good cause for discontinuance or refusal
25 to sell. Upon application by the wholesaler to the commission, the commission shall order the
26 supplier or successor supplier giving notice to make sales in the regular course to the wholesaler
27 pending determination by the commission of the merits of the application. The commission shall
28 after notice to all parties and hearing, make a determination on the issue of good cause and grant
29 such relief as may be appropriate under the circumstances. Good cause as used herein shall be
30 limited to the following:

- 31 (a) disparagement of the product so as to impair the reputation of the brand owner or the
32 brand name of any product,
- 33 (b) unfair preferment in sales effort for brand items of a competitor
- 34 (c) failure to exercise best efforts in promoting the sale of any brand item,
- 35 (d) engaging in improper or proscribed trade practices, or
- 36 (e) failure to comply with the terms of sale agreed upon between the supplier and
37 wholesaler.

38 A successor supplier shall be deemed to have assumed its predecessor's obligations under
39 this section and any written agreement governing the relationship between a successor supplier's
40 predecessor and a wholesaler. A successor supplier shall be deemed to have refused to sell brand
41 name alcoholic beverages to a wholesaler if it sells such beverages to a new wholesaler for resale
42 within the same territory. A successor supplier may refuse to sell brand name malt beverages, to
43 a wholesaler that has made regular purchases of that brand of alcoholic beverages during the
44 period of six months preceding any refusal to sell if it does so within a period of six months after
45 the successor supplier begins selling the brand name malt beverages in the commonwealth,
46 provided that a successor supplier or another wholesaler pays the affected wholesaler the fair
47 market value of the distribution rights which will be lost or diminished by reason of the
48 successor supplier's refusal to sell, including the value of the wholesaler's good will associated
49 with the brands in issue within thirty days after the refusal to sell.

50 In the event that a successor supplier and an affected wholesaler are unable to agree to the
51 compensation to be paid under the preceding paragraph within thirty days after the refusal to sell,
52 the issue shall be submitted forthwith to binding arbitration by a neutral arbitrator under the
53 commercial rules of the American Arbitration Association. The cost of the arbitrator shall be
54 equally divided between the affected wholesaler and the successor supplier, but each shall bear
55 their own attorney's fees and costs. The award of the arbitrator shall be confirmed and reduced
56 to a judgment in accordance with the law of the commonwealth.