

HOUSE No. 3424

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel E. Bosley

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

PETITION OF:

NAME:

Daniel E. Bosley

DISTRICT/ADDRESS:

1st Berkshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

1 Section 25E of chapter 138 of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended by adding the following paragraphs:

3 Notwithstanding any provisions of any agreement between a supplier of malt beverages and a wholesaler
4 to the contrary, a successor by any means to the ability to sell a malt beverage brand item to wholesalers
5 in the commonwealth may, pursuant to the notice and procedure set forth above, during the period of 6
6 months after it acquires the ability to sell such brand item to wholesalers in the commonwealth, refuse to
7 sell such brand item to a wholesaler that has made regular purchases of that brand item during the period
8 of 6 months preceding any refusal to sell only if the following conditions are met: (1) the commission
9 determines in accordance with the procedure set forth in this section either that the successor supplier has
10 good cause as provided in this section or that the obligation of its predecessor under this section may not
11 be imputed to the successor; and (2) except in the case of discontinuance or refusal to sell because of
12 good cause as defined in (a) through (d) above or failure to pay timely for malt beverages as provided in
13 the terms of sale agreed upon between supplier and wholesaler, the successor wholesaler of the brand
14 item has paid the affected wholesaler the fair market value of the distribution rights that will be lost or
15 diminished by reason of the successor supplier's refusal to sell, including the value of the affected
16 wholesaler's good will associated with the brands in issue as of the date upon which the successor
17 supplier acquires the ability to sell the brand item to wholesalers within the commonwealth.

18 In the event that a successor wholesaler of the brand item and an affected wholesaler are unable to agree
19 to the compensation to be paid under the preceding paragraph within 30 days after notice of the refusal to
20 sell, the issue shall be submitted within 10 days after expiration of the 30 days, to binding arbitration by a
21 neutral arbitrator under the commercial rules of the American Arbitration Association. The cost of the

22 arbitrator shall be equally divided between the affected wholesaler and the successor wholesaler of the
23 brand item, but each shall bear their own attorney's fees and costs. The arbitration award shall be
24 confirmed and reduced to a judgment in accordance with the law of the commonwealth and shall be
25 binding, final, and not subject to appeal. If the successor wholesaler does not pay the arbitrated award to
26 the affected wholesaler within 20 days of issuance of the decision, the successor supplier shall continue to
27 make sales to the affected wholesaler until the arbitrated award is paid with interest accrued thereon at the
28 statutory rate from the date of the decision and the affected wholesalers' reasonable attorney's fees and
29 costs.