

HOUSE No. 4135

The Commonwealth of Massachusetts

PRESENTED BY:

Mike Connolly

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 providing for immediate and long-term relief for restaurants and bars in response to the COVID-19 pandemic.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/19/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>3/8/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>9/9/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>9/9/2021</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>9/9/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/9/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>9/9/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>9/9/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>9/9/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>9/22/2021</i>

HOUSE No. 4135

By Mr. Connolly of Cambridge, a petition (accompanied by bill, House, No. 4135) of Mike Connolly and others relative to providing for relief for restaurants and bars in response to the COVID-19 pandemic and establishing a special commission (including members of the General Court) to review and evaluate happy hours, so-called, providing for the discounted sale of alcoholic beverages. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act providing for immediate and long-term relief for restaurants and bars in response to the COVID-19 pandemic.

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 40A of the General Laws is hereby amended by inserting after
2 section 9C, as appearing in the 2018 Official Edition, the following section:-

3 Section 9D. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Commission”, the alcoholic beverages control commission established by section 70 of
6 chapter 10.

7 “Outdoor table service”, restaurant service that includes food prepared on-site and under
8 a food establishment permit issued by a municipal authority pursuant to 105 CMR 590.00 that is
9 served to seated diners outside the restaurant building envelope, whether on a sidewalk, patio,
10 deck, lawn, parking area or other outdoor space.

11 (b) Notwithstanding any other section of this chapter, any special permit, variance or
12 other approval issued thereunder or any general or special law to the contrary, a city or town may
13 approve a request for expansion of outdoor table service, including in the description of licensed
14 premises as described in subsection (c), or an extension of an earlier granted approval issued
15 under section 4 of the governor's COVID-19 Order No. 35 or section 1 of the governor's
16 COVID-19 Order No. 50. Before approving the request, the mayor, board of selectmen or other
17 chief executive officer, as established by charter or special act, shall establish the process for
18 approving the requests. The process shall not be required to comply with the notice and
19 publication provisions of section 11. An approval pursuant to this section may be exercised
20 immediately upon filing of notice thereof with the city or town clerk, without complying with
21 any otherwise applicable recording or certification requirements.

22 (c) Pursuant to subsection (b), a local licensing authority may grant approval for a change
23 in the description of the licensed premises for the purpose of permitting outdoor alcohol service
24 as the local licensing authority deems reasonable and proper, and issue an amended license to
25 existing license holders, without further review or approval from the commission prior to
26 issuance. Upon approval of an amended license, the local licensing authority shall provide notice
27 of the amended license to the commission. Nothing in this section shall prevent the commission
28 from exercising the commission's enforcement authority over an amended license.

29 (d) Before approving any request to extend an earlier granted approval issued under
30 section 4 of the governor's COVID-19 Order No. 35 or section 1 of the governor's COVID-19
31 Order No. 50, a city, town or local licensing authority may modify the scope of the approval as
32 the city, town or local licensing authority deems proper and appropriate including, but not

33 limited to, modifying the terms of an earlier granted approval to address potential issues with
34 snow removal, pedestrian traffic or similar concerns.

35 SECTION 2. Chapter 93 of the General Laws is hereby amended by adding the following
36 section:-

37 Section 115. (a) As used in this section, the following words shall, unless the context
38 clearly requires otherwise, have the following meanings:-

39 "Covered establishment", a restaurant or other eating or drinking establishment offering
40 same-day food or drink for sale in a single commercial transaction through any third-party
41 delivery service platform, with less than 25 retail locations within the commonwealth.

42 "Customer", an individual using a third-party delivery service platform to place an online
43 order.

44 "Online order", an order for food or drinks placed by a customer through a third-party
45 delivery service platform provided by a third-party delivery service company for pickup or
46 delivery in the commonwealth.

47 "Purchase price", the menu price publicly offered on the third-party delivery service
48 platform by a covered establishment. The purchase price shall not include any taxes, gratuities or
49 other fees that may make up the total cost charged to the customer for an online order.

50 "Third-party delivery service company", a corporation, partnership, sole proprietorship or
51 other entity qualified to do business in the commonwealth that is engaged in facilitating same-
52 day delivery or pickup of food and beverages through a third-party delivery service platform for
53 20 or more separately owned and operated covered establishments.

54 "Third-party delivery service platform", any online-enabled application, software,
55 website or system offered or utilized by a third-party delivery service company to facilitate the
56 sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food
57 and beverages from, covered establishments.

58 (b) Notwithstanding any general or special law to the contrary, no third-party delivery
59 service company shall charge a covered establishment a delivery fee per online order for the use
60 of its services and fees other than a delivery fee that totals more than 15 per cent of the purchase
61 price of the online order. No third-party delivery service company shall reduce the compensation
62 rates paid to the delivery service driver, or garnish gratuities, as a result of this section.

63 (c) This section shall preempt, supersede or nullify any inconsistent, contrary or
64 conflicting local law, ordinance, rule or regulation relating to third-party delivery service
65 platforms and third-party delivery service companies fees, including with respect to any
66 agreements with covered establishments using third-party delivery service companies.

67 (d) A violation of this section shall be an unfair and deceptive trade practice in violation
68 of chapter 93A.

69 SECTION 3. Section 12 of chapter 138 of the General Laws, as appearing in the 2018
70 Official Edition, is hereby amended by adding the following paragraph: –

71 Notwithstanding any provision of this section or any other general or special law to the
72 contrary, an establishment licensed to sell alcoholic beverages or only wines and malt beverages
73 on-premises may sell wine or malt beverages only for off-premises consumption subject to the
74 following conditions: (i) the wine or malt beverage shall not be sold to a person under 21 years
75 of age; provided, however, that any delivery of wine or malt beverages for off-premises

76 consumption shall not be made without verification that the person receiving the order has
77 attained 21 years of age; (ii) the wine shall be sold in its original, sealed container and the malt
78 beverage shall be sold in a sealed container; (iii) the wine or malt beverage shall be sold as part
79 of the same transaction as the purchase of food; provided, however, that any order that includes
80 wine or malt beverages shall be placed not later than the hour of which the establishment is
81 licensed to sell alcohol or 12:00 midnight, whichever time is earlier; (iv) a customer shall be
82 limited to 192 ounces of malt beverage and 1.5 liters of wine per transaction; and (v) the wine or
83 malt beverages shall be sold at the same price for on-premises consumption and for off-premises
84 consumption.

85 SECTION 4. (a) There shall be a special legislative commission established pursuant to
86 section 2A of chapter 4 of the General Laws to examine repealing restrictions on the offer and
87 sale of discounted alcoholic beverages by persons licensed pursuant to chapter 138 of the
88 General Laws.

89 (b) The special legislative commission shall consist of: the house and senate chairs of the
90 joint committee on community development and small businesses, who shall serve as co-chairs;
91 1 member of the house of representatives, who shall be appointed by the speaker of the house of
92 representatives; 1 member of the senate, who shall be appointed by the senate president; 1 person
93 appointed by the governor, who shall have experience or expertise related to alcohol licensing; 4
94 members of geographically diverse business improvement districts, Main Streets organizations
95 or chambers of commerce, jointly appointed by the co-chairs; the president and chief executive
96 officer of the Massachusetts Restaurant Association, Inc. or their designee; 1 person with
97 industry expertise in alcohol distribution, jointly appointed by the co-chairs; 1 member of

98 Massachusetts Citizens for Happy Hour; and the executive director of the Massachusetts affiliate
99 of Mothers Against Drunk Driving or their designee.

100 (c) The special legislative commission shall: (i) review and evaluate state and federal
101 laws, regulations and legal advisories regarding the promotion and discounted sale of alcoholic
102 beverages, particularly in Illinois; (ii) analyze how changes to the Massachusetts laws might aid
103 restaurants and bars in their economic recovery from the effects of the COVID-19 pandemic; (iii)
104 examine how any proposed changes may be enacted with a primary focus on public safety,
105 including but not limited to the incorporation of ride sharing services and other technology,
106 messaging and training; (iv) assess changing trends in the workplace, including the likelihood of
107 expanded “work from home” policies and how current trends may impact future business
108 patterns at restaurants and bars; (v) consider the needs of different regions of the commonwealth
109 and different types of restaurants and bars within the context of the overall hospitality industry;
110 and (vi) assess the potential impacts casinos have on nearby restaurant and bar alcohol sales.

111 (d) The commission shall submit its report together with recommendations for legislation,
112 if any, to the clerks of the house of representatives and the senate not later than April 1, 2022.