

SENATE No. 136

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

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 restoring contract rights to craft brewers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/27/2017</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>1/27/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>1/27/2017</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	<i>2/1/2017</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/27/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/30/2017</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>2/1/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/30/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2017</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/31/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/31/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/31/2017</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/31/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2017</i>

<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/2/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/2/2017</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/2/2017</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>	<i>2/2/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>2/2/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>2/3/2017</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/3/2017</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>
<i>William Crocker</i>	<i>2nd Barnstable</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>2/6/2017</i>

SENATE No. 136

By Ms. L'Italien, a petition (accompanied by bill, Senate, No. 136) of Barbara A. L'Italien, Jay R. Kaufman, Ann-Margaret Ferrante, Jennifer L. Flanagan and other members of the General Court for legislation to restore contract rights to craft brewers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act restoring contract rights to craft brewers.

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 2014 Official
2 Editionis hereby amended by striking out section 25E, and inserting in place thereof the
3 following section:

4 Section 25E. (a) Refusal to sell brand name alcoholic beverages to wholesalers as unfair
5 trade practice; exception for good cause; discontinuance notice and procedure. It shall be an
6 unfair trade practice and therefore unlawful for any manufacturer, winegrower, farmer-brewer,
7 importer or wholesaler of any alcoholic beverages, to refuse to sell, except for good cause
8 shown, any item having a brand name to any licensed wholesaler to whom such manufacturer,
9 winegrower, farmerbrewer, importer or wholesaler has made regular sales of such brand item
10 during a period of six months preceding any refusal to sell.

11 Any manufacturer, importer or wholesaler shall forward a notice in writing to the
12 wholesaler, to whom it has sold any brand item, prior to discontinuing sales to such wholesaler
13 of such brand item and shall forward a copy of said notice to the commission. The notice of
14 discontinuance of sale shall be furnished by the manufacturer, importer or wholesaler to the
15 wholesaler being discontinued at least one hundred and twenty days before the effective date of
16 such discontinuance. The notice shall state the specific grounds for such discontinuance. Either
17 party may appeal to the commission for a hearing on the notice of discontinuance and the
18 commission shall make a determination after hearing on the issue of good cause for
19 discontinuance. Upon application by the wholesaler to the commission, the commission shall
20 order the manufacturer, importer or wholesaler giving notice of refusal to sell to continue to
21 make sales in the regular course to such wholesaler pending determination by the commission on
22 the merits of said appeal. The commission shall after notice to all parties and hearing, make a
23 determination on the issue of good cause and grant such relief as may be appropriate under the
24 circumstances. Good cause as used herein shall be limited to the following conduct:

- 25 (1) disparagement of the product so as to impair the reputation of the brand owner or the
26 brand name of any product,
- 27 (2) unfair preferment in sales effort for brand items of a competitor,
- 28 (3) failure to exercise best efforts in promoting the sale of any brand item,
- 29 (4) engaging in improper or proscribed trade practices, or
- 30 (5) failure to comply with the terms of sale agreed upon between the supplier and
31 wholesaler.

32 (b)Subsection (a) shall not apply to any relationship between a manufacturer of malt
33 beverages licensed under this Chapter, a farmer-brewer licensed under this Chapter, or a
34 manufacturer of malt beverages located outside of the Commonwealth that holds a certificate of
35 compliance permitting it to sell malt beverages to wholesalers in this state (collectively such
36 manufacturer or farmer-brewer referenced as a “malt beverage supplier” below) and a wholesaler
37 licensed under this Chapter. Regardless of whether or not the parties have entered into a written
38 agreement, relationships between a malt beverage supplier and a wholesaler shall be governed by
39 the parties’ agreement, the law of contracts, and/or other generally-applicable provisions and
40 principles of commercial law. Any dispute concerning whether a malt beverage supplier-
41 wholesaler relationship is governed by this subsection shall not be determined by the
42 commission, provided that if a competent judicial or arbitral forum concludes that a relationship
43 is not governed by this subsection then the dispute shall proceed before the commission in
44 accordance with subsection (a).

45 SECTION 2. This Act shall apply to all relationships existing as of its effective date, and
46 all agreements and relationships entered into after its effective date.

47 SECTION 3. This Act shall take effect immediately upon its passage.