

**SENATE . . . . . No. 175**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**O'Leary, Robert (SEN)**

*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 licenses for the sale of alcoholic beverages.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
O'Leary, Robert (SEN)	Cape and Islands
John W. Scibak	2nd Hampshire
Susan C. Tucker	Second Essex and Middlesex
Timothy Madden	Barnstable, Dukes and Nantucket

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES.

*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, is hereby  
2 amended by striking section 17 and inserting in place thereof the following section:-

3 Section 17. After June 30, 2009, the local licensing authority in a city or town shall be authorized to grant  
4 additional licenses for the sale of alcoholic beverages or wines and malt beverages to be drunk on the  
5 premises, subject to the provisions of section 12 of chapter 138, local zoning bylaws and a vote of the  
6 governing body of the municipality.

7 SECTION 2. Section 17A of said chapter 138 is hereby repealed.

8 SECTION 3. Section 17B of said chapter 138 is hereby repealed.

9 SECTION 4. Section 17C of said chapter 138 is hereby repealed.

10 SECTION 5. Said chapter 138, as so appearing, is hereby amended by striking section 12 and inserting in  
11 place thereof the following section:-

12 Section 12: A common victualler duly licensed under chapter 140 to conduct a restaurant, an innholder  
13 duly licensed under said chapter to conduct a hotel, a pub brewer and a keeper of a tavern as defined by  
14 this chapter, in any city or town wherein the granting of licenses under this section to sell all alcoholic  
15 beverages or only wines and malt beverages, as the case may be, is authorized by this chapter, subject  
16 however, in the case of a tavern, to the provisions of section 11A, may be licensed by the local licensing  
17 authorities, to sell to travelers, strangers and other patrons and customers not under twenty-one years of  
18 age, such beverages to be served and drunk, in case of a hotel or restaurant licensee, only in the dining  
19 room or dining rooms and in such other public rooms or areas of a hotel as the local licensing authorities

20 may deem reasonable and proper, and approve in writing; and provided further, that the limitations  
21 relative to service and consumption in a restaurant or hotel only in the dining rooms and such other public  
22 rooms or areas deemed reasonable and proper by the local licensing authority shall not be deemed to  
23 preclude the restaurant or hotel from allowing a patron to retain and take off the premises only so much as  
24 may remain of a bottled wine purchased by the patron in conjunction with a meal and not totally  
25 consumed by the patron during such meal; provided further, that the bottle shall be resealed in accordance  
26 with regulations promulgated by the commission; provided, that no tavern license shall be granted to the  
27 holder of a hotel license hereunder. Such sales may also be made, by an innholder licensed hereunder, to  
28 registered guests occupying private rooms in his hotel, and in the dining room or dining rooms and in  
29 such other public rooms or areas of buildings on the same premises as the hotel and operated as  
30 appurtenant and contiguous to and in conjunction with such hotel, and to registered guests occupying  
31 private rooms in such buildings and in the case of condominium accommodations that are located  
32 appurtenant and contiguous to and also upon the same premises as a hotel, sales may be made by the hotel  
33 licensee as the local licensing authorities may deem reasonable and proper, and approve in writing. Such  
34 sales may be made by a restaurant licensee at such stands or locations in a sports arena, stadium, ball  
35 park, race track, auditorium or in any one building at an airport as the local licensing authority may deem  
36 reasonable and proper, and approve in writing. Upon an application for a restaurant license, the local  
37 licensing authorities may in their discretion grant such a license authorizing the sale of alcoholic  
38 beverages on all days of the week or one authorizing such sale on secular days only, and the decision of  
39 such authorities as to which of the two types may be granted upon any particular application shall be  
40 final. During such time as the sale of such alcoholic beverages is authorized in any city or town under this  
41 chapter, the authority to grant innholders' and common victuallers' licenses therein under chapter one  
42 hundred and forty shall be vested in the local licensing authorities; provided, that if a person applies for  
43 the renewal of both a common victualler's license or an innholder's license under said chapter one  
44 hundred and forty and a hotel or a restaurant license, as the case may be, under this section and the local  
45 licensing authorities refuse to grant said common victualler's or innholder's license or fail to act on the  
46 applications therefor within a period of thirty days, such applicant may appeal therefrom to the  
47 commission in the same manner as provided in section 67 and all the provisions of said section relative to  
48 licenses authorized to be issued by local licensing authorities under this chapter shall apply in the case of  
49 such common victualler's license or innholder's license.

50 If a license granted under this section to a person holding a license as an innholder or common victualler  
51 is suspended or revoked for any particular cause, no action shall be taken on account thereof by such  
52 authorities with respect to such innholder's or common victualler's license prior to the expiration of the  
53 period provided for an appeal under section sixty-seven in case no such appeal is taken, or prior to the  
54 disposition of any such appeal so taken, nor thereafter, except for further cause, in case such disposition is  
55 in favor of the appellant. Any club in any city or town wherein the granting of licenses to sell alcoholic

56 beverages, or only wines and malt beverages, as the case may be, is authorized under this chapter may be  
57 licensed by the local licensing authorities, , to sell such beverages to its members only, and also, subject  
58 to regulations made by the local licensing authorities, to guests introduced by members, and to no others.

59 The local licensing authorities of any city or town wherein the granting of licenses under this section to  
60 sell all alcoholic beverages or only wines and malt beverages, as the case may be, is authorized by this  
61 chapter, may issue a license to any corporation the members of which are war veterans and which owns,  
62 hires or leases in such city or town a building, or space in a building, for the use and accommodation of a  
63 post of any war veterans' organization incorporated by the Congress of the United States, to sell such  
64 beverages to the members of such post only, and also, subject to regulations made by the local licensing  
65 authorities, to guests introduced by such members and to no others.

66 The local licensing authorities may determine in the first instance, when originally issuing and upon each  
67 annual renewal of licenses under this section, the amount of the license fee, for a tavern license or for any  
68 other license under this section for the sale of all alcoholic beverages, or for any other license under this  
69 section for the sale of wines and malt beverages, and provided that nothing herein shall prevent such  
70 authorities from establishing license fees differing in amounts within the limitations aforesaid for  
71 restaurant licenses authorizing such sale on secular days only. If different license fees are so established  
72 the fee for licenses authorizing the sale of alcoholic beverages on all days of the week shall not be more  
73 than twenty-five per cent higher than the fee for licensing such sale on secular days only. Before issuing a  
74 license to any applicant herefor under this section, or before a renewal of such license, the local licensing  
75 authority shall cause an examination to be made of the premises of the applicant to determine that such  
76 premises comply in all respects with the appropriate definition of section one and that the applicant is not  
77 less than twenty-one years of age and a person of good character in the city or town in which he seeks a  
78 license hereunder. No license shall be issued to any applicant who has been convicted of a violation of a  
79 federal or state narcotic drugs law.

80 The local licensing authorities may accept the surrender of a license issued under this section and may  
81 issue in place thereof to the same licensee any other form of license authorized under this section, and  
82 may allow as a credit on the fee for the new license the license fee paid for the license surrendered but no  
83 refund shall be authorized. Different licenses issued as aforesaid for any portion of the same license year  
84 to the same licensee shall count as one license for the purposes of section seventeen.

85 The hours during which sales of such alcoholic beverages may be made by any licensee as aforesaid shall  
86 be fixed by the local licensing authorities either generally or specially for each licensee; provided,  
87 however, that no such sale shall be made on any secular day between the hours of two and eight o'clock  
88 antemeridian and that, except as provided in section thirty-three, no such licensee shall be barred from  
89 making such sales on any such day after eleven o'clock antemeridian and before eleven o'clock

90 postmeridian, and no tavern shall be kept open on any such day between one o'clock antemeridian and  
91 eight o'clock antemeridian; provided, further, that any such licensee or his manager shall not be  
92 prohibited from being on the licensed premises at any time; provided, further, that the employees,  
93 contractors or subcontractors shall not be prohibited from being upon such premises at any time for the  
94 purpose of cleaning, making renovations, making emergency repairs to or providing security for, such  
95 premises or preparing food for the day's business or opening or closing the business in an orderly manner.  
96 The licensing authority shall not decrease the hours during which sales of such alcohol beverages may be  
97 made by a licensee until after a public hearing concerning the public need for such decrease; provided,  
98 however, that a licensee affected by any such change shall be given 2 weeks notice of the public hearing;  
99 provided further, that a local licensing authority, subject to the approval of the commission, may grant a  
100 license notwithstanding section 17 to sell wine for consumption on the winery premises to a winegrower  
101 authorized to operate a farmer-winery under section 19B, to sell malt beverages for consumption on the  
102 brewery premises to a farmer-brewer authorized to operate a farmer-brewer under section 19C and to sell  
103 spirits for consumption on the distillery premises to a farmer-distiller authorized to operate a farmer-  
104 distillery under section 19E; and provided further, that such licensees may sell for on premises  
105 consumption wines, malt beverages and spirits produced by the winery, brewery or distillery or produced  
106 for the winery, brewery or distillery and sold under the winery, brewery or distillery brand name.

107 No license issued under this section shall be subject to any condition or requirement varying the  
108 occupancy of the licensed premises as certified by any person or state or local agency charged with the  
109 administration or enforcement of the state building code or any of its rules or regulations.

110 No person, firm, corporation, association or other combination of persons, directly or indirectly, or  
111 through any agent, employee, stockholder, officer or other person, or any subsidiary whatsoever, licensed  
112 under the provisions of sections eighteen or nineteen shall be granted a license under this section.

113 In cities and towns which vote to authorize under section eleven the granting of licenses for the sale of all  
114 alcoholic beverages, specific licenses may nevertheless be granted under this section for the sale of wines  
115 or malt beverages only, or both. The licensing authorities may refuse to grant licenses under this section  
116 in certain geographical areas of their respective cities or towns, where the character of the neighborhood  
117 may warrant such refusal.

118 All malt beverages sold by a licensee under this section containing not more than three and two tenths per  
119 cent of alcohol by weight shall be expressly sold as such.

120 No malt beverage shall be sold on draught from a tap, faucet or other draughting device, unless there shall  
121 plainly appear on or attached to such device, in legible letters, the brand or trade name of the malt  
122 beverage so sold therefrom.

123 In any city or town wherein the granting of licenses under this section to sell alcoholic beverages or wines  
124 and malt beverages is authorized, a person may be granted a general on-premise license by the local  
125 licensing authorities authorizing him to sell alcoholic beverages without food to patrons and customers  
126 subject to all other relevant provisions of this chapter, provided that such beverages shall be sold and  
127 drunk in such rooms as the licensing authorities may approve in writing. The annual license fee for such  
128 general on-premise license shall be determined by the local licensing authority. For the purposes of  
129 section eleven an affirmative vote on subdivision A or B shall be considered an authorization for the  
130 granting of general on-premise licenses in a city or town.

131 A common victualler who holds a license pursuant to this section may provide on premises sample wine  
132 or malt beverage tasting; provided however, that such licensee shall not solicit orders for wine or malt for  
133 off premises consumption; and provided further, that any such wine tasting shall be limited to one ounce  
134 per serving and any such malt beverage tasting shall be limited to two ounces per serving and food shall  
135 be served in conjunction with any such wine or malt beverage tasting.

136 In any city or town which votes to accept the provisions of this paragraph, a common victualler, who  
137 holds a license under this section to sell wines and malt beverages may, upon written approval, also sell  
138 liqueurs and cordials pursuant to said license, subject, however, to all other licensing provisions of this  
139 chapter.

140 A common victualler who holds a license for the sale of all alcoholic beverages or holds a license for the  
141 sale of wines and malt beverages and who also holds pursuant to this section written approval to sell  
142 liqueurs and cordials pursuant to his license may provide on-premises sample liqueurs and cordials  
143 tasting; provided however, that a licensee shall not solicit orders for liqueurs and cordials for off-premises  
144 consumption; and provided, further, that any such liqueurs and cordials tasting shall be limited to 1/4 of  
145 an ounce per serving and food shall be served in conjunction with any liqueurs and cordials tasting.

146 A common victualler who holds a license for the sale of all alcoholic beverages may provide on premises  
147 sample alcoholic beverages tasting; provided, however, that a licensee shall not solicit orders for alcoholic  
148 beverages for off-premises consumption; and provided further, that any tasting of alcoholic beverages,  
149 other than wines and malt beverages, shall be limited to 1/4 of an ounce per serving and food shall be  
150 served in conjunction with any alcoholic beverages tasting.