



Massachusetts Package Stores Association, Inc.

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Monday, June 10, 2019

Written Testimony of the Massachusetts Package Stores Association Submitted to the Joint Committee on Consumer Protection & Professional Licensure for the Hearing on Record of:

- H208** - An Act relative to large project-based licenses;
- H212** - An Act further regulating storage of alcoholic beverages;
- H219** - An Act relative to the sale of liquor licenses;
- H226** - An Act relative to the establishment of a commission for fairness in liquor licensing;
- H230** - An Act relative to the direct sale of alcoholic beverages for off-premises consumption;
- H233** - An Act Relative to Alcoholic Beverage Containers
- H235** - An Act Relative to the Sale of Alcohol at Retail
- H251** - An Act relative to charitable alcohol donations;
- H252** - An Act establishing farmer-cideries and authorizing the sale of farmer-cidery products at farmers' markets;
- H258** - An Act expanding access to craft beer;
- H272** - An Act authorizing pub brewer self-distribution and sales on Sundays;
- H281** - An Act relative to alcohol sales on Thanksgiving;
- H289** - An Act returning liquor license control to municipalities;
- H290** - An Act returning liquor license control to municipalities
- H296** - An Act to Allow Non-Profits to Purchase Alcohol from Retail Package Stores for Charitable Events
- H334** - An Act providing municipal control of liquor licenses;
- H357** - An Act Relative to the Sale of Alcoholic Beverages
- S142** - An Act providing municipal control of liquor licenses;
- S152** - An Act expanding the sale of products by farmer distilleries and wineries;
- S193** - An Act relative to retail liquor sales to caterers
- S194** - An Act relative to identification for the sale of alcoholic beverages

Dear Chairs Rep. Tackey Chan and Sen. Paul Feeney, and Members of the Joint Committee on Consumer Protection & Professional Licensure,

The Massachusetts Package Stores Association (MPSA) represents independently owned retailers of beer, wine and spirits throughout Massachusetts. In Massachusetts, the state of the alcohol beverages industry is disruption, transformation and instability. Furthermore, the regulatory system in Massachusetts is under attack from every direction as demonstrated by the thirty-six (36) bills currently before the joint committee. Out of state direct shippers of wine, multi-state corporate chain stores, national box-stores, craft brewers and e-commerce providers all seek to by-pass or usurp three-tier regulation to undermine and replace independent retailers of beer, wine and spirits.

There are many unseen forces at play behind the 36 bills before the joint committee. The global and larger issues include a 1.6% drop in worldwide alcohol beverages consumption, the economic impacts from the ongoing tariff wars against the EU, Canada, Mexico and China, loss of sales resulting from the introduction of recreational cannabis and the potential fallout from the *Tennessee Wine & Spirits Retailers Association v.*

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Baird case that is awaiting a decision by the U.S. Supreme Court. The *Tennessee Wine & Spirits Retailers Association v. Baird* case is deeply alarming because its decision could completely upend the regulation of alcohol beverages in Massachusetts. The effect of all these factors have been materially impactful to the alcohol beverages industry in Massachusetts. It is in this context that MPSA is reporting feedback on twenty-one (21) of the 36 bills. The bills reported on by MPSA directly impact the future of independent retailers of beer, wine and spirits in Massachusetts.

MPSA and its membership of independent retailers oppose the following bills:

- **H208 - An Act relative to large project-based licenses**, allows the licensing authority of a city or town to grant an umbrella license to an owner of a qualifying project subject to the approval of the Alcoholic Beverages Control Commission (ABCC). At issue for MPSA is that the bill does not explicitly state that Section 15 licenses may or may not be given to a qualifying project, which could create a loophole for out of state big box chain stores and grocers to further gain licenses outside the municipal quota system. There will be exploitation of this exemption to municipal quotas as large corporate interests will use it to remove local competition by circumventing the municipal quotas system.

H208 – Oppose or alternatively amend H208 to explicitly exclude Section 15 licenses to be allowed within the exemption.

- **H212 - An Act further regulating storage of alcoholic beverages**, amends GL 138:20 (Storage of Alcoholic Beverages) to allow a manufacturer, wholesaler, importer, farmer-brewer, or farmer-winery to be awarded more than one storage permit in a city or town. H212 is concerning because of the pending *Tennessee Wine & Spirits Retailers Association v. Baird* decision on residency restrictions that is about to be released by the U.S. Supreme Court. If residency restrictions are declared unconstitutional, then large out of state suppliers and chain stores will use H212 to create a price advantage over small retailers and distributors. The result will be large scale disruption, loss of jobs and removal of independent and small businesses within Massachusetts.

H212 - Oppose

- **H219 - An Act relative to the sale of liquor licenses**, permits a city or town to collect a fee for any alcohol license issued by the city or town when a license is sold to another licensee; the fee to be assessed at the time of approval of the transfer of the license in an amount not to exceed 25% of the amount paid for the license. The alcohol beverages industry in Massachusetts is experiencing great disruption and change that is resulting in many long time and multi-generational retailers to sell their businesses. H219 is insult to injury for many of these small businesses who are existing the industry because it is no longer viable for them to operate their stores.

219 - Oppose

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- **H226 - An Act relative to the establishment of a commission for fairness in liquor licensing**, establishes a five-member special commission to study the feasibility of allowing municipalities to grant liquor licenses; articulates the qualifications of commission members; articulates the scope of the commission's investigation; requires the commission to file its recommendations no later than one year after its first meeting. H226 seeks to abolish the state's municipal quota system that was legislatively intended and is relied upon by communities and independent retailers to maintain stability within the marketplace. Quotas were legislatively intended to prevent oversaturation of spirit retailers within cities and towns, uphold communities, establish an incentive system for stores to prevent unlawful sales and help maintain a stable marketplace.

H226 - Oppose

- **H230 - An Act relative to the direct sale of alcoholic beverages for off-premises consumption**, allows a manufacturer to sell alcoholic beverages in kegs, casks, barrels, cans or bottles for consumption off a manufacturer's premises. H230 is a direct assault to the 3-tier system that is legislatively intended to separate manufacturers, wholesalers and retailers in order to prevent the social ills prior to Prohibition from returning. H230 is a return of tied house distribution which is exactly why the three tiers were separated in the 1940s. H230 also entices retailers to introduce retaliatory legislation allowing them to manufacture for off premise retail using new technology available today. H230 is additionally dangerous because it allows legislators to arbitrarily choose winners and losers in the alcohol beverages industry, because retailers will lose sales at the expense of manufacturers gaining access to the retail market.

H230 - Oppose

- **HB251 - An Act relative to charitable alcohol donations**, allows charitable organizations to purchase from section 12 licensees for up to 12 charitable events annually. Section 15 licensees are seeking the same exemption through H296. Charitable organizations should be able to purchase from both Section 12 and Section 15 licensees.

H230 – Oppose, or alternatively support passage of H230 and H296 together.

- **H252 - An Act establishing farmer-cideries and authorizing the sale of farmer-cidery products at farmers' markets**, creates an exception to three tier regulation that allows manufacturers to sell directly to consumers across the state. H252 also allows manufacturers to convert over 2000 farmer markets across Massachusetts into pop-up alcohol beverages retail locations. Simply put, H252 opens the door for manufacturers to become producer, wholesaler and retailer of alcohol beverages. Such an exception usurps the intent of the 3-tier system of alcohol beverage regulation in Massachusetts by blurring previously separated tiers. Exceptions to alcohol laws get exploited. Manufacturers of malt beverages and distilled spirits will demand similar exceptions for themselves. H252 generates further disruption.

H252 - Oppose

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- **H258 - An Act expanding access to craft beer**, Amends GL138:19C (Farmer-Brewery Licenses) and 19D (Pub Brewery Licenses) to allow farmers and pub brewers to fill empty growlers provided by consumers for retail sale; defines growler. Any expansion of brewers (well-intended or not) into the retail tier of three tier regulation is troubling as it undermines 80 years of legislatively intended separation of manufacturers, wholesalers and retailers. Furthermore, exceptions like H258 are inequitable against retailers. Consequently, H258 invites retaliation legislation as technology exists and is marketed throughout North America allowing retailers to manufacture on premise.

H258 – Oppose

- **H272 - An Act authorizing pub brewer self-distribution and sales on Sundays**, allows for pub brewers to fill empty growlers on Sundays provided by consumers for retail sale. H272 expands the abilities of manufactures and brewers to be off premise retailers, which is directly contrary to the 3-tier system that legislatively separate the operations and functions of manufacturers, wholesalers and retailers. H272 is also divisive within the industry and will result in enticing retailers to introduce retaliatory legislation allowing them to manufacture by using new technology available throughout North America. There is already too much disruption and chaos within the alcohol beverages industry. H272 should not proceed.

H272 - Oppose

- **H281 - An Act relative to alcohol sales on Thanksgiving**, allows Section 15 licensees to be open on Thanksgiving Day. There are currently only 2 days a year that retailers in Massachusetts cannot sell alcohol beverages. H281 would only leave Christmas Day as the one-day alcohol beverages cannot be sold. Retailers were against the introduction of Memorial Day sales of alcohol beverages. Regretfully, they were not consulted when an amendment to the 2016 Economic Bill was added and then enacted into law. Independent retailers across the state are strongly opposed to H281.

H281 - Oppose

- **H289 - An Act returning liquor license control to municipalities**, Amends provisions of GL c.138 (Alcoholic Liquors) to strike out provisions that currently cap the number of liquor licenses that a city or town may issue based on the size of the population. In its place, H289 gives cities and towns essentially unfettered discretion to determine the number of licenses the city or town wants to issue, so long as it is done so pursuant to a plan that has been approved by the mayor, city council or board of selectmen. H289 abolishes the state Quota System relied upon by industry and independent retailers. Quotas were legislatively intended to prevent oversaturation of liquor stores within cities and towns. They also uphold communities, establish an incentive system for retailers to prevent unlawful sales and help maintain a stable marketplace.

H289 - Oppose

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- **H290 - An Act returning liquor license control to municipalities**, amends provisions of GL c.138 (Alcoholic Liquors) to strike out provisions that currently cap the number of liquor licenses that a city or town may issue based on the size of the population. In its place, H289 gives cities and towns essentially unfettered discretion to determine the number of licenses the city or town wants to issue, so long as it is done so pursuant to a plan that has been approved by the mayor, city council or board of selectmen. H289 abolishes the state Quota System relied upon by industry and independent retailers. Quotas were legislatively intended to prevent oversaturation of liquor stores within cities and towns. They also uphold communities, establish an incentive system for retailers to prevent unlawful sales and help maintain a stable marketplace. H289 and H290 have the same language.

H290 - Oppose

- **H334 - An Act providing municipal control of liquor licenses**, amends GL 138:17 to allow the legislative body of a municipality that has voted to grant licenses for the sale of alcoholic beverages to determine the number of all categories of liquor licenses issued in the city or town; maintains current quotas for liquor licenses in cities or towns whose legislative bodies take no action. Petitions would no longer need to be filed at the state level. MPSA has repeatedly demonstrated objectively that there is no need to further saturate the marketplace with more stores. MPSA's position is supported by data showing that U.S. alcohol consumption volumes dropped 0.8% in 2018, which was slightly steeper than the 0.7% decline in 2017. Beer consumption has been the worst hit, with volumes down 1.5% in 2018, compared with a 1.1% decline in 2017. There is no objective need to increase Section 15 licenses.

H334 - Oppose

- **S142 - An Act providing municipal control of liquor licenses**, replaces the current system for regulating alcoholic licenses in cities or towns, as embodied in GL 138:17, with a system that gives discretion to a city or town to determine the number of licenses for sale of alcoholic beverages to issue, including seasonal licenses, licenses for restaurants, taverns, and inns, without the existing restraints. There is no objective evidence demonstrating a need to increase the number of Section 15 licenses throughout Massachusetts. The current system offers for home rule petition as an alternative pathway. MPSA's position is supported by data showing that U.S. alcohol consumption volumes dropped 0.8% in 2018, which was slightly steeper than the 0.7% decline in 2017. Beer consumption has been the worst hit, with volumes down 1.5% in 2018, compared with a 1.1% decline in 2017.

S142 - Oppose

- **S152 - An Act expanding the sale of products by farmer distilleries and wineries**, creates an exception to three tier regulation that allows manufacturers of wine and distilled spirits to sell directly to consumers across the state. S152 also allows manufacturers of wine and distilled spirits to sell the products of other manufacturers. S152 is extremely misleading. The title of S152 is "An Act expanding

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the sale of products by farmer distilleries and wineries.” The language in the title implies a narrow scope and impact to the exception created by S152, but the actual language within the bill tells a very different story. The language in S152 creates a broad exception for manufacturers of both “wine and distilled spirits” to sell direct to consumers across the state by converting farmer markets into pop-up retail stores for the sale of alcohol beverages. Direct sale by manufacturers to consumers is completely contrary to 3 tier regulation. Furthermore, the language in the bill allows the manufacturers of “wine and distilled spirits” to sell the products of other manufacturers provided they place their own label on the bottle. This is an example of an alcohol beverages industry trade practice called, “private labeling.” Whether intentional or not S152 misleads legislators into thinking they are helping farmers. This is not the case.

S152 – Oppose

Many of the opposed bills have little to do with protecting the public interest against sales to minors, stopping second party transactions or preventing overconsumption of alcohol beverages. Instead, they materially alter the balance within state regulation for the financial benefit of few at the expense to many. To help contain and reverse the disruption within Massachusetts, MPSA asks that H208, H212, H219, H226, H230, H251, H252, H258, H272, H281, H289, H290, H334, S142 and S152 be amended where applicable, or reported negatively or not proceed. MPSA also supports six (6) bills that have been introduced to the Joint Committee on Consumer Protection & Professional Licensure that strengthen three-tier regulation and assist independent retailers of beer, wine and spirits at a time when they need help.

Bills supported by MPSA and independent retailers of beer, wine and spirits:

- **H233 - An Act Relative to Alcoholic Beverage Containers**, allows to be sold in MA all bottles sizes authorized by Alcohol and Tobacco Tax and Trade Bureau (TTB). H233 is important because it provides clarity to wholesalers, retailers, manufacturers and municipalities across Massachusetts on what can and cannot be sold throughout Massachusetts by aligning the state with what has been scientifically reviewed, tested and permitted by the TTB.

H233 - Support

- **H235 - An Act Relative to the Sale of Alcohol at Retail**, amends GL 138:15 (Alcoholic Liquors: Licenses to Sell Beverages Not to Be Drunk on the Premises) to require that the sale of alcoholic beverages not to be drunk on the premises be conducted through a face to face transaction between the customer and the licensee or by an authorized employee of the licensee who has attained the age of 18 years; and prohibits automated or self-checkout for such sales. The likelihood of a minor making an illegal purchase is heightened with self-checkout. MPSA proffers as evidence 22 cases where illegal sales have occurred at big box stores or supermarkets. H235 incentivizes all retailers of alcohol beverages not to violate state law.

H235 - Support

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- **H296 - An Act to Allow Non-Profits to Purchase Alcohol from Retail Package Stores for Charitable Events**, eliminates the requirement that non-profits purchase from wholesaler and allows them to purchase direct from retailers. H296 sustains brick and mortar small businesses at a time when they are under great stress. Many states have amended their regulations to remove this impediment.

H296 – Support

- **H357 - An Act Relative to the Sale of Alcoholic Beverages**, amends GL 138:15 to eliminate the requirement that 50% of revenue produced by a restaurant licensed as a common victualler be derived from the sale of grocery items. H357 levels the playing field between out-of-state corporate chains and independent retailers by allowing brick and mortar retail stores the same revenue opportunities given to supermarkets while taking nothing away from competitors.

H357 – Support

- **S193 - An Act Relative to Retail Liquor Sales to Caterers**, amends provisions of GL 138:12C relative to a caterer's license for sale of alcoholic beverages at private catering events, by permitting the caterer to purchase liquor from a retailer as well as a wholesaler, and sunsets these provisions at the beginning of 2018. (Please note, the way the sunset is drafted, it appears that the whole caterer's licensing section would sunset effective immediately.)

S193 – Support

- **S194 - An Act relative to identification for the sale of alcoholic beverages**, amends GL 138:34B relative to liquor purchase identification cards by adding provisions that allow a liquor store clerk to rely on a valid photographic, non-duplicate motor vehicle license issued by the registry or department of motor vehicles of another state. Massachusetts is the only state that does not permit retailers of alcohol beverages to use valid out-of-state ID for the purchase of alcohol beverages. Technology is used by virtually every retailer to easily scan and verify valid out of state IDs. This regulation is irrational.

S194 - Support

Thank you for reviewing MPSA's written testimony. Please reach out to MPSA with any questions regarding the three-tier system and independent retailers of beer, wine and spirits.

Respectfully submitted,

Robert A. Mellion, Esq.
Executive Director | General Counsel

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