



## Massachusetts Package Stores Association, Inc.

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July 1, 2020

The Honorable Karen Spilka, President,  
The Honorable Michael Rodrigues, Chair of  
The Joint Committee on Ways and Means &  
Members of the Senate  
State House  
Boston, Massachusetts

RE: **Amendment 77** - Permitting to-go mixed drinks and expanding revenue-generating options for local restaurants to SB2789 - An Act making appropriations for the fiscal year 2020 to authorize certain COVID-19 spending in anticipation of federal reimbursement

Dear Senate President Spilka, Chairman Rodrigues and esteemed Members of the Senate,

Thank you for your continued efforts in addressing the public safety and economic needs of Massachusetts citizens. During these unprecedented times industry and public officials have worked together in addressing many challenges. To this end, the beer, wine, and spirits stores across the state, which comprise the membership of the Massachusetts Package Stores Association (MPSA), have taken on greater burdens to offset and reduce the losses and costs for many others. Section 15 off premise retailers have also actively supported our Section 12 on-premises partners. As an example, MPSA directly assisted with the drafting of H4967 in the spring that resulted in restaurants and breweries to receive needed temporary off-premises takeout and delivery relief. MPSA also supported passage of the Governor's relief bill (H4998).

Restaurants were essentially shut down during the spring, and their inventory on hand could not be sold back to wholesalers. State law also prohibited retail stores from buying the inventory. This led to significant concern that a black market for alcohol beverages would develop where restaurants might be enticed by desperation to sell alcohol illegally. Sustaining our industry partners in their time of need was necessary. In the spirit of cooperation, the best option was to provide immediate relief allowing them to sell off the excess inventory via take-out and delivery. Together, we were successful in preventing a black market from arising, but since implementation of H4998, there has been an increase in sales to minors due to the introduction of 3<sup>rd</sup> party delivery services that are now permitted to home deliver alcohol.

It is in this context that MPSA wishes to voice deep concern about Amendment 77 to S2789, which allows for cocktails to go and expanded take-out and delivery of alcohol beverages into the spring of 2021. Please recognize that no action occurs in a vacuum. In the alcohol beverages industry, there was great disruption going on in Massachusetts before Covid-19. Out of state shippers of wine circumvent state law by leveraging loopholes, New Hampshire continues to offer steep discounts to Massachusetts residents, and distillers seek to retail off-premises. Then there was the Cumberland Farms ballot question. The whole alcohol beverages industry is in turmoil.

The simple truth is that allowing restaurants and distillers to sell cocktails off premise and become semi-permanent off-premises retailers directly impacts the off-premises retail side of the industry. This is because the demand for alcohol is finite in Massachusetts unless people drink more alcohol. Consequently, a loss of sales to off premises or an increase in alcohol consumption in Massachusetts is exactly the outcome of Amendment 77.

Bold efforts by brewers, restaurants, distillers, and others to gain a greater foothold into off premises retail of alcohol beverages are not new. Over 80 bills were introduced this legislative session that chip away at off premises retail through the proposed enactment of "reforms" to breweries, malt beverage producers and distillers. Examples include H230, H256 and S363. Passage of Amendment 77 essentially enacts these bills which had hearings and were referred for further study.

Knowing that bills aimed at relaxing alcohol regulations are moving fast across the country, chain restaurants such as Olive Garden are taking advantage by launching their own private labels of wine and cocktails for home delivery. National chains are also using state legislatures to establish a direct to consumer alcohol beverages marketplace. That is

why the Distilled Spirits Council of the United States and the Wine and Spirits Wholesalers of America are involved.

To be clear, Amendment 77 allows for sixty-four ounces of spirits, which is over 2 ½ bottles of Canadian Whisky to be home delivered with a flask of water. The water arguably makes it a mixed drink under the board language of the amendment. Add in homemade potato chips and now spirits distillers will potentially qualify for home delivery. This is exactly what breweries are doing so that they may home deliver mini kegs, which are 170 ounces or 5 liters.

It must also be acknowledged that delivery to minors is on the rise across the country due to the recent entrance of restaurants and breweries into the off-premises side of retail. Many restaurants across the U.S. are abusing these speedily enacted provisions by not adequately carding IDs at the point of delivery. One way of doing this is by using third-party delivery services. Such practice is not permitted for off-premises delivery, because they must possess an ABCC permit for their vehicle and deliver it themselves from the permitted vehicle. Staff are also trained and certified to serve off-premises. This is not the case for on-premises, which is why the Washington Post recently wrote about minors getting greater access to alcohol.

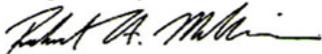
MPSA, also asks that you take into consideration before you vote on Amendment 77 that an understanding had been reached in the spring that has been disregarded. In the accord, retailers were given assurances that no extension of the take-out accommodation would be sought and that there would be no push for cocktails to go. That is not the case, as evidenced by Amendment 77, which creates new privileges for on-premises and extends the takeout and delivery of alcohol accommodation into the spring of 2021. At what point will these new privileges become permanent?

In summary, MPSA also strongly supports reasonable relief for Section 12 licensees, but the relief cannot go so far as to jeopardize the livelihood of the entire off-premises retail tier. It also cannot be at the expense of public safety and welfare. Allowing for cocktails to go and the takeout and delivery of alcohol beverages by on-premises licensees to go into 2021 is opening Pandora's box to illegally serving minors and making these privileges permanent.

One final concern is that legislative accommodations in 3-tier regulation also open the door to interstate litigation from out of state direct shippers. Loopholes in state regulations will be exploited through legal challenges by national chains at the expense of small and independent Massachusetts businesses. Look to the current two direct shipping federal cases in Rhode Island as evidence. It will eventually happen in Massachusetts too.

Under these circumstances, a more conservative approach to relaxing alcohol regulations is recommended. Please do not approve Amendment 77. Thank you for this opportunity to be heard. Please reach out with any questions or concerns.

Respectfully submitted,



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Executive Director | General Counsel