



## Massachusetts Package Stores Association, Inc.

30 Lyman Street - Suite #2 | Westborough, MA 01581  
Phone: (508) 366-1100 | Fax: (508) 366-1104 | Web: [www.masspack.org](http://www.masspack.org)

July 13, 2022

Chair Denise Garlick  
House Committee on Bills in the Third Reading  
24 Beacon Street, Room 20  
Boston, MA, 02133

Vice-Chair Brian M. Ashe  
House Committee on Bills in the Third Reading  
24 Beacon Street, Room 160  
Boston, MA, 02133

**RE: OPPOSITION H4590 (Formerly H475) - An Act relative to the sale of malt beverages produced by a pub brewery**

Dear Chair Garlick, Vice Chair Ashe and esteemed Members of the House Committee on Bills in the Third Reading,

The Massachusetts Package Stores Association (MassPack) commends the work of the House Committee on Bills in Third Reading. Your task throughout these challenging times has not been easy. Particularly as Massachusetts moves ever closer to normalcy triggering many special interests to seek gains.

This session, over two hundred and fifty bills have been introduced that in some manner impact the off-premises retail of alcohol beverages. One of the main issues disrupting the alcohol beverages industry in Massachusetts has been the relentless push in recent years by malt beverage producers to replace local stores even though they had previously agreed not to pursue entry into the retail tier of the three-tier system. H4590 (Formerly H475) - An Act relative to the sale of malt beverages produced by a pub brewery is an example of vertical integration when the supplier seeks to directly retail and market alcohol beverage products. They also hope to set up a direct-to-consumer channel across the country that compete against local retail.

A catalyst to many of the vertical integration bills this session has the national Brewer's Association. Vertical integration is where the producer of alcohol products sells direct to the consumer without using a wholesaler and a retail partner. The ban against vertical integration dates back to Prohibition.

H4590 (Formerly H475) is deeply alarming because it deregulates state alcohol laws that have been in place for over 70 years. The result is the reestablishing of vertical integration that allows alcohol producers and suppliers of up to 50,000 gallons the means to sell direct to consumers outside traditional retail channels. A policy change of this magnitude to the state's three tier system of alcohol regulation is substantially significant. To be clear, this change in the law creates a new class of off-premises selling outlets across the state. By flooding the marketplace with added retail outlets, H4590 will have substantial implications to the future of alcohol retail in Massachusetts. There is no way around the fact that H4590 (Formerly H475) deceptively tears at laws designed to prevent oversaturation of the marketplace. This bill is also the reinstatement of tied house retail that is presumptively prohibited.

*The Massachusetts Package Stores Association (MassPack) is a non-profit trade organization representing the interests of independently owned retail stores of beer, wine and spirits across Massachusetts. Contact MassPack with any questions at (508)366-1100, or email [info@masspack.org](mailto:info@masspack.org). Visit the MassPack website at: [www.masspack.org](http://www.masspack.org)*



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The alcohol beverages industry is not as simply as it was 10 years ago. Allowing manufacturers of malt products to sell directly to consumers across the state is also concerning because of their recent expansion into ready to drink products, and malt liquor products that are high alcohol content knock offs of liquor. It is also important to recognize that any privilege afforded to in-state malt producers must also be provided to out of state competition. Please see *Tennessee Wine & Spirits Retailers Ass'n v. Thomas* - 139 S. Ct. 2449 (2019). Look no farther than the National Brewers Association's litigation across the country to know that an out of state challenge to direct ship into Massachusetts will follow the enactment of H4590. Consequently, the intent to H4590 is far greater than what is likely being advertised.

The potential access to these added alcohol outlets to minors is yet another concern. Underage drinking as reported by the Center for Alcohol Policy was on a decline prior to Covid-19. Now underage drinking is on the rise for the first time in a decade. One of the best tools against underage drinking has been the gatekeeping role provided by off premises beer, wine, and spirits retailers. There is a very strong incentive for local stores to prevent illegal sales. Failure to follow state regulations results in severe criminal, monetary and civil penalties to a local retailer. Will these future retailers be required to have server training? What will be the IDing process be across the state and who will police for illegal sales? The bottom line is that this bill needlessly upends deliberate three tier separation by expanding the retail channels of a highly regulated product.

In summary, H4590 is deeply problematic. It is hoped that the issues raised adequately demonstrate that this bill requires further study. It should not be enacted. Thank you for reviewing MassPack's written testimony. Please reach out with any questions regarding the retail of alcohol beverage in Massachusetts or nationally.

Respectfully submitted,

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