

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

No. SJC-13273

THOMAS COLPACK, CHRISTINE M. LIMOGES,
MICHAEL R. LIMOGES, JAMES GARRETT, and
STEPHEN GARRETT,
Plaintiffs-Appellants,

v.

MAURA HEALEY, in her official capacity as
Attorney General of the Commonwealth of Massachusetts,
and WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,
Defendants-Appellees.

On Reservation and Report from the Supreme
Judicial Court for Suffolk County

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QUESTION PRESENTED

Whether Initiative Petition No. 21-03, "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform" complies with the requirements of Amendment Article 48 of the Massachusetts Constitution, which prohibits a petition from combining subjects that are not related or mutually dependent.

INTRODUCTION

This lawsuit seeks to enjoin Initiative Petition No. 21-03, "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform." R.A. 28-30. The petition violates Amendment Article 48 of the Massachusetts Constitution because it packages together conflicting provisions that are not unified by a sufficiently specific common purpose, address different subjects, and raise distinct and conflicting questions of public policy. As a result, the petition's placement on the ballot would deprive voters of their constitutional right to vote up or down on a single coherent policy proposal.

The drafters who established the initiative process in Massachusetts wanted to allow the people to enact policy reforms that serve the public good. But

they worried that the process could be abused. They denounced the practice of "hitching" alluring provisions to more controversial ones. And they recognized that, unlike legislators, voters would be able to give only an up-or-down vote on initiative proposals, without the ability to offer amendments. To address those concerns, Article 48 constrains the initiative process in a crucial way: only petitions that contain subjects "which are related or which are mutually dependent" are allowed to be placed on the ballot and voted into law.

The petition addresses five unrelated subjects that lack any coherent, unifying purpose that this Court could recognize as supporting the related subjects requirements of Article 48. It would require voters to make a series of conflicting policy judgments: (1) whether to gradually increase the total number of off-premises "wine and malt" licenses a retailer can obtain, (2) whether to immediately decrease the total number of off-premises "all alcohol" licenses a retailer can obtain, (3) whether to relax age identification requirements applicable to all licensees under Chapter 138 of the Massachusetts General Laws (relating to "Alcoholic Liquors"),

(4) whether to prohibit automated checkout of alcohol beverage purchases, and (5) whether to impose a new system of fines that would disproportionately burden virtually all Chapter 138 licensees - except the package stores operated by the petition's proponents.

Unlike the petition this Court approved in *Weiner v. Attorney General*, 484 Mass. 687 (2020), where all of its provisions worked together to facilitate a comprehensive increase in available off-premises retail licenses, Petition 21-03 has no coherent unifying purpose. Its modest proposal to increase statewide license ownership caps would not increase local quotas or local license caps that independently limit available licenses. Moreover, it is substantially undercut by another proposal to decrease statewide license ownership caps for all alcoholic beverages. The petition's remaining provisions also point in different and conflicting policy directions, with one provision offering to ease enforcement against age-related violations and illegal sales while other provisions would ostensibly tighten it.

In reality, the petition's provisions would prevent meaningful reforms by imposing restrictions that would pressure certain retailers to exit the

alcohol business in Massachusetts and dissuade new entrants to the market. Misnamed a "21st century ... reform," the petition is a Trojan horse that combines independently popular measures that purport to modernize Massachusetts licensing laws with regressive measures that favor the narrow business interests of its proponents. Accordingly, though the petition's proponents have characterized it as seeking to "expand the availability of licenses for the off-premises sale of alcoholic beverages," R.A. 34, the petition's overall effect would be the opposite: the cosmetic increase in statewide license ownership caps promised by the petition's initial provisions, which would have little practical impact, is overshadowed by provisions that would reduce license availability, interfere with competition, and restrict consumer choice.

All told, the petition would require the electorate to cast a single vote on five competing and disparate subjects raising significant and distinct policy questions about the number of off-premises licenses a retailer may own (and where), about what regulatory burdens should be imposed on different types of retail channels (and license tiers), and about what practices should be allowed to provide

greater choice and convenience for consumers. The Court should not accept this abuse of the initiative process, which deprives voters of their right to vote "yes" or "no" on a single coherent policy change.

STATEMENT OF THE CASE

Plaintiffs – who are registered voters, taxpayers, and residents of the Commonwealth – seek injunctive relief under Massachusetts General Laws Chapter 214, § 1, a grant of certiorari under Chapter 249, §§ 4 & 5, and declaratory relief under Chapter 231A.

A. Massachusetts' Alcohol Licensing System

The manufacture, import, distribution, and retail sale of alcohol in the Commonwealth is governed by a complex system of laws and regulations. *See generally* G.L. c. 138, §§ 1-78; 204 CMR 2.01-.20. This system restricts the number of licenses a retailer can obtain to sell alcohol to consumers in several overlapping ways. First, population-based quotas limit the total number of retail licenses any city or town can issue, whether for on-premises or off-premises consumption. *See* G.L. c. 138, § 17. Second, for off-premises licenses specifically, the total number of licenses any retailer can hold is capped at both the state-wide

and municipal levels (currently, one per town, two per city, and nine statewide). *Id.* § 15. Third, those off-premises licenses are divided into two different classes: (1) the "all alcohol" license class, which permits the sale of wine, beer, and distilled spirits, and (2) the "wine and malt" license class, which permit the sale of only wine and/or beer. *See id.*

In recent years, there has been increasing interest and support for efforts to modernize the Commonwealth's alcohol regulations to increase competition, encourage innovation, and better serve consumers. In late 2017, an Alcohol Task Force assembled by the Commonwealth's Treasurer and Receiver General recommended reforming the regulatory scheme for alcoholic beverages. *See E. Macey Russell, et al., Alcoholic Beverages Control Commission of Massachusetts: Task Force Report (Dec. 27, 2017), available at https://www.mass.gov/files/documents/2017/12/28/Alcohol%20Task%20Force%20Report_0.pdf.* The Task Force's report recognized that "Massachusetts appears to be experiencing a moment of openness to reform of the liquor licensing laws," *id.* at 25, and it emphasized that many in the Commonwealth believed

that “license restrictions are no longer needed or should be modified,” *id.* at 26.

These reform efforts have been reinforced by a recent U.S. Supreme Court decision holding that the U.S. Constitution prohibits discrimination in the “licensing of domestic retail alcohol stores.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2471 (2019). Breaking down barriers to competition has helped promote flourishing wine regions, an innovative craft beer industry, and a booming whiskey revival. Simultaneously, grocery stores, convenience stores, and supermarkets have sought to bring these highly desired products to consumers with greater convenience and at lower cost. *See generally* Food Mktg. Inst., FMI Wine Study, *The Economic Impact of Allowing Shoppers to Purchase Wine in Food Stores* (2012), available at https://www.fmi.org/docs/gr-state/fmi_wine_study.pdf.

B. MassPack and Petition 21-03

Despite widespread support for reforming Massachusetts’ liquor laws, some groups have fought to protect their market position and keep new entrants out of Massachusetts. Among the staunchest opponents of pro-consumer modernization efforts is a trade group

called the Massachusetts Package Store Association ("MassPack").

MassPack represents local "retail package stores," which are so named to distinguish their retail "package" licenses – to sell alcohol in "packages" to be consumed off premises, see G.L. c. 138, § 15 – from retail "pour" licenses – to sell alcohol for consumption on premises, see *id.* § 12. MassPack's members compete with the grocery stores, convenience stores, and supermarkets that also sell beer, wine, and/or distilled spirits for off-premises consumption.

MassPack's latest attempt to protect its members from competition is Petition 21-03. MassPack has styled the petition a "21st Century" modernization of Massachusetts' alcohol licensing laws, and it has told the Attorney General that the petition's "main feature" is to "expand the availability of licenses for the off-premises sale of alcoholic beverages," R.A. 34. But to its members, MassPack has said the "primary focus" of the petition is to "settl[e] things down on the issue of out-of-control licenses in this state" and "go from 9 down to 7 because it should never have gotten to 9 to begin with." R.A. 9

(MassPack representative opining that proposals to “grow the number of licenses” are “crazy”). Moreover, MassPack has not connected the various other provisions of the petition to the proposed changes in license ownership caps; instead, it has presented them as separately serving different purposes, including to “level[] the playing field,” prevent illegal sales, and “help[] every retailer.” See MassPack, *21st Century Alcohol Retail Reform Ballot Initiative*, MassPack.org, <https://www.masspack.org/ballot-initiative>.

The petition contains five sets of disparate provisions covering different subjects that do not serve a singular, unified purpose that could support the relatedness requirement.

First, in sections 1 through 3, the petition proposes to incrementally increase the statewide ownership cap on “wine and malt” licenses for off-premises consumption of alcohol.¹ See R.A. 28 (Pet.

¹ Technically, this section of the petition applies to the combined number of licenses that any single retailer may hold, but due to the reduction in section 4 of the petition of the ownership cap for the only other class of license, the “all alcohol” license, discussed *infra*, the legal effect of this provision is to increase the cap for “wine and malt” licenses only.

§§ 1-3); see also R.A. 29 (Pet. §§ 5-7) (setting effective dates for changes in section 1 through 3). That statewide cap would increase from 9 (under existing law) to 12 in 2023, from 12 to 15 in 2027, and from 15 to 18 in 2031. See *id.* R.A. 28-29 (§§ 1-3, 5-7). Significantly, however, the petition would not alter the municipal ownership cap for any town or city, see G.L. c. 138, § 15, nor would it change the population-based quotas governing the actual number of licenses any locality can issue, see *id.* § 17, both of which are independent licensing barriers. Without changes to those municipal caps and quotas, the proposed increase to the statewide ownership cap is largely inconsequential.

Second, and in conflict with the first three sections, section 4 would reduce (from nine to seven) the number of "all alcohol" licenses that any one retailer can own or control, while grandfathering retailers that have already secured more than seven such licenses. Compare G.L. c. 138, § 15 with R.A. 28 (Pet. § 4). There is no explanation of how this reduction in the statewide ownership cap serves the ostensible purpose of "expand[ing] the availability of licenses for the off-premises sale of alcoholic

beverages” or modernizing liquor laws, as the petition’s title implies. R.A. 34.

Third, the petition’s section 8 would require that retailers make in-store sales of alcoholic beverages for off-premises consumption through face-to-face transactions, thus eliminating the automated or self-checkout options currently available to consumers. See R.A. 29 (Pet. § 8). This significant change to existing law, which would take effect immediately in 2023, bears no cognizable relationship to either the gradual increase in the statewide ownership cap on “wine and malt” licenses (sections 1-3) or the decrease in the statewide ownership cap on “all alcohol” licenses (section 4). Instead of easing restrictions, this provision makes it harder for convenience stores, grocery stores, and supermarkets to continue offering consumer-friendly options. Nor does it address any plausible enforcement needs arising from the petition’s other sections. In fact, although this section would mandate a “face-to-face” transaction, it would still not require retailers to

verify age (as many automated systems in fact do), regardless of how old or young a customer appears.²

Fourth, the petition's section 9 would change the fine that the Alcoholic Beverages Control Commission may accept in lieu of suspending any license issued under Chapter 138, from 50 percent of gross profits on the sale of alcoholic beverages to 50 percent of gross profits *on all retail sales*. Compare R.A. 29 (Pet. § 9) with G.L. c. 138, § 23. This provision disproportionately affects all licensees except for the narrow interests of proponents' package stores, which predominantly sell alcohol. For their off-premises competitors (like supermarkets) and others in the retail tier (like restaurants), it would astronomically increase the penalty calculation because the fines would now be based on "all" retail sales - including those that have nothing to do with

² "Neither the state Liquor Control Act nor the regulations of the ABCC require identification to be checked as a condition to selling or delivering an alcoholic beverage Each licensee is left to decide for itself what policy to establish on checking identification prior [to] accepting orders for, selling and delivering alcoholic beverages." Frequently Asked Questions, Mass. Alcoholic Beverages Control Comm'n, p. 10 (Spring 2018), available at <https://www.mass.gov/doc/frequently-asked-questions-spring-2018-pdf/download>.

alcohol. Conversely, for licensees in the other non-retail tiers (like manufacturers and distributors), it would altogether eliminate their ability to pay a fine in lieu of suspension because they have no "retail" sales from which to calculate a penalty. This simultaneous expansion and contraction of the fine-in-lieu mechanism (as with the expansion and contraction of the statewide ownership caps) bears no operational relationship to the petition's other subjects.

Fifth, the petition's sections 10-11 would expand an existing statutory safe harbor by adding out-of-state motor vehicle licenses to the types of identification a Chapter 138 licensee may accept to avoid criminal or civil liability for alcohol-related infractions. Compare R.A. 29 (Pet. §§ 10, 11) with G.L. c. 138, § 34B. This change would liberalize the enforcement scheme for all license tiers, retail and otherwise, that have any age-related Chapter 138 compliance obligation. See, e.g., G.L. c. 138, § 34 (minimum age for employee to handle or sell alcohol on behalf of any licensee). It therefore raises another distinct policy question about the stringency of age verification requirements throughout the entire beverage alcohol marketplace. It also runs counter to

and at cross-purposes with the other parts of the petition that ostensibly tighten enforcement protocols by increasing penalties and prohibiting automated checkout.

C. History of Petition 21-03

MassPack's supporters drafted Petition 21-03, gathered the required ten signatures, and submitted the petition to the Massachusetts Attorney General in late Summer 2021. R.A. 66-67. On September 1, 2021, the Attorney General certified that the measure "contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2." R.A. 38, 67; *see also* Mass. Const. amend. art. 48, Init., II, § 3.

In January 2022, the Secretary of the Commonwealth transmitted the petition to the Clerk of the House of Representatives. *See* R.A. 31-32, 68.

On March 14, 2022, the Joint Committee on Consumer Protection and Professional Licensure of the Massachusetts Legislature held a hearing on the petition. At the hearing, the petition's proponents testified that, contrary to their statements to the Attorney General, the petition "is all about" the

"survival of main street retail in Massachusetts," not easing licensing restrictions. Massachusetts General Court, Joint Committee on Consumer Protection and Professional Licensure, Virtual Hearing, (Mar. 14, 2022), <https://malegislature.gov/Events/Hearings/Detail/4228>, at 5:12-5:25. They also emphasized the proposed *reduction* in license caps (from nine to seven) because they believe the Commonwealth should "never should have gone to nine in the first place." *Id.* at 6:50-7:15. And far from characterizing the proposal to increase licenses as a main feature of the petition (as they would subsequently tell the Attorney General) they described it as a "compromise" so that the petition "is not entirely self-serving[.]" *Id.* at 12:20-12:35. Noting these inconsistencies, neutral observers at the hearing concluded that the petition is "confusing," "defies easy explanation," and "generally boils down to a dispute among interest groups." See R.A. 8 (citing Shira Schoenberg, *Liquor license ballot question has layers of controversy*, Commonwealth Magazine (Mar. 16, 2022), <https://commonwealthmagazine.org/politics/liquor-license-ballot-question-has-layers-of-controversy/>).

On March 25, the Attorney General invited feedback on descriptions of the petition to be included in the "Voter Guide" distributed to the electorate in advance of the election. Contrary to its earlier statements, MassPack now argued that the "main feature" of the petition is to "expand the availability of licenses for the off-premises sale of alcoholic beverages," R.A. 34.

On April 12, Plaintiffs filed for relief in the Supreme Judicial Court for Suffolk County to prevent Petition 21-03 from being placed on the ballot. R.A. 4; *see also* R.A. 68 (if proponents file sufficient additional certified signatures by the first Wednesday in July 2022, the Secretary will place the petition on the ballot). The Attorney General filed a motion to dismiss and, in response, the single Justice referred the case to this Court and ordered expedited briefing.

SUMMARY OF ARGUMENT

1. Article 48's relatedness requirement safeguards the initiative process by ensuring that an initiative's provisions are operationally related and serve a uniform common purpose, and that its proponents are not engaged in log-rolling or seeking

to confuse the voters. An initiative petition is invalid if it requires voters to make a single yes-or-no decision regarding different policy questions. (See Section I, below, pp. 24-28).

2. Petition 21-03 violates Article 48 because it addresses unrelated subjects that raise different and conflicting questions of public policy, are not operationally related, and do not serve any coherent, uniform purpose. In particular, the petition purports to increase the statewide "wine and malt" license ownership cap (without increasing local quotas or local license caps) and to decrease the statewide "all alcohol" license ownership cap. Its remaining provisions also follow this up-and-down pattern by proposing conflicting policy goals, with one provision purporting to increase protections against age-related violations and illegal sales (through a ban on existing automated checkout systems for alcohol and a new system of penalties substantially raising fines for non-package store licensees) while other provisions appear to decrease them (through a new safe harbor for retailers that allows reliance on out-of-state drivers' licenses as proof of age). There is no common purpose that can unify these disparate

provisions without being too narrow to faithfully describe all subjects of the petition or too broad, and thus swallowing the relatedness requirement. (See Section II, below, pp. 28-50).

3. Contrary to the arguments advanced in the Attorney General's motion to dismiss (Mot.), there is no time bar to resolving the merits of this case. Because a constitutionally improper law is void ab initio, it cannot be made valid "by any lapse in time[.]" *Dunn v. Attorney Gen.*, 474 Mass. 675, 686 (2016) (quoting *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 326 (1951)). (See Section III, below, pp. 50-54).

STANDARD OF REVIEW

Both the Attorney General and this Court have an obligation to ensure conformity with Article 48. *Carney v. Attorney Gen.*, 447 Mass. 218, 225 (2006). A challenge to the decision by the Attorney General to certify an initiative petition is reviewed de novo. See *Gray v. Attorney Gen.*, 474 Mass. 638, 644 (2016). Article 48 demands "strict adherence" to its requirements "to ensure the integrity of the initiative process." *Carney*, 447 Mass. at 225

(citation omitted); see also *Anderson v. Attorney Gen.*, 479 Mass. 780, 785-86 (2018).

ARGUMENT

I. ARTICLE 48'S "RELATEDNESS REQUIREMENT" PROTECTS MASSACHUSETTS VOTERS FROM ABUSE OF THE INITIATIVE PROCESS.

Under Article 48 of the Massachusetts Constitution, measures proposed by initiative petitions cannot be certified, presented to the voters, or voted into law unless they contain only subjects "which are related or which are mutually dependent." Mass. Const. amend. art. 48, Init., II, § 3. This requirement was a key "compromise" in the Commonwealth's overall decision to adopt an initiative process. *Carney*, 447 Mass. at 226. It was "intended to ... forestall 'abuse' of the [initiative] process," *id.*, and to "foreclose ... misapplications of initiative petitions that ... had occurred in other States." *Id.* at 228.

The principal abuse feared by Article 48's drafters was "log-rolling" – the ruse of combining in a single initiative "what is popular with what is desired by selfish interests, as the proposers of the measures may choose." *Anderson*, 479 Mass. at 787 (quoting *Carney*, 447 Mass. at 227). The drafters

worried that the initiative process was especially vulnerable to this form of manipulation because unlike legislators, who may amend proposed laws, voters “have no choice save to pass or reject a measure exactly as framed by the petitioners.” *Carney*, 447 Mass. at 230, n.21 (internal quotation marks omitted); see also *Anderson*, 479 Mass. at 786 (“A voter cannot ‘sever the unobjectionable from the objectionable,’ and must vote to approve or reject an initiative petition in its entirety.”).

The delegates were also concerned that initiative proponents would “exploit [the] process to their own ends by packaging proposed laws in a way that would confuse the voter.” *Carney*, 447 Mass. at 228. They “denounced” the practice of “hitching” alluring provisions at the beginning of an initiative petition to more controversial proposals buried beneath. *Id.* at 229; see also *Anderson*, 740 Mass. at 788, n.6, quoting *Carney*, 447 Mass. at 227, n.20 (criticizing the “blind wording of titles” and the use of “catchy provisions” that might “wheedle” the voters).

As an example, the drafters discussed Oregon’s adoption of a new tax through the initiative process. *Carney*, 447 Mass. at 227, n.20. Proponents “hitched

to the front of [the new tax], like a locomotive to the front of a freight train, a proposal that there should be no more poll or head taxes.” *Id.* (quoting 2 Debates in the Massachusetts Constitutional Convention 1917-1918, 567 (1918) (Debates)). While this purported tax relief was superficially attractive, it had little real effect because all of “the important” poll and head taxes had already been abolished. *Id.* (internal quotation marks omitted). Accordingly, even though the petition’s provisions related to the same broad subject - taxation - its deceptive combination of popular and controversial provisions represented the type of abuse foreclosed by Article 48’s relatedness requirement.

This Court has faithfully adhered to and enforced the drafters’ understanding of the relatedness requirement. The Court’s teachings recognize that Article 48 prohibits the practice of including several diverse propositions in a single petition, so that voters will be induced to pass all of them, even though the propositions raise different policy questions and would be unlikely to pass if they were submitted separately. *See Carney*, 447 Mass. at 227.

To satisfy the related subjects requirement, the Court must “identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane.” *Abdow v. Attorney Gen.*, 468 Mass. 478, 499-500 (2014) (quoting *Mass. Teachers Ass’n v. Sec’y*, 384 Mass. 209, 219-20 (1981)). The common purpose “may not be so broad as to render the relatedness limitation ‘meaningless.’” *Carney*, 447 Mass. at 225 (quoting *Mass. Teachers Ass’n*, 384 Mass. at 219). Therefore, it “is not enough that the provisions in an initiative petition all ‘relate’ to some same broad topic at some conceivable level of abstraction.” *Anderson*, 479 Mass. at 796 (quoting *Carney*, 447 Mass. at 230). Instead, “to avoid ‘abuse’ of the process and confusion among voters, while an initiative petition may contain numerous subjects, it must embody one purpose[.]” *Id.* Each of its subparts “‘must express an operational relatedness’ in furtherance of that purpose, so that ‘a reasonable voter [can] affirm or reject the entire petition as a unified statement of public policy.’” *Id.*

In evaluating compliance with Article 48’s relatedness hurdle, the Court considers two questions:

First, [d]o the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on "yes" or "no" by the voters? ...

Second, does the initiative petition express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy?

Weiner, 484 Mass. at 691-92 (citations omitted); see also *Dunn*, 474 Mass. at 680. Both questions must be answered affirmatively to satisfy Article 48.

II. PETITION 21-03 VIOLATES ARTICLE 48 BECAUSE ITS PROVISIONS ARE NOT OPERATIONALLY RELATED AND DO NOT SERVE A UNIFORM PURPOSE.

Petition 21-03 violates Article 48 because it does not reflect a unified statement of public policy. Instead, it impermissibly combines multiple contradictory positions: both lifting and tightening restrictions on licenses (Pet. §§ 1-7) and (2) strengthening and loosening protections against age-related violations in a way that picks winners and losers in the overall competitive scheme (*id.* §§ 9-11). R.A. 28-30. There is no theory of relatedness that would pass muster under Article 48 because any proposed "common purpose" would be either too narrow to faithfully describe the divergent subjects of the

petition or too broad to give meaning to the relatedness requirement. *See, e.g., Opinion of the Justices*, 422 Mass. 1212, 1220-21 (1996) (“An interpretation of the general purpose of the initiative as being restricted to issues involving legislative compensation would be too narrow. On the other hand, the general purpose proposed by the drafters is unacceptably broad.”).

A. There is No Sufficiently Specific Purpose That Could Unify the Petition’s Provisions Consistent with Article 48.

1. The Attorney General’s proposed purpose cannot satisfy the relatedness requirement because it is too broad.

The Attorney General attempts to defend the petition by relying on an impermissibly broad statement of purpose. Specifically, the Attorney General asserts that Petition 21-03’s common purpose is that it “alter[s] the restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises.” R.A. 53 (Mot. at 13). This argument misperceives both the degree of relatedness required by this Court’s precedent and what the petition would actually do.

To pass muster under the Article 48 relatedness standard, each subject of the petition must be

“germane” to one common purpose. *Abdow*, 468 Mass. at 499. The common purpose must be sufficiently specific, because at a “high level of abstraction, any two laws may be said to share a ‘common purpose.’” *Carney*, 447 Mass. at 226. Accordingly, the common purpose may not swallow the relatedness requirement. *Id.* at 225.

The common purpose advanced by the Attorney General fails this test. Describing the petition as “altering” and “changing” the number and allocation of alcohol retail licenses is not accurate because, as discussed above, the petition also includes three other significant policies that do not relate to the number or allocation of licenses. Furthermore, even if this defect could be ignored (it cannot) without specifying what the change in licenses is designed to accomplish – the Attorney General’s proposed purpose is unacceptably broad. It does not reflect a coherent policy on which citizens can meaningfully “vote up or down as a whole.” *Anderson*, 479 Mass. at 798.

A simple way to identify an overbroad purpose is to see if it has multiple sub-purposes; the Attorney General’s does. This Court has consistently rejected similarly broad statements of purpose. In *Gray*, the

Court held that a common purpose to impose “new procedural requirements on ... educational standards” was too conceptual in light of the different operational impacts of the petition’s subsections. 474 Mass. at 648-49. The Court identified two distinct sub-purposes within that broad purpose statement: (1) “redefining the contents of the academic standards and curriculum frameworks for the Commonwealth’s public schools”; and (2) requiring annual publication of mandatory diagnostic assessment tests from the prior year. *Id.* at 647-48. Despite the fact that all of the sections dealt with educational matters, the petition still failed the relatedness test. *Id.*

Likewise, in *Carney*, “promoting the more humane treatment of dogs” was rejected as an overbroad purpose. There were two sub-purposes beneath that umbrella: banning dog racing and increasing penalties for the abuse of animals. 447 Mass. at 231. Although all subjects of the petition related to protection of dogs, the Court found that the petition did not meet the relatedness test. *Id.* at 232.

And in *Opinion of the Justices*, 422 Mass. 1212, the Court invalidated a petition ostensibly seeking to

make "government more accountable to the people," holding that its purpose was "unacceptably broad." *Id.* at 1221 ("One could imagine a multitude of diverse subjects all of which would 'relate' to making government more accountable to the people."); see also *Anderson*, 479 Mass. at 795-96 (common purpose to promote "social mobility" too abstract).

The same analysis applies here. The Attorney General's purpose is overbroad because it is merely a cover for multiple, distinct sub-purposes, e.g., purportedly increasing the statewide ownership cap on a certain type of alcohol license while also decreasing the statewide ownership cap on another; and ostensibly increasing protections against age-related alcohol infractions while also decreasing such protections. See R.A. 27-28 (Pet. §§ 1-3, 4, 5-7, 9-11). Even though all the subjects in Petition 21-03 arguably relate to regulation of alcohol, like the cases discussed above, that is too abstract a purpose to meet the relatedness standard.

The breadth of the purpose advanced by the Attorney General is underscored by the "multitude of diverse subjects" one could imagine that would "relate" at some high level of abstraction to the

number and allocation of licenses. *Opinion of the Justices*, 422 Mass. at 1221. For example, re-imposing 1920s-era prohibitions, eliminating all restrictions on alcohol licenses, and every permutation in between could be said to relate in some fashion to a “change” in the “number and allocation” of licenses. The types of provisions that could “anticipate and address [the] potential consequences” of all of these diverse subjects would be even more numerous. *See Oberlies v. Attorney Gen.*, 479 Mass. 823, 832 (2018) (characterizing operational relatedness). But combining such disparate provisions would not reflect a coherent policy and therefore could not (and does not) satisfy Article 48.

2. MassPack’s proposed purpose is too narrow and does not accurately describe the petition.

In contrast to the purpose advanced by the Attorney General, MassPack’s official theory is that the petition’s “main feature” is to “expand the availability of licenses for the off-premises sale of alcoholic beverages.” R.A. 34. That description is

too narrow and fails to encompass all subjects in the petition.³

The petition goes far beyond merely expanding a statewide license ownership cap. It would also decrease the cap on "all alcohol" licenses, R.A. 28 (Pet. § 4); change identification requirements, R.A. 29 (§§ 10, 11); increase fines for grocers and convenience stores (among numerous other licensees), *id.* (§ 9); and prohibit automated check-out, *id.* (§ 8). Those provisions not only address unrelated subjects, they raise differing and controversial policy questions that are entitled to be considered separately by the voters. Moreover, presenting the license increase at the front of the petition as "expand[ing] the availability of licenses" is itself misleading because, as discussed above, it likely will not result in any new licenses. The nominal expansion in the statewide ownership cap for "wine and malt"

³ As noted, in statements to its members, far from presenting expanded licenses as a centerpiece, MassPack has called it a "compromise" so that the petition is not "entirely self-serving." This inconsistency, particularly in light of the Attorney General's different and broader theory, is itself telling. *Cf. Anderson*, 479 Mass. at 795 (noting that it was "telling" when the Attorney General and proponents could not agree on a unified purpose).

licenses simply does not “dominate what each segment provides separately[.]” *Carney*, 447 Mass. at 226.

The reason that neither proponents nor the Attorney General have identified an alternative purpose that is neither too broad nor too narrow is because there is none.

B. *Weiner* Confirms That the Petition is Constitutionally Invalid.

The Attorney General incorrectly represents in her motion to dismiss that this Court approved in *Weiner* the same purpose that she proposes should apply to Petition 21-03. R.A. 53-54 (Mot. at 14-15). The purpose applied in *Weiner* was not to “alter the restrictions on the number and allocation of licenses,” R.A. 43 (Mot. at 3), but rather to “lift[] ... restrictions on the number and allocation of licenses,” *Weiner*, 484 Mass. at 692 (emphasis added), a critical difference that communicated to the voter what the petition actually did.

She is also incorrect in arguing that Petition 21-03 satisfies Article 48 because it is “substantially similar” to the petition considered in *Weiner*. R.A. 43 (Mot. at 3). In *Weiner*, the Court considered a comprehensive proposal to increase and

expand the number of alcohol licenses. The petition did so by creating a new "food store" class of off-premises license and eliminating the per-entity limit on all off-premises licenses. *Weiner*, 484 Mass. at 689. To support this broadscale expansion of off-premises licenses and anticipate its potential consequences, the petition's ancillary provisions included a commensurate strengthening of enforcement measures: it proposed to create an age verification requirement (applicable to off-premises licensees only) and set aside funding for increased enforcement that might arise from the expanded number of such licenses being issued by municipalities across the Commonwealth. *Id.* at 690.

Examining the proposed structure as a whole, the Court concluded that it conformed to Article 48. The foundation for that conclusion was the Court's finding that the petition's dominant and overriding purpose was to "lift[] ... restrictions on the number and allocation of licenses," *id.* at 692, and that the petition would have "directly implement[ed] this purpose." *Id.* Specifically, it would have done so through a detailed, integrated plan to (1) create a new category of off-premise "food store" licenses that

would not be subject to caps and quotas; and (2) “gradually increase and ultimately eliminate the per-entity limit” for existing licensees under section 15. *Id.* at 692-93.

The Court reasoned that these changes, taken together, would open the alcohol market segment to retailers not already experienced in alcohol sales. *Id.* That, in turn, might “result in more unlawful purchases of alcohol by underage persons” and “necessitate greater enforcement efforts by the commission.” *Id.* The petition’s remaining provisions – the “new age-verification requirements” and the “increased funding for enforcement” – were thus “operationally related” to and directly supported “the common purpose of lifting restrictions on licenses.” *Id.* at 696. Since all provisions were accounted for and supported the common purpose, the Court held that the petition satisfied the related subjects requirement. *Id.* at 692, 694-95.

That analysis does not hold here. Petition 21-03 lacks any dominant and overriding purpose to alleviate licensing restrictions. Most obviously, unlike the proposal in *Weiner*, the provisions of MassPack’s petition do not all support and revolve around the

“lifting [of] restrictions” on licenses. Instead, the petition would both lift and tighten license ownership caps, *compare* R.A. 27-28 (Pet. §§ 1-3, 5-7) (increasing caps) *with* R.A. 28 (§ 4) (decreasing caps), and importantly, would not change the number of licenses available to retailers, which are independently capped by quotas. Moreover, three of the petition’s five proposals pertain to regulatory matters that have nothing to do with the number or allocation of licenses. See R.A. 29 (Pet. § 8) (prohibiting self-checkout sales); *id.* (§ 9) (changing the calculation of fines); *id.* §§ (10, 11) (adding out-of-state motor vehicle licenses to the safe harbor for age-related compliance). Moreover, the non-licensing provisions also point in different policy directions: some would tighten regulatory restrictions and others would loosen them, without any coherent unifying goal. As a result, these different policies cannot fit into the operational relatedness framework the Court applied in *Weiner* because they do not “anticipate and address a potential consequence” of a single purpose.

Hensley v. Attorney General, 474 Mass. 651 (2016) also involved a petition proposing a regulatory

framework, but it, too, is distinguishable from Petition 21-03. The petition in *Hensley* proposed a comprehensive framework to legalize, regulate, and tax recreational marijuana. *Id.* at 658. The voter there could easily vote up or down on whether recreational marijuana should be made legal - which was the "centerpiece" of the petition - and the fourteen "detailed" other provisions each effectuated that purpose, giving rise to a "detailed plan" and "integrated scheme" that a voter could understand. *Id.* at 658-59. In contrast, the petition here is a random assortment of policies, not an "integrated scheme."

As in *Carney*, and unlike in *Weiner*, Petition 21-03 is an archetypal example of impermissible "log rolling" that seeks to "wheedle" citizens into voting for unrelated policies that they would not otherwise accept. *Anderson*, 479 Mass. at 787, n.6 (internal quotation marks omitted). There is no rational connection between the petition's proposed provisions (other than the self-interest of MassPack members), and its submission to the voters would therefore be unconstitutional.

C. The Petition's Non-Licensing Provisions Raise Significantly Different Policy Considerations.

The policy tensions between the proposed license modifications are magnified and exacerbated by the petition's other equally important, but also unrelated, provisions. These proposals each raise such significant policy considerations that the substantial differences between them dominate any minor similarities. See *Weiner*, 484 at Mass. at 691-92 (citations omitted).

Out-of-State Drivers Licenses. MassPack's proposal to permit licensees to rely on out-of-state drivers licenses when handling or selling alcohol (sections 10-11) would ease enforcement protocols and broaden an existing safe harbor for age-related infractions, thus encouraging the sale of alcohol. R.A. 29. That change has no discernable connection to the progressive proposal to nominally increase the statewide ownership cap for "wine and malt" licenses, or the regressive proposal to decrease the cap for "all alcohol" licenses. Nor is it plausibly related to the separate proposals that seek to ratchet up enforcement (for certain retailers) by basing regulatory penalties on all retail sales and to

decrease consumer convenience by prohibiting automated checkout.

Penalty Change. The proposed penalty increase (section 9) suffers the same defect. See R.A. 29. This section would change the formula for calculating penalties in lieu of a license suspension, from 50 percent of alcohol sales to 50 percent of all retail sales. Evaluating whether to adopt this new formula requires a significant policy decision concerning where Massachusetts consumers should be able to purchase wine, beer, and spirits, and any ancillary connection to the number of available licenses is wholly overshadowed by that policy decision.

Under the proposed new formula, retailers that do not predominantly sell alcohol, such as grocers and convenience stores, would face massive fines on sales that have nothing to do with alcohol (to say nothing of the potential effects on licensees in other tiers). To counter that possibility, these retailers would be forced either to exit the retail alcohol business or pass the risk of incurring the new penalties to their customers by raising prices across all sales. That difficult and unfair choice would create a significant disincentive for food and convenience stores to sell

alcohol, regardless of any nominal license expansion under the earlier sections of the petition. Moreover, it shares no perceptible nexus with the statewide "all alcohol" license ownership cap reduction under section 4. See R.A. 28. And it is at odds with the proposal to expand acceptable forms of identification (and thus loosen enforcement) under sections 10-11. See R.A. 29.

Prohibition of Automated Checkout. The petition's prohibition of automated checkout (section 8) also lacks any cognizable nexus to the petition's other subparts. See R.A. 29. The Attorney General has argued that, as in *Weiner*, this prohibition is appropriate to offset increased enforcement risks stemming from the proposed license expansion. That argument is unpersuasive.

Unlike the comprehensive license expansion in *Weiner*, which would have created a new, uncapped class of licenses for retailers inexperienced in alcohol sales and eliminated caps altogether for existing section 15 licensees, 484 Mass. at 692, this petition would affect only existing licensees' ability to compete for a closed universe of licenses under locality caps that remain unchanged. That incremental

right for existing licensees to fill a handful of unused licenses across the Commonwealth, over the next decade, is not comparable to the comprehensive licensing reforms in *Weiner*. It therefore would not plausibly give rise to the enforcement concerns at issue in that case.

Moreover, unlike the finely calibrated enforcement proposals in *Weiner* – which would have required age verification to offset the increased risk – this petition would simply prohibit automated checkout without ensuring that retailers actually verify a purchaser's age. And for those that choose to do so, the petition simultaneously *relaxes* age verification requirements under sections 10 and 11 (addressing out-of-state identification). The petition's proposed policies are therefore ill-fitted to address any hypothetical concerns about sales to minors.

In fact, and contrary to the petition's purported purpose of modernizing Massachusetts law and expanding licenses, the automated checkout provision and penalty changes are manifestly designed to favor the interests of local liquor stores at the expense of new entrants and competitors. These protectionist measures raise

serious constitutional concerns. See *Tenn. Wine*, 139 S. Ct. at 2474. But at a minimum, whether Massachusetts voters wish to adopt them is a weighty policy issue that should be presented for what it is and disaggregated from other weighty policy issues before presentment to the voters.

D. The Petition is a Classic Example of Improper Logrolling.

The petition impermissibly "hitches" regressive and controversial proposals (to reduce "all alcohol" license ownership caps, hike penalties for numerous licensees including grocers and restaurants, and prohibit automated checkout) to progressive and popular provisions (to increase "wine and malt" license ownership caps and relax identification requirements).

MassPack has framed Petition 21-03 as modernizing Massachusetts law through "21st Century" reform and argued to the Attorney General (most recently) that its "main feature" is to "expand the availability of licenses for the off-premises sale of alcoholic beverages," R.A. 34. That description is inaccurate and can only mislead voters.

Although the petition's initial sections appear to expand license caps, in a classic example of "hitching" and "logrolling," the petition's section 4 *reduces* (from nine to seven) the number of "all alcohol" licenses that any one retailer can possess, while grandfathering those that have already secured more than seven licenses. *Compare* G.L. c. 138, § 15 with R.A. 28 (Pet. § 4). MassPack has thus placed an "alluring provision" to increase license ownership caps "at the beginning" of its petition and "bur[ied] more controversial proposals farther down." *Carney*, 447 Mass. at 229. There is no stated policy objective for reducing the ownership cap on "all alcohol" licenses and certainly none that would advance the stated goal of expanding license availability overall.

Compounding this problem is the fact that, even viewed in isolation, MassPack's promise to "expand the availability of licenses," R.A. 34, is likely to confuse voters because it conceals the limited nature of the expansion. While the petition would, over time, raise statewide ownership caps on "wine and malt" licenses, it would not alter the population-based quotas that independently restrict the number of licenses each city or town can issue. *See* G.L.

c. 138, § 17. Nor would it change local ownership caps that limit a retailer's alcohol footprint in any city or town, regardless of statewide limits. See *id.* § 15. Without corresponding changes to those licensing caps and quotas, the petition's promise to expand license availability is illusory. Cf. *Carney*, 447 Mass. at 227, n.20 (discussing Oregon tax initiative that failed to disclose that proposal to eliminate taxes was misleading because the taxes had already been abolished under existing law).

E. The Petition Puts Voters in the Untenable Position of Either Supporting or Rejecting Multiple Important but Disparate Subjects.

Petition 21-03 violates the fundamental tenet of Article 48 relatedness as interpreted by this Court. This Court has consistently held that petitions that place voters in the "untenable position" of voting yes or no on "two or more dissimilar subjects" violate Article 48 and should not appear on the ballot. *Weiner*, 484 Mass. at 691 (quoting *Abdow*, 468 Mass. at 499, in turn citing *Carney*, 447 Mass. at 224-32); *Carney*, 447 Mass. at 230-31. To Plaintiffs' knowledge, there is no case that has ever upheld a petition containing such disparate subjects and raising such important, separate policy issues.

In *Carney*, the Court considered a proposal to ban parimutuel dog racing while separately amending the criminal law to address animal cruelty. 447 Mass. at 219. The Court held that, by joining these different provisions - one "controversial" and the "insignificant and non-controversial" - the petition violated Article 48, and would have forced voters to answer diverse policy questions with a single yes-or-no vote. *Id.* It was not enough that both provisions related to the "same broad topic" - the humane treatment of dogs - because "[t]he voter who favors increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing." *Id.* at 230-31. The same is true here: voters who favor relaxing licensing restrictions should be permitted to register that "clear preference" without also being required to support a reduction in "all alcohol" licenses, penalty hikes for food and convenience stores, and a ban on self-checkout.⁴

⁴ *Carney* also warned against mixing criminal law with regulatory changes. *Id.* at 231-32. The Court explained that the voters who might support

The Court's decision in *Gray* leads to the same conclusion. There, the Court held that changes to "academic standards and curriculum frameworks" were not related (within the meaning of Article 48) to a policy of "better informing educators about the assessment tests," 474 Mass. at 647. Although both proposals would impose "new procedural requirements on ... educational standards" - that connection was too "conceptual" and "abstract" to amount to a "unified statement of public policy." *Id.* at 648-49. The Court emphasized the "significant public debate" surrounding each topic and held that it would be

"increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing[,] just as the converse is true. See *id.* at 231. The Court found it "significant[]" that in "none of the petitions cited by the Attorney General do we find the same mixture of criminal law and administrative overhaul." *Id.* at 232; see also *Abdow v. Attorney Gen.*, 468 Mass. 478, 503 (2014) (contrasting the petition at bar from the "mixture of criminal law and administrative overhaul" found in *Carney*). Here, one of the subjects in Petition 21-03 implicates criminal law: sections 10 and 11 add out-of-state motor vehicle licenses as a type of identification on which a licensee, employee, or agent may reasonably rely as a defense to criminal liability, among other types of liability. This Court should be wary of putting voters in the position of having to vote on a criminal reform in the context of changing administrative regulations of alcohol licenses.

unfair to require voters to address distinct policy issues in a single vote. *Id.* at 649.

The Court applied a similar analysis in *Anderson*. There, the Court held that it was improper to ask voters to impose a new graduated tax on resident millionaires, and earmark revenues raised by the new tax for education and transportation spending. 479 Mass. at 781. Noting that it was “telling” that the petition’s proponents had “difficulty” identifying the petition’s “purported purpose” at a sufficient level of granularity, *id.* at 795, the Court emphasized the important and different policy considerations raised by each of the petition’s proposals. As the Court explained, “[p]lacing voters in the untenable position of either supporting or rejecting two important, but diverse, spending priorities, accompanied ... by a major change in tax policy” reflected “the specific misuse of the initiative process that the related subjects requirement was intended to avoid.” *Id.* at 324-25 (quoting *Gray*, 474 Mass. at 649).

The same analysis applies here. As in these cases, the MassPack petition puts voters in the untenable position of either supporting or rejecting different and important policy changes to the

regulatory and enforcement requirements accompanied by both an increase and decrease in license ownership caps. More specifically, the petition's conflicting provisions would require voters to vote up or down on independent provisions that accomplish diametrically opposing goals. *Weiner*, 484 Mass. at 691. A voter who favors easing licensing restrictions is likely to support that policy for all types of licenses. But that voter could only vote to increase the cap on "wine and malt" licenses by also voting to reduce the cap on "all alcohol" licenses, putting her in the position Article 48 seeks to avoid. Conversely, the voter who supports stricter licensing caps cannot express that policy preference for "all alcohol" licenses without also voting to increase the cap on "wine and malt" licenses, a policy she presumably does not support.

Any abstract connection between those policies does not overcome the unfairness of requiring voters to address them with a single up-or-down vote.

III. There is No Time Bar to Considering the Important Issues Raised in This Case.

The Attorney General has argued in her motion to dismiss that Plaintiffs' complaint is untimely because

it was not filed before February 1, and this Court's decision in *Dunn* "strongly urge[d] plaintiffs" to file Article 48 challenges before that date. R.A. 49 (Mot. at 9). While Plaintiffs regret the circumstances complained of in the motion, the Attorney General's arguments are contrary to law and should be rejected.

Dunn made clear that there is "no ... deadline in our Constitution or laws" for filing an Article 48 challenge.⁵ *Dunn*, 474 Mass. at 686. Nor can Article 48 challenges be "barred by laches" because a violation of Article 48 "'will mean that no valid law [is] enacted, no matter how great the popular majority may [be] in its favor[.]'" *Id.* (quoting *Sears*, 327 Mass. at 321, 326). *Dunn* thus rejected the Attorney General's *laches* defense (for a case filed later than this one), concluding that "[a]n unconstitutional law

⁵ This is consistent with the Attorney General's website instructing the public on the initiative petition process and its attendant deadlines. Although it lacks the force of law, it fails to even encourage voters to file a challenge to certification by a particular date. See Attorney General's Office, The initiative petition process, <https://www.mass.gov/info-details/the-initiative-petition-process>; Attorney General's Office, Constitutional requirements for initiative petitions, <https://www.mass.gov/service-details/constitutional-requirements-for-initiative-petitions>.

cannot be made valid by the laches of anyone or by any lapse of time." *Id.* at 686; accord *Mass. Teachers Ass'n*, 384 Mass. at 213, 231, n.19. Accordingly, an Article 48 challenge can be heard even after "the measure ha[s] been submitted to the people." *Sears*, 327 Mass. at 326.

To be sure, *Dunn* acknowledged that certain practical complications may arise when Article 48 challenges are brought later in an election year and urged parties to file earlier, if possible. *Dunn*, 474 Mass. at 687. But *Dunn* never purported to impose any judicially created timing requirement or to overrule precedent holding that laches is "not a defence [*sic*]" to an Article 48 challenge. *Sears*, 327 Mass. at 327. In fact, it applied that precedent. See *Dunn*, 474 Mass. at 689 (ruling on the merits). And if the Court were to overturn that precedent, it would need to address important principles of stare decisis and confront the rule that discretionary equitable doctrines cannot extinguish legal claims, which the Attorney General has not even attempted to address in her motion. See *Srebnick v. Lo-Law Transit Mgt., Inc.*, 29 Mass. App. Ct. 45, 46 (1990) (laches is not

"generally available as a defense to a legal claim")
(citing *Cohen v. Bailly*, 266 Mass. 39, 48-49 (1929)).

Tellingly, the Attorney General here chose not to comply with a similar non-binding directive announced by this Court to publish petition titles and "Yes"/"No" statements pursuant to G.L. c. 54, § 53 "no later than twenty days before February 1 of the election year, so that parties who commence an action asserting constitutional challenges under art. 48 might also bring a statutory claim under § 53." *Hensley v. Attorney Gen.*, 474 Mass. 651, 671 (2016). The Court sought to avoid a "mad scramble" by providing voters with all information they could need to allow them to make an informed decision about whether to file a challenge. *Id.* Here, the Attorney General did not solicit comments from the proponents and interested parties on the title and "Yes"/"No" statements until late March. R.A. 36.

The Court should decline the Attorney General's invitation to apply – for the first time ever – an equitable defense to bar a constitutional claim.

* * * *

There is no meaningful connection between Petition 21-03's various provisions. The marginal similarities between the different provisions are far outweighed by their substantive differences, and the various provisions are not operationally related as a unified statement of public policy. The petition puts Massachusetts voters in an impossible position of not being able to make a coherent "yes" or "no" vote. *Carney*, 447 Mass. at 226. This Court should grant the relief requested to protect Massachusetts voters and to ensure that the unconstitutional initiative is not placed on the ballot.

CONCLUSION

For these reasons, the Court should remand this case to the county court to enter judgment declaring that the Attorney General's certification of Initiative Petition 21-03 is not in compliance with Article 48 and that the petition is not suitable to be placed on the ballot in the 2022 Statewide election and enjoining the Secretary from doing so.

Respectfully submitted,

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By their attorneys,

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Dated: April 22, 2022

CERTIFICATE OF COMPLIANCE

I, Katherine A. Baker, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a) (13) (addendum);

Mass. R. A. P. 16 (e) (references to the record);

Mass. R. A. P. 18 (appendix to the briefs);

Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and

Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, 10½ characters per inch and contains 50, total non-excluded pages prepared with Microsoft Word 2013.

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I hereby certify that on April 22, 2022, I caused a true and accurate copy of the foregoing brief to be served by email upon counsel for the defendants:

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2022-37

THOMAS COLPACK, CHRISTINE M. LIMOGES, MICHAEL R. LIMOGES, JAMES
GARRETT and STEPHEN GARRETT

vs.

ATTORNEY GENERAL and the
SECRETARY OF THE COMMONWEALTH
OF MASSACHUSETTS.

RESERVATION AND REPORT

I hereby reserve and report this case to the full court. The record shall consist of all the papers filed in this case, the docket sheet, and this reservation and report. The defendants may also file an answer that will be made part of the record. Further, the parties are to prepare and file in the full court a statement of agreed facts to assist the court in its consideration of the case; the failure to agree on all the facts needed for a decision could impair the court's ability to decide the case.¹

The matter will be expedited in the full court. Unless the full court determines that oral argument is not necessary, the case will be scheduled for argument on Wednesday, May 4, 2022. The plaintiffs shall be deemed the appellants. The parties shall confer with the Clerk of the full court with respect to the final briefing and argument schedule. Unless otherwise directed, however, the plaintiffs must file their brief, any opposition to the defendants' motion to dismiss,

¹ It shall be incumbent on the plaintiffs to draft a statement of facts forthwith for the defendants' consideration, unless the defendants indicate to the plaintiffs' counsel that they wish to undertake the drafting of the statement in the first instance.

and the record appendix (including the agreed facts) on or before the close of business on April 22, 2022; and the defendants are to file their brief on or before the close of business on April 29, 2022. Briefs of amici curiae shall be filed no later than the date for the filing of the brief of the party they support. No extensions of time should be anticipated.

In addition to any other matters addressed in their brief, the plaintiffs shall respond to the arguments presented in the motion to dismiss, including an explanation for the apparent tardy filing of this action. See Dunn v. Attorney General, 474 Mass. 675, 685-686 (2016); Hensley v. Attorney General, 474 Mass. 651, 671-672 (2016).

By the Court,

/s/ Dalila Argaez Wendlandt
Dalila Argaez Wendlandt
Associate Justice

Dated: April 14, 2022

**AN INITIATIVE PETITION FOR A LAW RELATIVE TO 21ST CENTURY ALCOHOL
RETAIL REFORM**

Be it enacted by the People, and by their authority:

SECTION 1. The second sentence of section 15 of chapter 138 of the General Laws is hereby amended by striking out, in each instance, the phrase “more than 9” and inserting in place thereof the following phrase:- more than 12.

SECTION 2. The second sentence of said section 15 of said chapter 138, as amended by section 1 of this Act, is hereby further amended by striking out, in each instance, the figure “12” and inserting in place thereof the following figure:- 15.

SECTION 3. The second sentence of said section 15 of said chapter 138, as amended by section 2 of this Act, is hereby further amended by striking out, in each instance, the figure “15” and inserting in place thereof the following figure:- 18.

SECTION 4. Section 15 of chapter 138 of the General Laws is hereby further amended by inserting, after the second sentence, the following new sentences:-

No person, firm, corporation, association, or other combination of persons, directly or indirectly, or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever, shall be granted, in the aggregate, more than 7 licenses for the sale of all alcoholic beverages in the commonwealth, or participate in decisions regarding the purchasing of such beverages or the purchasing of insurance or accounting or bookkeeping services, or receive any percentage or fee derived from gross revenues in exchange for management assistance, or participate in any other action designed to effect common results of more than 7 such licensees; provided, however, any person, firm, corporation, association, or other combination of persons, directly or indirectly, or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever, who, as of December 31, 2022, has more than 7 licenses for the sale of all alcoholic beverages in the commonwealth, or who, as of December 31, 2022, participates in decisions regarding the purchasing of such beverages or the purchasing of insurance or accounting or bookkeeping services, or receives any percentage or fee derived from gross revenues in exchange for management

Handwritten notes and signatures at the bottom of the page include:
A circled '2' and a circled '14' on the left.
A signature 'Mitt' with 'LEF' and 'AS' below it.
A signature 'RTH 2 JON' in the center.
The number '1' followed by 'SD' and 'S.S.' in the middle.
A circled '20' in the middle.
The initials 'MWS' on the right.
A signature 'M' above 'BRW' on the far right.

assistance, or participates in any other action designed to effect common results of more than 7 such licensees, may continue to hold that number of all alcoholic beverages licenses and participate in any actions designed to effect the common results of that number of licensees. Each license for the sale of all alcoholic beverages shall be included as a license for purposes of determining the total number of licenses authorized under the second sentence of this section.

SECTION 5. Sections 1 and 4 of this Act shall take effect on January 1, 2023.

SECTION 6. Section 2 of this Act shall take effect on January 1, 2027.

SECTION 7. Section 3 of this Act shall take effect on January 1, 2031.

SECTION 8. Section 15 of chapter 138 of the General Laws, as so appearing, is hereby further amended by inserting after the final paragraph, the following new paragraph:-

The in-store sale of alcoholic beverages by a licensee engaged in the sale of alcoholic beverages as so authorized under the provisions of this section shall be conducted through a face-to-face transaction between the customer and the licensee or between the customer and an authorized employee of the licensee who has attained the age of 18 years. In-store automated or self-checkout sales of alcoholic beverages by such licensees shall be prohibited.

SECTION 9. Section 23 of chapter 138 of the General Laws is hereby amended by striking out, in the third sentence of the twelfth paragraph, the phrase "alcoholic beverage sales" and inserting in place thereof the following phrase:- all retail sales.

SECTION 10. Section 34B of chapter 138 of the General Laws is hereby amended by inserting in the first sentence of the second paragraph after the phrase "or a valid United States issued military identification card," the following phrase:- or a valid motor vehicle license issued by another state.

SECTION 11. Section 34B of said chapter 138 is hereby further amended by inserting in the second sentence of the second paragraph after the phrase "or motor vehicle license issued

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pursuant to said section eight," the following phrase:- or a valid motor vehicle license issued by another state,

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MASSACHUSETTS CONSTITUTION

Article XLVIII.

I. Definition.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

The Initiative.

II. Initiative Petitions

Section 1. *Contents.* An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. *Excluded Matters.* - No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the [eighteenth amendment of the constitution](#), as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

[Section 3. *Mode of Originating.* - Such petition shall first be signed by ten qualified voters of the commonwealth and shall then be submitted to the attorney-general, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or which are

mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.] [Section 3 superseded by section 1 of Amendments, Art. [LXXIV](#).]

Section 4. *Transmission to the General Court.* - If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. Legislative Action. General Provisions

Section 1. *Reference to Committee.* - If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

Section 2. *Legislative Substitutes.* - The general court may, by resolution passed by yeas and nays vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. Legislative Action on Proposed Constitutional Amendments

[Section 1. *Definition.* - A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

Section 2. *Joint Session.* - If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.] [Section 2 superseded by section 1 of Amendments, Art. [LXXXI](#).]

Section 3. *Amendment of Proposed Amendments.* - A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Section 4. *Legislative Action.* - Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Section 5. *Submission to the People.* If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of a least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. Legislative Action on Proposed Laws.

[Section 1. *Legislative Procedure.* - If an initiative petition for a law is introduced into the general court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.] [Section 1 superseded by section 2 of Amendments, Art. [LXXXI](#).]

[Section 2. *Amendment by Petitioners.* If the general court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following July, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.] [Section 2 superseded by section 3 of Amendments, Art. [LXXXI](#).]

VI. Conflicting and Alternative Measures.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

The Referendum.

I. When Statutes shall take Effect.

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. Emergency Measures.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. [A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each house voting thereon, the law shall not be an emergency law; but] if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law. [See Amendments, Art. [LXVII.](#)]

III. Referendum Petitions.

Section 1. *Contents.* - A referendum petition may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded.

Section 2. *Excluded Matters.* No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Section 3. *Mode of Petitioning for the Suspension of a Law and a Referendum Thereon.* - A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall

first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the commonwealth, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 3 amended by section 2 of Amendments, Art. [LXXIV](#) and section 4 of Amendments, Art. [LXXXI](#)]

Section 4. Petitions for Referendum on an Emergency Law or a Law the Suspension of Which is Not Asked for. - A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the commonwealth, and shall then be filed with the secretary of the commonwealth not later than thirty days after the law which is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the commonwealth protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election. If thirty days do not so intervene, then it shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 4 superseded by section 3 of Amendments, Art. [LXXIV](#) and section 5 of Amendments, Art. [LXXXI](#).]

General Provisions.

I. Identification and Certification of Signatures.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the attorney-general, subject to such provision as may be made by law, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:-

In the case of an amendment to the constitution: Shall an amendment to the constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.] [Subheadings *III* and *IV* superseded by section 4 of Amendments, Art. [LXXIV](#).][Subheading *IV* superseded by Amendments, Art. [CVIII](#).]

V. The Veto Power of the Governor.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VI. The General Court's Power of Repeal.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VII. Amendment Declared to be Self-executing.

This article of amendment to the constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. Articles IX and XLII of Amendments of the Constitution Annulled.

Article [IX](#) and Article [XLII](#) of the amendments of the constitution are hereby annulled.

MASSACHUSETTS CONSTITUTION

Article LXXIV.

Section 1. Article [XLVIII](#) of the amendments to the constitution is hereby amended by striking out section three, under the heading "THE INITIATIVE. III. *Initiative Petitions.*", and inserting in place thereof the following: -

Section 3. *Mode of Originating.* - Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney-general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney-general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

Section 2. Section three of that part of said Article [XLVIII](#), under the heading "**THE REFERENDUM. III. *Referendum Petitions.***", is hereby amended by striking out the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers.", and inserting in place thereof the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers."

Section 3. Section four of that part of said Article [XLVIII](#) under the heading "**THE REFERENDUM. III. *Referendum Petitions.***", is hereby amended by striking out the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers.", and inserting in place thereof the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers."

Section 4. Said Article [XLVIII](#) is hereby further amended by striking out, under the heading "GENERAL PROVISIONS", all of subheading "*III. Form of Ballot.*" and all of subheading "*IV. Information for Voters.*", and inserting in place thereof the following:--

III. Form of Ballot.

A fair, concise summary, as determined by the attorney general, subject to such provision as may be made by law, of each proposed amendment to the constitution, and each law submitted to the people, shall be printed on the ballot, and the secretary of the commonwealth shall give each

question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:--

In the case of an amendment to the constitution: Do you approve of the adoption of an amendment to the constitution summarized below, (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

[Set forth summary here]

In the case of a law: Do you approve of a law summarized below, (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

[Set forth summary here]

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a fair, concise summary of the measure as such summary will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.] [See Amendments, Art. [CVIII](#).]

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Articles of Amendment
Art. XLVIII. Initiative and Referendum
the Initiative.
II. Initiative Petitions. (Refs & Annos)

M.G.L.A. Const. Amend. Art. 48, Init., Pt. 2, § 3

Section 3. Mode of Originating

[Currentness](#)

Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney-general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney-general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.


<Each part and section of a part under Article XLVIII has been set out as a separate document. For Part II, § 1 enter: s;t;c;i(Const & Art & XLVIII & "Pt. II" & 1).>

[Notes of Decisions \(145\)](#)

M.G.L.A. Const. Amend. Art. 48, Init., Pt. 2, § 3, MA CONST Amend. Art. 48, Init., Pt. 2, § 3
Current through amendments approved February 1, 2022

End of Document

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 138. Alcoholic Liquors (Refs & Annos)

M.G.L.A. 138 § 12

§ 12. Licenses authorizing sale of beverages to be drunk on premises; veterans' organizations, corporations, etc.; suspension or revocation; hours of sale; liqueurs and cordials; liquor legal liability insurance requirement

Effective: April 13, 2017

[Currentness](#)

A common victualler duly licensed under chapter one hundred and forty to conduct a restaurant, an innholder duly licensed under said chapter to conduct a hotel, a pub brewer, a continuing care retirement community and a keeper of a tavern as defined by this chapter, in any city or town wherein the granting of licenses under this section to sell all alcoholic beverages or only wines and malt beverages, as the case may be, is authorized by this chapter, subject however, in the case of a tavern, to the provisions of [section eleven A](#), may be licensed by the local licensing authorities, subject to the prior approval of the commission, to sell to travelers, strangers and other patrons and customers not under twenty-one years of age, such beverages to be served and drunk, in case of a hotel or restaurant or continuing care retirement community licensee, only in the dining room or dining rooms and in such other public rooms or areas of a hotel as the local licensing authorities may deem reasonable and proper, and approve in writing; and provided further, that the limitations relative to service and consumption in a restaurant or hotel or continuing care retirement community only in the dining rooms and such other public rooms or areas deemed reasonable and proper by the local licensing authority shall not be deemed to preclude the restaurant or hotel from allowing a patron to retain and take off the premises only so much as may remain of a bottled wine purchased by the patron in conjunction with a meal and not totally consumed by the patron during such meal; provided further, that the limitations relative to service and consumption in a tavern, club or war veterans' organization licensed pursuant to this section shall not be deemed to preclude the tavern, club or war veterans' organization from allowing a patron, member or guest, as the case may be, to retain and take off the premises only so much as may remain of a bottled wine purchased by the patron, member or guest in conjunction with a meal and not totally consumed by the patron, member or guest during such meal; provided further, that all such wine bottles shall be resealed in accordance with regulations promulgated by the commission and transported in a manner authorized in [section 24I of chapter 90](#) when carried in a motor vehicle, as defined in section 1 of said chapter 90; provided, that no tavern license shall be granted to the holder of a hotel license hereunder. Such sales may also be made, by an innholder licensed hereunder, to registered guests occupying private rooms in his hotel, and in the dining room or dining rooms and in such other public rooms or areas of buildings on the same premises as the hotel and operated as appurtenant and contiguous to and in conjunction with such hotel, and to registered guests occupying private rooms in such buildings and in the case of condominium accommodations that are located appurtenant and contiguous to and also upon the same premises as a hotel, sales may be made by the hotel licensee as the local licensing authorities may deem reasonable and proper, and approve in writing. Such sales may also be made by a continuing care retirement community licensed hereunder, to residents or guests of residents in rooms in a continuing care retirement community, and in the dining rooms and in such other public rooms or areas of buildings on the same premises as the continuing care retirement community and operated as appurtenant and contiguous to and in conjunction with such continuing care retirement community, and to guests of residents in such buildings; provided, however, that such sales may be made by the continuing care retirement community licensee as the local licensing authorities may deem reasonable and proper and approve in writing. Such sales may be made by a restaurant licensee at such stands or locations in a sports arena, stadium, ball park, race track, auditorium or in any one building at an airport as the local licensing authority may deem reasonable and proper, and

approve in writing. A local licensing authority may grant a license for the sale of all alcoholic beverages or a license for the sale of wines and malt beverages at any location on the grounds of a golf course as it deems reasonable and proper. Upon an application for a restaurant license, the local licensing authorities may in their discretion grant such a license authorizing the sale of alcoholic beverages on all days of the week or one authorizing such sale on secular days only, and the decision of such authorities as to which of the two types may be granted upon any particular application shall be final. During such time as the sale of such alcoholic beverages is authorized in any city or town under this chapter, the authority to grant innholders' and common victuallers' licenses therein under chapter one hundred and forty shall be vested in the local licensing authorities; provided, that if a person applies for the renewal of both a common victualler's license or an innholder's license under said chapter one hundred and forty and a hotel or a restaurant license, as the case may be, under this section and the local licensing authorities refuse to grant said common victualler's or innholder's license or fail to act on the applications therefor within a period of thirty days, such applicant may appeal therefrom to the commission in the same manner as provided in [section sixty-seven](#) and all the provisions of said section relative to licenses authorized to be issued by local licensing authorities under this chapter shall apply in the case of such common victualler's license or innholder's license.

If a license granted under this section to a person holding a license as an innholder or common victualler is suspended or revoked for any particular cause, no action shall be taken on account thereof by such authorities with respect to such innholder's or common victualler's license prior to the expiration of the period provided for an appeal under [section sixty-seven](#) in case no such appeal is taken, or prior to the disposition of any such appeal so taken, nor thereafter, except for further cause, in case such disposition is in favor of the appellant. Any club in any city or town wherein the granting of licenses to sell alcoholic beverages, or only wines and malt beverages, as the case may be, is authorized under this chapter may be licensed by the local licensing authorities, subject to the approval of the commission, to sell such beverages to its members only, and also, subject to regulations made by the local licensing authorities, to guests introduced by members, and to no others. A member of a club licensed under this section may bring wine to be consumed on the premises with a meal purchased at the club, unless the club objects, which it may do at its sole discretion. At all times the club shall control the handling, serving and dispensing of wine in accordance with this chapter and may refuse to pour wine for any patron for any reason or for no reason, regardless of whether bottles are opened or unopened. Unopened bottles shall be returned to the patron who shall remove such bottles from the premises at the conclusion of the event, and open bottles shall be returned and resealed in accordance with regulations promulgated by the commission and transported in a manner authorized by [section 24J of chapter 90](#) when carried in a motor vehicle, as defined in section 1 of said chapter 90. The club shall set and charge a reasonable corkage fee, which shall be added to the member's meal expense. Such fee shall be set at not less than \$30 and shall be applied to each bottle of wine that is opened.

The local licensing authorities of any city or town wherein the granting of licenses under this section to sell all alcoholic beverages or only wines and malt beverages, as the case may be, is authorized by this chapter, may, subject to the approval of the commission and irrespective of any limitation of number of licenses contained in [section seventeen](#), issue a license to any corporation the members of which are war veterans and which owns, hires or leases in such city or town a building, or space in a building, for the use and accommodation of a post of any war veterans' organization incorporated by the Congress of the United States, to sell such beverages to the members of such post only, and also, subject to regulations made by the local licensing authorities, to guests introduced by such members and to no others.

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

of a federal or state narcotic drugs law.

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

The hours during which sales of such alcoholic beverages may be made by any licensee as aforesaid shall be fixed by the local licensing authorities either generally or specially for each licensee; provided, however, that no such sale shall be made on any secular day between the hours of two and eight o'clock antemeridian and that, except as provided in [section thirty-three](#), no such licensee shall be barred from making such sales on any such day after eleven o'clock antemeridian and before eleven o'clock postmeridian, and no tavern shall be kept open on any such day between one o'clock antemeridian and eight o'clock antemeridian; provided, further, that any such licensee or his manager shall not be prohibited from being on the licensed premises at any time; provided, further, that the employees, contractors or subcontractors shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making renovations, making emergency repairs to or providing security for, such premises or preparing food for the day's business or opening or closing the business in an orderly manner. The licensing authority shall not decrease the hours during which sales of such alcohol beverages may be made by a licensee until after a public hearing concerning the public need for such decrease; provided, however, that a licensee affected by any such change shall be given 2 weeks notice of the public hearing.

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

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

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

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

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

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

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

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

A common victualler who holds a license for the sale of all alcoholic beverages or holds a license for the sale of wines and malt beverages and who also holds pursuant to this section written approval to sell liqueurs and cordials pursuant to his license may provide on-premises sample liqueurs and cordials tasting; provided however, that a licensee shall not solicit orders for liqueurs and cordials for off-premises consumption; and provided, further, that any such liqueurs and cordials tasting shall be limited to ¼ of an ounce per serving and food shall be served in conjunction with any liqueurs and cordials tasting.

A common victualler who holds a license for the sale of all alcoholic beverages may provide on premises sample alcoholic beverages tasting; provided, however, that a licensee shall not solicit orders for alcoholic beverages for off-premises consumption; and provided further, that any tasting of alcoholic beverages, other than wines and malt beverages, shall be limited to ¼ of an ounce per serving and food shall be served in conjunction with any alcoholic beverages tasting.

No license shall be issued or renewed under this section until the applicant or licensee provides proof of coverage under a liquor legal liability insurance policy for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of 1 person, and \$500,000 on account of any 1 accident resulting in injury to or death of more than 1 person. Proof of the insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority. The insurance shall be subject to [sections 5 and 6 of chapter 175A of the General Laws](#).

Credits

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 121, § 2; St.1934, c. 370, §§ 1, 2; St.1934, c. 385, § 3; St.1935, c. 253, §§ 2 to 4; St.1935, c. 440, §§ 7 to 9; St.1935, c. 468, § 1; St.1936, c. 207, § 2; St.1936, c. 368, § 2; St.1937, c. 264; St.1937, c. 331; St.1943, c. 542, §§ 3, 4; St.1948, c. 649; St.1949, c. 391; St.1955, c. 336, St.1959, c. 480; St.1963, c. 176; St.1965, c. 505; St.1966, c. 275; St.1967, c. 124; St.1968, c. 268; St.1968, c. 365; St.1968, c. 395; St.1970, c. 185; St.1971, c. 586, § 1; St.1972, c. 138; St.1973, c. 241, §§ 1, 2; St.1973, c. 477; St.1973, c. 1161; St.1975, c. 396; St.1977, c. 812; St.1977, c. 929, § 2; St.1979, c. 15, §§ 2, 3; St.1979, c. 721; St.1981, c. 351, § 67; St.1982, c. 231; St.1982, c. 627, § 2; St.1984, c. 312, §§ 1, 2; St.1987, c. 147; St.1988, c. 158, §§ 1, 2; St.1989, c. 694, § 1; St.1991, c. 138, §§ 193, 194; St.1993, c. 481, § 2; St.1998, c. 113, §§ 2, 3; St.2002, c. 514, § 1; St.2004, c. 149, § 177, eff. July 1, 2004; St.2006, c. 33, § 3, eff. Feb. 15, 2006; St.2008, c. 300, eff. Nov. 5, 2008; St.2008, c. 303, § 20, eff. Aug. 8, 2008; St.2010, c. 116, § 1, eff. Aug. 26, 2010; St.2010, c. 240, § 139, eff. Aug. 1, 2010; St.2013, c. 36, § 16, eff. July 11, 2013; St.2014, c. 433, §§ 2 to 5, eff. April 2, 2015; St.2016, c. 219, § 97, eff. Aug. 10, 2016; St.2016, c. 297, eff. Jan. 18, 2017; St.2016, c. 447, eff. April 13, 2017.

Notes of Decisions (44)


§ 12. Licenses authorizing sale of beverages to be drunk on..., MA ST 138 § 12

M.G.L.A. 138 § 12, MA ST 138 § 12

Current through Chapter 41 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 138. Alcoholic Liquors (Refs & Annos)

M.G.L.A. 138 § 15

§ 15. Licensing authorizing sale of beverages not to be drunk on premises; applications; approval; price lists; renewals; fees; hours of sales; samples

Effective: January 1, 2020

[Currentness](#)

The local licensing authorities in any city or town which votes to authorize the granting of licenses for the sale of all alcoholic beverages, and such authorities in any city or town which votes to authorize the granting of licenses for the sale of wines and malt beverages only, may grant licenses for the sale at retail of such alcoholic beverages or wines and malt beverages, as the case may be, not to be drunk on the premises, to applicants therefor who are citizens and residents of the commonwealth, or partnerships composed solely of such citizens and residents or to corporations organized under the laws of the commonwealth and whereof all directors shall be citizens of the United States and a majority residents of the commonwealth or to limited liability companies or limited liability partnerships organized under the laws of the commonwealth, subject to such conditions as the commission may prescribe by regulation to address issues of citizenship and residency and the requirements for a citizen manager or citizen principal representative of an alien licensee under [section 26](#) as qualifications for a limited liability company or limited liability partnership to hold a license pursuant to this section and [sections 18, 18A, 19, 19B and 19C](#), or to an applicant licensed to operate as a farmer-winery under said [section 19B](#) or in any other state. No person, firm, corporation, association, or other combination of persons, directly or indirectly, or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever, shall be granted, in the aggregate, more than 9 such licenses in the commonwealth, or participate in decisions regarding the purchasing of alcoholic beverages or the purchasing of insurance or accounting or bookkeeping services, or receive any percentage or fee derived from gross revenues in exchange for management assistance, or participate in any other action designed to effect common results of more than 9 licensees under this section, or be granted more than one such license in a town or two in a city. Each applicant for a new license or the transfer of a license shall pay a fee of up to \$5,000 to the commission when the issuing of the new or transferred license would result in the applicant owning more than 3 licenses. The fee shall be paid to the commission after approval of the application but before the issuance of the new or transferred license. No such license shall be granted except to an applicant approved by the commission. Such applicant shall be at least twenty-one years of age and of good character in the city or town in which he seeks a license hereunder. No license shall be issued to any applicant who has been convicted of a felony. Each license shall describe the premises to which it applies. Not more than one location shall be included in any such license, nor shall any location or premises for which a license has been granted under [section twelve](#) be included therein; provided, however, that a common victualler duly licensed to operate a restaurant under chapter 140 and holding a license under [section 12](#) may be connected to premises licensed under this section if at least 50 per cent of the revenue generated at the premises licensed under this section is derived from the sale of grocery items as defined in [section 184B of chapter 94](#); and provided further, that the connection between and the design of the 2 locations so licensed, including interior connections, which shall be allowed, shall clearly delineate the 2 premises in such a way as to: (i) make the boundaries of each licensed premises clearly separate and identifiable to customers, alcohol distributors and regulatory authorities; (ii) enable the respective licensees to maintain control of the licensed area, egress and the sale, storage and service of alcoholic beverages; and (iii) otherwise conform with this chapter. Every licensee hereunder shall keep conspicuously posted in each room where any alcoholic beverages are sold a price list of such beverages. Sales by such licensees shall be made only in the

original manufacturer's or wholesaler's and importer's package and at the prices stated on the current posted price list. All malt beverages containing not more than three and two tenths per cent of alcohol by weight shall be so labelled.

Any sale of such beverages shall be conclusively presumed to have been made in the store wherein the order was received from the customer. The local licensing authorities may determine in the first instance when originally issuing and upon each annual renewal of licenses under this section, the amount of the license fee and nothing shall prohibit the local licensing authority from establishing reduced fees for special licenses issued under [section 15F](#). Any holder of a license under this section shall be permitted to make sales in accordance with the terms of his license at any time between eight o'clock ante meridian and eleven o'clock post meridian, or between eight o'clock ante meridian and half past eleven o'clock post meridian on any day immediately preceding a legal holiday, except when prohibited by [section thirty-three](#). Any such licensee may provide, without charge, on premises sample wine or malt beverage tastings for prospective customers available for sale on such premises; provided, however, that no single serving of wine shall exceed one ounce and no single serving of malt beverages shall exceed two ounces. A licensee who holds a license according to the provisions of this section may also conduct on premise sample wine or malt beverage tasting in restaurants and function rooms licensed under the provisions of [section 12](#); provided, however, that the holder of a license pursuant to this section shall not solicit orders for off premises consumption; provided, further, that the holder of a license issued pursuant to the provisions of [section 12](#) shall control the dispensing of wine or malt beverage samples on his premises; and provided, further, that food shall be served in conjunction with such wine or malt beverage tasting conducted on the premises of the holder of a license issued pursuant to said [section 12](#).

A licensee who holds a license for the sale of all alcoholic beverages may provide, without charge, on-premises sample liqueurs and cordials tastings for prospective customers if such beverages shall be available for sale on the premises; provided, however, that no single serving of liqueurs and cordials shall exceed $\frac{1}{4}$ of an ounce. A licensee who holds a license for the sale of all alcoholic beverages according to this section may also conduct on-premises sample liqueurs and cordials tasting in restaurants and function rooms licensed under [section 12](#) who hold a license for the sale of all alcoholic beverages or a license for the sale of wines and malt beverages and which also hold, pursuant to said [section 12](#), written approval to sell liqueurs and cordials pursuant to the license; provided, however, that the holder of a license pursuant to this section shall not solicit orders for off-premises consumption; provided, further, that the holder of a license issued pursuant to said [section 12](#) shall control the dispensing of liqueurs and cordials samples on his premises; and provided further, that food shall be served in conjunction with liqueurs and cordials tasting conducted on the premises of the holder of a license issued pursuant to [section 12](#).

A licensee who holds a license for the sale of all alcoholic beverages may provide, without charge, on-premises sample alcoholic beverages tastings for prospective customers if such beverages shall be available for sale on such premises; provided, however, that no single serving of alcoholic beverages, other than wines and malt beverages, shall exceed $\frac{1}{4}$ of an ounce. A licensee who holds a license for the sale of all alcoholic beverages according to this section may also conduct on-premises sample tasting of alcoholic beverages, other than wines and malt beverages, in restaurants and function rooms licensed under [section 12](#) who hold a license for the sale of all alcoholic beverages; provided, however, that the holder of a license pursuant to this section shall not solicit orders for off-premises consumption; provided further, that the holder of a license issued pursuant to said [section 12](#) shall control the dispensing of samples of alcoholic beverages, other than wines and malt beverages, on his premises; and provided, further, that food shall be served in conjunction with alcoholic beverages tasting, other than wines and malt beverages, conducted on the premises of the holder of a license issued pursuant to said [section 12](#).

Any person or entity who holds licenses under both this section and [section 18](#) or [19](#), which licenses were granted prior to January 1, 2011, may obtain licenses under this section in accordance with the other provisions of this section.

No person, firm, corporation, association or other combination of persons, directly or indirectly, or through an agent, employee, stockholder, officer or other person or any subsidiary licensed under [sections 18](#) and [19](#) shall be granted a license

under this section after January 1, 2011.

Credits

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 370, § 4; St.1934, c. 385, § 5; St.1935, c. 440, § 12; St.1936, c. 225, § 1; St.1938, c. 353; St.1973, c. 422; St.1981, c. 177; St.1981, c. 351, § 68; St.1987, c. 496, § 2; St.1989, c. 694, § 2; St.1991, c. 138, § 195; St.1998, c. 113, § 4; St.2002, c. 228, § 1; St.2002, c. 514, § 2; St.2004, c. 149, § 178, eff. July 1, 2004; St.2010, c. 240 §§ 140, 141, eff. Aug. 1, 2010; St.2010, c. 255, § 1, eff. Nov. 3, 2010; St.2011, c. 193, §§ 1, 4, eff. Jan. 1, 2012; St.2011, c. 193, §§ 2, 5, eff. Jan. 1, 2016; St.2011, c. 193, §§ 3, 6, eff. Jan. 1, 2020; St.2011, c. 193, § 7, eff. Nov. 22, 2011; St.2014, c. 287, § 70, eff. Aug. 13, 2014; St.2016, c. 219, § 98, eff. Aug. 10, 2016.


Notes of Decisions (70)

M.G.L.A. 138 § 15, MA ST 138 § 15

Current through Chapter 41 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

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Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 138. Alcoholic Liquors (Refs & Annos)

M.G.L.A. 138 § 17

§ 17. Number of licenses quotas; licenses for wines and malt beverages per population unit; additional licenses; estimates of increased population; decrease in quota due to loss in population; determination of population of city or town

Effective: September 1, 2016

Currentness

Except as otherwise provided in this chapter, the number of licenses issued in any city or town under [sections twelve](#) and [fifteen](#) and in force and effect at any one time during any license year shall be limited as hereinafter provided:

The local licensing authorities of any city or town, except the city of Boston, may grant one license under the provisions of [section twelve](#) for each population unit of one thousand or additional fraction thereof, and, in addition, one such license for each population unit of ten thousand or fraction thereof, over the first twenty-five thousand, but may, regardless of population, grant at least fourteen licenses under said [section twelve](#); and the local licensing authorities may also grant one license under the provisions of [section fifteen](#) for each population unit of five thousand or additional fraction thereof, but may, regardless of population, grant at least two licenses under said [section fifteen](#).

In addition to the number of licenses otherwise authorized to be granted by the provisions of this section, the local licensing authorities of any city or town, except the city of Boston, which has voted to grant licenses for the sale of all alcoholic beverages as provided in the first question appearing in [section eleven](#), may grant not more than one license for the sale of wines or malt beverages only, or both under [section twelve](#), for each population unit of five thousand or fraction thereof; provided, that in any such city or town, said authorities may grant at least five additional licenses for the sale of such beverages, irrespective of its population; and the local licensing authorities may also grant not more than one license for the sale of wines or malt beverages only or both under the provisions of [section fifteen](#) for each population unit of five thousand or fraction thereof; provided, that in any such city or town said authorities may grant at least five additional licenses for the sale of such beverages, irrespective of its population; and provided, further, that the establishment of this limitation shall not be construed to prevent the renewal of any license granted prior to June fifteenth, nineteen hundred and thirty-seven.

The local licensing authorities of any city or town, except the city of Boston, which has voted to grant licenses for the sale of wines and malt beverages, as provided in the second question appearing in [section eleven](#), and which has also voted to grant licenses for the sale of all alcoholic beverages in packages, as provided in the third question appearing in the said section, may grant additional licenses under [section fifteen](#) for the sale of wines or malt beverages only, or both, equal to the number of licenses under the said section otherwise authorized to be granted in any such city or town by the provisions of this section.

The local licensing authorities of any city or town, except the city of Boston, may make an estimate prior to March the first in any year of any temporary increased resident population in such city or town as of July the tenth following, and one additional license under [section fifteen](#), to be effective from April 1 to November 30 or from April 1 to the following January 15 at the discretion of the local licensing authority, may be granted by said authorities for each unit of five thousand or additional fraction thereof of such population as so estimated, and the local licensing authorities of any city or town in Berkshire county, in which the city council, in accordance with the provisions of its charter, or the town, at an annual or special town meeting, votes to authorize such authority to grant winter seasonal licenses, or of any town in Franklin county, may make an estimate not later than October the fifteenth in any year of any temporary increased resident population in such city or town as of February the tenth following, and one additional license under [section fifteen](#), to be effective from December the first to April the first of the year following, may be granted by said authorities for each unit of five thousand or additional fraction thereof of such population as so estimated; provided, that not more than one additional license shall be granted under this paragraph to the same person or for the same premises in any one year; and provided, further, that the local licensing authorities of any city or town, except the city of Boston, may grant, in addition to and irrespective of any limitation of the number of licenses contained in this section, seasonal licenses under [section twelve](#), to be effective from April first to January fifteenth of the following year, or any portion thereof, and in any city or town in Berkshire county in which the granting of winter seasonal licenses is authorized as above provided, and in any town in Franklin county seasonal licenses under [section twelve](#), to be effective from December the first to April the first, to the amount or number that such authorities deem to be in the public interest. Every estimate hereunder of temporary resident population shall be made and voted upon by the local licensing authorities at a meeting of said authorities called for the purpose after due notice to each of the members thereof of the time, place and purpose of said meeting and after investigation and ascertainment by them of all the facts and after co-operative discussion and deliberation. A copy of such an estimate, signed by a majority of the members of said authorities, stating under the penalties of perjury that all the foregoing requirements have been complied with and that the estimate is true to the best of their knowledge and belief, shall be forwarded forthwith to the commission. Upon the petition of twenty-five persons who are taxpayers of the city or town in which a seasonal license has been so granted, or who are registered voters in the voting precinct or district wherein the licensed premises are situated, filed within five days after the granting of such license, the commission shall, and upon its own initiative at any time may, after a hearing, examine and review any estimate made or action taken by the local licensing authorities in granting the same, and after such examination or review, may rescind, revoke, cancel, modify or suspend any such estimate or action. Nothing in this paragraph shall be deemed to authorize or permit the commission to deny a renewal of, or to rescind, revoke or cancel, because of a decrease in population, any seasonal license outstanding and in full force on April thirtieth, nineteen hundred and fifty.

The licensing board for the city of Boston may grant 665 licenses for the sale of all alcoholic beverages under [section 12](#). The board may grant 250 licenses for the sale of all alcoholic beverages under [section 15](#). The number of licenses for the sale of wines and malt beverages only, or both, in the city shall not exceed 320. The transfer of existing licenses shall be subject to a public hearing in the neighborhood in which the license is to be relocated, properly advertised and at an appropriate time to afford that neighborhood an opportunity to be present.

The licensing board of the city of Boston may grant up to 25 additional licenses for the sale of all alcoholic beverages to be drunk on the premises and up to 30 additional licenses for the sale of wines and malt beverages to drunk on the premises. Notwithstanding the first sentence, 5 of the additional all alcoholic beverages licenses shall be granted only to innholders duly licensed under chapter 140 to conduct a hotel and 10 of the additional all alcoholic beverages licenses shall be granted to existing holders of licenses for the sale of wines and malt beverages under [section 12](#) provided that those licensees return to the licensing board, the licenses that they currently hold. The remaining licenses for the sale of all alcoholic beverages to be drunk on the premises and the 30 additional licenses for the sale of wines and malt beverages to be drunk on the premises shall be granted in the areas designated by the Boston Redevelopment Authority as main street districts, urban renewal areas, empowerment zones or municipal harbor plan areas. Once issued to a licensee in a Boston Redevelopment Authority designated area, the licensing board shall not approve the transfer of that license to a location outside of the designated area. A license granted pursuant to this paragraph shall be nontransferable to any other person, corporation or organization and shall be clearly marked nontransferable on its face. A license issued under this paragraph, that is cancelled, revoked or no longer in use, shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing board and the licensing board may then grant that license to a new applicant consistent with the criteria set forth in this paragraph if the applicant files with the licensing board a letter from the department of revenue and a letter from the

department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid.

In addition to the licenses granted pursuant to the preceding 2 paragraphs, the licensing board of the city of Boston may grant up to 45 additional licenses for the sale of all alcoholic beverages to be drunk on the premises and up to 15 additional licenses for the sale of wines and malt beverages to be drunk on the premises in either the zoning districts of Dorchester, East Boston, Hyde Park, Jamaica Plain, Mattapan, Mission Hill and Roxbury as designated by the Boston Zoning Commission or in the areas designated by the Boston Redevelopment Authority as main street districts. A license granted pursuant to this paragraph shall be nontransferable to any other person, corporation or organization and shall be clearly marked “nontransferable” and “neighborhood restricted” on its face. A license issued under this paragraph, if cancelled, revoked or no longer in use at the location of original issuance, shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing board which may then grant that license to a new applicant under the same conditions as specified in this paragraph if the applicant files with the licensing board a letter from the department of revenue and a letter from the department of unemployment assistance indicating that the license is in good standing with those departments and that all applicable taxes, fees and contributions have been paid; provided, however, that a license issued under this paragraph that is cancelled, revoked or no longer in use at the location of original issuance shall only be issued to a new applicant in the same designated area of the city where the original license was granted.”

As used in this section, the following words shall have the following meanings:--

“Airline club”, an establishment that is not open to the general public and which is operated by or for an airline at the airport to provide exclusive or special accommodations to members and their guests in accordance with airline policy.

“Airport”, the General Edward Lawrence Logan International Airport.

“Boston license”, a license for the sale of alcoholic beverages issued pursuant to the preceding paragraph and subject to the city of Boston municipal quota.

“Passenger terminals”, the passenger terminals and designated airline clubs within the airport.

“Restricted airport licenses”, licenses for: (i) the sale of all alcoholic beverages to be drunk on the premises within the passenger terminals; and (ii) the sale of wines and malt beverages to be drunk on the premises within the passenger terminals.

The licensing board for the city of Boston may grant restricted airport licenses to common victuallers duly licensed under chapter 140 and operating within the passenger terminals, subject to the approval of the alcoholic beverages control commission. Once issued to a licensee within the passenger terminals, the licensing board shall not approve the transfer of a restricted airport license to a location outside of the passenger terminals. A restricted airport license shall be nontransferable to any other person, corporation or organization operating outside the passenger terminals and shall be clearly marked “nontransferable outside the passenger terminals at the airport” on its face. Notwithstanding this section or any other special or general law to the contrary, restricted airport licenses shall not be subject to or counted against the municipal quota set forth in this section including, but not limited to, the city of Boston quota set forth in the sixth paragraph. A restricted airport license, if revoked or no longer in use, shall be returned physically, with all of the legal rights and privileges pertaining thereto, to the licensing board which may then grant that license to a new applicant operating within the passenger terminals, consistent with this paragraph.

Notwithstanding the provisions hereof, no quota established hereunder for any city or town shall be decreased because of any loss in population.

The population of any city or town for the purposes of this section shall be that enumerated in the most recent federal census.

In determining the population of any city or town for the purposes of this section the state secretary shall, if the last preceding census is the national census, by a writing filed by him in his office, make such adjustments in such census as will reflect the criteria used in making the last preceding state census.

Notwithstanding the provisions of this section, the number of licenses which a city or town was authorized to grant in nineteen hundred and thirty-three under this section shall not be decreased because of any loss in population, but only because of cancellation, revocation or failure to renew existing licenses, and no further original licenses shall be granted in a city or town where the population has decreased since nineteen hundred and thirty-three until the number of licenses outstanding shall have been reduced for the aforementioned reasons to a number which is less than that which may be granted based on such reduced population and thereafter the number of licenses in force and effect at any one time during the license year shall be based on such reduced population as provided in this section.

In addition to the number of licenses otherwise authorized to be granted pursuant to this section, a city or town may grant additional licenses under [sections 15](#) or [15F](#) to the holder of a farmer-winery license under [section 19B](#) or in any other state for the sale of wine produced by or for the applicant. A license granted by a city or town under said [section 15](#) or [15F](#) shall not be include as a license for purposes of determining the number of licenses allowed to be granted by a city or town under this section. A license granted pursuant to this paragraph shall be nontransferable to any other person, corporation or organization and shall be clearly marked nontransferable on its face.

Credits

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 83; St.1934, c. 385, § 7; St.1935, c. 81; St.1935, c. 440, § 15; St.1936, c. 136; St.1936, c. 199; St.1936, c. 245; St.1936, c. 368, § 4; St.1937, c. 14, § 1; St.1937, c. 424, § 3; St.1939, c. 263; St.1941, c. 522; St.1945, c. 666; St.1946, c. 305; St.1950, c. 222; St.1951, c. 145; St.1952, c. 197, § 1; St.1953, c. 310; St.1960, c. 691; St.1965, c. 570; St.1968, c. 197, §§ 1, 1A; St.1968, c. 305, § 1; St.1970, c. 453, §§ 1, 2; St.1978, c. 225; St.1978, c. 377, § 1; St.1979, c. 764; St.1992, c. 403, § 28; St.2000, c. 225; St.2006, c. 383, § 1, eff. Dec. 19, 2006; St.2010, c. 240, § 143, eff. Aug. 1, 2010; St.2012, c. 87, § 1, eff. May 3, 2012; St.2014, c. 287, § 71, eff. Sept. 1, 2014; St.2014, c. 287, §§ 72, 74, 75A, eff. Sept. 1, 2015; St.2014, c. 287, §§ 75, 75B, eff. Sept. 1, 2016; St.2015, c. 119, § 18, eff. Sept. 1, 2015; St.2015, c. 119, § 19, eff. Sept. 1, 2016; St.2016, c. 219, §§ 99, 100, eff. Aug. 10, 2016.


Notes of Decisions (11)

M.G.L.A. 138 § 17, MA ST 138 § 17

Current through Chapter 41 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 138. Alcoholic Liquors (Refs & Annos)

M.G.L.A. 138 § 34

§ 34. Sale, delivery or furnishing alcoholic beverages to persons under twenty-one years of age; employment of persons under eighteen years of age

Effective: August 4, 2000

[Currentness](#)

No person shall receive a license or permit under this chapter who is under 21 years of age. Whoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under [section 12](#) or [15](#), delivers or procures to be delivered in any public room or area of such establishment if licensed under [section 12](#), [15](#), [19B](#), [19C](#) or [19D](#) or in any area of such establishment if licensed under said [section 15](#), [19B](#), [19C](#) or [19D](#) any such beverages or alcohol to or for use by a person who he knows or has reason to believe is under 21 years of age or whoever procures any such beverage or alcohol for a person under 21 years of age in any establishment licensed under [section 12](#) or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment licensed under said [section 15](#), [19B](#), [19C](#) or [19D](#) or whoever furnishes any such beverage or alcohol for a person under 21 years of age shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both. For the purpose of this section the word “furnish” shall mean to knowingly or intentionally supply, give, or provide to or allow a person under 21 years of age except for the children and grandchildren of the person being charged to possess alcoholic beverages on premises or property owned or controlled by the person charged. Nothing in this section shall be construed to prohibit any person licensed under this chapter from employing any person 18 years of age or older for the direct handling or selling of alcoholic beverages or alcohol.

Notwithstanding the provisions of clause (14) of [section 62 of chapter 149](#), a licensee under this chapter may employ a person under the age of 18 who does not directly handle, sell, mix or serve alcohol or alcoholic beverages.

Credits

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1935, c. 440, § 34; St.1936, c. 171; St.1937, c. 424, § 5; St.1943, c. 542, § 15; St.1962, c. 354; St.1972, c. 155, § 2; St.1977, c. 929, § 14; St.1979, c. 15, § 6; St.1980, c. 193; St.1982, c. 97; St.1982, c. 627, § 13; St.1984, c. 312, § 5; St.1988, c. 149; St.1998, c. 113, § 9; St.2000, c. 175.

[Notes of Decisions \(82\)](#)

§ 34. Sale, delivery or furnishing alcoholic beverages to persons..., MA ST 138 § 34

M.G.L.A. 138 § 34, MA ST 138 § 34

Current through Chapter 41 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

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Massachusetts General Laws Annotated

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title II. Actions and Proceedings Therein (Ch. 223-236)

Chapter 231A. Procedure for Declaratory Judgments (Refs & Annos)

M.G.L.A. 231A § 1

§ 1. Power to make declaratory determination; jury questions

Currentness

The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such; provided, that nothing contained herein shall be construed to authorize the change, extension or alteration of the law regulating the method of obtaining service on, or jurisdiction over, parties or affect their right to trial by jury. When a declaration of right, or the granting of further relief based thereon, shall involve the determination of issues of fact triable by a jury as of right and as to which a jury trial is duly claimed by the party entitled thereto, or issues which the court, in accordance with the practice of courts of equity, considers should be tried by a jury, such issues may be submitted to a jury in the form of questions, with proper instructions by the court, whether a general verdict be required or not.

Credits

Added by St.1945, c. 582, § 1.

[Notes of Decisions \(484\)](#)

M.G.L.A. 231A § 1, MA ST 231A § 1

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Massachusetts General Laws Annotated

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title IV. Certain Writs and Proceedings in Special Cases (Ch. 246-258e)

Chapter 249. Audita Querela, Certiorari, Mandamus and Quo Warranto (Refs & Annos)

M.G.L.A. 249 § 4

§ 4. Action in the nature of certiorari; limitation; joinder of party defendant; injunction; judgment

Effective: February 20, 2007

[Currentness](#)

A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court or, if the matter involves any right, title or interest in land, or arises under or involves the subdivision control law, the zoning act or municipal zoning, or subdivision ordinances, by-laws or regulations, in the land court or, if the matter involves fence viewers, in the district court. Such action shall be commenced within sixty days next after the proceeding complained of. Where such an action is brought against a body or officer exercising judicial or quasi-judicial functions to prevent the body or officer from proceeding in favor of another party, or is brought with relation to proceedings already taken, such other party may be joined as a party defendant by the plaintiff or on motion of the defendant body or officer or by application to intervene. Such other party may file a separate answer or adopt the pleadings of the body or officer. The court may at any time after the commencement of the action issue an injunction and order the record of the proceedings complained of brought before it. The court may enter judgment quashing or affirming such proceedings or such other judgment as justice may require.

Credits

Amended by St.1943, c. 374, § 1; St.1953, c. 586, § 1; St.1963, c. 661, § 1; St.1973, c. 1114, § 289; St.1986, c. 95; St.2002, c. 393, § 20; St.2006, c. 366, eff. Feb. 20, 2007.

[Notes of Decisions \(387\)](#)

M.G.L.A. 249 § 4, MA ST 249 § 4

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Massachusetts General Laws Annotated

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title IV. Certain Writs and Proceedings in Special Cases (Ch. 246-258e)

Chapter 249. Audita Querela, Certiorari, Mandamus and Quo Warranto (Refs & Annos)

M.G.L.A. 249 § 5

§ 5. Action in the nature of mandamus

Effective: January 1, 2003

[Currentness](#)

A civil action to obtain relief formerly available by writ of mandamus may be brought in the supreme judicial or superior court or, if the matter involves any right, title or interest in land, or arises under or involves the subdivision control law, the zoning act, or municipal zoning, or subdivision ordinances, by-laws or regulations, in the land court.

Credits

Amended by St.1938, c. 202; St.1943, c. 374, § 2; St.1949, c. 176; St.1973, c. 1114, § 291; St.2002, c. 393, § 21.

[Notes of Decisions \(378\)](#)

M.G.L.A. 249 § 5, MA ST 249 § 5

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