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By Mr. Walsh, a petition (accompanied by bill, Senate, No. 419) of Joseph B. Walsh for legislation to regulate the distribution of malt beverages in the Commonwealth. Government Regulations.

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

### AN ACT REGULATING THE DISTRIBUTION OF MALT BEVERAGES IN THE COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:*

1 Chapter 138 of the General Laws is hereby amended by  
2 adding the following sections: —

3 *Section 25F.* It shall be unlawful for any manufacturer or  
4 holder of a certificate of compliance or any officer, director,  
5 agent or representative of a manufacturer or holder of a  
6 certificate of compliance:

7 (a) To coerce or attempt to coerce or persuade any person  
8 licensed to sell malt beverages at wholesale to enter into any  
9 agreement to take any action which would violate or tend to  
10 violate any of the laws of this commonwealth or any rule or  
11 regulation promulgated by the commission;

12 (b) To sell its products in this commonwealth without a  
13 written contract which conforms to the provisions of sections  
14 25F to 25J inclusive with each appointed wholesaler and  
15 importer;

16 (c) To designate or allow more than one wholesaler and  
17 importer to sell or distribute a specific brand of his products to  
18 retail licensees in the same area, provided that nothing herein  
19 shall prohibit a manufacturer or holder of a certificate of  
20 compliance from designating more than one wholesaler and  
21 importer to sell or distribute different brands of the same  
22 manufacturer or holder of a certificate of compliance to retail  
23 licensees in the same area;

24 (d) To unfairly cancel or terminate, without due regard to  
25 the equities of the wholesaler or without just cause or provoca-  
26 tion, any agreement or contract, written or oral, or the fran-  
27 chise of any wholesaler and importer existing on January 1,  
28 1974 or hereafter entered into, to sell malt beverages produced  
29 or sold by the manufacturer or holder of a certificate of com-  
30 pliance. After the effective date of sections 25F to 25J inclusive  
31 the above provisions of section 25E shall be a part of any  
32 franchise, contract or agreement or understanding, whether  
33 written or oral, between any wholesaler and importer licensed  
34 to do business in this commonwealth and any manufacturer or  
35 holder of a certificate of compliance doing business with the  
36 licensed wholesaler and importer just as though the provisions  
37 had been specifically agreed upon between parties.

38 *Section 25G.* All contracts, agreements or franchises be-  
39 tween a manufacturer or holder of a certificate of compliance  
40 and a wholesaler and importer shall specifically set forth or  
41 contain the following:

42 (a) The manufacturer or holder of a certificate of compli-  
43 ance and the wholesaler and importer involved shall mutually  
44 determine the size or extent of the area in which the whole-  
45 saler and importer may sell or distribute the products of the  
46 manufacturer or holder of a certificate of compliance to hold-  
47 ers of retail licenses under this chapter. Said territory shall be  
48 the territory (mutually agreed upon) and may not be changed  
49 without the written consent of both parties to the agreement;  
50 description of said territory to be filed with the commission.

51 (b) The agreed upon brands of the manufacturer or holder  
52 of a certificate of compliance to be sold by the wholesaler  
53 and importer;

54 (c) The manufacturer or holder of a certificate of compli-  
55 ance recognizes that the wholesaler is free to manage his busi-  
56 ness in the manner he deems best and that he has the right to  
57 establish his selling prices to select the brands he wishes to  
58 handle;

59 (d) A procedure for the review of alleged deficiencies in the  
60 performance of the wholesaler and importer including the  
61 submission in writing to the wholesaler and importer by the  
62 manufacturer or holder of a certificate of compliance of a list

63 of the alleged deficiencies. If the deficiencies are susceptible  
64 of correction and if the wholesaler desires to correct said de-  
65 ficiencies and are not unfairly injurious to the equity of the  
66 wholesaler, a reasonable period of time not to exceed ninety  
67 days shall be given the wholesaler and importer for rectifica-  
68 tion of said deficiencies prior to any notice of intent to termi-  
69 nate the contract, franchise or agreement between the parties;

70 (e) A termination clause providing that the manufacturer  
71 or holder of a certificate of compliance shall deliver, in writing,  
72 to the wholesaler and importer a sixty days' notice of the in-  
73 tent to terminate the agreement, contract or franchise.

74 *Section 25H.* A wholesaler and importer shall have the right  
75 to sell or transfer his business or an interest in his business to  
76 any person, or to one or more members of his family, or heirs  
77 or legatees whether the wholesaler operates as an individual,  
78 partnership or corporation and the new owner shall have all  
79 rights implied or contained in this act as if no transfer had  
80 taken place. Any sale or transfer shall be subject to the written  
81 approval of the manufacturer or holder of a certificate of com-  
82 pliance however such approval shall not be withheld unrea-  
83 sonably.

84 *Section 25-I.* The doing or accomplishing of any of the fol-  
85 lowing acts shall constitute prima facie evidence of a con-  
86 tractual or franchise relationship within the contemplation of  
87 sections 25F to 25J inclusive as between a manufacturer or  
88 holder of a certificate of compliance and a wholesaler and  
89 importer;

90 (a) The shipment, preparation for shipment or acceptance  
91 of any order by any manufacturer or holder of a certificate of  
92 compliance or his agent for any malt beverages to a licensed  
93 wholesaler and importer within the commonwealth;

94 (b) The payment by a licensed wholesaler and importer or  
95 the acceptance of payment by a manufacturer or holder of a  
96 certificate of compliance or his agent for the shipment of an  
97 order of malt beverages intended for sale within the common-  
98 wealth.

99 *Section 25-J.* The Superior Court shall have the authority  
100 to enjoin the cancellation or termination of a franchise or

101 agreement between a wholesaler and importer and manufac-  
102 turer or holder of a certificate of compliance at the instance of  
103 the wholesaler and importer who is or would be adversely  
104 affected by the cancellation or termination.

105 In granting an injunction the court shall provide that the  
106 manufacturer or holder of a certificate of compliance shall not  
107 supply the customers or territory of the wholesaler and im-  
108 porter who is serving the territory or customers through other  
109 wholesalers and importers or other means while the injunction  
110 is in effect.