

AT THE BAR WITH BOWDITCH

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Potential Changes to Distributor Agreements for Small Breweries

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The Massachusetts Senate recently passed a bill that would bring an end to a hard-fought dispute between the craft brewery industry and distributors. The pending legislation represents a significant compromise between the two industry groups, making it easier for most craft breweries to end their relationships with wholesalers. Although the bill is not yet law, both sides are optimistic that, after overcoming a number of challenges along the way, this mutually beneficial agreement will finally close the book on a nearly decade-long negotiation.

Within just the past few years, there have been a number of failed attempts to reform G. L. c. 138, § 25E, which controls how and when a brewery can choose a new distributor. As it is currently written, if a brewery has regularly engaged with a wholesaler during a 6-month period, it cannot thereafter refuse to sell to that wholesaler unless the brewery demonstrates "good cause." This has proven to be a difficult hurdle, meaning that breweries are often left with no choice but to continue working with the same distributor.

Senate Bill 2841 would create an exception to this rule. The change would permit small breweries to terminate distributorship agreements *without* good cause, upon 30 days' notice, provided that the wholesaler is compensated for its unsold inventory, its marketing investment, and the loss of distribution rights. Any disputes regarding fair compensation under the new law would be submitted to arbitration.

Although only breweries that produce less than 250,000 barrels per year could exercise this option, almost every brewery in the Commonwealth falls would qualify. The notable exception is Boston Beer Company, which reportedly agreed to be excluded so that a compromise could be reached.

The saga is not over just yet, as the House of Representatives must next vote on S. 2841 before passing it on to the Governor for his approval. But the sense of relief from both industry groups (distributors and breweries) is palpable, as those who have tirelessly worked for years to find this common ground are clearly confident about the path forward.

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