

HOUSE No. 317

The Commonwealth of Massachusetts

PRESENTED BY:
David M. Torrissi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act regulating the direct shipment of wine.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
David M. Torrissi	14th Essex
John F. Quinn	9th Bristol
John W. Scibak	2nd Hampshire
James E. Vallee	10th Norfolk
Bradley H. Jones, Jr.	20th Middlesex
Susan C. Tucker	Second Essex and Middlesex
Ruth B. Balser	12th Middlesex
Frank I. Smizik	15th Norfolk
Martha M. Walz	8th Suffolk
Barbara A. L'Italien	18th Essex
Robert L. Hedlund	Plymouth and Norfolk
Paul McMurtry	11th Norfolk
Cory Atkins	14th Middlesex
William N. Brownsberger	24th Middlesex
Mary E. Grant	6th Essex
William Lantigua	16th Essex
Robert M. Koczera	11th Bristol
Scott P. Brown	Norfolk, Bristol and Middlesex
Stephen L. DiNatale	3rd Worcester
Harriett L. Stanley	2nd Essex
Bradford R. Hill	4th Essex
Michael O. Moore	Second Worcester
Antonio F.D. Cabral	13th Bristol
Byron Rushing	9th Suffolk
Sean Garballey	23rd Middlesex

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT REGULATING THE DIRECT SHIPMENT OF WINE.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make to authorize the direct shipment of wine , therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 1 of chapter 138 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the definition of “Alcoholic beverages” the following definition:- “Alcoholic beverages expert”, an individual who is recognized for their written contributions evaluating alcoholic beverages in trade publications, newspapers, magazines, websites, newsletters, and other media for public distribution.

SECTION 2. Chapter 138 of the General Laws, as so appearing, is hereby amended by striking section 19F and inserting in place thereof the following section:-

Section 19F. (a) Notwithstanding any general or special law to the contrary, an applicant that is currently licensed in the Commonwealth, or any other state, to manufacture, export and sell wine, who obtains a direct shipment license pursuant to this section, may sell and ship wine directly to a resident of the Commonwealth, who is at least 21 years of age, for such resident’s personal use, and not for resale.

(b) The commission may issue a direct shipment license to an applicant who: (1) Is authorized by their home state licensing authority to manufacture, export and sell wine; (2) Files an application with the commission; and (3) Pays an annual license fee per winery.

(c) The annual license fee for a license issued under this section shall be \$100 per winery; provided that an affiliate, franchise, or subsidiary thereof shall require a separate license. The applicant shall provide the commission and the department of revenue with a true copy of the applicable alcoholic beverage license to manufacture, export and sell its wine as issued by the appropriate licensing authority. A copy of the wine shipment license obtained under this section shall be sent by the commission to the department of revenue to be kept on file.

(d) A person licensed under this section shall ship wine in accordance with section 22.

(e) A household shall not receive more than 30 cases (no more than 9 liters each case) per year of wine produced by the holder of a direct shipment license.

(f) When accepting an order for a delivery of wine to a resident of the Commonwealth, the holder of a direct shipment license shall require the prospective customer to represent that he or she has attained the age of 21 years or more and that the wine being purchased will not be resold or introduced into commerce.

(g) A person licensed under this section shall pay to the department of revenue, under the department's rules and regulations, all taxes due, the amount of such taxes to be calculated as if the sale were at the location where the delivery is made; provided that the licensee shall pay, for each shipment of wine, the excise levied on importations of wine calculated under section 21 and, upon request, allow the commission or the department of revenue to perform an audit of the licensee's records.

(h) No person shall ship wine directly to a consumer without a direct shipment license. The commission shall enforce the requirements of this section, by administrative proceedings, against a licensee who ships wine in violation of this section as follows:

for a first violation, by a fine of \$100;

for a second violation, by a suspension of the winery's direct shipment license for not more than 1 year, a fine of \$500, or both;

for a third violation, by a prohibition of the winery from making any direct shipment of wine under this section, by a fine of up to \$5,000, or both; provided that after 1 year, the winery may reapply for the authority to directly ship wine under this section.

if a violation of this section involves a sale or delivery to a person under 21 years of age, a first offense may be punished by suspension of the winery's direct shipment license for not more than 1 year; and a second offense may be punished by revocation of the winery's direct shipment license; provided that nothing in this clause shall preclude punishment under section 34.

(i) The commission may promulgate rules and regulations necessary to effectuate its alcohol oversight, licensing, and enforcement purposes under this chapter as they relate to this section, including rules and regulations for reporting violations of this section.

(j) The department of revenue may promulgate rules and regulations necessary to effectuate the tax oversight, collection and enforcement provisions of the General Laws as they relate to this section.

(k) The commission shall issue an annual report to the house and senate committees on ways and means and the joint committee on consumer protection and professional licensure, which shall include, but not limited to, a determination of direct shipment licenses issued, a review of violations and enforcement measures under this section and an analysis of the need for changes in the law and regulations relative thereto.

SECTION 3. Section 22 of chapter 138 of the General Laws, as so appearing, is hereby amended, in line 34, by striking the figure "\$50" and inserting in place thereof the figure "\$5".

SECTION 4. Said section 22 of said chapter 138, as so appearing, is hereby further amended by striking paragraph 9 and inserting in place thereof the following paragraph:-

Notwithstanding any other provision of this section, any individual, partnership, or corporation, regularly and lawfully conducting a parcel delivery service, or a general express or trucking business, or regularly and lawfully engaged in the business of leasing trucks for hire, with or without drivers, may if authorized by a permit issued by the commission, transport and deliver the products sold at retail by licensees under section 19F, or farmer-brewery licensees under section 19E, to the ultimate consumers of such products. Licensees under sections 19F and 19E shall ensure that the outside of each parcel transported or delivered under this section shall be clearly labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY" and with a seal of licensure attached thereto as provided by the commission. Receipts for delivery of such parcels shall contain a check box next to the recipient's signature where the recipient shall certify that he or she is not under 21 years of age and a check box where the delivery person shall certify that a valid form of photographic identification showing that the recipient is not under 21 years of age was presented by the recipient upon delivery. Notwithstanding the foregoing, a delivery company may use an electronic device to receive the signature of a person accepting delivery of a parcel under this section and to certify that the person has displayed a valid identification as so required.

SECTION 5. Section 22A of chapter 138 of the General Laws, as so appearing, is hereby amended by striking the second paragraph.

SECTION 6. Chapter 138 of the General Laws, as so appearing, is hereby amended by inserting, after section 22A, the following section:-

Section 22B. (1) Upon payment of annual fee of \$50, the commission may grant to an alcoholic beverages expert a permit which shall authorize such individual to accept delivery of alcoholic beverages from a licensee under this chapter. These beverages, known as samples, are acquired otherwise than by purchase and are not intended for sale. The holder of a permit issued under this section shall use the samples obtained for the express purpose of evaluation and analysis related to consumer consumption of an item having a brand name. The permit shall allow for the delivery of the samples to the premises where the research is to be conducted.

(2) Before an individual may qualify as an expert under this section, the individual shall submit credentials, with their initial application fee, to be approved by the commission.

SECTION 7. This act shall take effect upon its passage.