

SENATE No. 176

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

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 Authorizing the Direct Shipment of Wine.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mr. O'Leary	Cape and Islands
Sarah K. Peake	4th Barnstable
William N. Brownsberger	24th Middlesex
Denise Provost	27th Middlesex
James B. Eldridge	Middlesex and Worcester
Robert M. Koczera	11th Bristol
John W. Scibak	2nd Hampshire
Cynthia Stone Creem	First Middlesex and Norfolk
Martha M. Walz	8th Suffolk
Jennifer L. Flanagan	Worcester and Middlesex
Mark V. Falzone	9th Essex
Timothy Madden	Barnstable, Dukes and Nantucket
Kay Khan	11th Middlesex
Scott P. Brown	Norfolk, Bristol and Middlesex
Susan C. Tucker	Second Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AUTHORIZING THE DIRECT SHIPMENT OF WINE.

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

- 1 **SECTION 1.** Section 19B of chapter 138 of the general laws, as appearing in the 2006 official
2 edition, is hereby amended by striking subsection (g) and inserting in place thereof the following:-
3 (g) A winegrower may sell wine or winery products:
4 (1) at wholesale to any person holding a valid license to manufacture alcoholic beverages under section
5 nineteen;
6 (2) at wholesale to any person holding a valid wholesaler's and importer's license under section eighteen;
7 (3) at wholesale to any person holding a valid farmer-winery license under this section;
8 (4) at wholesale in kegs, casks, barrels or bottles to any person holding a license to sell under section
9 twelve, thirteen or fourteen, and, for the sole purpose of resale in containers in which the wine was
10 delivered, to any person holding a license to sell under section fifteen; provided that the total annual sales
11 to section twelve, thirteen, fourteen, and fifteen licenses shall not exceed fifty thousand gallons;
12 (5) at wholesale to any registered pharmacist holding a certificate of fitness under section thirty;

13 (6) at wholesale to churches and religious societies, educational institutions, incorporated hospitals,
14 homes for the aged, manufacturers of food products, and manufacturers of drugs and chemicals as
15 authorized by, and subject to the provisions of section twenty-eight;

16 (7) at retail by the bottle to consumers for consumption off the winery premises;

17 (8) at wholesale to any person in any state or territory in which the importation and sale of wine is not
18 prohibited by law; and

19 (9) at wholesale to any person in any foreign country.

20 **SECTION 2.** Said chapter 138 is hereby further amended by inserting after section 19E the
21 following new section:-

22 Section 19F. (a) The commission may issue to an applicant who operates a winery and who is authorized
23 by the appropriate licensing authority to manufacture, export and sell wine, a direct shipment license to
24 sell and ship wine or winery products produced by the winery: (i) at retail directly to consumers; (ii) at
25 wholesale in kegs, casks, barrels or bottles to a person licensed under section 12, 13 or 14; (iii) at
26 wholesale for the sole purpose of resale in containers in which wine was delivered to any person licensed
27 under section 15; (iv) at wholesale to a person licensed under section 18, 19 or 19B; (v) at wholesale to
28 churches and religious societies, educational institutions, incorporated hospitals, homes for the aged,
29 manufacturers of food products and manufacturers of drugs and chemicals under section 28; or (vi) at
30 wholesale to a registered pharmacist holding a certificate of fitness under section 30.

31 (b) The annual license fee for a license issued under this section shall be \$100 per winery. The applicant
32 shall provide the commission and the department of revenue with a true copy of the applicable alcoholic
33 beverage licenses to manufacture, export and sell its wine as issued by the appropriate licensing authority.
34 A copy of the wine shipment license, obtained under this section, shall be sent by the commission to the
35 department of revenue to be kept on file.

36 (c) A licensee may ship up to twenty-four nine liter cases of wine annually to a resident who is at least 21
37 years of age for such resident's personal use and not for resale. All wine direct shipper licensees shall
38 ensure that all containers of wine shipped directly to a resident in this state are conspicuously labeled with
39 the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
40 FOR DELIVERY."

41 (d) A person licensed under this section shall: (i) report monthly to the commission and the department of
42 revenue the total number of gallons of wine shipped into the commonwealth for the preceding month; (ii)
43 pay to the department of revenue, under the department's rules and regulations, all taxes due, the amount
44 of such taxes to be calculated as if the sale were at the location where the delivery is made; provided,
45 however, that the licensee shall pay, for each shipment of wine, the excise levied on importations of wine
46 calculated under section 21; and (iii) upon request, allow the commission or the department of revenue to
47 perform an audit of the licensee's records.

48 (e) The commission may enforce the requirements of this section by administrative proceedings to
49 suspend or revoke a wine direct shipper's license, and the department may accept payment of a fine or an
50 offer in compromise in lieu of suspension, such payments to be determined by rules promulgated by the
51 Commission.

52 (f) No person shall direct ship wine to consumers without a license to sell and ship wine. A person who
53 manufactures, transports, imports, exports or receives wine in violation of this chapter shall be deemed to
54 have engaged in a deceptive act or practice under chapter 93A; provided, however, that a common carrier
55 acting in the ordinary course of business shall be exempt from this subsection.

56 (g) The commission may promulgate rules and regulations to effectuate the purposes of this law in
57 accordance with its powers under chapter 138, Sec 24. The department of revenue may promulgate rules
58 and regulations necessary to effectuate the tax oversight, collection and enforcement provisions of the
59 General Laws as they relate to this section.

60 **SECTION 3.** Said section 22 of said chapter 138, as so appearing, is hereby further amended by
61 striking out the ninth paragraph and inserting in place thereof the following paragraph:

62 Notwithstanding any other provision of this section, any individual, partnership, or corporation, regularly
63 and lawfully conducting a parcel delivery service, or a general express or trucking business, or regularly
64 and lawfully engaged in the business of leasing trucks for hire, with or without drivers, may make
65 application to the commission and shall be issued a permit to transport or deliver the products sold by
66 farmer-winery licensees under section 19B, farmer-brewer licensees under section 19E and licensees
67 under sections 19F. There shall be no fee for such permit, and persons operating a vehicle when engaged
68 in such transportation or delivery shall not be required to carry such permit or certified copy thereof. In
69 lieu of such permit, the commission may issue a fleet permit for an annual fee of not more than \$2500.
70 Such fleet permit shall cover any and all vehicles owned or hired and operated by, such permittee. The
71 fleet permit shall be maintained at the offices of the transportation company and produced upon request.
72 Parcels transported or delivered under this paragraph shall be clearly labeled as containing alcoholic
73 beverages and requiring the signatures of, and restricting delivery to, an adult recipient 21 years of age or
74 older, or to a licensee with a valid alcohol license in the commonwealth. Notwithstanding the foregoing,
75 a delivery company may use an electronic device to receive the signature of a person accepting delivery
76 of a parcel under this section and to certify that the person has displayed a valid identification as so
77 required.

78 **SECTION 4.** Section 23 of said chapter 138, as so appearing, is hereby amended by striking the
79 third paragraph and inserting in place thereof the following:-

80 No license issued under section twelve, fourteen or fifteen, and no certificate of fitness issued under
81 section thirty shall authorize the sale of any alcoholic beverages other than those purchased from a
82 licensee under section eighteen, nineteen, 19B, 19F, or nineteen C or from a holder of a special permit to
83 sell issued under section twenty-two A; provided, that the holder of a license under section twelve or

84 fifteen may sell alcoholic beverages acquired as the result of the purchase of a warehouse receipt for such
85 beverages if the said receipt was purchased from the holder of a license under section eighteen, nineteen,
86 19B, 19F or nineteen C or from a broker registered under chapter one hundred and ten A who is
87 authorized thereunder to deal in warehouse receipts for alcoholic beverages; and provided, further, that
88 nothing contained in this section shall be construed to authorize a licensee under section twelve or fifteen
89 to import alcoholic beverages into the commonwealth except through the holder of a license issued under
90 section eighteen or 19F.