

**HOUSE . . . . . No.**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**David M. Torrasi**

*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:              |
|-------------------------|--------------------------------|
| Cory Atkins             | 14th Middlesex                 |
| Ruth B. Balser          | 12th Middlesex                 |
| William N. Brownsberger | 24th Middlesex                 |
| Stephen L. DiNatale     | 3rd Worcester                  |
| Mary E. Grant           | 6th Essex                      |
| Robert L. Hedlund       | Plymouth and Norfolk           |
| Bradley H. Jones, Jr.   | 20th Middlesex                 |
| Robert M. Koczera       | 11th Bristol                   |
| Barbara A. L'Italien    | 18th Essex                     |
| Paul McMurtry           | 11th Norfolk                   |
| John F. Quinn           | 9th Bristol                    |
| John W. Scibak          | 2nd Hampshire                  |
| Frank I. Smizik         | 15th Norfolk                   |
| Harriett L. Stanley     | 2nd Essex                      |
| David M. Torrasi        | 14th Essex                     |
| Susan C. Tucker         | Second Essex and Middlesex     |
| Bradford R. Hill        | 4th Essex                      |
| William Lantigua        | 16th Essex                     |
| Scott P. Brown          | Norfolk, Bristol and Middlesex |

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## 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:*

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

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7 SECTION 2. Chapter 138 of the General Laws, as so appearing, is hereby amended by striking section 19F  
8 and inserting in place thereof the following section:-  
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10 Section 19F. (a) Notwithstanding any general or special law to the contrary, an applicant that is currently  
11 licensed in the Commonwealth, or any other state, to manufacture, export and sell wine, who obtains a  
12 direct shipment license pursuant to this section, may sell and ship wine directly to a resident of the  
13 Commonwealth, who is at least 21 years of age, for such resident's personal use, and not for resale.

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

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

22 of the wine shipment license obtained under this section shall be sent by the commission to the  
23 department of revenue to be kept on file.

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

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

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

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

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

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

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

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

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

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

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

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

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68 SECTION 3. Section 22 of chapter 138 of the General Laws, as so appearing, is hereby amended, in line  
69 34, by striking the figure "\$50" and inserting in place thereof the figure "\$5".

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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.