

**SENATE . . . . . No.**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Mr. 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:

Mr. O'Leary

DISTRICT/ADDRESS:

Cape and Islands

# 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 edition, is  
2 hereby amended by striking subsection (g) and inserting in place thereof the following:-

3 (g) A winegrower may sell wine or winery products:

4

5 (1) at wholesale to any person holding a valid license to manufacture alcoholic beverages under section  
6 nineteen;

7 (2) at wholesale to any person holding a valid wholesaler's and importer's license under section  
8 eighteen;

9 (3) at wholesale to any person holding a valid farmer-winery license under this section;

10 (4) at wholesale in kegs, casks, barrels or bottles to any person holding a license to sell under section  
11 twelve, thirteen or fourteen, and, for the sole purpose of resale in containers in which the wine was  
12 delivered, to any person holding a license to sell under section fifteen; provided that the total annual  
13 sales to section twelve, thirteen, fourteen, and fifteen licenses shall not exceed fifty thousand gallons;

14 (5) at wholesale to any registered pharmacist holding a certificate of fitness under section thirty;

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

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

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

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

22

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

25 Section 19F. (a) The commission may issue to an applicant who operates a winery and who is authorized  
26 by the appropriate licensing authority to manufacture, export and sell wine, a direct shipment license to  
27 sell and ship wine or winery products produced by the winery: (i) at retail directly to consumers; (ii) at  
28 wholesale in kegs, casks, barrels or bottles to a person licensed under section 12, 13 or 14; (iii) at  
29 wholesale for the sole purpose of resale in containers in which wine was delivered to any person  
30 licensed under section 15; (iv) at wholesale to a person licensed under section 18, 19 or 19B; (v) at  
31 wholesale to churches and religious societies, educational institutions, incorporated hospitals, homes  
32 for the aged, manufacturers of food products and manufacturers of drugs and chemicals under section  
33 28; or (vi) at wholesale to a registered pharmacist holding a certificate of fitness under section 30.

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

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

44

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

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

56

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

61

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

66

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

69 Notwithstanding any other provision of this section, any individual, partnership, or corporation,  
70 regularly and lawfully conducting a parcel delivery service, or a general express or trucking business, or  
71 regularly and lawfully engaged in the business of leasing trucks for hire, with or without drivers, may  
72 make application to the commission and shall be issued a permit to transport or deliver the products

73 sold by farmer-winery licensees under section 19B, farmer-brewer licensees under section 19E and  
74 licensees under sections 19F. There shall be no fee for such permit, and persons operating a vehicle  
75 when engaged in such transportation or delivery shall not be required to carry such permit or certified  
76 copy thereof. In lieu of such permit, the commission may issue a fleet permit for an annual fee of not  
77 more than \$2500. Such fleet permit shall cover any and all vehicles owned or hired and operated by,  
78 such permittee. The fleet permit shall be maintained at the offices of the transportation company and  
79 produced upon request. Parcels transported or delivered under this paragraph shall be clearly labeled as  
80 containing alcoholic beverages and requiring the signatures of, and restricting delivery to, an adult  
81 recipient 21 years of age or older, or to a licensee with a valid alcohol license in the commonwealth.  
82 Notwithstanding the foregoing, a delivery company may use an electronic device to receive the  
83 signature of a person accepting delivery of a parcel under this section and to certify that the person has  
84 displayed a valid identification as so required.

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

87 No license issued under section twelve, fourteen or fifteen, and no certificate of fitness issued under  
88 section thirty shall authorize the sale of any alcoholic beverages other than those purchased from a  
89 licensee under section eighteen, nineteen, 19B, 19F, or nineteen C or from a holder of a special permit  
90 to sell issued under section twenty-two A; provided, that the holder of a license under section twelve or  
91 fifteen may sell alcoholic beverages acquired as the result of the purchase of a warehouse receipt for  
92 such beverages if the said receipt was purchased from the holder of a license under section eighteen,  
93 nineteen, 19B, 19F or nineteen C or from a broker registered under chapter one hundred and ten A who  
94 is authorized thereunder to deal in warehouse receipts for alcoholic beverages; and provided, further,  
95 that nothing contained in this section shall be construed to authorize a licensee under section twelve or  
96 fifteen to import alcoholic beverages into the commonwealth except through the holder of a license  
97 issued under section eighteen or 19F.