

HOUSE No. 4497

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act regulating 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 1 of chapter 138 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by inserting after the definition of “Alcoholic beverages” the
3 following definition:-

4 “Alcoholic beverages expert”, an individual who is recognized for their written
5 contributions evaluating alcoholic beverages in trade publications, newspapers, magazines,
6 websites, newsletters, and other media for public distribution.

7 SECTION 2. Section 19B of Chapter 138, as appearing in the 2008 official edition, is
8 hereby amended by striking out in line 1 of paragraph (a) the words “ For the purposes of
9 encouraging the development of domestic vineyards, the commission shall” , and insert in place
10 thereof the following words: “The commission shall”

11 SECTION 3. Chapter 138 of the General Laws, as so appearing, is hereby amended by
12 striking section 19F and inserting in place thereof the following section:-

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

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

21 (c) The annual license fee for a license issued under this section shall be \$100.00 per
22 winery; provided that an affiliate, franchise, or subsidiary thereof shall require a separate
23 license. The applicant shall provide the commission and the department of revenue with a true
24 copy of the applicable alcoholic beverage license to manufacture, export and sell its wine as
25 issued by the appropriate licensing authority. A copy of the wine shipment license obtained
26 under this section shall be sent by the commission to the department of revenue to be kept on
27 file.

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

29 (e) A licensee, licensed under this section, may ship not more than 4 cases (no more than
30 10 liters each case) per year of wine to a resident located within the Commonwealth.

31 (f) A person licensed under this section shall: (i) report monthly to the commission and
32 the department of revenue the total number of gallons of wine shipped into the commonwealth
33 for the preceding month; (ii) pay to the department of revenue, under the department's rules and
34 regulations, all taxes due, the amount of such taxes to be calculated as if the sale were at the

35 location where the delivery is made; provided, however, that the licensee shall pay, for each
36 shipment of wine, the excise levied on importations of wine calculated under section 21 and any
37 and all other applicable taxes, including sales tax; and (iii) upon request, allow the commission
38 or the department of revenue to perform an audit of the licensee's records.

39 (g) No person shall direct ship wine to consumers without a license to sell and ship wine.
40 A person who manufactures, transports, imports, exports or receives wine in violation of this
41 chapter shall be deemed to have engaged in a deceptive act or practice under chapter 93A. The
42 commission shall enforce the requirements of this section, by administrative proceedings, against
43 a licensee who ships wine in violation of this section as follows: for a first violation, by a fine of
44 \$1000; for a second violation, a fine of \$2000; for a third violation within one calendar year, by a
45 prohibition of the winery from making any direct shipment of wine under this section, by a fine
46 of up to \$10,000, or both; provided that after 1 year, the winery may reapply for the authority to
47 directly ship wine under this section.

48 If a violation of this section involves a sale or delivery to a person under 21 years of age,
49 a first offense may a fine of \$1000; for a second violation, a fine of \$2000; for a third violation
50 within one calendar year, by a prohibition of the winery from making any direct shipment of
51 wine under this section, by a fine of up to \$10,000, or both; provided that after 1 year, the winery
52 may reapply for the authority to directly ship wine under this section. Nothing in this clause shall
53 preclude punishment under section 34.

54 (h) The commission may promulgate rules and regulations to effectuate the purposes of
55 this law in accordance with its powers under chapter 138, Sec 24. The department of revenue

56 may promulgate rules and regulations necessary to effectuate the tax oversight, collection and
57 enforcement provisions of the General Laws as they relate to this section.

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

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

65 Notwithstanding any other provision of this section, any individual, partnership, or
66 corporation, regularly and lawfully conducting a parcel delivery service, or a general express or
67 trucking business, or regularly and lawfully engaged in the business of leasing trucks for hire,
68 with or without drivers, may transport and deliver the products sold at retail by licensees under
69 section 19F, farmer-winery licensees under 19B, or farmer-brewery licensees under section 19E,
70 to the ultimate consumers of such products pursuant to this section. Licensees under sections
71 19F and 19E shall ensure that the outside of each parcel transported or delivered under this
72 section shall be clearly labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF
73 PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY." Receipts for delivery of such
74 parcels shall contain a check box next to the recipient's signature where the recipient shall certify
75 that he or she is not under 21 years of age and a check box where the delivery person shall certify
76 that a valid form of photographic identification showing that the recipient is not under 21 years
77 of age was presented by the recipient upon delivery. Notwithstanding the foregoing, a delivery

78 company may use an electronic device to receive the signature of a person accepting delivery of
79 a parcel under this section and to certify that the person has displayed a valid identification as so
80 required.

81 SECTION 5. Section 22A of chapter 138 of the General Laws, as so appearing, is hereby
82 amended by inserting after the second paragraph the following two paragraphs:-

83 (1) Upon payment of annual fee of \$100.00, the commission may grant to an alcoholic
84 beverages expert a permit which shall authorize such individual to accept delivery of alcoholic
85 beverages from a licensee under this chapter. These beverages, known as samples, are acquired
86 otherwise than by purchase and are not intended for sale. The holder of a permit issued under
87 this section shall use the samples obtained for the express purpose of evaluation and analysis
88 related to consumer consumption of an item having a brand name. The permit shall allow for the
89 delivery of the samples to the premises where the research is to be conducted.

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

92 SECTION 6. This act shall take effect upon its passage.