

SENATE No. 176

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 official edition, is hereby amended by striking subsection (g) and inserting in place thereof the
3 following:-

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

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

7 (2) at wholesale to any person holding a valid wholesaler's and importer's license under
8 section 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
11 under section twelve, thirteen or fourteen, and, for the sole purpose of resale in containers in
12 which the wine was delivered, to any person holding a license to sell under section fifteen;

13 provided that the total annual sales to section twelve, thirteen, fourteen, and fifteen licenses shall
14 not exceed fifty thousand gallons;

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

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

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

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

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

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

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

34 products and manufacturers of drugs and chemicals under section 28; or (vi) at wholesale to a
35 registered pharmacist holding a certificate of fitness under section 30.

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

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

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

54 (e) The commission may enforce the requirements of this section by administrative
55 proceedings to suspend or revoke a wine direct shipper's license, and the department may accept

56 payment of a fine or an offer in compromise in lieu of suspension, such payments to be
57 determined by rules promulgated by the Commission.

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

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

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

70 Notwithstanding any other provision of this section, any individual, partnership, or
71 corporation, regularly and lawfully conducting a parcel delivery service, or a general express or
72 trucking business, or regularly and lawfully engaged in the business of leasing trucks for hire,
73 with or without drivers, may make application to the commission and shall be issued a permit to
74 transport or deliver the products sold by farmer-winery licensees under section 19B, farmer-
75 brewer licensees under section 19E and licensees under sections 19F. There shall be no fee for
76 such permit, and persons operating a vehicle when engaged in such transportation or delivery
77 shall not be required to carry such permit or certified copy thereof. In lieu of such permit, the

78 commission may issue a fleet permit for an annual fee of not more than \$2500. Such fleet permit
79 shall cover any and all vehicles owned or hired and operated by, such permittee. The fleet permit
80 shall be maintained at the offices of the transportation company and produced upon request.
81 Parcels transported or delivered under this paragraph shall be clearly labeled as containing
82 alcoholic beverages and requiring the signatures of, and restricting delivery to, an adult recipient
83 21 years of age or older, or to a licensee with a valid alcohol license in the commonwealth.
84 Notwithstanding the foregoing, a delivery company may use an electronic device to receive the
85 signature of a person accepting delivery of a parcel under this section and to certify that the
86 person has displayed a valid identification as so required.

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

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