

HOUSE No. 1029**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 adoption of the accompanying bill:

An Act regulating the direct shipment of wine.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Torrasi</i>	<i>14th Essex</i>	<i>1/20/2011</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2011</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>2/4/2011</i>
<i>James B. Eldridge</i>		<i>2/4/2011</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>1/20/2011</i>
<i>William N. Brownsberger</i>		<i>1/23/2011</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/25/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/22/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/25/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/3/2011</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/4/2011</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/2/2011</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/3/2011</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/3/2011</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>2/3/2011</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>	<i>2/2/2011</i>

HOUSE No. 1029

By Mr. David M. Torrasi of North Andover, petition (accompanied by bill, House, No. 01029) of James Eldridge and others for legislation to further regulate the direct shipments of wine. Joint Committee on Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regulating the direct shipment of wine.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is 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 2008
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 inserting in
10 place thereof the following words: “The commission shall”.

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

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

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

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

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

(e) A licensee, licensed under this section, may ship not more than 24 cases (no more than 9 liters each case) per year of wine to a resident located within the Commonwealth.

(f) A person licensed under this section shall: (i) report yearly to the commission and the department of revenue the total number of gallons of wine shipped into the commonwealth for

the preceding month; (ii) pay to the department of revenue, under the department's rules and regulations, all taxes due, the amount of such taxes to be calculated as if the sale were at the location where the delivery is made; provided, however, that the licensee shall pay, for each shipment of wine, the excise levied on importations of wine calculated under section 21 and any and all other applicable taxes, including sales tax; and (iii) upon request, allow the commission or the department of revenue to perform an audit of the licensee's records.

(g) No person shall direct ship wine to consumers without a license to sell and ship wine. A person who manufactures, transports, imports, exports, or receives wine in violation of this chapter shall be deemed to have engaged in a deceptive act or practice under chapter 93A. The commission shall enforce the requirements of this section, by administrative proceedings, against a licensee who ships wine in violation of this section as follows: for a first violation, by a fine of no more than \$500; for a second violation, by a fine of \$1000; for a third violation within one calendar year, by a prohibition of the winery from making any direct shipment of wine under this section, by a fine of up to \$2,000, or both; provided that after one year, the winery may reapply for the authority to directly ship wine under this section.

If a violation of this section involves a sale or delivery to a person under 21 years of age, a first offense may be punishable by a fine of \$500; for a second violation, a fine of \$1000; for a third violation within one calendar year, by a prohibition of the winery from making any direct shipment of wine under this section, by a fine of up to \$2,000, or both; provided that after one year, the winery may reapply for the authority to directly ship wine under this section. Nothing in this clause shall preclude punishment under section 34.

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

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

SECTION 4. Section 22 of said chapter 138 is hereby amended by striking out the ninth paragraph 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 make application to the commission and shall be issued a permit to transport or deliver the products sold by farmer-winery licensees under section 19B, farmer-brewer licensees under section 19E, and licensees under sections 19F. The fee for such permit shall not exceed \$150. Persons operating a vehicle when engaged in such transportation or delivery shall be required to carry such permit or certified copy thereof. In lieu of such permit, the commission may issue a fleet permit for an annual fee of not more than \$5000. Such fleet permit shall cover any and all vehicles owned or hired and operated by such permittee. The fleet permit shall be maintained at the offices of the transportation company and produced upon

request. Parcels transported or delivered under this paragraph shall be clearly labeled as containing alcoholic beverages and requiring the signatures of, and restricting delivery to, an adult recipient 21 years of age or older, or to a licensee with a valid alcohol license in the commonwealth. 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 said chapter 138 is hereby amended by inserting after the second paragraph the following two paragraphs:-

Upon payment of an annual fee of \$100.00, 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.

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 6. This act shall take effect upon its passage.