

HOUSE No. 1883

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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:

An Act regulating the direct shipment of wine.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-----------------------|
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Donald F. Humason, Jr.</i> | <i>4th Hampden</i> |
| <i>Geoff Diehl</i> | <i>7th Plymouth</i> |
| <i>F. Jay Barrows</i> | <i>1st Bristol</i> |
| <i>Shaunna O'Connell</i> | <i>3rd Bristol</i> |
| <i>Susan Williams Gifford</i> | <i>2nd Plymouth</i> |
| <i>Sarah K. Peake</i> | <i>4th Barnstable</i> |
| <i>Todd M. Smola</i> | <i>1st Hampden</i> |
| <i>Sheila C. Harrington</i> | <i>1st Middlesex</i> |
| <i>Matthew A. Beaton</i> | <i>11th Worcester</i> |
| <i>Steven L. Levy</i> | <i>4th Middlesex</i> |
| <i>George N. Peterson, Jr.</i> | <i>9th Worcester</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> |
| <i>Viriato Manuel deMacedo</i> | <i>1st Plymouth</i> |

HOUSE No. 1883

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1883) of Bradley H. Jones, Jr. and others for legislation to regulate the direct shipment of wines. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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

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

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

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

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

24 (e) A person licensed under this section shall: (i) report monthly to the commission and
25 the department of revenue the total number of gallons of wine shipped into the commonwealth
26 for the preceding month; (ii) pay to the department of revenue, under the department's rules and
27 regulations, all taxes due, the amount of such taxes to be calculated as if the sale were at the
28 location where the delivery is made; provided, however, that the licensee shall pay, for each
29 shipment of wine, the excise levied on importations of wine calculated under section 21 and any
30 and all other applicable taxes, including sales tax; and (iii) upon request, allow the commission
31 or the department of revenue to perform an audit of the licensee's records.

32 (f) No person shall direct ship wine to consumers without a license to sell and ship wine.
33 A person who manufactures, transports, imports, or exports wine in violation of this chapter shall
34 be deemed to have engaged in a deceptive act or practice under chapter 93A.

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

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

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

50 SECTION 3. Said section 22 of said chapter 138, as so appearing, is hereby further
51 amended by striking paragraph 9 and inserting in place thereof the following paragraph:-

52 Notwithstanding any other provision of this section, any individual, partnership, or
53 corporation, regularly and lawfully conducting a parcel delivery service, or a general express or
54 trucking business, or regularly and lawfully engaged in the business of leasing trucks for hire,
55 with or without drivers , may transport and deliver the products sold at retail by licensees under
56 section 19F, farmer-winery licensees under 19B, or farmer-brewery licensees under section 19E,
57 to the ultimate consumers of such products pursuant to this section . Licensees under sections
58 19F and 19E shall ensure that the outside of each parcel transported or delivered under this

59 section shall be clearly labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF
60 PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.” Receipts for delivery of such
61 parcels shall contain a check box next to the recipient’s signature where the recipient shall certify
62 that he or she is not under 21 years of age and a check box where the delivery person shall certify
63 that a valid form of photographic identification showing that the recipient is not under 21 years
64 of age was presented by the recipient upon delivery. Notwithstanding the foregoing, a delivery
65 company may use an electronic device to receive the signature of a person accepting delivery of
66 a parcel under this section and to certify that the person has displayed a valid identification as so
67 required.

68 SECTION 4. Section 22A of chapter 138 of the General Laws, as so appearing, is
69 hereby amended by inserting after the second paragraph the following two paragraphs:-

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

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

79 SECTION 5. This act shall take effect upon its passage.