

HOUSE No. 258

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Moran

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 An regulating the direct shipment of wine.

PETITION OF:

NAME:

Michael J. Moran

DISTRICT/ADDRESS:

18th Suffolk

HOUSE No. 258

By Mr. Moran of Boston, a petition (accompanied by bill, House, No. 258) of Michael J. Moran for legislation to further regulate the direct shipment of wine. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

An Act An 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 19B of chapter 138, as appearing in the 2008 Official Edition, is
2 hereby amended by striking out, in line 1 of paragraph (a), the words “ For the purposes of
3 encouraging the development of domestic vineyards, the commission shall”, and inserting in
4 place thereof the following words: “The commission shall”.

5 SECTION 2. Chapter 138 of the General Laws, as so appearing, is hereby amended by
6 striking out section 19F and inserting in place thereof the following section.

7 Section 19F. Notwithstanding any general or special law to the contrary,

8 (a) Any person, firm or corporation that holds a federal basic permit pursuant to the
9 federal Alcohol Administration Act, compiled in 27 U.S.C. § 201 et seq., holds a license in the
10 Commonwealth or any other state to manufacture and export wine, and is in the business of
11 manufacturing, bottling or rectifying wine may apply to the commission for a direct shipper's
12 license under this section.

13 (b) A direct shipper, meeting the requirements of this section, shall be authorized to make
14 sales and delivery of wine, as defined in §1, by common carrier, which holds a valid
15 transportation permit issued by the commission under §22, to the citizens of this state over the
16 age of twenty-one (21), for personal use and not resale, who have purchased the wine directly
17 from the direct shipper, subject to the limitations and requirements imposed by this section.

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

19 (d) As a condition to the issuance of a direct shipper's license as authorized in this
20 section, an applicant for the license must satisfy the following conditions:

21 (1) Pay to the commission a one-time nonrefundable fee in the amount of three hundred
22 dollars (\$300) when the application is submitted for review. A direct shipper's license under
23 this section shall not be issued until the applicant has paid to the commission the annual license
24 fee of one hundred fifty dollars (\$150); provided that an affiliate, franchise, or subsidiary thereof
25 shall require a separate license. A copy of the direct shipper's license shall be sent by the
26 commission to the department of revenue to be kept on file.

27 (2) Execute a consent to jurisdiction and venue of all actions brought before the
28 commission, any state agency or the courts of this state, such that any and all hearings, appeals
29 and other matters relating to the license of the direct shipper shall be held in this state.

30 (3) Acknowledge, in writing, that it will contract only with common carriers that agree
31 that any delivery of wine made in this state shall be by face-to-face delivery and that deliveries
32 will only be made to individuals who demonstrate that the individuals are over twenty-one (21)
33 years of age and the individuals sign upon receipt of the wine.

34 (e) (1) No direct shipper may ship more than a total of four (4) cases of wine to any
35 resident of the Commonwealth during calendar year.

36 (2) Any shipment of wine pursuant to this section shall be made only in containers that
37 clearly indicate on the exterior of the container, visible to a person at least three feet (3') away,
38 that the container "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER
39 REQUIRED FOR DELIVERY".

40 (f) (1) A direct shipper shall be responsible for remitting all taxes due, including but not
41 limited to excise taxes, pursuant to section 21, resulting from any sale made under this section.

42 (2) The taxes levied on sales made by a direct shipper as authorized by this section shall
43 become due and payable on the first day of each month following the month during which the
44 sales occur, and shall become delinquent if not paid on or before the twentieth day of each such
45 following month. For the purpose of ascertaining the amount of tax due, it is the duty of any
46 direct shipper licensed pursuant to this section to transmit to the commissioner of the department
47 of revenue appropriate returns on forms prescribed by the commissioner.

48 (3) A person licensed under this section shall report yearly to the commission and the
49 department of revenue the total number of gallons of wine shipped into the commonwealth for
50 the preceding year. Upon request of the commission or its designated agent, any direct shipper,
51 licensed pursuant to this section, shall provide to the commission, under penalty of perjury, a list
52 of any wine shipped to an address within this state, including the addressee.

53 (4) The commission may enforce the requirements of this section by administrative
54 action, may suspend or revoke a direct shipper's license and may accept an offer in compromise
55 in lieu of suspension.

56 (5) A direct shipper that is found to have violated this title, in addition to any fine
57 imposed by the commission, shall reimburse the commission for all costs incurred in connection
58 with the investigation and administrative action, including the out-of-pocket costs and reasonable
59 personnel costs.

60 (6) No direct shipper may avoid liability under this section by subcontracting with a third
61 party to perform its obligations required pursuant to this section.

62 (g) (1) The commission may promulgate rules and regulations to effectuate the purposes
63 of this section in accordance with its powers under section 24 of chapter 138. The department of
64 revenue may promulgate rules and regulations necessary to effectuate the tax oversight,
65 collection and enforcement provisions of the General laws as they relate to this section.

66 (2) A person who manufactures, transports, imports, exports, or receives wine in violation
67 of this section shall be deemed to have engaged in a deceptive act or practice under chapter 93A.

68 (h) (1) No person shall direct ship wine to consumers without a license to sell and ship
69 wine under this section.

70 (2) A violation of subdivision (h)(1) shall be punishable by up to one (1) year in the
71 house of correction, a fine of \$1,000.00 or both.

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

77 (j) The provisions of this law are severable, and if any clause, sentence, paragraph of this
78 section or an application thereof shall be adjudged by any court of competent jurisdiction to be
79 invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be
80 confined in its operation to the clause, sentence, paragraph, or section adjudged invalid.