HOUSE DOCKET, NO. 3144 FILED ON: 1/18/2013

HOUSE . . . . . No. 294

The Commonwealth of Massachusetts

PRESENTED BY:

Theodore C. Speliotis

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:
Theodore C. Speliotis	*13th Essex*
Daniel A. Wolf	*Cape and Islands*

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HOUSE . . . . . No. 294

By Mr. Speliotis of Danvers, a petition (accompanied by bill, House, No. 294) of Theodore C. Speliotis and Daniel A. Wolf for legislation to authorize the direct shipment of wines. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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:

SECTION 1. 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. Notwithstanding any general or special law to the contrary,

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

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

(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 which holds a separate Federal Basic Permit 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

19 the wine shipment license obtained under this section shall be sent by the commission to the
20 department of revenue to be kept on file.

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

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

24 (f) A person licensed under this section shall: (i) report yearly to the commission and the
25 department of revenue the total number of gallons of wine shipped into the commonwealth for
26 the preceding year; (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 (g) No person shall direct ship wine to consumers without a license to sell and ship wine.
33 A person who manufactures, transports, imports, exports or receives wine in violation of this
34 section shall be deemed to have engaged in a deceptive act or practice under chapter 93A and be
35 subject to equitable relief under that chapter.

36 (h) The commission shall enforce the requirements of this section, by administrative
37 proceedings, against a licensee who ships wine in violation of this section as follows: for a first
38 violation, by a warning; for a second violation a three day temporary loss of license or a fine of
39 no more than $100; for a third violation, a ten day temporary loss of license or a fine of not more
40 than $500; for any other violations of this section within one calendar year, by a prohibiting the
41 winery from making any direct shipment of wine under this section or by a fine of up to $1,000,
42 or both; provided that after 1 year, the winery may reapply for the authority to directly ship wine
43 under this section.

44 (i) If a violation of this section involves a sale or delivery to a person under 21 years of
45 age, a first offense shall be punished by a six day temporary loss of license or a fine of $200.00;
46 for a second violation shall be punished by a twenty day temporary loss of license or a fine of
47 $500; for a third violation within one calendar year, by a prohibition of the winery from making
48 any direct shipment of wine under this section, by a fine of up to $1,000, or both; provided that
49 after 1 year, the winery may reapply for the authority to directly ship wine under this section.
50 Nothing in this clause shall preclude punishment under section 34.

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

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

61 SECTION 2. Said section 22 of said chapter 138, as so appearing, is hereby further
62 amended by striking out the following phrase in the ninth paragraph:

63 "and with a seal of licensure attached thereto as provided by the commission"

64 SECTION 3 The provisions of this law are severable, and if any clause, sentence,
65 paragraph of this section or an application thereof shall be adjudged by any court of competent
66 jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder
67 thereof but shall be confined in its operation to the clause, sentence, paragraph, or section
68 adjudged invalid.

69 SECTION 4. This act shall take effect upon its passage.