
House bill No. 4490, as amended, as changed by the committee on Bills in the Third Reading, and as passed to be engrossed by the House, November 14, 2005.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT AUTHORIZING THE DIRECT SHIPMENT OF WINE.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to authorize forthwith the direct ship-
3 ment of wine, therefore it is hereby declared to be an emergency
4 law, necessary for the immediate preservation of the public con-
5 venience.

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 24I of chapter 90 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the word “consumed”, in line 4, the following
4 words:— ; provided, however, that a bottle resealed pursuant to
5 section 12 of chapter 138 shall not be considered an open con-
6 tainer.

1 SECTION 2. Section 1 of chapter 138 of the General Laws, as
2 so appearing, is hereby amended by inserting after the definition
3 of “Winegrower” the following definition:—

4 “Winery”, any plant or premise where wine is produced, recti-
5 fied, blended, fortified, from fruits, flowers, herbs or vegetables,
6 or where wine is bottled or packaged.

1 SECTION 3. Section 12 of said chapter 138, as so appearing, is
2 hereby amended by inserting after the word “hereunder”, in
3 line 15, the following words:— and provided, further, that the

4 limitations relative to service and consumption in a restaurant or
5 hotel only in the dining room or dining rooms and such other
6 public rooms or areas seemed reasonable and proper by the local
7 licensing authorities shall not be deemed to preclude said restau-
8 rant or hotel room permitting a patron from retaining and taking
9 off premises only so much as may remain of any bottled wine pur-
10 chased by said patron in conjunction with a meal and not totally
11 consumed by the patron during such meal; provided, further, that
12 the bottle shall be resealed in accordance with regulations promul-
13 gated by the commission.

1 SECTION 4. Section 18 of said chapter 138, as so appearing, is
2 hereby amended by inserting after the word “section”, in lines 80
3 and 81, the following words:— and section 19F.

1 SECTION 5. Subsection (g) of section 19B of said chapter 138,
2 as so appearing, is hereby amended by striking out clause (1).

1 SECTION 6. Said subsection (g) of said section 19B of
2 chapter 138, as so appearing, is hereby further amended by
3 striking out clauses (3) to (6), inclusive.

1 SECTION 7. Said section 19B of said chapter 138, as so
2 appearing, is hereby further amended by inserting after the word
3 “premises”, in line 113, the following words:— in accordance
4 with a license issued under section 19F.

1 SECTION 8. Said section 19B of said chapter 138, as so
2 appearing, is hereby further amended by inserting after the word
3 “at”, in line 114, the following words:— retail or.

1 SECTION 9. Said chapter 138 is hereby further amended by
2 inserting after section 19E the following section:—

3 Section 19F. (a) The commission may issue to any applicant,
4 who (1) operates a winery whose total annual production,
5 including that of its affiliates, franchises and subsidiaries, is
6 50,000 gallons of wine or more; and (2) is authorized by the
7 appropriate licensing authorities to manufacture, to export and to
8 sell wine, a large winery shipment license to sell and to ship wine

9 or winery products produced by the winery directly to consumers:
10 provided, however, that said winery has not contracted with or has
11 not been represented by a wholesaler licensed under section 18 for
12 the preceding 6 months.

13 (b) The commission may issue to any applicant, who: (1) oper-
14 ates a winery whose total annual production, including that of its
15 affiliates, franchises and subsidiaries, is less than 50,000 gallons
16 of wine; and (2) is authorized by the appropriate licensing authori-
17 ties to manufacture, to export and to sell wine, a small winery
18 shipment license to sell and to ship wine or winery products pro-
19 duced by the winery (i) at retail directly to consumers, (ii) at
20 wholesale in kegs, casks, barrels or bottles to any person licensed
21 under section 12, 13, or 14, (iii) at wholesale for the sole purpose
22 of resale in containers in which wine was delivered to any person
23 licensed under section 15, (iv) at wholesale to any person licensed
24 under section 18, 19 or 19B, (v) at wholesale to churches and reli-
25 gious societies, educational institutions, incorporated hospitals,
26 homes for the aged, manufacturers of food products, and manufac-
27 turers of drugs and chemicals as authorized by and subject to
28 section 28, or (vi) at wholesale to any registered pharmacist
29 holding a certificate of fitness under section 30.

30 (c) The annual license fee for a license issued under this section
31 shall be \$100 per winery; provided that any affiliate, franchise or
32 subsidiary thereof shall require a separate license. The applicant
33 must provide the commission and the department of revenue a
34 true copy of the applicable alcoholic beverage licenses to manu-
35 facture, to export and to sell its wine as issued by the appropriate
36 licensing authorities. A copy of the wine shipment license,
37 obtained under this section, shall be sent by said commission to
38 the department of revenue to be kept on file.

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

41 (e) A household shall not be permitted to receive delivery of
42 more than 240 liters of wine per year from licensees under this
43 section.

44 (f) A person licensed under this section shall: (i) report to the
45 commission and the department of revenue each month the total
46 number of gallons of wine shipped into the commonwealth for the
47 preceding month; (ii) pay to the department of revenue, under the

48 department's rules and regulations, all taxes due, the amount of
49 such taxes to be calculated as if the sale were at the location
50 where the delivery is made; provided that the licensee shall pay
51 for each shipment of wine the excise tax levied on importations of
52 wine calculated under section 21; and (iii) upon request, allow the
53 commission or the department of revenue to perform an audit of
54 the licensee's records.

55 (g) The commission shall enforce the requirements of this
56 section, by administrative proceedings, against a person licensed
57 under this section who ships wine in violation of this section, as
58 follows:—

59 (i) A first violation of this section shall be punished by a fine of
60 not less than \$100.

61 (ii) A second violation of this section may be punished by a
62 suspension of the winery's direct shipment license for not more
63 than 1 year, a fine of \$500, or both.

64 (iii) A third violation of this section may be punished by the
65 prohibition of the winery from making any shipments of wine
66 under this section or through a wholesaler or importer under
67 section 18, be fined up to \$5,000, or both; provided, however, that
68 after 1 year the winery may apply for the authority to ship wine
69 through a wholesaler or importer under said section 18.

70 (iv) If a violation of this section involves a sale or delivery to a
71 person under 21 years of age, a first offense may be punished by a
72 direct suspension of the winery's direct shipment license for not
73 more than 1 year; and a second offense may be punished by a pro-
74 hibition of the winery from making any shipments of wine under
75 this section or through a wholesaler or importer under section 18;
76 provided, however, that after 1 year the winery may apply for the
77 authority to ship wine through a wholesaler or importer under
78 section 18. This paragraph shall not preclude punishment under
79 section 34.

80 (h) Direct shipment of wine to consumers from persons who do
81 not possess a wine shipment license is prohibited. Any person
82 who manufactures, transports, imports, exports or receives wine in
83 violation of any provision of this chapter commits a deceptive act
84 or practice as defined in chapter 93A.

85 (i) The commission may promulgate rules and regulations nec-
86 essary to effectuate its alcohol oversight, licensing and enforce-

87 ment purposes under this chapter as they relate to this section,
88 including rules and regulations for reporting violations of this
89 section and the requirement of sufficient documentation of a win-
90 ery's annual wine production. The department of revenue may
91 promulgate rules and regulations necessary to effectuate the tax
92 oversight, collection and enforcement provisions of the General
93 Laws as they relate to this section. Said rules and regulations shall
94 be submitted to the joint committees on state administration and
95 regulatory oversight and consumer protection and professional
96 licensure prior to promulgation of such rules and regulations.

97 (j) The commission shall issue an annual report to the house
98 and senate committees on ways and means and the joint com-
99 mittee on consumer protection and professional licensure,
100 including, but not limited to, a determination of licenses issued, a
101 review of violations and enforcement measures under this section
102 and an analysis of the need for changes in the laws and regulations
103 relative thereto.

1 SECTION 10. Section 22 of said chapter 138, as so appearing,
2 is hereby amended by striking out, in lines 57 and 58, the words
3 "farmer-winery licensees under section nineteen B" and inserting
4 in place thereof the following words:— licensees under
5 section 19F.

1 SECTION 11. The ninth paragraph of said section 22 of said
2 chapter 138, as so appearing, is hereby amended by striking out
3 the second sentence and inserting in place thereof the following
4 sentence:— There shall be a fee for such permit, and persons
5 operating a vehicle when engaged in such transportation or
6 delivery shall be required to carry such permit or certified copy
7 thereof.

1 SECTION 12. Said section 22 of said chapter 138, as so
2 appearing, is hereby further amended by striking out, in lines 63
3 to 65, inclusive, the words "as containing alcoholic beverages and
4 requiring the signatures of, and delivery to, a person legally
5 authorized to consume alcoholic beverages in the commonwealth"
6 and inserting in place thereof the following words:— "CON-
7 TAINS ALCOHOL: REQUIRES SIGNATURE OF AND PER-

8 SONAL DELIVERY TO A PERSON LEGALLY AUTHORIZED
9 TO CONSUME ALCOHOLIC BEVERAGES IN THE COM-
10 MONWEALTH” and with a seal of licensure attached thereto as
11 provided by the commission. Receipts for delivery of said parcels
12 shall contain a check box next to the recipient’s signature where
13 he shall certify that he is not under 21 years of age and a check
14 box where the delivery person shall certify that valid identifica-
15 tion showing that the recipient is not under 21 years of age was
16 presented by the recipient upon delivery.

1 SECTION 13. Said section 23 of said chapter 138, as so
2 appearing, is hereby further amended by striking out, in lines 28
3 and 33, the words “nineteen B” and inserting in place thereof, in
4 each sentence, the following figure:— 19F.

1 SECTION 14. Said section 23 of said chapter 138, as so
2 appearing, is hereby further amended by inserting after the word
3 “eighteen”, in line 39, the following words:— or section 19F.

