
Direct-to-Consumer Wine Shipment Comes to Massachusetts on January 1

WEDNESDAY, DECEMBER 31, 2014

Another Reason to Celebrate—Wine Delivered Straight to Your Door!

This holiday season brings an extra reason to celebrate for Massachusetts wine enthusiasts. When long-overdue changes to Mass. Gen. Laws. ch. 138, § 19F take effect at 12:01 a.m. on January 1, 2015, Massachusetts residents will finally be able to purchase wine directly from most out-of-state wineries and have it shipped to their door.

Historical Prohibitions on Direct Wine Shipment in the Commonwealth

The law governing the direct shipment of wine to Massachusetts residents has a long and convoluted history—owing to changes in Supreme Court precedent, in-state protectionism, and legislative sluggishness.

From the end of Prohibition in 1933 until 2006, Massachusetts law permitted in-state wineries to sell and ship their wines directly to Massachusetts residents, but prohibited out-of-state wineries from doing the same. Mass. Gen. Laws. ch. 138, §§ 2, 19, 19F. In 2005, the Supreme Court of the United States ruled in *Granholm v. Heald*¹ that similar laws in New York and Michigan unlawfully discriminated against out-of-state producers in violation of the Commerce Clause.

Recognizing that *Granholm* rendered the Commonwealth's direct shipping rule unconstitutional, in 2006 the Massachusetts legislature adopted a new version of Mass. Gen. Laws. ch. 138, § 19F. This new version compelled "large" wineries—those producing more than 30,000 gallons of wine per year—to choose either to ship their wine directly to consumers or distribute it through Massachusetts-based wholesalers. At the same time, the new Section 19F allowed wineries producing less than 30,000 gallons per year—a cap that encompassed all Massachusetts wineries—to simultaneously engage in direct shipping and wholesale distribution, as well as a third option completely unavailable to large wineries: direct distribution to retailers.

The practical effect of this statutory regime was that most out-of-state wineries wishing to sell wine

to Massachusetts consumers were forced to distribute exclusively through wholesalers, as those wineries were unwilling to forgo the revenue and increased brand awareness offered from wholesale distribution to the retail market. Further, for profitability reasons, Massachusetts wholesalers typically carried and distributed only one or two of a winery's lower priced, higher volume wines, rendering the remainder of that winery's offerings unavailable in Massachusetts.

Unlike the statutes invalidated in *Granholm*, and the pre-2006 version of Massachusetts' direct wine shipment law, the revised version of Section 19F was facially neutral; it categorized wineries not by state citizenship but rather by production volume. Nevertheless, in 2010 the First Circuit held in *Family Winemakers of California v. Jenkins* that Section 19F violated the dormant Commerce Clause "because the effect of its particular gallonage cap [was] to change the competitive balance between in-state and out-of-state wineries in a way that benefits Massachusetts's wineries and significantly burdens out of state competitors."² The court further observed that "Section 19F's statutory context, legislative history, and other factors also yield the unavoidable conclusion that this discrimination was purposeful." *Id.*

Although the First Circuit held that Section 19F was unconstitutional in *Family Winemakers* in 2010, the legislature failed to act until 2013. During that time, there existed no constitutionally valid regulatory framework under which out-of-state wineries could legally ship directly to Massachusetts consumers. As a result, out-of-state wineries continued to abstain from direct shipping, while lobbying the legislature to enact a new regulatory scheme under which they could legally do so.

After four years of limbo, the Massachusetts legislature overhauled Section 19F to allow out-of-state wineries to ship directly to consumers as well as distribute through wholesalers, placing out-of-state wineries on the same competitive footing as wineries located in the Commonwealth. That new law takes effect January 1, 2015. Certain limitations apply to direct shipments under the new law, including that a direct wine shipper may sell and deliver a maximum of twelve cases of wine per year per consumer, each containing the equivalent of twelve standard 750 ml bottles.

What Does the New Law Do?

One wine industry expert has said that the change to Massachusetts law is "perhaps the most important change to the direct shipping market since [*Granholm*]" and predicts that "Massachusetts will easily vault into the top ten states by shipping revenue and represent over \$60 million in additional revenue for wineries that ship," due to factors such as Massachusetts' population, per capita consumption of wine, and proximity to important wine-producing regions.³

Apart from convenience, direct shipping offers a number of other benefits to consumers. Under the previous regime, out-of-state wineries were often only able to distribute one or two of their lower priced, higher volume wines to Massachusetts consumers. Now wineries will be able to offer their entire range of wines to Massachusetts consumers through direct shipping, while still offering their high volume labels in retail settings. In addition, smaller out-of-state wineries that face economic barriers to entry in the Massachusetts wholesale market will now be able to reach Bay State

consumers for the first time. And finally, direct shipping eliminates wholesaler and retailer price markups.

For Massachusetts wine lovers, this new law should mean lower prices, more choices, and wine delivered to your doorstep. Happy New Year!

¹ 544 U.S. 460.

² 592 F.3d 1, 5.

³ Jeff Carroll, VP of Compliance at ShipCompliant, July 17, 2014; available at <http://shipcompliantblog.com/blog/2014/07/17/is-massachusetts-the-most-important-change-since-granholt/>.

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