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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE LIQUOR CONTROL COMMITTEE

STATE CAPITOL
ROOM 140, MAJORITY CAUCUS ROOM
HARRISBURG, PENNSYLVANIA

THURSDAY, JUNE 19, 2008
10:30 A.M.

PUBLIC HEARING ON
HOUSE BILL 2165

BEFORE:

- HONORABLE ROBERT C. DONATUCCI, CHAIRMAN
- HONORABLE RON RAYMOND
- HONORABLE PAUL COSTA
- HONORABLE THOMAS W. BLACKWELL
- HONORABLE JOSEPH F. BRENNAN
- HONORABLE JOHN R. EVANS
- HONORABLE MARC GERGELY
- HONORABLE T. MARK MUSTIO
- HONORABLE BERNIE O'NEILL
- HONORABLE SCOTT A. PETRI
- HONORABLE JEFFREY P. PYLE
- HONORABLE DANTE SANTONI, JR.
- HONORABLE RONALD G. WATERS

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(CONT'D)

ALSO PRESENT:

LYNN BENKA-DAVIES, MAJORITY EXECUTIVE DIRECTOR
MARCIA LAMPMAN, MINORITY EXECUTIVE DIRECTOR
ANDREW T. MOSER, LEGISLATIVE ASSISTANT

BRENDA S. HAMILTON, RPR
REPORTER - NOTARY PUBLIC

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P R O C E E D I N G S

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June 19th, 2008.

CHAIRMAN DONATUCCI: Good morning.

I'd like to call this meeting of the House Liquor Control Committee to order. My name is Bob Donatucci. I am chairman of the House Liquor Control Committee. I'd like to thank everyone for being here today.

I am joined today by my friend and colleague, Republican Chairman of the House Liquor, Representative Ron Raymond, to my right.

I want -- I want to welcome everybody to this hearing. As you know, the U.S. Supreme Court ruling in May of 2005 have forced many states to re-examine their laws regarding direct shipment of wines.

With the combined of the court ruling in that case, the court held that states must treat in-state and out-of-state wineries the same.

Today we will receive testimony on House Bill 2165, introduced by Representative Costa, which serves the purpose of making the

1 state compliant with the Supreme Court
2 ruling.

3 With that, I'll turn it over to
4 Representative Ron Raymond for an opening
5 remark and then to Representative Costa.

6 One quick comment. Anyone who would
7 like to take their jackets off are welcome to
8 do so, because it's awful warm in here. So
9 feel free to do that.

10 REPRESENTATIVE COSTA: You don't have
11 to say that twice, Mr. Chairman.

12 REPRESENTATIVE RAYMOND:
13 Mr. Chairman, I'll say that's the fastest the
14 Governor's energy -- new policy got
15 implemented we've ever seen, while we sweat.

16 CHAIRMAN DONATUCCI: Okay.

17 REPRESENTATIVE RAYMOND: I'm just
18 going to hand it over to Representative Costa
19 and reserve my comments for later. Thank you.

20 REPRESENTATIVE COSTA: Thank you,
21 Mr. Chairman. As he said, I'm Representative
22 Paul Costa from the 34th Legislative District,
23 which is in Allegheny County.

24 And first off, I cannot thank
25 Chairman Donatucci and Chairman Raymond enough

1 for having this hearing. This is a subject
2 that's been going on for a while now and my
3 intent from the get-go, and I hope to make
4 this clear, my intent was to get the
5 conversation going to make sure that we had
6 the Liquor Control Board, the Governor's
7 Office, the Legislature, the consumer, and all
8 the wineries together to come up with a bill.

9 As you know, with the Supreme Court
10 ruling, we have to do something. We have
11 three options. One of them are to do
12 absolutely nothing, to permit nobody to do
13 direct wine shipping.

14 Our option two is to let everybody do
15 it. Or the third option is to limit it, and
16 that's the one I'm looking at, is the limited
17 one. And by limiting it, I would make sure
18 that all Pennsylvania wineries are held
19 harmless.

20 My goal from the get-go was to make
21 sure that the Pennsylvania wineries could
22 continue to operate the way they have been
23 operating forever. And I don't want to hurt
24 them. I'm certainly trying to help them. But
25 we do have to do something.

1 My other intention was to make sure
2 if we do a bill that we do it right. And if
3 we have everybody in the room and we do have
4 to or we're forced to react to something, that
5 we do a bill and we do it right and we don't
6 have to come back six months from then and try
7 to correct it.

8 So that's why I'm hoping that
9 everyone would give us their information and
10 help us gather this. That's pretty much it.

11 And I'd also like to thank executive
12 director, Lynn Benka-Davies, for her -- as she
13 can tell you, I can be a pain in the butt
14 sometimes with all the phone calls and e-mails
15 to clarify what the positions are and where we
16 need to go on this. We obviously need to
17 thank you also.

18 And, Mr. Chairman, thank you, again,
19 for having this hearing.

20 CHAIRMAN DONATUCCI: Thank you. One
21 quick comment before we call our first
22 witness -- first witness. In the past couple
23 days, Lynn can tell you, we got numerous
24 inquiries about people's testimony, wanting to
25 testify on this issue.

1 This hearing, we're very short of
2 time, only a few hours. So we're going to
3 stick to the program that we set up over a
4 week ago.

5 But anyone who wanted to testify on
6 this bill and this issue, they could get in
7 contact with Lynn or Marcia, in Representative
8 Ron Raymond's office, and we'll be more than
9 happy in our next hearing to have you
10 testify.

11 But today we're going to try to stick
12 to this schedule to the minute. So to anyone
13 testifying I appreciate being short and to the
14 point and any members asking questions, being
15 short, to the point, and -- so we can get out
16 of here at a reasonable time. Thank you.

17 On that, with that note, I'd like to
18 call up the Pennsylvania Liquor Control Board,
19 Joe Conti, the Chief Executive Officer; Faith
20 Diehl, Chief Counsel; Rod Diaz, Deputy Chief
21 Counsel.

22 Welcome.

23 MR. JOE CONTI: Thank you,
24 Mr. Chairman. And can everybody hear me?
25 I'll move the microphones around.

1 I'm delighted to be here. It brings
2 back a lot of memories to be in this room. I
3 was part of an event once where someone
4 inadvertently called Governor Rendell Mayor
5 Rendell. And he's got this great way of
6 making people feel comfortable, and he said,
7 you know, if somebody came into a room while I
8 was sleeping late at night and said, who are
9 you? There's a fire. You have to get out of
10 the building. He said, I would say I'm Mayor
11 Rendell.

12 And I kind of had the same feelings
13 in the sense that I did end up my elective
14 career on the other side of the building, but
15 in my heart the representative description is
16 closest to me. So it's great to be back here
17 again.

18 I'd like -- you did introduce our
19 co-testifiers, Faith Diehl, our chief counsel,
20 and Rod Diaz, her deputy.

21 Also with us is Chris Harrington from
22 the counsel's office; Nick Hayes from our
23 press office; and John Stark, our secretary;
24 Lorraine, his assistant. I think that covered
25 all the members of the team PLCB here.

1 I bring greetings from Chairman
2 Stapleton, Member Marcus, and Member Goldsmith
3 who send their regards.

4 Our intention today, Chairman
5 Donatucci, Chairman Raymond, and members of
6 the committee, is to provide you with the
7 background regarding the issue of the direct
8 shipment of wine to Pennsylvania consumers
9 which is the subject of House Bill 2165.

10 We are here to offer the assistance
11 of the board and our staff to the General
12 Assembly, as well as to the Governor's Office,
13 on this and any other issue before you.

14 To begin the dialogue on the issue of
15 direct shipment, it is important to understand
16 the path that led us to today's hearing. We
17 will describe the law that existed prior to
18 2005, outline how the courts in 2005 on both
19 the national and state level affected the
20 sales and delivery by small wine
21 manufacturers, explain the current state of
22 affairs, and how House Bill 2165 changes the
23 status quo.

24 Until 2005, there were 2 primary ways
25 of buying wine in Pennsylvania. You could

1 purchase it from one of our board's wine and
2 spirit shops or from a Pennsylvania small
3 producer licensed as a Pennsylvania limited
4 winery.

5 Prior to 2005, holders of the
6 Pennsylvania limited winery licenses enjoyed a
7 litany of privileges that afforded -- not
8 afforded to anyone else, including the ability
9 to sell and delivery dilectly -- directly to
10 other board licensees and to consumers at home
11 and to sell directly to the public at their
12 licensed premises.

13 These licensees -- licenses were only
14 available to wineries located in Pennsylvania
15 who used predominantly Pennsylvania fruit and
16 who produced less than 200,000 gallons of wine
17 per year.

18 Out-of-state wineries were not
19 permitted under the Liquor Code to hold such
20 licenses and, therefore, did not enjoy such
21 privileges. An out-of-state winery that
22 desired to sell its product to Pennsylvania's
23 consumers had to sell the product to the board
24 or obtain a direct shipper's license.

25 The holder of a direct shipper's

1 license, a creation of this former committee
2 under Chairman Raymond, may fill wine orders
3 from Pennsylvania residents via the Internet
4 and ship such wine to one of the board's 620
5 stores, where purchases could be picked up and
6 transported home.

7 Wine obtained from a direct wine
8 shipper is not for resell and is limited to
9 those wines not available from the board and
10 the direct wine shipper is not permitted to
11 ship more than nine liters to a single
12 resident in any one month.

13 To be clear, a direct shipper's
14 license does not allow the holder to ship
15 directly to a resident's home but rather to a
16 wine and spirit store for pick up by the
17 buyer.

18 At this point, I'd like to turn it
19 over to our chief counsel, Faith Diehl, who
20 will continue the testimony.

21 MS. FAITH DIEHL: As you've heard
22 today, in 2005, the United States Supreme
23 Court in a decision known as Granholm decided
24 that state laws in New York and Michigan were
25 unconstitutional in that privileges were

1 extended to in-state wineries that were denied
2 to out-of-state wineries.

3 Subsequently, in a case known as
4 Cutner, a challenge was raised to
5 Pennsylvania's statutes prohibiting direct
6 out-of-state shipments of wine to in-state
7 residents while allowing such shipments from
8 in-state wineries.

9 On November 9th, 2005, the Cutner
10 court enjoined Pennsylvania from enforcing the
11 Liquor Code in a manner that treated in-state
12 and out-of-state wineries differently.

13 The key concept to emerge from both
14 Granholm and Cutner is that the state must
15 treat in-state and out-of-state wineries
16 equally, or, in the words of Justice Kennedy,
17 if a state chooses to allow direct shipment of
18 wine, it must do so on evenhanded terms.

19 As a result of Cutner, the board,
20 after consulting with the Attorney General's
21 Office, has been accepting and processing
22 applications from out-of-state wineries for
23 limited winery licenses, therefore affording
24 such out-of-state wineries the ability to ship
25 wine directly to consumers' homes.

1 Similarly, the board has not
2 attempted to have enforced the provisions of
3 the Liquor Code that would require limited
4 wineries to primarily use Pennsylvania
5 products when producing wine.

6 MR. ROD DIAZ: As of the date of this
7 hearing, the board has approved one limited
8 winery license to an out-of-state winery, and
9 that's Kistler Winery in California. That
10 winery may sell and deliver its wine directly
11 to consumers and licensees in Pennsylvania and
12 when such sales occur, they are not subject to
13 either the board's mark-up or the 18 percent
14 tax, commonly referred to as the Johnstown
15 Flood Tax. Such wine may be resold in the
16 same manner that any other wine may be
17 resold.

18 The federal judge in Cutner created
19 parity between in-state and out-of-state
20 wineries by granting the out-of-state wineries
21 all of the privileges afforded the in-state
22 wineries.

23 He did not independently consider
24 whether such privileges are appropriate or
25 whether such privileges would have been

1 granted if they could only be granted to both
2 in-state and out-of-state wineries.

3 Put another way, Granholm does not
4 require states to allow for direct shipment of
5 wine, nor does it dictate the manner in which
6 such shipments must occur. It only requires
7 parity across state lines.

8 House Bill 2165 is an attempt to
9 answer the question of how direct shipment of
10 wine should occur, if it must occur in the
11 same manner regardless of whether the winery
12 is located inside or outside of Pennsylvania.

13 House Bill 2165 allows both in-state
14 and out-of-state wineries who produce less
15 than 80,000 gallons per year to acquire a
16 limited winery license. It modifies that
17 winery's ability to deliver or ship wine by
18 requiring that such shipments be made through
19 the board with delivery to customers' homes
20 and businesses.

21 Delivery by the board or its
22 contractors will allow the board to implement
23 safeguards designed to ensure that only adults
24 receive such wines, such as requiring an adult
25 signature and requiring proper

1 identification.

2 This is important because last year
3 the United States Supreme Court said that
4 states cannot impose such rules on private
5 entities when discussing delivery of another
6 regulated product, of cigarettes.

7 Wine delivered in this manner will be
8 subject to taxes in the same manner as wine
9 sold through the Pennsylvania wine and spirit
10 stores, as well as a delivery fee, but will
11 not be subject to the board's 30 percent
12 markup which the board assesses on products
13 sold by the board through its wine and spirit
14 stores.

15 Currently, Pennsylvania limited
16 wineries are not assessed the 18 percent
17 Johnstown Flood Tax, nor are they charged the
18 30 percent mark-up for wine that they sell and
19 deliver directly.

20 MR. CONTI: Thank you, Faith and
21 Rod. Members of the committee, obviously, any
22 change in the law which results in a decrease
23 of the amount of wine sold by our board may
24 have a significant impact on the board's
25 revenue, the board's contribution to the

1 General Fund, and the continuing employment of
2 the board's current employees.

3 The amount of impact will depend on
4 the amount of decrease in sales, and it is
5 virtually impossible to predict how much of a
6 decrease, if any, would occur if the board's
7 revenue -- in the board's revenue if House
8 Bill 2165 were to pass in its current form.

9 As an aside, all Pennsylvania
10 wineries, and most national wineries, fall
11 under the production limit of 80,000 gallons
12 per year. We think something between 90 and
13 95 percent of all wineries produce below
14 that.

15 On behalf of the board, we look
16 forward to working with you on this important
17 issue. We applaud you in confronting it, and
18 look forward to working with you and the
19 Governor's Office on the policy and
20 legislative changes needed in this area.

21 Thank you, Mr. Chairman. We'll be
22 happy to try to answer any questions.

23 CHAIRMAN DONATUCCI: Thank you.
24 Before we go to questions, I would like my
25 colleagues to introduce themselves starting

1 with Representative Ron Waters.

2 REPRESENTATIVE WATERS: Thank you. I
3 think you just did. But I'm with the 191st
4 Legislative District from west to west --
5 Philadelphia County and Delaware County,
6 Yeadon Borough.

7 REPRESENTATIVE SANTONI: I'm Dante
8 Santoni from Berks County.

9 REPRESENTATIVE BRENNAN: Joe Brennan,
10 Lehigh, Northampton Counties.

11 REPRESENTATIVE MUSTIO: Mark Mustio,
12 Allegheny County.

13 REPRESENTATIVE BLACKWELL: Tom
14 Blackwell, 190th District, Philadelphia
15 County.

16 REPRESENTATIVE GERGELY: Marc
17 Gergely, Allegheny County.

18 REPRESENTATIVE EVANS: John Evans,
19 Erie and Crawford.

20 REPRESENTATIVE O'NEILL: Bernie
21 O'Neill from -- you ever hear of Bucks County?

22 MR. CONTI: I have, yes.

23 REPRESENTATIVE O'NEILL: Okay.

24 REPRESENTATIVE PYLE: Jeff Pyle, 60th
25 Legislative District, Armstrong and Indiana

1 Counties.

2 REPRESENTATIVE PETRI: Scott Petri,
3 178th District, Bucks County.

4 CHAIRMAN DONATUCCI: I think
5 everybody else has been introduced.

6 A couple quick questions. Since this
7 ruling came down, what is the position of the
8 board in terms of enforcement?

9 Right now it's basically the limited
10 winery that you gave the license to, their --
11 you're not collecting no taxes off of them or
12 like an in-state winery. Am I correct?

13 MR. CONTI: They would pay the six
14 percent tax. Correct? They would pay the six
15 percent tax.

16 CHAIRMAN DONATUCCI: Now, the other
17 thing is, you know, my concern is on direct
18 shipment, and I was on the record on this
19 before, is, you know, any kind of liquor being
20 delivered to a private residence, about the
21 21 -- minor being served, what -- I believe
22 you mentioned something that the -- that the
23 courts handled. They're in no way enforcing
24 them. Maybe I misunderstood you? Making --
25 requiring them to have an ID at the door?

1 MR. DIAZ: What we mentioned is that
2 last year the supreme -- the United States
3 Supreme Court decided a case called Rowe
4 versus New Hampshire Motor Transport, and what
5 that case was about was a state requirement
6 that when delivering cigarettes you needed to
7 do such things as getting -- verify ID and
8 getting signature, and what the Supreme Court
9 said was that those types of laws are
10 unconstitutional because they're preempting a
11 federal law.

12 By having a system that -- that's in
13 this House Bill, by having the board do it,
14 you're not going to need a law. It's going to
15 be done contractually. So you -- you get
16 around the potential issue that was addressed
17 in the -- in the Supreme Court last year.

18 CHAIRMAN DONATUCCI: Okay. Now, the
19 other question, what kind of response have you
20 been getting like from UPS, Fed Ex, people who
21 would be delivering this wine and, you know,
22 in terms of, you know, taking ID's? Are they
23 agreeable to it or --

24 MS. DIEHL: I would say that what we
25 have -- what we have seen from the carriers

1 is -- is a mixed bag. Right now we -- the law
2 is unclear to many of them, and they are
3 unwilling to take a chance because of the
4 possible ramifications, confiscation of the
5 product and confiscation of their trucks.

6 We have not dealt with them directly
7 on the subject of --

8 CHAIRMAN DONATUCCI: So what you're
9 saying right now is there's no enforcement as
10 far as if someone wanted a bottle of wine from
11 whoever and it's being shipped to Philadelphia
12 to a home, they -- they just leave it?

13 MS. DIEHL: I would say, again,
14 deferring to the Pennsylvania State Police,
15 Bureau of Liquor Control Enforcement, who
16 enforces the Liquor Code, I would ask you to
17 ask them what is -- what is happening.

18 CHAIRMAN DONATUCCI: Senator?

19 MS. DIEHL: We have -- we have
20 anecdotal information.

21 MR. CONTI: Well, no. I --

22 CHAIRMAN DONATUCCI: That concerns
23 me.

24 MR. CONTI: No. Counsel is right on
25 point.

1 Let me say this bill offers an
2 interesting dilemma, if you will, for our
3 board. We are pleased and delighted to work
4 with an outstanding staff, and our instinct is
5 to have our staff deliver this to the homes
6 and businesses as provided in the bill, would
7 be our first preference.

8 But then we would take on the
9 responsibility for the legal age and those
10 kind of things which may be better from a risk
11 management situation to contract out. That's
12 something we'd have to work through together.
13 But it certainly is an important issue.

14 You know that in our stories we --
15 we've testified many times that we have
16 roughly 900,000 checks, 300,000 denials, and,
17 knock on wood, not one underage citation. So
18 I mean we have a pretty good record of our
19 fine staff working this through.

20 But it is -- it is a -- a risk, if
21 you will, that we have to assess.

22 CHAIRMAN DONATUCCI: Well, basically
23 everything goes through the state store
24 system, like if -- an in-wine -- in-state
25 winery, out-of-state winery decides to ship a

1 bottle of wine to someone in Pennsylvania, it
2 goes through our system I am told, but --

3 MS. DIEHL: Under the --

4 CHAIRMAN DONATUCCI: But they do get
5 around that?

6 MR. CONTI: It would be proposed
7 under this bill perhaps to do it that way.

8 CHAIRMAN DONATUCCI: Right.

9 MR. CONTI: Currently some of the SLO
10 product is -- is delivered to our doors for a
11 little stock stop but --

12 MS. DIEHL: And the in-state
13 wineries.

14 MR. CONTI: And the wineries can
15 deliver directly, right.

16 MS. DIEHL: In-state and out-of-state
17 wineries.

18 CHAIRMAN DONATUCCI: By not doing
19 this bill, what is it costing the state of
20 Pennsylvania as far as money? Do you have any
21 idea?

22 MR. CONTI: By not doing the bill?

23 CHAIRMAN DONATUCCI: Yeah. Right
24 now, the way it sounds it's not going through
25 our system. Do you have an idea what it's

1 costing as far as monies every year?

2 MR. CONTI: I would have to testify
3 today I have no idea, Chairman. We -- we have
4 spent a lot of time in the last 24 hours
5 trying to assess the -- this bill could change
6 the profile of purchases by licensees
7 dramatically in the state.

8 You've all been in our stores and you
9 know that there's basically two or three
10 different places to buy wine. You have on the
11 shelf our listed product; you have in the
12 wood, as we say, our specialty product; and
13 then you have the SLO that's in the back
14 door.

15 This bill could dramatically change
16 the profile of those sales and, of course,
17 probably diminish it.

18 If -- if a licensee would have the
19 ability to buy their 1.5 Woodbridge Chardonnay
20 direct from California, delivered, you know,
21 and save the 30 percent mark-up, you're going
22 to ask us to do a fiscal impact that is
23 virtually impossible to do. We really don't
24 know how that's going to work.

25 But as far as what sales are being

1 lost by the state because of not having this
2 bill in place, that's an even harder thing to
3 try to -- to -- I would -- seat of the pants,
4 probably a couple percentage points.

5 New Hampshire, I think, had a three
6 percent change in their sales when they did
7 something similar to this. A much smaller
8 state, much different profile.

9 CHAIRMAN DONATUCCI: Like I say, my
10 concern -- going back to my original point --
11 was underage drinking and -- and in our next
12 hearing I'm going to ask Lynn maybe to have
13 enforcement here because I would like to see
14 some answers, you know, as far as how they're
15 going to enforce, you know, if UPS, or
16 whoever, will not require identification, even
17 if the board passes it.

18 That would be -- you know, I want to
19 basically -- I know you said you can't. I'd
20 like to know if it doesn't happen what it's
21 costing the state of Pennsylvania.

22 MR. CONTI: Well, we'll try to do an
23 assessment of that and, you know, Chairman,
24 our board has been more than willing to work
25 with you on the enforcement issues.

1 CHAIRMAN DONATUCCI: I know that. I
2 agree.

3 MR. CONTI: Along with the State
4 Police and Major Lutz. We have a great
5 relationship. They're stretched pretty thin
6 and -- and looking at, you know, the nuisance
7 bars, the underage drinking, and we would be
8 adding another responsibility through this
9 bill --

10 CHAIRMAN DONATUCCI: I understand
11 that.

12 MR. CONTI: -- one way or another.

13 CHAIRMAN DONATUCCI: And we're
14 looking at a way to make their life a little
15 easier, too, as you know.

16 Thank you, Senator Conti.

17 Chairman Raymond.

18 REPRESENTATIVE RAYMOND: Thank you,
19 Mr. Chairman.

20 Let's get back to Kistler for a
21 minute. You're telling me that currently
22 under our codes and law, Pennsylvania wineries
23 are continuing to ship directly, as they had
24 in the past, in order to miss the six percent
25 sales tax. Is that correct?

1 And the down side to the winery,
2 somebody said 95 percent, 95 percent of all
3 wineries in America would qualify for under
4 80,000?

5 MR. CONTI: That's what -- 90 to 95,
6 something in there.

7 REPRESENTATIVE RAYMOND: So in
8 essence, if they -- how much is a license?
9 Does Kistler have a license? How much is that
10 license?

11 MS. DIEHL: Several hundred.

12 MR. DIAZ: Several hundred dollars.

13 MS. DIEHL: Several hundred.

14 REPRESENTATIVE RAYMOND: Several
15 hundred bucks. You're telling me that any
16 winery out there who has premium wines, in
17 order to get stuff, the mailing list stuff,
18 could come in here and get a license and ship
19 directly to me, by getting a license and
20 you're not paying the six percent sales tax?

21 MR. CONTI: You have accurately
22 assessed an exposure that has existed,
23 continues to exist, and they can complete --
24 compete directly with the PA wineries and even
25 have five satellite locations.

1 REPRESENTATIVE RAYMOND: My question,
2 we have a lot of people complaining, is they
3 have it pretty good now because that's a
4 better break you can get. On the other side
5 of that coin is the most expensive bottle of
6 wine you're going to buy is one from the
7 winery and ship it back to your house,
8 because, you know, if they're particularly
9 throwing in the mark-ups and all the LCB
10 profits and, you know, it's most expensive,
11 then when you ship it, it's probably going to
12 be more than you would pay for it if you walk
13 into your stores.

14 And I think -- so this bill, if I
15 understand this correctly -- I know more about
16 this than I ever wanted to know -- this bill
17 would make it more restrictive and would bring
18 it back under control that you'd have to go to
19 the liquor store and pick it up and prove
20 you're 21 and pay the six percent sales tax
21 and nothing else?

22 MR. CONTI: I think it actually says
23 deliver. In other words, it goes to our
24 store.

25 REPRESENTATIVE RAYMOND: Right. You

1 deliver.

2 MR. CONTI: And then we or a
3 contractor would have to deliver it as
4 proposed.

5 REPRESENTATIVE RAYMOND: So the only
6 cost would be an additional delivery charge
7 and then the six percent sales tax on top of
8 what I paid the winery?

9 MR. CONTI: Keep in mind also, if I
10 may, the bill says 80,000 gallons per year.
11 Kistler and those folks are applying under two
12 -- 125?

13 MR. DIAZ: 200.

14 MR. CONTI: 200. So we frank -- you
15 know, how can I put this? We're surprised
16 that only one entity --

17 REPRESENTATIVE RAYMOND: I'm
18 shocked.

19 MR. CONTI: -- has taken advantage of
20 this situation.

21 REPRESENTATIVE RAYMOND: Right. Let
22 me take you another step. I got a bunch of
23 e-mails today from friends of mine, who will
24 remain nameless, since they're violating the
25 whole idea, who got an e-mail from

1 WineBid.com that said that UPS and Fed Ex were
2 going to cease and desist deliveries to
3 Pennsylvania because Pennsylvania just changed
4 the law on direct shipping. And they're
5 writing me letters, nasty letters, and
6 e-mails -- they're friends, so they can get
7 away with it -- and they want to know did we
8 change the law or did we put out some edict
9 that somebody that claims that you cannot ship
10 into Pennsylvania without, you know --

11 MS. DIEHL: What --

12 REPRESENTATIVE RAYMOND: Giving up
13 your first child or something?

14 MS. DIEHL: What we have seen in wine
15 blogs is the same sort of statement, and we
16 don't know where it's coming from.

17 REPRESENTATIVE RAYMOND: Okay. It
18 didn't come from you guys?

19 MR. CONTI: No.

20 REPRESENTATIVE RAYMOND: IT didn't
21 come from Raymond or Donatucci. So it must be
22 the Senate.

23 So to clarify, let me remind
24 everybody, including my good friend,
25 Representative Costa. Pennsylvania is a

1 control state for a reason. And the thing
2 that bothers me is we have all these wholly
3 peripheral edge games being played about
4 direct shipping, about all kind of things.

5 We either want to be a control state
6 or we don't want to be a control state. If
7 you want to be a control state, you should
8 take control of the situation and what we've
9 been doing to the tune of 450 or \$500 million
10 into the General Fund every year and having no
11 citations for underage drinking, no problems
12 with -- with package stores on every corner
13 and -- and you go that route where you get rid
14 of the system. I mean all this middle game
15 stuff, I think, is ridiculous.

16 What he's trying to do I think
17 probably brings it back to some control, but
18 we got to start thinking about, we're in a
19 tough budget year, we're looking for money,
20 now is not the time to start giving away 10
21 million here, 10 million here, 20 million
22 there and keep asking the LCB to keep up with
23 \$470 million of taxes and profits in the
24 system. It's a difficult thing to do.

25 And it's much -- he's making a good

1 effort. I applaud you for that. But it's a
2 much more complicated issue, as we've just
3 pointed out in testimony, as we're discussing
4 here, than one would have -- than one would
5 understand from reading the editorials in the
6 newspapers or reading the blogs and so forth
7 and so on.

8 I appreciate your -- your candor, and
9 this goes back to my whole -- whole time on
10 the Liquor Committee. We could never put a
11 finger on a number on how much direct shipping
12 is coming into Pennsylvania or not coming.

13 Is some stuff coming? Absolutely.
14 Are people bringing stuff back from vacation?
15 Absolutely. But I think it's -- it's a small
16 number at this point and, you know, I don't
17 know how you can assess that. Newman couldn't
18 do it. Before Newman, Goodman, he couldn't do
19 it. Nobody could do it. It's just -- it's an
20 impossible thing to do, because they're not
21 going to tell us and we're not going to find
22 out.

23 And it's next to impossible to
24 enforce these kind of things in terms of --
25 you know, look at the enforcement people and

1 talk to them. Shipment is going through the
2 mail and they're going through UPS and Fed Ex
3 and DHL.

4 MR. CONTI: Could I add an
5 observation to your -- your thoughts there?
6 The wine enthusiast, if you read the wine
7 blogs carefully, and I'm having to do that now
8 for a living, we are the tipping point as a
9 state.

10 Our E-commerce site is doing triple
11 the business it did a year or two ago, and we
12 are now able to get some of the most
13 sought-after wines, because of our new
14 marketing connections, of any place in the
15 country. And our 30 percent mark-up is one of
16 the lowest in the country. So the wine --
17 we're at the tipping point.

18 You're starting to see on some of the
19 blogs that -- Screaming Eagle, for example,
20 only 24 bottles were made. We got three of
21 them, and we sold them on our Internet in
22 about 20 minutes, at a much lower price than
23 anywhere else in the country.

24 So if you representatives are hearing
25 from wine enthusiasts that Pennsylvania is the

1 republic of Pennsylvania and all those kind of
2 things, I ask you to give us about another six
3 months as we improve our E-commerce site and I
4 think already the enthusiasts who use the
5 Internet -- and we're finding that the
6 enthusiasts prefer to buy on the Internet than
7 in our stores.

8 BY So it's a work in progress, if you will.
9 So we applaud the efforts to bring us in
10 compliance with Granholm.

11 As far as the wine enthusiast, we're
12 making progress day by day and some of it is
13 planned and some of it, frankly, is just by
14 accident, because it's just starting to happen
15 on its own.

16 CHAIRMAN DONATUCCI: Thank you,
17 chairman -- Senator Conti, Chairman Raymond.
18 Representative Pyle.

19 REPRESENTATIVE PYLE: Thank you,
20 Mr. Chairman.

21 And Mr. Chairman, slash, Senator,
22 slash --

23 MR. CONTI: Joe.

24 REPRESENTATIVE PYLE: Joe.

25 MR. CONTI: Thank you.

1 REPRESENTATIVE PYLE: Please forgive
2 my ignorance. A couple of questions have
3 arisen after listening to your testimony.

4 Direct shipment of wine from out of
5 state is not subject to the same Johnstown
6 Flood Tax amount that we charge for wine we
7 sell out of our state stores? Am I correct?

8 MR. CONTI: That is correct. And
9 that -- that currently applies to the one
10 winery, Kistler.

11 REPRESENTATIVE PYLE: I -- I don't
12 know how that's going to satisfy Granholm. I
13 mean Granholm's intent was for all wineries,
14 in-state, out-of-state to be treated equally.

15 Are we not putting our in-state
16 wineries at a disadvantage assessing the extra
17 18 -- sales-wise -- assessing the extra 18
18 percent Johnstown Flood tax, when somebody in
19 Ohio can brew up a batch of wine and ship it
20 in and not have to mark it up that much?

21 MS. DIEHL: I would -- I would agree
22 with you except that the in-state wineries do
23 not pay that 18 percent.

24 REPRESENTATIVE PYLE: They pay when
25 the wine crosses the counter to the customer.

1 MS. DIEHL: They pay sales tax, but
2 they don't pay the 18 percent.

3 MR. CONTI: Only the six percent.

4 REPRESENTATIVE PYLE: Okay. Thank
5 you.

6 My second question, Mr. Chairman.
7 Direct shipment, they mentioned Fed Ex, UPS,
8 DHL, and all those guys and I suppose this is
9 a question for the legal officers.

10 Say something did go wrong and one of
11 these people did take a fake ID or something
12 like that. My question would be would the
13 state recognize a Fed Ex or UPS or DHL driver
14 as a legal entity should we have to prosecute?

15 I mean that DHL -- the same thing
16 comes up with your sales in supermarkets; you
17 know, there's a fear that there's going to be
18 a 17-year-old at the checkout counter and when
19 their buddy comes through and says sell me a
20 six pack, well, you let it go.

21 My question is, say you do have a 18-
22 or 19-year-old UPS driver that's delivering
23 wine, you know, would that person be
24 recognized as a legal entity if we have to
25 prosecute?

1 MR. CONTI: I enjoyed my time
2 authoring the laws. Interpreting them is
3 something for the bar --

4 REPRESENTATIVE PYLE: Well, that's --

5 MR. CONTI: -- or Major Lutz. So I
6 will defer that. Let's -- I think counsel is
7 trying to come up with an answer here.

8 REPRESENTATIVE PYLE: I'm always
9 curious to see what counsel's --

10 MR. DIAZ: We can give you -- the
11 analogy we'll give you is -- is anyone who is
12 licensed now, if the -- when the bartender
13 sells, it's the licensee who is cited civilly
14 for the sale because they're the one that has
15 the license.

16 And if someone decides to take
17 crim -- you know, a criminal charge, it's
18 typically the person who provided the alcohol
19 or sold the alcohol.

20 And I assume whether your license --
21 whether you're UPS or a restaurant, that's how
22 it would work.

23 REPRESENTATIVE PYLE: I think that
24 kind of exposes a weakness in our system.
25 We're -- I mean I appreciate the state store

1 system as is. I like that degree of control,
2 re-up training, everybody that comes in gets
3 carded.

4 I just, Mr. Chairman, have
5 reservations about opening this up to people
6 who are not recognized as legal officers by
7 the state of Pennsylvania that are going to be
8 handling liquor, being delivered to people who
9 could be under age if that delivery person is
10 not RAMP certified to handle liquor and wine
11 on behalf of the state.

12 Okay. Thank you, Mr. Chairman.

13 MR. CONTI: I -- I guess the response
14 would be, of course, our staff -- the same
15 staff that are in our stores, if we delivered,
16 you would -- you could draw the conclusion --

17 REPRESENTATIVE PYLE: Well, yeah.

18 MR. CONTI: -- we do as fine a job.
19 But, listen, in the field it's much more
20 difficult.

21 REPRESENTATIVE PYLE: Right.

22 MR. CONTI: In the store we have
23 the -- the machines to check IDs. We have
24 processes, procedures, to take that mobile, if
25 you will, and to do it in front doors of

1 businesses or residences is a whole new
2 direction for us and our excellent staff.

3 REPRESENTATIVE PYLE: Okay.

4 MR. CONTI: So we'd have to work
5 through that together.

6 REPRESENTATIVE PYLE: Thank you.

7 Thank you, Mr. Chairman.

8 CHAIRMAN DONATUCCI: Thank you.

9 Representative Petri.

10 REPRESENTATIVE PETRI: Thank you,
11 Mr. Chairman.

12 I'm going to start with some legal
13 questions -- I think they're appropriate for
14 legal counsel -- and hope you can help me
15 through this process.

16 I've been hearing from a lot of my
17 wineries and, as Joe knows, we have some great
18 wineries in Bucks County. And the one
19 struggle they have is that early on, when
20 Granholm came down, or even Cutner, the
21 question is: Was an argument made, when we're
22 talking about parity, about the limitations
23 that the wineries have?

24 We always talk about, oh, they have
25 these kiosks, they get these off-sites, they

1 get this, but what about the limitation of
2 having to acquire your product primarily in
3 Pennsylvania? Was that argument made in
4 Cutner?

5 MR. DIAZ: In terms of?

6 REPRESENTATIVE PETRI: In terms of if
7 we're going to be on parity with out-of-state
8 wineries and our limited wineries are required
9 to get predominantly their grapes from
10 Pennsylvania, they have to be Pennsylvania
11 grown, was that argument made?

12 There's just not benefits. There's
13 limitations. And if we're going to have true
14 parity, should an out-of-state winery have to
15 acquire their grapes from Pennsylvania?

16 MR. DIAZ: It was -- it was made and
17 the Attorney General represented the board.

18 That argument came up in the same way
19 that it came up in Cutner, which is not as a
20 limitation but as a -- as a requirement as
21 proof that you were treating in-state entities
22 differently than out-of-state entities because
23 the out-of-state entities couldn't comply with
24 that requirement.

25 REPRESENTATIVE PETRI: Well, they

1 could. They could just buy the Pennsylvania
2 grapes and have them shipped to their location
3 anywhere in the world.

4 MR. DIAZ: They -- they could have,
5 but the court felt -- in the Granholm, the
6 Supreme Court pointed to that requirement in
7 New York law as proof that you were treating
8 in-state people differently than out-of-state
9 and then went to the privileges.

10 What we did argue -- maybe this is
11 somewhat similar -- is we -- we had suggested
12 to the -- to the judge in Cutner that one way
13 of solving it was not to put everyone at the
14 same level as in-state wineries but to bring
15 everyone out to the level of out-of-state
16 wineries. To -- in other words, to not let
17 anyone ship.

18 And what the judge said, I -- I can't
19 rewrite the letter. You have set a playing
20 field. All I can do is bring everyone to that
21 same playing field.

22 REPRESENTATIVE PETRI: Okay. I guess
23 my point is, from what I'm hearing you say,
24 you made the argument and, unfortunately, the
25 guys in the black robe disagreed with you.

1 MR. DIAZ: Yeah. They said everyone
2 gets the privileges, not everyone gets --

3 REPRESENTATIVE PETRI: I think that's
4 an important issue for the record, you know,
5 and for my understanding because that is
6 certainly -- you know, I'd have to put my hat
7 on as a lawyer for 22 years. That certainly
8 is an argument I would have pushed and,
9 according to what you're telling me now is it
10 was made. It just wasn't accepted by the
11 court.

12 MS. DIEHL: Right.

13 REPRESENTATIVE PETRI: And so we're
14 stuck with trying to fix it.

15 Okay. Have you, as legal counsel,
16 thought of any other methodology that we can
17 protect our in-state wineries a little bit?

18 I know that they're a significant
19 part of our agricultural product. They're a
20 significant asset in open space, which is
21 really big in Bucks County. They're certainly
22 grape producers.

23 Can you think of anything else we
24 could do that would help them compete on a --
25 on a decent, you know, on a decent level?

1 Because it seems to me that if they
2 have to pay the Johnstown Flood Tax that could
3 be a significant impairment to sale of their
4 product.

5 MS. DIEHL: What I would say is that
6 the board has directed our office to explore
7 other initiatives, and we will be presenting a
8 white paper on that to the board next
9 Wednesday.

10 REPRESENTATIVE PETRI: Okay

11 MS. DIEHL: About ways in which we
12 can support our --

13 MR. CONTI: And if I may, we probably
14 had a -- a time-out, if you will, of a strong
15 working relationship with our partners, the PA
16 wineries, at the board for a period of time.

17 But we have changed greatly. We're
18 meeting at least twice a year with the PA
19 wineries with their board. They've all become
20 our friends, and we would certainly look
21 forward to working with them.

22 So we're beginning more of a dialogue
23 where not only can we research things on our
24 own to how we can help them, but there's
25 nothing better than talking to them, getting

1 some ideas from them.

2 Or, as I say, we have a new working
3 relationship with the PA wineries that we're,
4 frankly, quite proud of.

5 REPRESENTATIVE PETRI: Last
6 question. Under a PA limited winery, am I
7 correct -- with a limited winery license, or
8 under the limited winery licenses, am I under
9 the impression that they're allowed to deliver
10 only their product? They wouldn't be allowed
11 to sell any other -- anyone's product, whether
12 it be wine, spirits or anything else?

13 MR. DIAZ: They can -- all limited
14 wineries can purchase a certain amount of
15 product from other wineries and then repackage
16 it and sell it as if its their own.

17 And there's also another little
18 provision dealing with wine that undergoes a
19 second fermentation process.

20 But generally you're right. Limited
21 wineries sell their product.

22 REPRESENTATIVE PETRI: Well, of
23 course, that's their choice. I guess my
24 question is if I wanted to have -- say I
25 wanted to have a party at my house. Would

1 it -- would I be allowed to hire the limited
2 winery to come out and serve their product at
3 my house?

4 MR. CONTI: You could purchase.

5 REPRESENTATIVE PETRI: I could
6 purchase it?

7 MR. CONTI: But as far as having them
8 come out and serve it and cater it sort of?

9 MS. DIEHL: It hasn't been --

10 MR. DIAZ: It's not -- it's a
11 different question, your Honor. You can buy.
12 They can deliver it. But when someone does
13 something outside their core business, they
14 typically need our permission, you know,
15 request to conduct another business.

16 MS. DIEHL: And I don't know that the
17 board would disapprove it, that the board
18 would disapprove it, but it hasn't been
19 requested to date.

20 REPRESENTATIVE PETRI: Okay. Thank
21 you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN DONATUCCI: Thank you.
24 Representative Mustio.

25 REPRESENTATIVE MUSTIO: Thank you,

1 Mr. Chairman.

2 Scott, when's the party?

3 REPRESENTATIVE PETRI: Oh, whenever
4 you want.

5 REPRESENTATIVE MUSTIO: I just wanted
6 to follow up with Chairman Conti regarding the
7 wine enthusiast. I have several in my
8 district and several have been written up in
9 the local Pittsburgh papers.

10 And the concerns they have are the
11 ability to get those limited productions,
12 which you will -- perhaps would be willing to
13 speak with them directly to tell them what
14 direction you're going and some of the
15 privileges that have taken place there.

16 But I think ultimately the concern I
17 received in e-mails is the quality and
18 control, the concern of it being out of the
19 winery's hand, and then going through the
20 system and possible temperature changes, all
21 those types of things that can happen to a
22 wine that they may not be opening it because
23 they're just collecting it and maybe reselling
24 it.

25 So how do we address that? How do we

1 develop a comfort level with that buyer who's
2 not your normal customer, I would suspect, in
3 liquor stores?

4 MR. CONTI: First of all, I would
5 enjoy talking with them about their concerns.

6 Frankly, we haven't heard a lot of
7 those concerns because the board over the last
8 five to ten years has made a concerted effort
9 to handle product properly.

10 Remember, that when the wine leaves
11 California or Europe, there's a period of time
12 there where, you know, we're involved in that,
13 if you will, and consolidation and shipping
14 and things like that.

15 But it's a little hard to control the
16 temperature till it gets to us. We think as
17 soon as we get it we're handling it
18 appropriately.

19 If somebody can point out how we're
20 not, we're very happy to talk to them and
21 address the issue.

22 REPRESENTATIVE MUSTIO: Thank you.
23 And I appreciate your willingness to do that.

24 And I think, as in a lot of our
25 communications with our constituents, a lot of

1 time things are made based on assumption and
2 not on fact.

3 And I don't have enough knowledge of
4 your inside operations or the industry to
5 address those facts or comments that they're
6 making. So you're willingness to do that
7 makes my life a lot easier, and I certainly
8 appreciate that.

9 MR. CONTI: Sure.

10 REPRESENTATIVE MUSTIO: And that's
11 the extent of my comments today.

12 CHAIRMAN DONATUCCI: Thank you.

13 Representative Costa.

14 REPRESENTATIVE COSTA: Thank you,
15 Mr. Chairman.

16 And I want, along with Representative
17 Mustio, the same type question -- excuse me --
18 a concern, because, as he said, it was written
19 up in our papers that there were consumers
20 that were complaining about the quality.

21 And I know, for instance, in my -- in
22 my bill you guys have air-conditioned
23 facilities. We've entered and toured some of
24 them. I'm glad you addressed that.

25 A couple comments I'd like to make

1 that's important. One, the 80,000 gallon
2 limit, the reason we did that was to make sure
3 that we included all Pennsylvania wineries.

4 If we need to raise or lower that,
5 I'm willing to work with that to make sure
6 that we get it to who we need to.

7 To address the grape issue, I know
8 I've gotten several calls from wineries that
9 they're having trouble making the 350-mile
10 radius in buying grapes.

11 I believe we took that out of the
12 legislation. So that addresses that concern.

13 The other thing I wanted to ask you,
14 we're based -- one -- one winery outside of
15 Pennsylvania applied?

16 MR. CONTI: What --

17 REPRESENTATIVE COSTA: Why? Why do
18 you think that is?

19 MR. DIAZ: Three applied. One has
20 gotten the license. The other two eventually
21 decided it wasn't worth --

22 REPRESENTATIVE COSTA: Did you get
23 feedback as to why, first, they chose not to
24 or why there aren't other places? I mean it
25 seems like there is a demand for this direct

1 wine shipping from out of state obviously
2 because it sparked the -- the court cases.

3 Why is no one trying to apply or are
4 they just circumventing the system?

5 MR. CONTI: I think, as counsel has
6 said, and I, on behalf of the board, said, we
7 have not had any dialogue in this matter with
8 applicants or permittees.

9 I mentioned to you that we should get
10 together and talk about, you know, this bill
11 and how it may change the profile.

12 I would ask that question to some of
13 your next testifiers, you know, the Restaurant
14 Association, the Wine and Spirit Association,
15 and see what their take may be on that.

16 From my industry days I have my
17 opinion on -- on what Kistler may be doing in
18 the long run, but it would be inappropriate
19 for me to talk about that today.

20 It's really interesting stuff.
21 It's -- the market is changing. Follow what I
22 mean? The restaurant markets and the wine
23 markets and the spirit markets, everything
24 changes daily, and we're responding to the
25 changes.

1 REPRESENTATIVE COSTA: And my last
2 question on the actual delivering of the
3 product, I know you guys would like to have
4 your hands on delivering because you'd have
5 more control.

6 Would you have a problem if someone
7 else delivered it, if you contracted with Fed
8 Ex, UPS, whoever it may be, and you got a
9 shipment on it?

10 MR. CONTI: No, we would not have a
11 problem with it.

12 REPRESENTATIVE COSTA: I appreciate
13 your testimony and look forward to working
14 with you.

15 MR. CONTI: Thank you,
16 Representative.

17 CHAIRMAN DONATUCCI: Thank you.

18 Thank you, Senator Conti, and
19 everyone.

20 The next witness is the Governor's
21 Office of General Counsel, Nora Winkelman.

22 MS. WINKELMAN: Good morning. Good
23 morning to you.

24 CHAIRMAN DONATUCCI: Good morning.
25 Thank you for coming.

1 MS. WINKELMAN: Thank you. My name
2 is Nora Winkelman, and I'm Executive Deputy
3 General Counsel in the Governor's Office of
4 General Counsel, and I serve as the Governor's
5 legislative counsel.

6 Thank you for giving me the
7 opportunity to address the committee this
8 morning on House Bill 2165.

9 As you already know and have heard
10 from the LCB testimony, we have been in legal
11 limbo since 2005 when the United States
12 Supreme Court, in the Granholm case, declared
13 laws in New York and Michigan unconstitutional
14 because they prohibited residents of those
15 states from receiving wine directly from
16 out-of-state wineries while permitting such
17 direct shipments by in-state wineries and,
18 secondly, a federal district court in
19 Pennsylvania ruled, in the Cutner case, that
20 Pennsylvania's own Liquor Code and regulations
21 were also unconstitutional because they
22 basically followed the same scheme as New York
23 and Michigan.

24 There are two very different ways
25 Pennsylvania could come into compliance with

1 the decisions in these two court cases. We
2 could prohibit direct shipment altogether by
3 both in-state and out-of-state wineries or we
4 could go a path that House Bill 2165
5 suggests.

6 And it is the Governor's desire from
7 the start to go down the path of giving the
8 consumers as much choice as possible in this
9 regard so long as we could ensure that minors
10 did not have easy access to alcohol and that
11 as much of the revenue the Commonwealth
12 currently enjoys from the sale of wine through
13 Liquor Control Board retail stores could be
14 preserved.

15 Enhanced consumer choice would also
16 mean improved consumer satisfaction, which is
17 a critical ingredient in maintaining public
18 support of our state store system.

19 We believe that House Bill 2165 gets
20 us most of the way to the desired end result
21 by leveling the playing field in compliance
22 with the federal court rulings, and allowing
23 all wineries, those located here in
24 Pennsylvania, as well as those located in
25 other states, to ship their wines to

1 consumers.

2 The requirement that the shipments go
3 through the Liquor Control Board will preserve
4 the Commonwealth's regulatory control over the
5 sale of wine and ensure that it does fall --
6 does not -- sorry -- does not fall into the
7 hands of minors.

8 Unfortunately, the bill does not
9 preserve some of the financial benefits that
10 the Commonwealth currently enjoys because it
11 fails to carry over the 30 percent mark-up on
12 wine that the Liquor Control Board is
13 currently authorized to collect, and we
14 believe this should be addressed in some
15 fashion.

16 In addition, the bill would seem to
17 expand the rights of breweries that are only
18 operating as brewpubs; that is, without a full
19 restaurant liquor license, to go beyond
20 selling Pennsylvania wines as they are
21 permitted to do today to selling any wine that
22 they want.

23 While this provision would eliminate
24 the disparate treatment of in-state and
25 out-of-state wineries that the federal courts

1 found objectionable, we also believe this
2 would put the state's restaurant liquor
3 license holders at a competitive disadvantage
4 because restaurant liquor licenses, as you
5 probably know, tend to be more expensive to
6 obtain because they're within the quota system
7 while the brewpub licenses are not.

8 We believe this may be an unintended
9 consequence of the change to Section 446 of
10 the Liquor Code where just the word
11 Pennsylvania was taken out of that section to
12 affect what kind of wines can be purchased. I
13 don't know.

14 But in order to sort of keep that
15 status quo that we have now with respect to
16 restaurant liquor licenses, we would support
17 an amendment that would actually limit --
18 eliminate all breweries' rights to sell all
19 wines, Pennsylvania and out-of-state, because,
20 as we've already heard, any -- really any
21 issue or any solution that will give in-state
22 wineries some kind of a competitive advantage
23 over out-of-state is just not going to pass
24 muster with the courts.

25 And that's really all I have to say.

1 I think the LCB said most of -- gave you most
2 of the testimony you need on the background,
3 but I will be happy to take any questions.

4 CHAIRMAN DONATUCCI: Thank you.

5 Are there any questions?

6 MS. WINKELMAN: Excellent. My work
7 is done.

8 CHAIRMAN DONATUCCI: Thank you.

9 MS. WINKELMAN: Thank you.

10 CHAIRMAN DONATUCCI: The next witness
11 is -- next witness is John Meyerson, Director
12 of Legislation and Political Action and UFCW
13 Local 1776.

14 Welcome, John. I know you have --
15 that you're going to talk about how to make
16 this all easy.

17 MR. JOHN MEYERSON: Well, I will tell
18 you, Mr. Chairman, that as I -- as I sit here
19 and listen to the other testimony, I've -- I'm
20 sitting there changing my testimony as I -- as
21 I went along, but you have my written
22 testimony. But it's not going to change that
23 much. I will -- I will diverge a little bit.

24 But, again, you know, good morning,
25 Chairman Donatucci, Chairman Raymond, members

1 of the committee.

2 As stated, I'm probably the least
3 important person here with the longest title,
4 Director of Legislation and Political Action
5 of the United Food and Commercial Workers,
6 Local 1776.

7 I also want to point out that in a
8 past life I was John Meyerson PLCB Clerk I in
9 Stores 9103 and 5101 in Philadelphia.

10 I also want to -- let you know.

11 CHAIRMAN DONATUCCI: Are those stores
12 still open?

13 MR. MEYERSON: As strange as it may
14 seem, yes. I -- I was not able to close them.

15 CHAIRMAN DONATUCCI: You're doing a
16 good job then.

17 MR. MEYERSON: I also want to let you
18 know that I bring the greetings and the best
19 wishes of the President of Local 1776, Wendell
20 Young, IV.

21 United Food and Commercial Workers,
22 Local 1776, represents about 23,000 working
23 Pennsylvanians across the eastern two-thirds
24 of the Commonwealth, including about
25 two-thirds of the PLCB wine and spirit shops

1 clerks.

2 The other PLCB clerks are represented
3 by our sister UFCW locals, Local 23 in
4 Pittsburgh and Local 27 -- well, 23 in
5 Pittsburgh and western Pennsylvania and local
6 27, which has members in southern Delaware and
7 Chester Counties.

8 Before I get into the meat of my
9 testimony, I just wanted to take a minute to
10 thank this committee not only for the
11 opportunity to testify today on this important
12 issue, but for the leadership that you have
13 provided for all of us on -- on liquor
14 issues.

15 This committee has been an example of
16 bipartisan leadership. Regardless of which
17 party has held the majority, you've always
18 operated in the same collegial fashion, and,
19 you know, you have been goal oriented and my
20 members, and I would say all the people in
21 Pennsylvania, have really benefited from that
22 approach.

23 So I want to thank both Chairman
24 Donatucci and Chairman Raymond for their
25 leadership and hard work over the last several

1 years, especially considering Chairman
2 Raymond's decision not to seek re-election.
3 You will be missed, sir.

4 As for the --

5 CHAIRMAN DONATUCCI: We're going to
6 take over budget negotiations by the end of
7 the week.

8 MR. MEYERSON: All right. All
9 right. I'm moving.

10 As for the matter at hand, the United
11 Food and Commercial Workers starts with the
12 premise that the PLCB system works. We have
13 and will continue to work with the board and
14 the General Assembly to make improvements
15 where we agree and that -- where they are
16 appropriate, and I believe our record speaks
17 for itself in that regard.

18 Today, we find ourselves having to
19 address the issue of direct shipment more so
20 due from external pressures from the federal
21 courts than from an internal need.

22 Accordingly, we need to look for a
23 solution that disrupts our -- our current
24 system as little as possible. That is why I'm
25 here -- here today to be supportive of

1 Representative Costa's Bill 2165.

2 H.B. 2165 leaves intact the three
3 basic pillars that the PLCB wine and spirit
4 stores are built on: Control of the sale of
5 alcohol, maintaining a revenue stream to the
6 Commonwealth, and great customer service to
7 adults who have made the choice to drink.

8 Everyone in this room knows this has
9 not been a easy task, but by working together
10 we have crafted a system that now provides our
11 customers with over 12,000 different wine and
12 spirit choices in clean, modern, well-located
13 stores staffed by employees trained in product
14 knowledge and customer service, a system that
15 earns the Commonwealth over a half billion
16 dollars -- almost half a billion dollars a
17 year, with sales increasing annually and a
18 system where the employees card over a million
19 young people a year, armed with the best
20 training and modern equipment to prevent
21 underage drinking. This is truly a system
22 that works for all Pennsylvanians.

23 The United Food and Commercial
24 Workers has always believed that adult
25 citizens in Pennsylvania should have the right

1 to get whatever they choose in the way of
2 wines and spirits, and they should be able to
3 order over the Internet, by mail order, or at
4 a winery.

5 But to maintain the three pillars I
6 mentioned earlier, we believe those items must
7 be run through the PLCB. If a customer want
8 to order a wine that is not available in
9 Pennsylvania, they should be able to order it
10 through any process they choose but should
11 have to pick it up -- pick it up at a -- at a
12 wine and spirit shop or, as made possible in
13 HB 2165, have it delivered by the PLCB.

14 In this way when the customer comes
15 into the store of their choice to pick up
16 their order or when it's delivered by a board
17 employee, the PLCB's high standards will be
18 maintained and we could all be assured that
19 the customer receiving the order is 21 years
20 of age or older and that all the taxes have
21 been paid before the delivery is made.

22 Representative Costa's bill gives the
23 PLCB a choice of contracting a shipper to make
24 home deliveries to the homes -- the homes and
25 businesses of customers.

1 We would urge the bill be amended to
2 require that board employees make all wine and
3 spirit deliveries inside the Commonwealth.

4 Now, I included an article that --
5 and now I understand it might not be totally
6 correct, but it has to do with that Maine
7 Supreme Court decision about tobacco that was
8 referenced in the board's -- the board's
9 testimony.

10 And while it might not be on point,
11 if we are contracting, you know, if the board
12 contracts with the delivery, I think it's
13 still something we have to take note of and
14 that's on the back of my testimony.

15 You know, we feel that you know, when
16 you start opening up to, you know, to public
17 and common carriers, it could open up serious
18 consequences when it comes to controlling the
19 sales of wine and spirits to minors.

20 I would submit to you that the best
21 people to ensure that only sober adults take
22 delivery of alcoholic beverages are the PLCB
23 employees that the state of Pennsylvania and
24 the PLCB have already trained to do the job
25 and do it better than anyone else in the

1 world.

2 In the past five years I believe
3 there have only been two verified instances of
4 minors being served at wine and spirit shops,
5 and a 1995 study by the Insurance Institute
6 for Highway Safety showed that underage
7 drinkers are twice as likely to be served
8 alcoholic beverages for off-premises
9 consumption in neighboring New York state than
10 in Pennsylvania.

11 Also after listening to -- to Senator
12 Conti, I would like to, you know, suggest
13 that -- to some of the things that are not in
14 my testimony, but that they be looked at.

15 I know in earlier legislation it was
16 talked about that only items that are not
17 available through the PLCB be eligible for
18 direct shipment, which is something we
19 might -- we might want to look at so we are
20 not opening up direct competition with
21 ourselves, which I think might address some of
22 the board's concern.

23 And that, again, I think that we need
24 to re-eval -- re-evaluate the 30 percent
25 mark-up so that, you know, we don't want to

1 leave -- we want -- we want everything we do
2 to enhance revenue. We don't want it to -- to
3 deter revenue.

4 But, you know, again, one of the key,
5 you know, missions and probably the only
6 people who sell alcohol who it's part of their
7 mission -- is to control the sale to young
8 people and we cannot afford to take our --
9 take a -- take a chance with our
10 Commonwealth's most precious resources, our
11 youth.

12 So, you know, we urge you to -- to
13 move or consider and continue discussion with
14 2165 with some of the suggestions that I made
15 earlier.

16 And, you know, I pledge to you the
17 support of the United Food and Commercial
18 Workers Union in working out a system for
19 delivery that works for the PLCB and the
20 people of Pennsylvania, just as we have in the
21 past with Sunday sales at PLCB and
22 supermarkets.

23 Thank you for the opportunity to
24 address you on this issue.

25 CHAIRMAN DONATUCCI: Thank you.

1 Just for our record, Representative
2 Raymond addressed the tax issue in a piece of
3 legislation, and I believe I'm a co-sponsor,
4 that lowered the Johnstown Flood, but with the
5 economy being the way it is, it's a hard issue
6 to sell right now.

7 And even when Ron retires, I give my
8 word we're going to look at it again and when
9 we do pass it, we will mention it was Ron's
10 baby from --

11 REPRESENTATIVE RAYMOND: As former.

12 CHAIRMAN DONATUCCI: Former
13 Representative Ron Raymond.

14 MR. MEYERSON: You get an assist,
15 Ron.

16 CHAIRMAN DONATUCCI: Right.

17 Basically I agree with you. We've
18 got to get --- be more competitive. Even
19 though our prices are competitive, if we get
20 our Johnstown Flood Tax down a little bit, no
21 one is going to come near Pennsylvania, and I
22 believe that will increase sales, right, and
23 make up the difference.

24 But we'll even eventually take a look
25 at that. Maybe not this session. Maybe

1 next.

2 Any questions?

3 John, you're free to go.

4 MR. MEYERSON: Thank you,

5 Mr. Chairman.

6 CHAIRMAN DONATUCCI: Thank you for

7 testifying.

8 Patrick Conway, the Restaurant

9 Association.

10 MR. PATRICK CONWAY: Good afternoon,

11 Mr. Chairman. We do have some copies with

12 us.

13 CHAIRMAN DONATUCCI: Yes.

14 MR. CONWAY: Good afternoon. Thank

15 you for the opportunity to be here.

16 CHAIRMAN DONATUCCI: You got me

17 nervous. It's still morning.

18 MR. CONWAY: You know, I apologize.

19 I cut it so close, Mr. Chairman.

20 Thanks again for the opportunity to

21 be here. Chairmen Donatucci and Raymond and

22 members of the House Liquor Control Committee,

23 thanks again for the opportunity to provide

24 testimony on House Bill 2165 and the important

25 topic of direct shipment of wine in

1 Pennsylvania.

2 I'm Patrick Conway, President and CEO
3 of the Pennsylvania Restaurant Association,
4 and with me today is Ray Hottenstein who is
5 the owner of Olde Greenfield Inn in Lancaster
6 and chairman of the PRA Alcohol Service
7 Committee.

8 Ray and I speak today for our
9 association members and licensees across the
10 Commonwealth. Our members represent
11 individuals and organizations operating both
12 large and small, independent, multiple unit
13 chain and franchise food and beverage
14 establishments.

15 This committee, I'm quite sure, is
16 fully aware of the economic impact of our
17 industry in the Commonwealth. But I'd like to
18 take just a moment for the record, however, to
19 talk about that.

20 Our eating and drinking place sales
21 are expected to exceed \$15.2 billion in
22 Pennsylvania this year. We directly or
23 indirectly employ approximately 629,000
24 Pennsylvanians, and we're the largest retail
25 employer and the second largest private sector

1 employer in the Commonwealth.

2 One out of four retail outlets in
3 Pennsylvania is an eating or drinking place,
4 and each one million in sales that eating and
5 drinking places provides for 43 jobs.

6 Restaurants also serve more than just
7 meals. Nine out of ten restaurants in
8 Pennsylvania are involved in charitable and
9 philanthropic activities in their -- in their
10 local communities; and our business owners,
11 their families, and their employees are your
12 constituents.

13 As you can see, our restaurant
14 industry contributes significantly to the
15 economic viability of the Commonwealth. It's
16 also a very highly competitive industry that
17 operates on a very narrow average profit
18 margin of about five percent.

19 Licensed restaurants in particular
20 must operate on tight profit margins faced
21 with the high cost of wine and spirits in the
22 Commonwealth. Clearly, any changes in the
23 state liquor control system that may reduce
24 the cost or increase the availability of wine
25 and spirits for licensees will be embraced by

1 licenses who are the wholesale purchasers
2 that buy high volumes of these raw materials
3 from our one and only purveyor, the
4 Pennsylvania Liquor Control Board.

5 We've seen a number of positive
6 changes to the Liquor Code in recent years,
7 and would like to congratulate all of you on
8 that, that have helped improve and modernize
9 our dated liquor control system.

10 These changes have opened new
11 opportunities for the state and have
12 benefited the consumer public and industry
13 stakeholders as well.

14 We believe that direct shipment
15 presents another positive opportunity for the
16 Commonwealth to continue -- to continue the
17 recent trend on improvement and modernization
18 that will benefit both consumers and also
19 licensees, especially as the world of
20 E-commerce continues to grow.

21 At this point I'll turn it over to
22 Ray Hottenstein.

23 MR. RAY HOTTENSTEIN: All right.
24 Thank you.

25 CHAIRMAN DONATUCCI: You're welcome,

1 Ray.

2 MR. HOTTENSTEIN: I'm from
3 Lancaster. I'm a licensee there. I've been a
4 licensee for 37 years and we do sell wine and
5 spirits.

6 Last night I had a nice wine dinner.
7 I'll explain to you what -- some of our
8 concerns from just that one particular
9 incident.

10 We're -- as the PRA, we support
11 direct shipment of wine for both the consumer
12 and as well as the licensee in Pennsylvania.
13 And we're pleased that House Bill 2165 would
14 allow shipments for both the public and
15 ourselves.

16 We're concerned, however, that the
17 legislation would require that shipments be
18 made directly through the PA -- the PLCB.

19 Our concerns would be that these
20 products that are shipped to the LCB would,
21 therefore, add additional cost and, from the
22 experiences that we've had and seen, that
23 those additional costs would be anywhere from
24 \$30 a case to maybe \$150 case, depending on
25 whether it's a second- or third-party

1 individual shipping. And then, of course, the
2 additional step in the delivery process would
3 be adding the time and significant cost from
4 the PLCB in the transaction.

5 In addition, by raising the costs of
6 the wines throughout the state and adding
7 additional costs to operate the PLCB, we would
8 like to see that these costs were -- not like
9 to see, but we are concerned that the costs
10 will have to be matched by other wines as
11 well.

12 This means that the case -- like the
13 case of Moondancer Chardonnay in York County,
14 Pennsylvania, that currently retails for \$15 a
15 bottle or \$180 a case, will increase their
16 basic costs, according to the 2165, to about
17 \$20.60 a bottle, or their case price would go
18 from 180 to \$247.

19 Pennsylvania wines already have --
20 and it's not -- not a credible situation,
21 but -- because our Pennsylvania wineries are
22 doing a great job, but people already look at
23 them as being overpriced and undervalued.

24 So by increasing the cost of these
25 products and they're not able to recoup these

1 costs, you're going to be forcing our
2 Pennsylvania wineries, perhaps, out of
3 business.

4 I use an example of the Cabernet
5 Franc from Nissley Wines, which is not a bad
6 Cabernet Franc. And, incidentally, I have a
7 wine list, that's a wine spectator list,
8 that's been that way for nine years. We
9 feature at least three Pennsylvania wineries
10 on our list at all times.

11 Their Cabernet Franc right now is
12 \$16.45 bottle. It's going to be 23 bucks.
13 And are you going to drink a \$23 bottle of
14 Lancaster County wine? I'm not sure that
15 that's what's going to happen here.

16 Suddenly the wine from California and
17 Washington and Oregon looks like a better
18 value. So the same will play out through all
19 of Pennsylvania at all the wineries, and the
20 cost of their product will increase to the
21 consumer but the vineyard will not receive any
22 additional compensation.

23 So I'm not in the vineyard business,
24 but I'm in the business of selling their
25 products and I'm a Pennsylvanian and I'm

1 concerned for the agricultural -- the
2 agricultural problem that this is going to
3 incur.

4 I've lost my place here.

5 The increased costs that I'm speaking
6 about do not include any additional costs to
7 the PL -- you know, from the PLCB. So that
8 \$16 bottle that went to be 23 bucks doesn't
9 include the -- the 30 bucks, or whatever it's
10 going to cost, for the PLCB to -- to deliver.

11 So we're -- this is where our big
12 concern is.

13 We're also pleased that the bill does
14 not apply to shipped products the standard 30
15 percent SLO mark-up. And we -- we're
16 certainly -- this is the first and most
17 significant of the five levels of taxation on
18 all the PLCB products.

19 Because most of the work in the
20 direct shipment transaction is handled outside
21 the state store system, it's appropriate that
22 the PLCB mark-up not be included in these
23 products.

24 The issue of the mark-up, that 30
25 percent SLO mark-up, raises another important

1 issue, the question of special liquor orders
2 that we do as licensees.

3 The SLOs are products -- for those of
4 you that are not familiar -- they are products
5 that are not listed by the PLCB and carried --
6 or carried in the state store on the shelves,
7 and they're not handled by their employees
8 until they're purchased directly from a
9 private distributor, such as Capital Wines,
10 Southern Wine and Spirits, or many of the
11 others in Pennsylvania that are distributors.

12 These distributors employ a work
13 force of salesmen and they educate our
14 industry, they market their products, they
15 warehouse them, they transport them,
16 inventory, and then deliver them to the --
17 deliver the ordered products to the local --
18 local state store only to be picked up by
19 licensees.

20 And I am a licensee who is not
21 interested in the additional cost of the
22 Pennsylvania Liquor Control Board and their
23 delivery system. I don't mind sending
24 somebody to pick up my product.

25 Licensed premises in Pennsylvania, we

1 utilize the SLOs to a great extent for these
2 inventories of wine and spirits.

3 The distributors pay for the product
4 at the winery, they pay their employees, and
5 make a profit. Typically they'll mark up
6 their cost of product 20 to 35 percent as just
7 normal cost of doing business.

8 Our concern is that after this 20 or
9 35 percent, there's a transaction that's put
10 in, that's the 30 percent mark-up on an SLO,
11 which the state -- the Pennsylvania state
12 store system does absolutely nothing to
13 deserve.

14 The additional mark-up is a burden to
15 us as licensees because our raw materials
16 and our -- it gives us inequity -- or it puts
17 us in an inequitable position with surrounding
18 states and it certainly beats up the wholesale
19 purchasing system in Pennsylvania.

20 So we are concerned. We are happy
21 that there is an opportunity for direct
22 shipping, but we are definitely concerned
23 about the SLO system and we're concerned --
24 we're happy that you would have seen the --
25 and had the foresight not to put that on a

1 direct shipment product. We'd also like to
2 see that extended to the licensee side of the
3 game.

4 Finally, we'd like to thank the
5 committee for your continued support for an
6 increase in the wholesale discount to all
7 Pennsylvania licensees. Increasing the
8 discount is our industry's top priority, and
9 we would like to restore a more reasonable
10 discount and wholesale relationship between
11 the PLCB and its largest customers, the
12 licensees who account for over 30 percent of
13 the state store sales.

14 As you know, the PLCB used to
15 recognize licensees for their volume purchases
16 with a reasonable discount of 16 and six
17 percent -- 16.67 percent. The discount was
18 taken away and it was reduced to over -- seven
19 percent.

20 Recently in 2006, your committee
21 helped us, and the Governor, work a deal and
22 work closely with the Pennsylvania Restaurant
23 Association to restore three percent; and
24 we're grateful for that. Our employees are
25 grateful for that and our customers are

1 grateful for that.

2 But now is the time to consider
3 another increase in the discount. We're
4 asking you to consider that as well along with
5 this legislation.

6 In closing, we thank the chairman and
7 the members of the House -- the House Liquor
8 Control Committee for the opportunity to
9 provide testimony on this important topic of
10 direct shipment.

11 Our restaurant association
12 appreciates the opportunity -- appreciates the
13 opportunity to share our input with you, and
14 we look forward to working with you as a
15 partner and as a good industry resource as we
16 work together on direct shipment and other
17 important Liquor Code matters.

18 Thank you.

19 CHAIRMAN DONATUCCI: Thank you, Ray,
20 for your testimony and your insight.

21 Chairman Raymond.

22 REPRESENTATIVE RAYMOND: Ray, it's
23 always a pleasure to see you.

24 MR. HOTTENSTEIN: Thank you.

25 REPRESENTATIVE RAYMOND: And as well

1 I appreciate it. It just -- you remind me of
2 all the issues I've been working on that I
3 wasn't able to get done. The SLO, I was
4 trying to get that reduced. And the
5 innkeepers and the winery, I'm -- I'm a
6 failure on that one as well. The increase in
7 discount, we got it at three percent but we're
8 going for four next, that's another thing you
9 got out there on a bad budget year this year.

10 But the whole key issue -- and I
11 think the SLO question is a big one for
12 everybody in the industry. It's hard to
13 justify the PLCB taking 30 percent. I get it
14 too. It's hard to justify that mark-up --

15 MR. HOTTENSTEIN: Yeah.

16 REPRESENTATIVE RAYMOND: -- for a SLO
17 order to anyone, and we tried to get that done
18 a year or so ago, maybe a couple years ago,
19 and we had a fiscal note on it. We thought it
20 was a maybe 20 -- \$20 million issue or item,
21 somewhere in there, and then the LCB had a
22 \$180 million number on it. And, of course, we
23 couldn't get anywhere near that.

24 MR. HOTTENSTEIN: Wow.

25 REPRESENTATIVE RAYMOND: And so it

1 never happened. But those are issues that are
2 important.

3 If I'm reading his bill right, if you
4 get direct shipment to the LCB, there's no 30
5 percent, there's no 18 percent, so you're
6 getting in essence a 48 percent break on -- on
7 an item and then addition -- an additional
8 shipping, cost of shipping of the LCB
9 through -- through a commercial worker or
10 employee that works for the LCB bringing it to
11 your place, you're still way ahead of the game
12 if you go that way, aren't you?

13 MR. HOTTENSTEIN: In -- with the --
14 we're -- with the removal of the SLO, yes, we
15 are. But in order -- and the way I understand
16 this bill to read is that when you do this and
17 allow direct shipment, that means that your
18 license -- or your wineries will now have to
19 participate in the state store system as well,
20 which means that they're going to have the 30
21 percent, the 18 percent, the six percent,
22 dollar fifty bottle charge, and the nine
23 percent --

24 REPRESENTATIVE RAYMOND: No, I
25 believe currently, as this bill is currently

1 written, if your winery goes out and gets a
2 license, a limited winery license, as Kistler
3 has done, and they ship it to Paul Costa, the
4 consumer, through the LCB, or in that, that
5 won't hurt to purchase that license and there
6 is no 30 percent, no 18 percent, there's no
7 winery license incentive there. That 48
8 percent, as your bill is written currently,
9 would be gone. All you would pay additional
10 would be that shipping charge from the LCB to
11 your -- your place. So you'd be way ahead of
12 the game that way, if that were the case.

13 SLOs are a whole different --
14 different issue --

15 MR. HOTTENSTEIN: Right.

16 REPRESENTATIVE RAYMOND: -- and
17 different kettle of fish.

18 MR. HOTTENSTEIN: And let me explain
19 on that SLO issue. I spent \$3300 last night
20 for -- for six courses of champagne. And it
21 was a great party. It was 80 people. It was
22 a wonderful success.

23 However, you take 3300 -- \$3300 and,
24 you know, you use that 30 percent, you're
25 going to come somewhere around 7 to \$800

1 that -- you know, and I'm -- I'm -- I'm a
2 supporter of the Pennsylvania Liquor Control
3 Board. Don't get me wrong. I don't want them
4 knocking on my door tomorrow with -- with
5 whatever questions they want to ask me.

6 But, you know, it's a lot of money.
7 And they did -- all they did was write the
8 invoice. That's all they did. They delivered
9 it. We went and picked it up.

10 REPRESENTATIVE RAYMOND: I appreciate
11 your thoughts on that. I agree with you
12 there.

13 MR. HOTTENSTEIN: Okay.

14 REPRESENTATIVE RAYMOND: If you
15 listened to the testimony of the Governor's
16 Office and the LCB, the concern that they have
17 is on the 30 percent. It's not on this bill
18 that they would like to see amended into a
19 bill which takes away a lot of your benefit.
20 Instead of the 48 percent break, you'd be
21 getting an 18 percent break.

22 But I appreciate your testimony and
23 your work and your premier restaurant in
24 Lancaster County, which is probably the
25 destination wine and dinner restaurant.

1 Congratulations.

2 MR. HOTTENSTEIN: Thank you.

3 CHAIRMAN DONATUCCI: Thank you.

4 Lynn, do you have a comment?

5 MS. BENKA-DAVIES: The bill does
6 require the same taxes that are incurred at
7 the state store system, which would be the 18
8 percent and the six percent.

9 MR. HOTTENSTEIN: Right.

10 MS. BENKA-DAVIES: Yeah. It does not
11 include the 30 percent mark-up, but the 18
12 percent and six percent.

13 MR. HOTTENSTEIN: No. I -- I --

14 MS. BENKA-DAVIES: You're right. And
15 they are in the bill.

16 MR. HOTTENSTEIN: That's in the bill,
17 right?

18 MS. BENKA-DAVIES: Yeah.

19 MR. HOTTENSTEIN: I thought that was
20 the way it was.

21 MS. BENKA-DAVIES: You're correct.

22 MR. HOTTENSTEIN: But my -- my
23 understanding when you -- with this -- when
24 you start to do this, you now have to treat
25 in-state as well as out state -- out-of-state,

1 so that means that all of the in-state
2 wineries have to go through the state store
3 system.

4 Am I correct on that?

5 MS. BENKA-DAVIES: Yes. And they
6 would have to go through the state store
7 system for shipping. So they would go -- ship
8 to a -- a warehouse or wherever, and the LCB
9 would either --

10 MR. HOTTENSTEIN: Right.

11 MS. BENKA-DAVIES: -- contract or
12 ship.

13 MR. HOTTENSTEIN: When I figured the
14 \$16 to the \$23, I didn't use the 30 percent
15 mark-up. I used the 18 and the bottle charge
16 and the six percent sales and round up to the
17 nine.

18 So that's where -- that's where my
19 concern is. And, believe me, I don't want to
20 see them go away because it's -- it's tough
21 to -- it's tough to grow grapes on asphalt,
22 and that's what will happen to those folks.

23 REPRESENTATIVE RAYMOND: If I
24 understand correctly, the clear loser under
25 this proposal would be the Pennsylvania

1 wineries?

2 MR. HOTTENSTEIN: It is. And that's
3 the sad part about it.

4 REPRESENTATIVE RAYMOND: Absolutely.

5 MR. HOTTENSTEIN: So anyway.

6 CHAIRMAN DONATUCCI: Representative
7 Paul Costa.

8 REPRESENTATIVE COSTA: Thank you,
9 Mr. Chairman.

10 Ray, first off, I spoke to Kevin this
11 morning.

12 MR. HOTTENSTEIN: Yeah, I know.

13 REPRESENTATIVE COSTA: He said to
14 tell you hi. And we had an extensive
15 conversation on the SLO, and I do agree with
16 you that that 30 percent mark-up -- I always
17 thought it was because the state has such
18 great purchasing power that they can charge
19 the increase.

20 But when we're dealing with SLOs,
21 there's not that purchasing power. So I agree
22 with you. I hope we can work on it.

23 And I think I have to disagree with
24 my chairman. I don't think he's been a
25 failure. I think he's done a great job and

1 has always been here. And actually I was
2 disappointed when he did announce that he's
3 not running again. But hopefully we can
4 continue to work together.

5 But the -- I don't know if you were
6 here when we asked Senator Conti -- Chairman
7 Conti about shipping, would he have a problem
8 with it going directly from the winery to the
9 person's home or the person's business and --
10 as long as he got a purchasing order, and he
11 didn't have a problem with that.

12 And my intent is, when I visualize
13 this, again, I just threw out a template and
14 said, let's fine tune this. Let's make it
15 work where everybody is happy.

16 So if that's a concern that you're
17 worried about the increased cost on the
18 shipping and if the LCB is okay with it, I
19 don't have any problem with it going straight
20 through as long as the LCB is notified how
21 much was purchased.

22 And, you know, so that is the intent
23 there. So that's, again, the purpose of this
24 hearing --

25 MR. HOTTENSTEIN: Correct.

1 REPRESENTATIVE COSTA: -- to make
2 sure we do get input from everybody and make
3 sure we fine tune this thing.

4 And I do appreciate your comments and
5 I will hopefully work with you on the SLO
6 issue also.

7 MR. HOTTENSTEIN: Thank you. We look
8 forward to it.

9 MR. CONWAY: And, Representative,
10 thank you, again, for raising the -- the
11 mark-up issue. We think that's important, not
12 only with the direct shipment, but with the
13 SLO issue. We appreciate your support with
14 that.

15 CHAIRMAN DONATUCCI: Thank you,
16 Representative Costa.

17 Thank you Ray, Patrick, for coming
18 today.

19 MR. HOTTENSTEIN: Thank you.

20 MR. CONWAY: Thank you,
21 Mr. Chairman.

22 CHAIRMAN DONATUCCI: And good luck to
23 you.

24 MR. HOTTENSTEIN: Thank you.

25 CHAIRMAN DONATUCCI: Our next witness

1 is Shade Mountain Vineyard and Winery,
2 Middleburg, Pennsylvania, Karl and Jennifer
3 Zimmer -- Zimmerman.

4 Welcome.

5 As I can see, there's more than two.
6 Can you identify yourself --

7 MS. JENNIFER ZIMMERMAN: Yep.

8 CHAIRMAN DONATUCCI: -- for the
9 record.

10 MS. JENNIFER ZIMMERMAN: I'm actually
11 in charge of the introductions.

12 CHAIRMAN DONATUCCI: Okay.

13 MS. JENNIFER ZIMMERMAN: So my name
14 is --

15 CHAIRMAN DONATUCCI: Is the
16 microphone on?

17 MS. JENNIFER ZIMMERMAN: My name is
18 Jennifer Zimmerman, and this is my father,
19 Karl Zimmerman. We're from Shade Mountain
20 Winery and Vineyards in Middleburg,
21 Pennsylvania.

22 We're a 65-acre vineyard in
23 Middleburg, Pennsylvania in Snyder County.

24 CHAIRMAN DONATUCCI: Use the mike.
25 Be sure to slide it over.

1 MS. JENNIFER ZIMMERMAN: And we're
2 also supported here today by Sharon Klay and
3 her son, Christian Klay. They're from the
4 Christian Klay Winery located in Uniontown,
5 Pennsylvania in Fayette County.

6 CHAIRMAN DONATUCCI: We want to
7 welcome you to the Capitol.

8 MS. JENNIFER ZIMMERMAN: And my
9 father is going to present our testimony right
10 now.

11 MR. KARL ZIMMERMAN: I didn't know if
12 I could clarify a few points before I
13 started. One --

14 CHAIRMAN DONATUCCI: You can try.

15 MR. KARL ZIMMERMAN: I'll try,
16 right. The 18 percent Johnstown tax, the
17 wineries are actually assessed that tax; but
18 it goes into the wine marketing and research
19 fund, which is a -- an organization, you know,
20 to fund the wine industry.

21 So they are paying that fee. So if
22 you put the additional tax on, it will be on
23 top of that. It won't come to the -- it will
24 be an additional tax, not just bringing us up
25 to a level playing field.

1 And the other thing was that Fed Ex
2 and UPS do require a signed ID when they
3 deliver.

4 Good morning. My name is Karl
5 Zimmerman. And -- wow -- my eyes are failing,
6 too. I have to apologize.

7 My name is Karl Zimmerman, and I'm
8 here today with my daughter, Jennifer
9 Zimmerman. My wife, Carolyn, and I are the
10 owners of Shade Mountain Vineyard and Winery,
11 a family-owned and operated vineyard and
12 winery located in Middleburg in Snyder
13 County.

14 We want to thank Chairman Donatucci
15 and the House Liquor Control Committee for
16 giving us the opportunity to present testimony
17 today on House Bill 2165 on behalf of our
18 winery and the Pennsylvania Winery
19 Association, of which we are one of 91
20 members.

21 As a member of the PWA, we are very
22 concerned about stipulations and restraints on
23 the direct shipment of wine from wineries to
24 our customers and the negative financial
25 impact such restraint would inflict on

1 Pennsylvania's wine industry.

2 As a solid revenue-producing
3 agricultural industry, Pennsylvania wineries
4 and wine grape growers contribute
5 approximately \$661 million annually to the
6 state's economy.

7 According to an economic impact study
8 conducted in 2005 by MKF Research, in that
9 year alone the winery industry generated
10 1.6 -- or no -- 167 million in tourism
11 expenditures and returned 37.5 million in
12 state and local taxes to the Pennsylvania
13 economy.

14 Since that study was compiled, the
15 winery industry has continued to grow, adding
16 another 23 wineries that generate even more
17 taxes and tourism dollars.

18 The position of the Pennsylvania
19 winery industry on direct shipment of wine is
20 very straightforward. We believe the
21 Pennsylvania wineries should be permitted to
22 ship directly to their customers provided they
23 obtain a shipping permit from the Pennsylvania
24 Liquor Control Board and that they file the
25 quarterly reports with the PLCB indicating the

1 quantity and retail value of the shipments.

2 The PWA also supports permits for
3 out-of-state wineries to ship to Pennsylvania
4 consumers provided they, too, obtain shipping
5 permits from the PLCB and file the required
6 quarterly reports.

7 Additionally, the PWA believes that
8 this privilege should only be afforded to
9 those out-of-state wineries whose states have
10 reciprocal shipping agreements with
11 Pennsylvania.

12 As written, House Bill 25 -- or 2165
13 proposes several actions that would
14 significantly impact the ability of our
15 wineries to grow and in some cases to
16 survive.

17 Especially counter-productive is a
18 proposed change in production allowances for
19 limited wineries that would reduce the annual
20 volume of wine produced from 200,000 gallons
21 to 80,000 gallons.

22 At a time when the Commonwealth
23 espouses its support for developing businesses
24 and even grants tax credits and exemptions for
25 new enterprises, curtailing a winery's

1 production would unfairly penalize a
2 long-standing, productive sector of
3 Pennsylvania agriculture.

4 The limited wineries of Pennsylvania
5 cannot compete with large wineries like Robert
6 Mondavi, Paul Masson, et cetera, nor is it
7 their intent. By definition, limited wineries
8 promote tourism and recreational development
9 in Pennsylvania and produce wine mainly from
10 Pennsylvania-grown agricultural commodities.

11 As such, our livelihoods depend
12 heavily on our winery location sales and the
13 ability to ship directly to our customers.

14 Given the rural nature of our region,
15 many of our customers are not within a easy
16 drive of our winery.

17 Many other patrons stop by in the
18 summer months on the way to their cabins and
19 children's camps, for example. They purchase
20 our wines at that time and enjoy having them
21 shipped directly to their homes during the
22 winter months.

23 The requirement in House Bill 2165
24 that winery sales be processed through the
25 PLCB would create an additional encumbrance

1 for customers who would then be required to
2 pick up their orders at a local state store or
3 distribution point or to pay an extra fee to
4 have the wine shipped to them after it's been
5 processed through the PLCB distribution
6 point.

7 Even more egregious, if our wine
8 shipments must be processed through the state
9 store system, as this bill proposes, is the
10 addition of the 18 percent Johnstown Flood Tax
11 that is currently added to all liquor store
12 sales.

13 The extra expense and inconvenience
14 would negatively impact the growth and
15 sustainability of Pennsylvania wineries, like
16 our own, and in a trickle-down fashion would
17 then negatively impact Pennsylvania
18 agriculture and tourism dollars.

19 Another point of concern in House
20 Bill 2165 affects our current ability to sell
21 wine by the glass and food for consumption off
22 its primary licensed premises. Since our
23 wineries are limited to a single location,
24 there are occasional invitations to
25 participate in public events outside our

1 premises, such as wine festivals, at which we
2 have the opportunity to showcase our wines and
3 sell wine by the glass and food for
4 consumption off the primary licensed
5 premises.

6 House Bill 2165 would also preclude
7 this practice, denying us this additional
8 revenue and opportunity to raise the
9 visibility of our wineries.

10 Speaking on a personal note, this
11 proposed legislation hits home more than
12 others realize as it directly impacts our
13 lives, our family, and 18 full- and part-time
14 employees of Shade Mountain Winery.

15 Like many other fam -- like many
16 other family-owned and operated Pennsylvania
17 wineries, our children, all four of them, have
18 returned home to their roots to take part in
19 the family business. Not only are my wife and
20 I personally vested in the wine industry, but
21 now our children and their families are vested
22 as well.

23 In light of this, there is an over --
24 overwhelming need to ensure that the industry
25 and our business continue to expand to secure

1 the livelihood of our next generation and the
2 generations to come.

3 The prosperity of the wine industry
4 reaches past our family, as it affects our
5 patrons and their families as well. Our
6 neighbors and local customers are proud to
7 show their guests and visitors our picturesque
8 vineyard and sample the grapes and wines
9 produced in their own back yard.

10 Restricting the growth of local
11 vineyards would only negatively -- negatively
12 impact our regional area.

13 Currently, our industry has the
14 potential to grow and expand and prosper --
15 well, expand with proper guidance and
16 monitoring.

17 We believe the proposed legislation
18 would hinder the growth of the largest and
19 healthiest agri-tourism industry in the
20 Commonwealth.

21 Therefore, we oppose House Bill 2165
22 as it is written -- as it is written and would
23 recommend that the House Liquor Control
24 Committee oppose the bill in its entirety.

25 Again, thank you for the opportunity

1 to present testimony on behalf of the Shade
2 Mountain Vineyard and Winery and the
3 Pennsylvania Winery Association.

4 CHAIRMAN DONATUCCI: Thank you,
5 Mr. Zimmerman. We too are proud to have you
6 produce wine in Pennsylvania.

7 But the only question I've got, from
8 the beginning off your -- not on your
9 testimony, that you mentioned about the 18
10 percent.

11 MR. KARL ZIMMERMAN: Unless I'm
12 mistaken, aren't we assessed the 18 percent
13 for the -- where is the marketing and the
14 research group on this?

15 CHAIRMAN DONATUCCI: Maybe the LCB
16 could answer it?

17 MR. KARL ZIMMERMAN: It's -- actually
18 through the Department of Agriculture it's
19 assessed. It's not through the LCB.

20 MS. SHARON KLAY: Right.

21 CHAIRMAN DONATUCCI: It's not through
22 the LCB then. You do pay the 18 percent?

23 MR. KARL ZIMMERMAN: We do pay that,
24 yes, sir.

25 CHAIRMAN DONATUCCI: Thank you.

1 Any questions?

2 Representative Mustio.

3 REPRESENTATIVE MUSTIO: Thank you,
4 Chairman.

5 I have a question for the maker of
6 the bill, I think. The comment about the
7 legislation precluding the practice of
8 participating at wine festivals, just to give
9 you a specific example, Paul, in the
10 Pittsburgh Airport Area Chamber of Commerce,
11 within the next couple weeks, we'll be having
12 a wine festival where they invite local
13 Pennsylvania wineries to participate for their
14 members. It's sort of a fundraising event.

15 You know, I just was wondering what
16 the intent was for that limitation?

17 REPRESENTATIVE COSTA: Is this the
18 same concern that he had about the wine
19 selling by the glass or just to give it away?

20 REPRESENTATIVE MUSTIO: This -- I
21 believe -- I believe you buy the wine at the
22 festival.

23 REPRESENTATIVE COSTA: I don't think
24 it's in there.

25 Lynn, didn't we address that already

1 in previous legislation?

2 MS. BENKA-DAVIES: I believe that the
3 bill allows -- because it keeps the definition
4 in there with regards to farmers' market and
5 obtaining special permits, allowing wineries
6 to participate in that, but there is a
7 provision in the bill that says you can only
8 sell wine by the glass at -- at a licensed
9 private event, which I believe Representative
10 Costa will probably address that.

11 REPRESENTATIVE COSTA: Yeah.
12 Actually you're not the first person to bring
13 that to my attention.

14 MR. KARL ZIMMERMAN: It's a little
15 ambiguous, you know, in two different parts.

16 REPRESENTATIVE COSTA: Yes, I agree
17 with you. That's not the intent. So that's
18 something we're going to have to clear up, to
19 make clearer because we took out the word sell
20 and that's where the intent wasn't not to
21 permit you to sell it, but to make sure we had
22 it clearer. Obviously we didn't. But that's
23 one thing we'll work on.

24 Again, I want to assure you, I'm not
25 trying to do anything that will hurt or harm

1 you. I want to hold you guys harmless to be
2 able to let you continue what you've been
3 doing forever, and -- but also comply with the
4 Supreme Court ruling.

5 As far as with the 18 percent with
6 the Department of Agriculture, I wasn't aware
7 of that. I think that's actually a good idea
8 because it's going back into your industry.

9 MR. KARL ZIMMERMAN: It's a way to
10 fund our research.

11 REPRESENTATIVE COSTA: I'd rather
12 keep it that way and not have to pay the
13 General Fund 18 percent.

14 CHAIRMAN MUSTIO: Representative
15 Mustio.

16 REPRESENTATIVE MUSTIO: My last
17 question relates to that and perhaps we can
18 get some language in the bill where there's a
19 tax credit or tax set-off so that there's no
20 out-of-pocket addition.

21 Thank you, Mr. Chairman.

22 CHAIRMAN DONATUCCI: Thank you. One
23 thing is when this court decision did come
24 down, our number one concern are our
25 Pennsylvania wineries, and that's why we're

1 here today basically.

2 The -- the -- you know, to answer
3 the -- being that the Supreme Court rendered
4 the decision, we want to be -- to answer that
5 decision, do it legally, and while protecting
6 your rights. So that's why we're here.

7 Representative Costa's bill has a few
8 flaws in it.

9 REPRESENTATIVE COSTA: Oh, come on.

10 REPRESENTATIVE MUSTIO:

11 Opportunities.

12 CHAIRMAN DONATUCCI: Well, anyhow, he
13 does -- it does have a few problems that I
14 see. That's why we're here today, to get
15 testimony from you, and we're going to address
16 them and try to come out with the perfect bill
17 that will pass the House and the Senate,
18 signed by the Governor.

19 So on that note, I want to thank you
20 again for being here and for your input.

21 MR. KARL ZIMMERMAN: Thank you.

22 CHAIRMAN DONATUCCI: Representative
23 Waters.

24 REPRESENTATIVE WATERS: Yes,
25 Mr. Chairman. Thank you.

1 A quick question I want to ask
2 Mr. Zimmerman. And thank you for your
3 testimony.

4 Am I -- am I to read this that you
5 have a 68-acre winery presently?

6 CHAIRMAN DONATUCCI: Ron, could you
7 talk into the mike?

8 MR. KARL ZIMMERMAN: We have 65 acres
9 of grapes, yes, sir.

10 REPRESENTATIVE WATERS: 65 acres.
11 And you produce 200 --

12 MR. KARL ZIMMERMAN: No, we don't.
13 No.

14 REPRESENTATIVE WATERS: You don't
15 produce it?

16 MR. KARL ZIMMERMAN: We were just --
17 you know, it's in the -- personal stand --
18 200,000 gallons, we're nowhere near there.
19 We're not near 80,000 personally. But it's an
20 industry stand. That is not my personal.

21 I mean we produce 23, 25,000
22 gallons. We sell a lot of grapes to other
23 wineries. So that's where the extra
24 production goes to at this point.

25 REPRESENTATIVE WATERS: All right.

1 MR. KARL ZIMMERMAN: But we're not --
2 you know, the 200,000 or the 80,000 gallons do
3 not specifically influence our personal
4 winery. We're specifically --

5 REPRESENTATIVE WATERS: That's a
6 concern that I had.

7 Thank you, Mr. Chairman.

8 CHAIRMAN DONATUCCI: Thank you,
9 Representative Waters.

10 Once again -- hold it.
11 Representative Costa.

12 REPRESENTATIVE COSTA: Thank you.
13 Thank you again, Mr. Chairman.

14 Just real quick, again, that 80,000
15 number, we just threw that out there because
16 that included every Pennsylvania winery. If
17 we need to raise that to make sure to give you
18 room to grow, I'm fine with that as long as
19 the chairman is.

20 MR. KARL ZIMMERMAN: I understand. I
21 appreciate your -- you know, your flexibility
22 and your honesty there. That's kind of what
23 we're looking for, a working relationship.

24 You know, it was my not being part of
25 the hierarchy, I was told that, you know, we

1 weren't even -- you know, the industry wasn't
2 consulted on this bill. I don't know if that
3 was so or not.

4 REPRESENTATIVE COSTA: This is the
5 first year that we have.

6 MR. KARL ZIMMERMAN: I mean as far as
7 the actual working of the bill or inputs, I
8 guess.

9 REPRESENTATIVE COSTA: Well, that's
10 why, again, we're having not only this hearing
11 today, but I hope the Chairman can schedule
12 more hearings to get more information from
13 more people so that we can.

14 Again, I threw out a template and
15 just said, let's do this, this, this, this,
16 and let's work it out, and that's why --

17 MR. KARL ZIMMERMAN: Well, that's
18 good. That's the way to go. I mean I know, I
19 understand we have a problem and we have to
20 deal with it. So, you know, hopefully we can
21 come up with some amicable solution to this.

22 REPRESENTATIVE COSTA: Well, that's
23 my goal. Thank you.

24 CHAIRMAN DONATUCCI: Basically we
25 want to hear from everybody. You know, myself

1 and Chairman Raymond, you know, we're a phone
2 call away. So, like I feel, when this is all
3 coming down, you hear anything you don't like
4 or you do like, let us know.

5 Thank you.

6 MS. JENNIFER ZIMMERMAN: If I may,
7 actually, I just wanted to just add a little
8 personal note.

9 CHAIRMAN DONATUCCI: Sure.

10 MS. JENNIFER ZIMMERMAN: If that's
11 okay? Because I had the opportunity to be
12 here.

13 Just as a daughter, I watched my
14 parents' business grow specifically over the
15 past two years. And we have increased our
16 gallons up to 23,000, as my father just said.
17 We've also added three satellite locations
18 over the past two years; and all of us, we've
19 increased our production to roughly 30 percent
20 of what -- of what it had been in the past.

21 And just given this overall growth
22 it's amazing that we've still maintained the
23 presence of a family-operated, family-run
24 winery.

25 MR. KARL ZIMMERMAN: Maybe we had to

1 do it to support you, too.

2 MS. JENNIFER ZIMMERMAN: Maybe that
3 as well. That's very true.

4 MR. KARL ZIMMERMAN: Cause and effect
5 here.

6 MS. JENNIFER ZIMMERMAN: But we are
7 growing and we want to continue to be able to
8 grow. I know every day my father, he goes out
9 into our 65-acre vineyard and my -- my two
10 brothers follow -- follow him and join him out
11 there.

12 And every day my mother walks through
13 the door of the winery and my sister and I, we
14 follow suit as well.

15 And, you know, our business is open
16 seven days a week, and it's very much our
17 livelihood. You know, there's no vacation
18 days. We don't take trips afar. We're always
19 there. We're always, you know, in the
20 business.

21 I wish I could bring our vineyard to
22 show you. I wish you could see, you know, the
23 amount of work we actually do there. I think
24 you would sort of appreciate better, have --
25 you know, have a better appreciation of how

1 legislation like House Bill 2165 could
2 negative -- negatively affect not only our
3 family business, our -- our industry, but
4 also, you know, my family's livelihood.

5 Just on a personal note.

6 CHAIRMAN DONATUCCI: Thank you for
7 your comments. We hope -- we would hope to
8 see your vineyard some day.

9 MS. JENNIFER ZIMMERMAN: You should.
10 It's beautiful.

11 MR. KARL ZIMMERMAN: You have a
12 personal invitation anytime.

13 CHAIRMAN DONATUCCI: Thank you.
14 Maybe -- maybe we'll take the committee out to
15 see you. There you go.

16 MS. JENNIFER ZIMMERMAN: That's
17 great.

18 CHAIRMAN DONATUCCI: Thank you again.
19 Myron Waxman, Executive Director of
20 Pennsylvania Wine and Spirit Association.

21 Welcome, Myron.

22 MR. MYRON WAXMAN: Thank you. I'm
23 going to ask a colleague to join me if it's
24 okay.

25 CHAIRMAN DONATUCCI: Sure. As long

1 as he identifies himself for the record.

2 MR. WAXMAN: He's going to take all
3 the hard questions.

4 This is Mark Sweeney. He's the
5 vice-president of the Pennsylvania Wine and
6 Spirits Association. He also happens to be
7 state manager of a small firm called Diageo.

8 CHAIRMAN DONATUCCI: Okay. I heard
9 of that name once before. I heard that name
10 once before.

11 Well, welcome.

12 MR. MARK SWEENEY: Thank you.

13 MR. WAXMAN: I have -- Chairman, I
14 have an easel there that I've got to use.
15 Excuse me.

16 CHAIRMAN DONATUCCI: You can begin
17 whenever you're ready.

18 MR. WAXMAN: Thank you, Chairmen
19 Donatucci and Raymond, and members of the
20 committee, for having us here.

21 Unlike my friend, Senator Conti, this
22 is not my forte, but I think we'll be able to
23 give the committee enough information so that
24 they know where we're standing on this.

25 My name is Myron Waxman. I'm the

1 Executive Director of the Pennsylvania Wine
2 and Spirits Association. We are a trade
3 organization in Pennsylvania composed of
4 suppliers, distillers, vintners, wholesale
5 distributors, who conduct their business with
6 the Pennsylvania Liquor Control Board.

7 Our members represent 95 percent of
8 the total cases purchased by the PLCB, and we
9 also employ over 500 taxpaying citizens of the
10 Commonwealth.

11 Although we have several goals and
12 objectives as a trade organization, our
13 primary purpose is to serve the wine and
14 spirit needs of the Pennsylvania consumers,
15 providing the widest selection of items at the
16 most attractive prices.

17 We also believe in and promote the
18 responsible use of all alcoholic products. My
19 remarks today concerning direct shipment of
20 wines from out-of-state wineries, as well as
21 in-state wineries, varies only slightly with
22 my presentation before this committee on
23 September the 19th, 2005.

24 The Granholm decision states that
25 shipments of wines from out-of-state wineries

1 into Pennsylvania should have the same rights
2 and privileges enjoyed by the in-state
3 wineries.

4 However, the issue that the members
5 of our association are concerned with is the
6 30 percent mark-up, which is included in the
7 pricing structure of the special liquor order
8 wines sold by our members to the PLCB.

9 The out-of-state and in-state
10 wineries are not required to include this
11 mark-up in the pricing of their wines. As a
12 result, there is a discernible difference in
13 the final retail price of the SLO wines which
14 we sell to the board compared to the
15 out-of-state and in-state wineries.

16 When the members of our association
17 sell a case of special liquor order wines to
18 the PLCB, the board applies the following
19 mark-up.

20 And you have the details of the
21 mark-up in your presentation and you can look
22 at this poster which I have made here for
23 you.

24 The end result of a case delivered to
25 the board at the cost of a hundred dollars

1 will result in a final retail price to the
2 consumer of 166.42 per case, mark-up and taxes
3 included.

4 However, when the in-state wineries
5 and out-of-state shippers calculate the final
6 price for the same \$100 initial cost, their
7 final retail price, with the 18 percent and
8 the six percent under this bill, is \$124 a
9 case. This results in a profit to the PLCB
10 for their items of \$24 compared to 66.42 for
11 the wines that we sell.

12 You can see by the poster the final
13 profit for the PLCB is dramatically different
14 in these pricing situations.

15 There is one other issue. If this
16 bill passes, there would be a total disruption
17 of the PLCB system in Pennsylvania.

18 Now, why do I say that? Out-of-state
19 shippers would be able to offer wines, jug
20 wines, specialty items off the Internet at a
21 much lower price than those items offered for
22 sale by the board.

23 This situation would also include
24 spirits as well. Customers, both retail and
25 licensees, would circumvent our stores and

1 even buy items that are presently listed by
2 the board with a tremendous loss of revenues
3 to the state.

4 After that, any discussion about SLO
5 wine business would be moot.

6 When we initially had a discussion on
7 this bill, frankly, our idea was to say, let's
8 eliminate the 30 percent from the pricing
9 structure of our SLO wines.

10 But then we thought that was a
11 short -- a short-term idea, because when we
12 discussed it, the next question is where do we
13 make up for the lost revenues? And that is a
14 problem.

15 In conclusion, we strongly suggest
16 that you include the 30 percent mark-up in the
17 pricing formula requirement for out-of-state
18 shippers as well as in-state wineries.

19 In other words, their pricing formula
20 would include the 30 percent mark-up, the 18
21 percent emergency tax, and six percent sales
22 tax, which would result in the same pricing
23 required by the members of our association
24 when we sell to the board.

25 Anything less would be discriminatory

1 against our members. You would then have a
2 level playing field for everyone and we'd be
3 in agreement with the Supreme Court ruling.

4 Thank you for the opportunity of
5 appearing before you, and I guess you want to
6 ask some questions.

7 CHAIRMAN DONATUCCI: Thank you for
8 your testimony.

9 Are there any questions?

10 Representative Costa.

11 REPRESENTATIVE COSTA: Thank you,
12 Mr. Chairman.

13 And thank you, sir, for testifying.

14 Do you have any idea how much the 30
15 percent mark-up from SLO brings into the
16 state? What kind of impact? I would much
17 rather see nobody take it, the 30 percent --

18 MR. WAXMAN: I believe it's --

19 REPRESENTATIVE COSTA: -- as
20 everybody.

21 MR. WAXMAN: I believe it's \$25
22 million.

23 REPRESENTATIVE COSTA: 25 million?

24 MR. WAXMAN: Yeah.

25 REPRESENTATIVE COSTA: Wow. That is

1 a lot to make up.

2 Thank you.

3 CHAIRMAN DONATUCCI: Thank you.

4 Any other questions?

5 REPRESENTATIVE RAYMOND: Do you have
6 anything?

7 MR. SWEENEY: No, I'm just here to
8 support Myron.

9 REPRESENTATIVE RAYMOND: Okay.

10 CHAIRMAN DONATUCCI: Are there any
11 other questions?

12 Seeing none, thank you.

13 MR. WAXMAN: Thank you very much.

14 CHAIRMAN DONATUCCI: As I stated in
15 the beginning of this hearing, we're going to
16 have at least one more.

17 We don't know where exactly it might
18 be. It might be in the Philadelphia area. It
19 might be the Allegheny area, Representative
20 Costa's district.

21 So anyone else that could not testify
22 today, please get in contact with us and we'll
23 be happy to hear from you.

24 On that note, this Liquor hearing is
25 adjourned.

1 (The following is written testimony
2 submitted by Robert Mazza, President of the
3 Pennsylvania Winery Association, regarding
4 House Bill 2165.)

5 My name is Bob Mazza and I am the
6 owner/operator of Mazza Vineyards in North
7 East, PA, located in Erie County.

8 Mazza Vineyards was established in
9 1972 and was the seventh limited license
10 winery to be established under the Limited
11 Winery Act. Each year, Mazza Vineyards
12 produces between 55,000 to 65,000 gallons of
13 wine. The winery has experienced continued
14 growth throughout its history of producing
15 wine, and I look forward to continued growth
16 in the future.

17 As President of the Pennsylvania
18 Winery Association, I would like to thank you
19 for this opportunity to submit testimony on
20 House Bill 2165. For the PWA, direct shipment
21 is an issue of major importance for the
22 continued viability and growth of the winery
23 industry in Pennsylvania.

24 As such, I would like to submit the
25 Pennsylvania Winery Association's position on

1 this issue as follows:

2 PWA Position on Direct Shipping, June
3 17, 2008.

4 Allow PA Limited wineries to ship
5 directly to consumers in PA provided:

6 They obtain a shipping permit from
7 the PLCB.

8 They file quarterly reports with the
9 PLCB indicating quantity and retail value of
10 shipments.

11 Permit out-of-state wineries to ship
12 to PA consumers provided:

13 They obtain a shipping permit from
14 the PLCB.

15 They file quarterly reports with the
16 PLCB indicating quantity and retail value of
17 shipments.

18 That those wineries' states have a
19 reciprocal shipping agreement with PA.

20 Limited wineries in Pennsylvania have
21 a tremendous economic impact on agriculture
22 and tourism, especially in rural areas. A
23 winery's ability to reach their customers
24 through direct shipping is critical to their
25 business and future growth.

1 A vibrant wine and wine grape
2 industry in Pennsylvania pays huge dividends
3 to the economy which will only be enhanced
4 unless more restrictive laws are enacted that
5 serve no purpose other than to impede the
6 growth of this sector of agriculture in
7 Pennsylvania.

8 Pennsylvania's wine industry
9 generates more than \$661 million annually to
10 the state's economy. This growing
11 agricultural industry attracts nearly one
12 million visitors and draws more than \$167
13 million in tourism dollars each year.

14 (This concludes the submitted written
15 testimony.)

16 (The proceedings were concluded.)

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I hereby certify that the proceedings
and evidence are contained fully and
accurately in the notes taken by me on the
within proceedings and that this is a correct
transcript of the same.

Brenda S. Hamilton, RPR
Reporter - Notary Public