

**Senate Law and Justice Committee Hearing**

**Wednesday, August 10, 2011**

**Direct Shipment of Wine**

**Testimony of  
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Chairman Pippy, Chairman Ferlo, Members of the Senate Law and Justice Committee, good afternoon. On behalf of the Pennsylvania Liquor Control Board, I would like to thank you for the opportunity to comment on the issue of direct shipment of wine to consumers in Pennsylvania. I hope that my testimony will be of use to the Committee.

The issue of direct shipment of wine to consumers has been one of great interest to many inside and outside of the Commonwealth even before the United States Supreme Court, in its 2005 decision in Granholm v. Heald, held that states that allow in-state wineries to ship wine to residents must allow out-of-state wineries to do so as well. As a result of that decision and the line of cases it generated, various states have had to take another look at the manner in which they allow wine - a lawful product for those twenty-one years of age and older, but illegal for minors - to be

distributed within their territories. Indeed, no other consumer item has inspired (not just one (1), but) two (2) constitutional amendments.

Under the Pennsylvania Liquor Code, holders of limited winery licenses, who may produce annually no more than 200,000 gallons of wine, enjoy a packet of privileges, including the ability to sell and deliver directly to other Board licensees and to consumers at home, and to sell directly to the public at their licensed premises. Out-of-state wineries are not permitted, pursuant to the Liquor Code, to hold such licenses or enjoy such privileges. In the absence of legislation addressing the unconstitutionality of those provisions of the Liquor Code which treat in-state wineries differently from out-of-state wineries, the Board, in consultation with the Attorney General's Office, has been accepting and processing applications from out-of-state wineries for limited winery licenses, thereby affording such out-of-state wineries the ability to ship wine directly to consumers' homes.

Direct shipment sales by licensed limited wineries are subject only to the 6% sales tax and local taxes in Allegheny County and Philadelphia County, and are not subject to the 18% emergency tax, or what is commonly referred to as the Johnstown Flood Tax. This was a legislative decision to provide Pennsylvania wineries with a

competitive edge in pricing. At the present time, there are 172 active limited winery licenses issued by the Board, including five (5) which operate outside of Pennsylvania (three (3) in California and one (1) each in New York and New Jersey). Four (4) other out-of-state limited wineries (one (1) in New York, and three (3) in California) have applications which are pending at the present time.

Separate and apart from the limited winery license, is a direct wine shipper license. Pursuant to section 488 of the Liquor Code, an entity which applies for a direct shipper license may fill wine orders from Pennsylvania residents via the Internet and ship such wine to one (1) of the Board's wine and spirits stores, where purchasers can pick up the wine and transport it home. Purchases of wine from a licensed direct wine shipper may only be made via the Internet, and a direct wine shipper is not permitted to ship more than nine (9) liters or twelve (12) 750 ml bottles to a single resident in any one (1) month. For clarity, a direct shipper license does not allow its holder to ship directly to a resident's home.

Such direct wine shipper licenses are currently available without cost to any person or entity licensed by another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine. At present, there are forty-seven (47) active direct

wine shipper licenses which have been issued by the Board. For Fiscal Year 2010-11, sales from licensed direct wine shippers totaled \$55,112, generating \$1,364 in revenue from handling fees, \$10,167 from the 18% emergency tax, and \$4,159 from the 6% state sales tax and local taxes.

In Pennsylvania, there are at least six (6) bills – Senate Bill 790, Senate Bill 886, House Bill 110, House Bill 430, House Bill 845 and House Bill 1770 – that address the issue of direct shipment of wine to consumers. While the bills differ in such details as who can ship, how much can be shipped and the taxes that are due, the bills collectively represent a legislative desire to allow the direct shipment of wine to consumers in a manner that is not currently available.

The Board has a strong interest in the issue before this committee both because it is the agency charged with the licensure of all entities – including wineries – that sell alcohol in Pennsylvania and because the Board is the primary seller and distributor of wine to the citizens of Pennsylvania. With that in mind, I can tell you that the Board endorses the concept of the direct shipment of wine to consumers of legal drinking age so long as appropriate safeguards are put in place to ensure that the wine is not

provided to minors and that provisions are put in place to ensure that the sales are properly recorded and the taxes collected.

Enclosed is a draft of the type of direct shipper bill that the Board would consider optimal. Succinctly:

- It would allow any entity licensed to sell wine by the Board or another state to apply for a direct wine shipper's license.
- The fee for the license shall be set by the Board, but will be waived for the holder of a limited winery license. The administrative costs associated with processing such applications are wholly dependent on the number of applications (whether qualified or unqualified) which are ultimately submitted to the Board. However, the Board estimates that an annual fee of \$200 should cover the administrative costs associated with processing applications for these new licenses. Such a fee would be in-line with those assessed in our neighboring states.
- The license holder must agree to collect the applicable taxes and remit them to the Department of Revenue. The license holder must also acquire a tax bond to ensure its compliance with the collection requirements.

- The license holder will be subject to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, if it does not adhere to the Liquor Code.
- The wine shipper's license will authorize the holder to sell wine that will be delivered to the buyer's home (although the actual delivery will be by a licensed transporter-for-hire.)
- The wine in question will not be available for resale.
- All containers of wine shipped directly to a resident of this Commonwealth are to be conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE TWENTY-ONE (21) OR OLDER REQUIRED FOR DELIVERY."
- The recipient of the wine must sign for it upon delivery;
- Wine may not be delivered unless the recipient's age is verified through a valid form of photo identification.
- The recipient may not be visibly intoxicated at the time of delivery.

While I believe the proposed language is self-explanatory, I do wish to note a couple of specifics. First, the language allows not just wineries but wholesalers and retailers to acquire the license in question. The Board believes this is both more equitable –

since outside of Pennsylvania, many wholesalers and retailers of wine may deliver wine to consumers – and more consistent with the intent of the legislation, which is to allow persons to acquire wines they cannot acquire from the Board. Indeed, while the Board has access to thousands of different wines, there are many thousands more which it cannot acquire, principally because of their scarcity.

Second, this language makes the wine sold by the direct wine shipper subject to the 18% emergency tax. The Board believes that this is important because its proposal allows a direct wine shipper to sell wine that is available through the Board. While the Board does not wish to burden direct wine shippers – especially those limited wineries who can already sell wine without paying the 18% emergency tax – it would be unfair to punish Pennsylvania residents for purchasing wine or spirits at a state store by imposing a tax on them that is not imposed on persons who purchase from direct wine shippers. Indeed, a significant portion of the almost five hundred million dollars (a record-breaking amount) the Board transferred to the General Fund earlier this year included proceeds derived from the collection of the 18% emergency tax. These tax proceeds benefit all Pennsylvania residents, not just those in our industry.

As an aside, the attached proposed language most closely resembles House Bill 1770, with the biggest difference being that House Bill 1770 does not impose the 18% emergency tax on purchases made from a direct wine shipper.

I would like to point out that Maryland recently enacted a direct shipping law that became effective on July 1<sup>st</sup>. The Maryland law allows only wineries to obtain a direct shipping permit after filing an application fee of \$200 and a \$1,000 bond to ensure the payment of taxes. In the first twenty (20) days that the law was effective, Maryland received 150 applications for direct shipping permits, so clearly its direct shipping law has been well-received in the industry.

In closing, on behalf of our Board members, I would respectfully suggest that if the General Assembly decides to permit direct shipment by out-of-state retailers, the agency should be given the corresponding authority to deliver or ship directly to residents and/or licensees of other states. As one (1) of the world's largest purchasers of wine and spirits, the PLCB believes that it can exercise its significant market leverage in other states' markets, representing a significant revenue opportunity for the Commonwealth.



In addition, the PLCB is currently evaluating the concept of direct delivery to the homes of residents and the place of business of licensees of Pennsylvania. While direct delivery within Pennsylvania would not require legislation, a legislative change to section 207 may be prudent to authorize the Board to sell and deliver its products to out-of-state individuals and entities. The agency has identified more than a dozen states where it might be permitted to ship directly to residents and/or licensees, including California, provided that it complies with all state and federal requirements.

Thank you again for this opportunity to testify today, and I look forward to answering any questions you may have.

## **PROPOSED LEGISLATION PROVIDING FOR THE DIRECT SHIPMENT OF WINE**

### **Proposed Changes to Title 47, the Liquor Code**

#### **Section 1. Section 488 is amended as follows:**

Section 488. Shipment of wine into Commonwealth

(a) The shipment of wine [from out-of-State] to residents of this Commonwealth is prohibited, except as otherwise provided for in this section.

(b) Notwithstanding any other provision of this act or law to the contrary, a person licensed by the board or by another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine and who obtains a direct wine shipper license as provided for in this section may ship [up to nine liters per month of any] wine [not included on the list provided for in subsection (c)] on the [Internet] order of any resident of this Commonwealth who is at least twenty-one (21) years of age for such resident's personal use and not for resale.

[(c) Each month, the board shall publish on the Internet a list of all classes, varieties and brands of wine available for sale in the Pennsylvania Liquor Stores. A person holding a direct shipper license may ship only those classes, varieties and brands of wine not included on the list at the time an Internet order is placed.]

(d) A[n out-of-State] direct wine shipper shall:

(1)[Not ship more than nine liters per month on the Internet order of any person in this Commonwealth.] File a written application with the board in such form and containing such information as the board shall require. A completed application shall contain a true and correct copy of the applicant's current license or certificate of operating authority issued by the board or by another state. Further, the applicant must provide documentation which evidences that it has obtained a sales tax license

from the Pennsylvania Department of Revenue. The licensing period for such a license shall be established under section 402. Any applicant for such a license shall be required to adhere to the provisions of section 477. The application, renewal and filing fee for such a license shall be as prescribed by the board. Notwithstanding this provision, if an applicant, at the time of the initial application for such a license, holds a valid limited winery license issued by the board, such applicant shall not be required to pay the application fee prescribed by the board. Further, provided that the applicant properly renews its limited winery license, as provided in section 517, such an applicant shall not be required to pay the renewal fee prescribed by the board.

(2) Report to the board each [year] month the total [of] number of bottles sold and shipped during the preceding calendar month, the sizes of those bottles, the name brand of each wine in such shipments, the quantities of each wine included in such shipments, and the price of each item included in such shipments, for all such wine shipped within and into this Commonwealth in the preceding [calendar year] month.

(3) Permit the board, the enforcement bureau or the Secretary of Revenue, or their designated representatives, to perform an audit of the [out-of-State] direct wine shipper's records upon request.

(4) Be deemed to have submitted to the jurisdiction of the board, any other State agency and the courts of this Commonwealth for purposes of enforcement of this section and any related laws, rules or regulations, including the collection and remission of taxes as required under this section.

(5) Shall provide to the Pennsylvania Department of Revenue, on a quarterly basis, with a copy to the board, an accounting of the taxes collected pursuant to this section. All taxes collected by the direct wine shipper shall be remitted to the Pennsylvania Department of Revenue on a quarterly basis. All direct wine shippers shall permit the board, the enforcement bureau, or the Pennsylvania Department of Revenue to perform an audit of the licensee's records upon request. Further, all direct wine shippers shall provide the board, or the enforcement bureau,

or the Pennsylvania Department of Revenue, any additional information deemed necessary to ensure compliance with this section

(e) [A direct shipper may ship wine on the Internet order of a resident into this Commonwealth provided that the wine is shipped to a Pennsylvania Liquor Store selected by the resident. The w]Wine sold by a direct wine shipper pursuant to this section will be subject to [taxes in the same manner as wine sold directly by the board] the sales and use tax imposed by section 202 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and the emergency State tax imposed on wines sold by the board under the act of June 9, 1936 (1st Sp.Sess., P.L.13, No.4), entitled "An act imposing an emergency State tax on liquor." [The wine will not be released by the State store until all moneys due, including all taxes and fees, have been paid by the resident.]

(f) [A person shall sign an affidavit provided by the Pennsylvania Liquor Store where the wine was delivered to stating that the wine will only be used for the person's personal use.] A direct wine shipper shall only ship wine pursuant to this section provided that the resident placing the order has provided the shipper with a written or electronic acknowledgement that the wine is for personal consumption only, and not for resale. Any person who resells wine obtained under this section commits a misdemeanor of the second degree. Further, all direct wine shippers shall:

(1) Ensure that all containers of wine shipped directly to a resident of this Commonwealth are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE TWENTY-ONE (21) OR OLDER REQUIRED FOR DELIVERY."

(2) Ensure that shipments shall be delivered by an entity holding an valid transporter-for-hire license issued by the board, and that such transporter-for-hire shall not deliver any wine unless it:

a. Obtains the signature of the recipient of the wine upon delivery;

b. Verifies by inspecting a valid form of photo identification, as provided for in section 495(a), that the recipient is at least twenty-one (21) years of age; and

c. Determines that the recipient is not visibly intoxicated at the time of delivery.

(g) The board may promulgate such rules and regulations as are necessary to implement and enforce the provisions of this section. [The board may charge the resident a fee to cover the cost associated with processing the Internet order.]

(h) The board shall submit monthly reports to the Appropriations Committee and the Law and Justice Committee of the Senate and to the Appropriations Committee and the Liquor Control Committee of the House of Representatives summarizing the number of direct wine shipper licenses issued by the board, the quantity of wine sold pursuant to this section and the total dollar value of sales under this section.

(i) The term "wine" as used in this section shall mean liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less. The term "wine" shall not include malt or brewed beverages nor shall wine include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.

(j) Such licenses shall be subject to the citation process as set forth in section 471.

(k) Shipments of wine direct to persons in this Commonwealth from persons who do not possess a direct wine shipper license from the board are prohibited. Any person who knowingly makes, participates in, transports, imports or receives such a shipment is guilty of a misdemeanor.

(l) All applicants for such a license shall obtain a tax bond in the amount of one thousand dollars (\$1,000.00).

**Section 2. Section 493 is amended as follows:**

Section 493. Unlawful acts relative to liquor, malt and brewed beverages and licensees

The term "licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful --

\* \* \*

(34) SALE OF WINE RECEIVED BY DIRECT SHIPMENT. For any licensee to sell or offer to sell any wine purchased or acquired from a direct wine shipper pursuant to the authority of section 488.

**Section 3. Section 505.2 is amended as follows:**

Section 505.2. Limited wineries

(a) In the interest of promoting tourism and recreational development in Pennsylvania, holders of a limited winery license may:

\* \* \*

(2) Sell alcoholic cider, wine and wine coolers produced by the limited winery or purchased in bulk in bond from another Pennsylvania limited winery on the licensed premises, under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and public service liquor licensees, and to Pennsylvania winery licensees: Provided, That a limited winery shall not, in any calendar year, purchase alcoholic cider or wine produced by other limited wineries in an amount in excess of fifty per centum of the alcoholic cider or wine produced by the purchasing limited winery in the preceding calendar year. In addition, the holder of a limited winery license may purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process. Such wine may be sold in bottles bearing the purchasing limited winery's label or the producing limited winery's label. Such wines, if sold by the board, may be sold by the producing limited

winery to the purchasing limited winery at a price lower than the price charged by the board.

(2.1) Notwithstanding any other provision of this act or law to the contrary, only ship wine to residents of this Commonwealth in accordance with the provisions of section 488. Further, notwithstanding any other provision of this act or law to the contrary, any sale to a licensee of the board shall take place on the licensed premises of the limited winery. A limited winery is prohibited from shipping or delivering wine sold to licensees of the Board.

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