

P U B L I C   H E A R I N G

before

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

on

Tied-house Statutes in Liquor Industry

June 13, 1986  
Room 403  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMISSION PRESENT:**

Senator Catherine A. Costa, Chairwoman  
Leo Bromley, Vice Chairman  
Norman S. Feldman, Vice Chairman  
Assemblyman Jimmy Zangari  
Director John F. Vassallo, Jr.  
J. Ross Bevis  
Anthony N. Frattini  
John J. Garrity  
William E. Jerlat  
John W. McCaffrey  
Anthony J. Napodano  
Charles D. Sapienza  
Frank J. Tripuka

**ALSO PRESENT:**

Daniel Ben-Asher  
Office of Legislative Services  
Aide, Alcoholic Beverage Control Study Commission

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Hearing Recorded and Transcribed by  
Office of Legislative Services  
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CN 068  
Trenton, New Jersey 08625

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

ROOM 457B STATE HOUSE ANNEX

CN-068

TRENTON, NEW JERSEY 08625

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COLONEL CLINTON L. PAGANO, SR.  
EX OFFICIO  
JOHN F. VASSALLO, JR.

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION  
ANNOUNCES PUBLIC HEARING

SENATOR CATHERINE A. COSTA (D-BURLINGTON AND CAMDEN),  
CHAIRMAN OF THE ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION, HAS  
ANNOUNCED THAT THE COMMISSION WILL HOLD A PUBLIC HEARING ON THE  
STATE'S "TIED-HOUSE" LAW ON JUNE 13, 1986 AT 10:00 A.M. IN ROOM  
403 OF THE STATE HOUSE ANNEX.

THE TERM "TIED-HOUSE" REFERS TO THE MUTUAL INTEREST THAT  
MAY EXIST BETWEEN A PRODUCER OR WHOLESALER AND A RETAILER OF  
ALCOHOLIC BEVERAGES. WITH LIMITED STATUTORY EXCEPTIONS,  
"TIED-HOUSE" INTERESTS ARE NOT PERMITTED IN NEW JERSEY. ONE  
EXAMPLE OF AN IMPERMISSIBLE RELATIONSHIP UNDER CURRENT LAW IS FOR  
A PERSON TO HAVE AN OWNERSHIP INTEREST IN BOTH A BREWERY AND A  
RESTAURANT OR LIQUOR STORE.

THE STUDY COMMISSION IS CONSIDERING POSSIBLE REVISIONS  
THAT WOULD LIBERALIZE THE "TIED-HOUSE" LAW'S EFFECT ON BUSINESS  
OPERATIONS IN NEW JERSEY.

TESTIFYING AT THE HEARING, AMONG OTHERS, WILL BE  
REPRESENTATIVES FROM THE U.S. BUREAU OF ALCOHOL, TOBACCO AND  
FIREARMS AND FROM BUCHMAN, SCHREIBER, O'BRIEN, BUCHMAN &  
MACKNIGHT, A NEW YORK LAW FIRM SPECIALIZING IN ALCOHOLIC BEVERAGE  
LAW.

ANYONE INTERESTED IN TESTIFYING AT THE HEARING ON THE  
"TIED-HOUSE" STATUTES SHOULD CONTACT DANIEL L. BEN-ASHER BY JUNE  
9, 1986 AT (609) 984-0231. WITNESSES ARE REQUESTED TO HAVE AT  
LEAST 25 COPIES OF THEIR TESTIMONY AVAILABLE FOR DISTRIBUTION TO  
THE COMMISSION AND PRESS ON THE DAY OF THE HEARING. THOSE UNABLE  
TO ATTEND MAY FORWARD WRITTEN TESTIMONY TO THE COMMISSION AT THE



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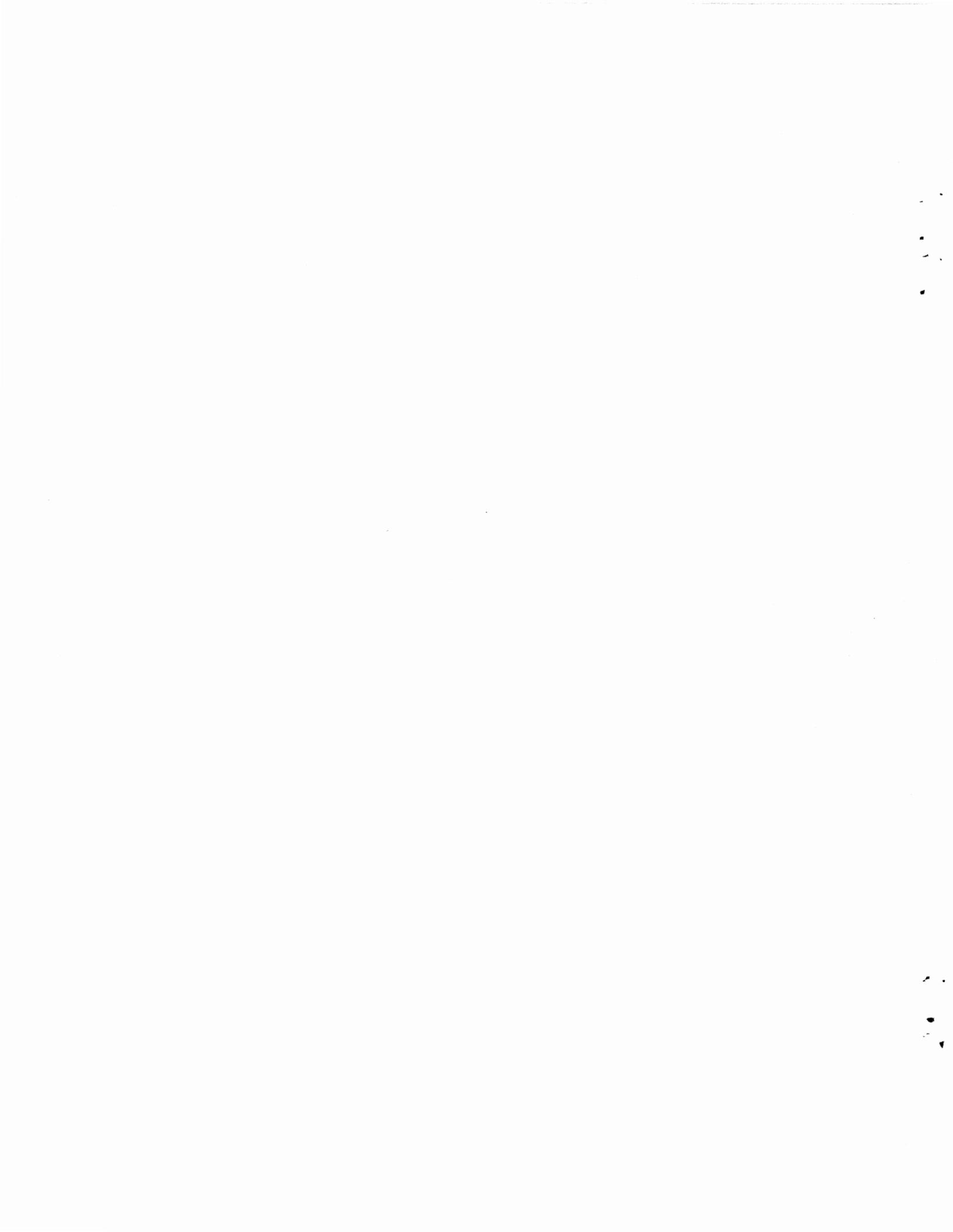
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SENATOR CATERINE A. COSTA (Chairwoman): I'm Senator Catherine Costa. I'm Chairman of this Commission and the other members of the Commission here with us today are: To my extreme left is Commissioner Anthony Frattini. Next to him is Mr. Jerlat -- William Jerlat -- Commissioner Jerlat. After him is Director Vassallo, Assemblyman Jimmy Zangari, and right next to me is Vice Chairman of this Commision, Mr. Leo Bromley. To my extreme right is Mr. Bevis, and he's our consumer representative on this Commission, Commissioner Bevis. Next to him is Commissioner Tripuka, Commissioner Garrity, Commissioner Sapienza, Commissioner Napodano, and Commissioner McCaffrey or did I get it wrong? I got it wrong. All these Irish names get me. This is Mr. Garrity, Commissioner Garrity, and that's Mr. McCaffrey. And Commissioner Feldman, who's our other Vice Chairman. And this is Dan Ben-Asher, who's our staff aide on this Commission.

It's our intention today to obtain testimony from a cross section of people associated with the alcoholic beverage industry with regard to the State's tied-house policies in general, and specifically with respect to a recommendation supported by Mr. John Vassallo, Director of the Alcoholic Beverage Control. As you know, a tied-house is the term in the industry that refers to mutual interest that may exist between a producer or a wholesaler and a retailer of alcoholic beverages. With few exceptions, these types of interests are not permitted in the State. If this policy is being complied with now, are there changes we should recommend to the Legislature that would bring about a healthy business environment in New Jersey? These are some of the issues that we would like you to address. When your name or your organization is called, please come up to give your testimony right here at the desk because it would be most helpful for the purpose of assembling an official statement or an official transcript of this hearing. Then, if you have a written

official statement please presented it to Mr. Inverso, the stenographer over there at the end of the hall. If there's anyone else here who has not expressed a desire to speak before this Commission, would you please bring your name up to Mr. Ben-Asher at this time? We'd appreciate that. Is there anyone here because we do have a list of people we will call? If not, fine. We'll go with what we have here.

If you have a written statement that's of any length, please try to summarize it in the interest of time. Also, if you hear something that's already been said by someone else, we'd appreciate it if it could be repeated in a brief manner. So, without further comment, I'd like to call the first witness, and that is Mr. Larry Moore, from the U.S. Bureau of Alcohol, Tobacco, and Firearms. Mr. Moore?

L A R R Y M O O R E: Madame Chairman, Commission members: I'm honored to be asked to testify before your Commission on the subject of Federal control regarding unfair competition and unlawful provisions and unlawful practices of the Federal Alcohol Administration Act. I would like to introduce here with me today before we go any further, Mr. Jim Zammillo, on my right here, who is the area supervisor of our Parsippany area office, and Mr. George Kear, who is the special operations inspector who works for me.

Before getting into the substance of my statement, I would like to point out that my remarks will be strictly limited to the provisions of the Federal Alcohol Administration Act and ATF's enforcement of the Act. As a matter of Bureau policy, I will not comment of the specifics of New Jersey statutes or regulations, nor will I make suggestions or recommendations relative to the revision of these laws and regulations. At the time of repeal, with the adoption of the 21st Amendment on December 5, 1933, there were no statutes on the books adequate to control the alcoholic beverage industries. As a result, the Code of Fair Competition under

the National Industrial Recovery Act was adopted for use until Congress had the opportunity to legislate. However, new legislation was not forthcoming and the code system continued to be used until May 27, 1935. Then the Supreme Court in the Schechter case declared the NIRA unconstitutional.

On August 29 1935, Congress enacted the Federal Alcohol Administration Act. This legislation was designed to eliminate the abuses and anti-competitive practices which were prevalent before Prohibition and, in large measure, contributed to the enactment of Prohibition. I will not take up the Commissioners' time with a comprehensive analysis of the purpose, rationale, and legislative history of the Act. Rather, I will refer you to a very competent and comprehensive study relating to the Alcoholic Beverage Control and the early post-repeal years, that you may pursue at your leisure. This study was published by the Duke University School of Law in the Autumn of 1940 and is entitled "Law and Contemporary Problems - Alcoholic Beverage Control."

Contained in this publication was an article, "Trade Practice and Price Control in the Alcoholic Beverage Industry," by Mr. Joe De Ganahl. I will quote briefly from this article before moving on to outline the provisions of the Act. The excerpts are intended to give you a brief glimpse of the rationale behind the "Trade Practice" provisions. And I submit to you that this rationale is as sound and relevant today as it was when applied to enacting the original legislation.

Mr. De Ganahl wrote: "With repeal came a new type of regulation in the alcoholic beverage industry. Pre-Prohibition legislation related principally to taxation and regulation of the retail sale of alcoholic beverages in the social interest. There was no attempt to regulate the relationships between the retailer and his vendors. The failure of this legislation was due in part, to the failure to recognize the effect of industrial organization on the manufacture and sale of

alcoholic beverages. With the rise of the large distilling and brewing corporations seeking new markets through high-pressure sales organizations, the independent tavern-keeper, theretofore subjecting to the restraints imposed by local legislation and local public opinion, ceased to exist. Among the devices used by the powerful sales organizations to achieve control of the local saloons was the furnishing of equipment, extension of credit, payment of rebates, and the rendering of liberal financial assistance in other ways.

The resulting tied-house was one of the factors which brought the saloon into disrepute and helped to bring about Prohibition. This fact, emphasized in the studies of pre-Prohibition regulation, conducted in anticipation of repeal, made it clear that post-repeal legislation would have to embrace legislation controlling the relationships between manufacturers, importers, and wholesalers and retail establishments." In addition, I offer the following in connection with the thought of the Congress on the "Tied-House" issue.

The Senate Finance Committee in its report stated: "The house bill, Section 5, which is our unlawful practices section, prohibited two classes of trade practices. The first class of these prohibited practices were those which tended to produce monopolistic control of retail outlets such as arrangements for exclusive outlets, creation of tied-houses, commercial bribery, and sales on consignment or with the privilege of return. The reports of the National Commission on Law Observance and Enforcement (Wickersham Commission), and of other agencies that conducted surveys of liquor enforcement problems, all indicated that control by producers and wholesalers of retail outlets through the various devices such as those prohibited by the bill has been productive not only of monopoly but also of serious social and political evils which were, in large measure, responsible for bringing on Prohibition."

The House Ways and Means Committee commented: "The foregoing practices have in this industry constituted the principal abuses whereby interstate and foreign commerce have been restrained and monopolistic control has been accomplished or attempted. The most effective means of preventing monopolies and restraint of trade in this industry is by prohibiting such practices, thereby striking at the causes for restraints of trade and monopolistic conditions and dealing with such conditions in their incipiency. Therefore, the Prohibition of these practices will accordingly not only prevent monopoly and restraint of interstate trade, but will also tend to eliminate or mitigate certain incidental social evils, such as those which have necessarily followed the forced increase in alcoholic beverage sales resulting from the tied-house. The majority of the industry members have come to accept the view that it is unfair for any of their members to resort to practices which result in such social evils, since other members of the industry are thereupon compelled, likewise, to engage in such practices if they are to retain their business, and as a result the entire industry is brought into disrepute."

For your information and study, I have attached copies of Mr. De Ganahl's article and a copy of the Legislative History of the FAA Act to the record copy of my testimony. Turning now to the "Unfair Competition and Unlawful Practices" portion of the Act, the specific proscriptions of this section of the Act are: Section 5a, Exclusive Outlet; Section 5b, Tied-House; Section 3c, Commercial Bribery; Section 5d, Consignment Sales. To establish a violation of this section, the requirement imposed on the Bureau is substantially more stringent than that required of most State agencies. In most states, the offering or giving of an inducement is sufficient to establish a violation. Under the FAA Act we must prove three elements: One, that an inducement was given; two, that a

product sold or offered for sale in interstate or foreign commerce was excluded; and three, that the transaction was made in the course of interstate commerce or that there was a restraint or hinderance to interstate commerce. There is a fourth requirement that must be satisfied when dealing solely with malt beverages, which I will cover later in my presentation.

Sections 5a and 5b, Exclusive Outlet and Tied-House, relate only to transactions between producers, importers, or wholesalers with retailers. Sections 5c and 5d, Commercial Bribery and Consignment Sales, relate to transactions with any trade buyer, a trade buyer being a wholesaler or a retailer.

Exclusive outlet: In substance, prohibits a supplier from requiring a retailer to purchase his product to the exclusion, in whole or part, of competitive products if the restraints on commerce specified in the Act result therefrom. Exclusive outlet situations are often contractual type arrangements. For example, the recent settlement with a major brewer for \$2 million was a result of the brewer agreeing to buy and pay for advertising, scoreboards, and other sponsor events at ball parks, stadiums, etc., in return for that retailer or concessioner agreeing to purchase and sell the brewer's products to the exclusion, in whole or part, of competitors' products. The exclusive outlet arrangement could also come about as a result of coercion, physical or economical, on the part of a supplier.

Tied-House Provisions: These prohibit a supplier from inducing a retailer to purchase his product to the exclusion, in whole or part, of a competitor's products, with the resultant restraint on commerce by acquiring or holding any interest in any license with respect to the premises of the retailer; by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; by furnishing, giving, renting, lending, or selling

to the retailer any equipment, fixtures, signs, supplies, money, services, or other things of value subject to certain exceptions; by paying or crediting the retailer for any advertising, display, or distribution service; by guaranteeing any loan as repayment of any financial obligation of the retailer; by extending to the retailer credit for a period in excess of credit period usual and customary to the industry for the particular class of transaction. Thirty days has been established by regulations; and by requiring the retailer to take and dispose of a certain quota of such products.

Of these proscriptions, the most commonly violated in this section is 5b(3), the furnishing, giving, renting, lending, or selling equipment, fixtures, services, or things of value. The exceptions referred to in Section 5b(3) are found in 27 Code of Federal Regulations 6.81 through 6.101. These exceptions, with certain qualifications and within specific limitations, allow product displays, consumer advertising specialties, retail advertising specialties, and a number of authorized activities. I have also included a copy of these regulations with my remarks given to the Commission.

Commercial Bribery: This prohibits a supplier from inducing a trade buyer to purchase his product to the exclusion, in whole or part, of competitive products, if a restraint of commerce follows by commercial bribery, which is the secret and corrupt dealing with the employees of a purchaser or the officer or director of a corporation; or by offering or giving of bonus premiums or compensation to any officer or employee or representative of a trade buyer. This is much broader than commercial bribery in its usual sense and includes such things as sales contests for wholesalers' salesmen, free trips, prizes, etc.

Consignment Sales prohibits the sale, offer for sale, or contract to sell on any basis otherwise than a bona fide sale to a trade buyer. Returns can be made for ordinary and

usual commercial reasons arising after the product has been sold.

The foregoing has been a very brief and concise summary of the things prohibited by the FAA Act. And as I indicated earlier, there are certain exceptions covered by the regulations that deal with quantity, dollar values, etc. These Prohibitions apply to all transactions involving distilled spirits and wine. They do not necessarily apply to transactions involving malt liquor. The Act contains a provision in the penultimate paragraph of Section 5 that provides a caveat for malt beverages. In effect, this provision states that in the case of malt beverages 5a, b, c, and d apply to interstate transactions only to the extent which the laws of the state in which the retailer or trade buyer is located impose similar requirements to those set forth in the statute with regard to intrastate malt beverage transactions.

To illustrate, if a wholesaler of distilled spirits were to give a retailer a television set and the State law allowed such an activity, ATF would nonetheless cite the wholesaler for a violation, assuming we established the necessary elements. However, if a beer wholesaler gave this same television set and again there was no Prohibition under State law, ATF would not be able to cite the beer wholesaler even though we could establish all necessary elements. The bottom line is ATF cannot cite a malt beverage dealer with a violation unless there is a similar State law.

This concludes my remarks relative to the "Unfair Competition and Unlawful Practices" statute and their underlying purposes.

Turning now to what is currently happening in the marketplace, the problems and findings I will mention are not necessarily reflective of what is happening in New Jersey. Rather, they are matters that I am aware of in the five states within Philadelphia Field Operations, those states being

Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. Also, a number of these problems are being reported throughout the country. We have recently accepted offers in compromise from several major brewers for violations of Section 5a, Exclusive Outlet and 5b(4), paying or crediting the retailer for advertising. We are finding an excessive amount of bar spending at retail establishments and the giving of free beer. Also, we continue to receive complaints relative to the giving, lending, and selling of draft equipment. This has picked up considerably with the advent of draft wine.

One of the major problems we are finding has to do with displays, or what we call the dealer loader problem. A wholesaler will build a display on a retailer's premises utilizing a specific piece of equipment, such as a telephone, a blender, a canoe, a television, or a table saw. Some of these stagger the imagination. When this display is dismantled, the item of equipment is left with the retailer. Consumer promotions present the same problem. The supplier offers for sale to the consumer with a tear off coupon an article such as a picnic cooler, a sweater, golf equipment, etc., and puts the article on display at the retailer's premises. The display article is given to the retailer for participating in the promotion.

Sales contests offered by suppliers to wholesalers' salesmen are another potential violation we have identified. This can involve free trips or the awarding of prizes. This has a double edge, in that some contests are set up so that for every "x" number of cases sold, the salesman gets a prize, for example, a ten-speed bicycle. If the salesman really pushes the product, he may end up with five or ten ten-speed bicycles, which he, in turn, gives to certain retailers for helping him meet his sales goals. The foregoing is by no means all that is going on in the marketplace today. However, these types of activities are the biggest problems we have identified. They

fall primarily within the tied-house and commercial bribery provisions of the Act.

This concludes my remarks, and again I want to thank the Commission for asking me to participate with their study. If either I or any of the members of my staff can be of further assistance, please do not hesitate to call. Thank you.

SENATOR COSTA: Thank you very much for your testimony. I'm going to ask the Commissioners if they have any questions. Commissioner Feldman?

MR. FELDMAN: One of the considerations that the State Commission is going to have to think about is something that has been proposed to us that will be concerned in your Part 6.26 Indirect Interest, that is by a producer, an importer, or a wholesaler and a retailer. For the record, Mr. Moore, I'd like to compliment you on that very, very comprehensive presentation you made.

MR. MOORE: Thank you, sir.

MR. FELDMAN: Could you read 6.26 to us -- indirect interest in a retail license -- and then explain any definition or any interpretation that you may have on it?

MR. MOORE Yes, sir. "Industry members interested in retail licenses include any interest acquired by corporate officials, partners, employers, or representatives of an industry member in the interest of a retail license acquired by separate corporations, in which the industry member or its official hold ownership or are otherwise affiliated as an interest in a retail license." What we are dealing with there specifically is an interest in that license, and we prohibit a wholesaler, importer, brewer, or distiller, from holding an interest of any nature in a retail license. Let me correct that: a partial ownership. If they own it outright, we have no objection because you can't induce yourself. But we do not allow them to have an interest in that license.

MR. FELDMAN: So, the indirect interest is the same as the direct according to this definition?

MR. MOORE: Yes, sir.

MR. FELDMAN: In other words, you can't camouflage it by putting it in a separate corporation, which is part of an umbrella group.

MR. MOORE: No, sir.

MR. FELDMAN: But which is identified only with that license.

MR. MOORE: No, sir. The only, I guess I should say, exceptions that would be made that are perhaps, a corporation is on the New York Stock Exchange or something that through one of its acquisitions happens to acquire a partial interest. But that would not be a direct interest of a supplier or wholesaler. And I think those things have happened before which we have addressed and we look at them. Usually, they're sent in to us.

MR. FELDMAN: Thank you, Senator.

SENATOR COSTA: Any other Commissioners? Director Vassallo.

DIRECTOR VASSALLO: Mr. Moore, I too would like to thank you for the comprehensive explanation of the Federal law. However, in the answer to the question you were just given, and if you wish to comment on it, I'd like to just point out that the Federal law still requires exclusion for it to be actionable under the Federal law, and it doesn't necessarily preempt the State from taking a different position on that. Whereas, the State can allow, as my proposal would allow, a partial interest but provided there are safeguards in there to provide that no exclusion can be there. And without that exclusion it's not actionable under Federal law.

MR. MOORE: This is correct, Mr. Director. Any of these Prohibitions, as I indicated in my testimony, have to be accompanied by all three elements, or if it is malt beverages,

the fourth element of the similar State law. And that we must first establish the violation which would be the indirect interest or direct interest. Two, we would have to establish that exclusion resulting as a result of that, and three, that it had an impact on interstate commerce. To be quite candid, if a supplier or wholesaler owns a part interest in a retail establishment, I don't feel it would be that difficult to establish exclusion.

DIRECTOR VASSALLO: Mr. Moore, have you read the proposed amendment?

MR. MOORE: No, I haven't, Jack. I haven't seen it yet.

DIRECTOR VASSALLO: In it we have safeguards that they can't have -- would not be able to carry more than five percent of their own product. Obviously, there you are safeguarding against an exclusion, although I suppose in a limited circumstance you can still have an exclusion. But, I just pointed out that safeguards are built in so that they wouldn't be an inherent conflict with the Federal law.

SENATOR COSTA: Any other questions from the Commissioners? (Negative response) I have a question. Within your jurisdiction, violations, as far as New Jersey's concern as compared to the other states, could you give us an idea?

MR. MOORE: The-- I'm not sure I understand your question, Madam Chairman. You mean--

SENATOR COSTA: If there are any violations that would come under your jurisdiction, would it not?

MR. MOORE: Yes. We have several--

SENATOR COSTA: And you have five states under your direction?

MR. MOORE: Right. I would say that--

SENATOR COSTA: I just wanted--

MR. MOORE: To be quite honest, it runs in cycles. As we make cases, as Jack will attest to, the wholesalers and

importers get smarter and they make it more difficult. And we move on to the next state and we come back later. But no, I would say that as far as the State of New Jersey goes, that I would rank them about equivalent with Pennsylvania and the State of Virginia in numbers and types of violations. As of recent, we have initiated a number of open cases in the State of New Jersey. It has been a while since we have been active in the trade practices area in New Jersey because we just had some tax law changes which tied up most of our resources and we were doing floor stock taxes on tobacco. Most recently, we've been doing floor stock taxes on distilled spirits. So, there has been kind of a holding time in there where we have not been active in trade practice. But we currently have a number of major investigations ongoing in the State of New Jersey.

SENATOR COSTA: Thank you very much. Appreciate your testimony, and Director Vassallo has another question.

DIRECTOR VASSALLO: No. Madame Chairman, I just wanted to comment, I think we should thank Mr. Moore for that accommodation to New Jersey wholesalers because he compared us to the States of Pennsylvania and Virginia, both of which the States are in the wholesale business, not independent wholesalers.

SENATOR COSTA: Thank you once again.

MR. MOORE Thank you very much.

SENATOR COSTA: Our next person to testify will be Steven Barsby, Consulting Economist. And as he's coming before us I'd like to state that this Commission is represented by not only the Legislature, the Senate and the Assembly, but also the distributors, wholesalers, retailers, the casino industry, and the law enforcement officials. They're all on this Commission and we're really pleased with the efforts that they have put in the past three years I've Chaired this Commission, and some of them were here prior to that and should really be commended. Dr. Barsby, thank you for coming.

S T E V E N L. B A R S B Y, PH.D.: Chairwoman Costa, members of the Commission, thank you for permitting me to speak today. I'm Dr. Steve Barsby, President of Steve L. Barsby and Associates, Inc., a consulting firm that specializes in the economic, finance, and marketing structure of the alcohol beverage industry. I have been a student of the industry for 14 years. The first eight years as economist for the Distilled Spirits Council of the U.S., and six as an independent consultant. My clients come from every segment of the alcohol beverage industry: brewers, vendors, distillers, importers, wholesalers, and even regulators. I have provided testimony before the U.S. Congress and state regulatory codes, as well as giving expert testimony in before Federal Court.

My comments revolving around tied-house regulations are by necessity abbreviated and general. My goal is to provide you with some of the background behind the tied-house provision of the FAA Act, and why most states adopted even stronger rules proscribing ownership ties between suppliers and wholesalers on the one hand, and the retail level. Many students of history believe that the perceived abuses of the tied-house gave Prohibitionists a focal point for argument and were a leading reason why the 18th Amendment was passed. Some background is important here.

Prior to Prohibition, there were relatively few commercial rules governing the production, distribution, and sales of alcohol beverages. Producers often did not have to obtain licenses, and could use virtually any means of distribution and promotion at retail. Distillers and especially brewers sought control over retail outlets by outright ownership, or by commercial pressures. The goal was to sell as much product as possible, both by the package and by the drink. This often meant selling to people who were already intoxicated, giving credit, or advertising falsely. Retailers, after accepting bar equipment, loans, excessive credit, or free

goods, etc., could be forced to carry some brands to the exclusion of others, and to meet purchase quotas which could only be met by pushing towards ever higher sales levels. It was in the on-premises establishments that the sales and promotion abuses were especially visible, and public drunkeness was common.

Prohibition gave rise to its own set of problems; speakeasies and organized crime being the most noticeable. When society found that Prohibition was worse than the ills it sought to cure, the 21st Amendment was passed and ratified. The public sentiment and regulatory goals at that time might be summarized as follows: first, alcohol beverages should be marketed and sold in a fashion so as to minimize product abuse and social problems; second, the distribution channels should be structured to promote competition and prevent tied-house commercial practices; third, alcohol beverages should be a source of government revenues; and finally, we should achieve these goals in an efficient manner.

To achieve these goals within the framework of the private sector, the Federal government and states established a regulatory framework encompassing production, distribution and retailing. The Federal legislation contained two key features of interest today. First, it required the licensing of all establishments which produce, sell, or distribute alcohol beverages. Second, it prohibited producers from following practices designed to control the behavior of retailers either in terms of sales levels or the products they carry.

The regulatory approach is different among the states, but tied-house abuses most often were treated by establishing a set of rules which made the tree industry tiers, those tiers are production, distribution, and retailing, financially functionally independent from each other. Consumption abuses were countered by limiting access, and by limiting marketing practices. Revenue generation required setting tax rates, and

establishing a mechanism for collecting them and making evasion difficult. Efficiency in achieving these goals required controlling and monitoring the distribution and sales channels.

Given this frame of reference, we can understand the basis for laws governing the minimum purchase age; permitted days and hours of retail sales; advertising media and message content; product promotions; product characteristics; distribution channels; nature of ownership and of the owners; required business records; certain kinds of price competition; and a whole host of other business practices. Most passed tied-house laws more restrictive than the Federal law. Whereas Federal law divided the industry into two tiers, producer and wholesaling on the one hand, and retailing on the other, the majority of the license states, and New Jersey is a license state, restricted retail ownership by either suppliers or wholesalers; and required retailers to purchase from wholesalers, and wholesalers to purchase from suppliers.

Many states attack the problem of noncaring, nonresponsive absentee owners by requiring owners of wholesale and retailing establishment to be residents of the state. They felt this gave the owners a more sense of community in obeying the state laws. Are things different now? Are the considerations which gave rise to the general framework of laws, including those which set the three tier systems, now passe? To help to answer these questions, I have asked some more questions.

Has business structure changed since the 1930's? Yes. Have the potentials for product abuse disappeared? Probably not. Has public opinion veered to view alcohol beverages in a more favorable light, or is a product no longer requiring special treatment? Yes and no. Alcohol beverages now are recognized as a part of our economic and social fabric, but the pendulum has been swinging. During the 1970s, for example, a number of states moved to lower the minimum purchase

age. Even before the Federal legislation involving Federal highway funds was passed, however, states reversed themselves, and begun raising the minimum purchase age. We now have increasingly restrictive laws governing happy hours. Road blocks are used to detect impaired drivers. Fetal alcohol syndrome has received national attention, as has alcohol abuse by teenagers. In other words, alcohol beverages still are viewed as a special category of consumer product.

In commercial regulation this means that at the state level we retain regulations on hours and days of sale, how and where alcohol beverages can be advertised, the background of owners, container sizes, pricing, and a whole host of regulations not found governing other products. At the Federal level we have strict rules against supplier inducements to retailers for purchasing certain goods to the exclusion of others.

What about tied-house ownership? Federal law does permit full ownership of retailers by suppliers, but prohibits partial ownership. Most states retain stronger strictures for both suppliers and wholesalers. Given the rise of conglomerates, potential conflicts between desired business alignments and tied-house laws are possible. Such laws may prevent certain mergers, or may cause portions of business to be sold off as condition of merger. There are only one set of numerous considerations, however, that potential merger partners must take in account. Tied-house ownership between wholesalers and retailers is less a natural outgrowth of industry ownership changes than that between suppliers and retailers. I have studied the economics of alcohol beverage wholesaling and offer these generalizations of some of the potential commercial effects of combination wholesaler-retailers.

1) The most likely candidates involve retail chains which often serve as their own food wholesaler. These

retailers are large purchasers, and by using their own captive wholesale source, they deprive other wholesalers of large sales. These large sales provide the volumes necessary for wholesalers to survive and to serve the smaller retailers. In effect, the chains would be doing their own "cherry picking" at the expense of other wholesalers.

2) The merger of wholesale and retail operations offers the risk of a lost paper trail of transactions, both for product control and for revenue collecting.

3) The wholesaler-to-retailer sales push will be lost in these instances, with the wholesale arm of the retailer serving only as an order taker. This will make it more difficult for new products and companies to gain access to these large retailers.

4) A new, low-cost class of wholesalers will be created. Their sales, inventorying, and delivery cost will be lower than other wholesalers. This can lead to predatory pricing by the larger retailers, and even predatory selling by their wholesaling arms.

5) Many of the advantages of acting as one's own wholesaler come from practices the alcohol beverage industry often prohibits, such as the providing of services to retailers (accounting, merchandising, shelf management), and also credit extension.

My basic points are as follows: First, alcohol beverages are a special class of consumer product. Second, the marketing and sale of alcohol beverages are subject to special public attitudes, where perception may be more important than actuality. Three, the attitudes which resulted in Prohibition are still present today, although modified. Finally, tied-house provisions are only a part of interrelated alcohol beverage regulation, and any changes in tied-house rules may result in unexpected changes in industry structure, and competitive practices, and in public attitudes toward the

industry. Thus, changes for these provisions should be made most carefully. Thank you very much.

SENATOR COSTA: Thank you. I'd be pleased if we didn't have any demonstrations. Please, this is a public hearing and if you have something to say, we'll give you the floor. Thank you Mr. Barsby, and I'll ask the Commissioners if they have any questions for Dr. Barsby. Director Vassallo.

DIRECTOR VASSALLO: Dr. Barsby, thank you for your comments. Have you read the proposed amendment?

DR. BARSBY: Yes, I have read it.

DIRECTOR VASSALLO: What's your position on that since you seem to address the wholesaler retailer relationship and the proposal does not undertake any changes in the wholesaler retailer relationship?

DR. BARSBY: Well, first, I addressed the wholesaler retailer relationship because that was included as part of the announcement for the hearing, and so I included some comment on that. With respect to the supplier retailer interest, I found the proposed amendments, to me as a non-lawyer, to be very difficult to read. But that's normal for somebody who is outside the law field, I suspect. There were two aspects of the proposed amendment which did catch my eye. Oh, by the way, when I say they are difficult to read, what it looked to me like is the regulations are getting much more complex, and any time you get regulations move complex, that makes it much more difficult to enforce. And ease of forcibility is one of the goals of the liquor legislation and regulation. One prevision required there to be no discussion between the supplier and the retail owners on brands carried or sales practices, and so forth. I know from own experience that subsidiaries of larger companies, and managers of sudsidiaries, are aware of who owns whom, and on what basis performance is judged, which is of course higher profits. So, just because specific meetings aren't made between owners and subsidiaries does not mean that

who owns who is not taken into account in buying and selling practices. More specifically, I found one provision which would permit the hotels and motels to carry products of their parent suppliers as long as those sells did not exceed 2% of the alcohol beverage.

DIRECTOR VASSALLO: Five percent of it.

DR. BARSBY: I missed it.

DIRECTOR VASSALLO: You probably read the one -- there was a draft last fall which has been substantially changed.

DR. BARSBY: Oh, that's probably it. Okay. Let's take 5% then. As an example, I'll use Seagram. Let's say that some company controlled by Seagram or some company controlling Seagram became a co-owner in a large hotel chain which had bars and restaurants. Seagram products have about 20% of the market place in the U.S. of malt beverages. It would be very natural to find, for example, Seagram having larger than 5% sales in alcohol beverages in these types of outlets. So, some kind of voluntary restrictions would have to be made. Well, take the extreme case where you have some Seagram's 7 sitting on the self and someone orders a drink of 7 & 7 and the bartender says "I'm sorry. We exceeded our 5% sales quota for Seagram products. Can't sell to you." It's a humorous example, but I believe that this is a potential of the sort of problem interpreting this kind of a rule that you will run into. It's very difficult to enforce and interpret these kinds of rules.

DIRECTOR VASSALLO: You believe the 5% is unrealistically below?

DR. BARSBY: Well, I'll put it a different way. I believe that specifying a percentage number is a risky sort of thing to do, regardless of what that percentage number is.

DIRECTOR VASSALLO: Can you suggest any other way it might be done?

DR. BARSBY: Not offhand.

SENATOR COSTA: I--

MR. NAPODANO: Madame Chairman?

SENATOR COSTA: Are there any questions? Commissioner Napodano, and then--

MR. NAPODANO: Dr. Barsby, unless I missed it, are you appearing here today on behalf of some client or some group?

DR. BARSBY: Yes, I'm appearing at the request of the N.J. Spirits Wholesalers Association.

MR. NAPODANO: I didn't think that you put that on the record previously, unless I missed it.

DR. BARSBY: No, we did not.

MR. NAPODANO: Your firm specializes in economics, finance and marketing structure?

DR. BARSBY: Yes sir.

MR. NAPODANO: Do you believe, sir, that the State should preserve an inefficient level of distribution, simply because it exists? That's a hypothetical question, sir.

DR. BARSBY: A whole host of alcoholic beverage regulations--

MR. NAPODANO: Sir, I'm presenting a hypothetical question. Do you-- May I continue? Assume we have an inefficient level of distribution. Assume we have a State statute, sir, that preserves that level of distribution. Is it your opinion that the State should preserve that level of distribution, yes or no, sir?

MR. SAPIENZA: Madam Chairlady, may I raise a point of order, please?

SENATOR COSTA: Just a moment, over here. Usually we have somebody between those two. Today they sat right next to each other, but that's all right now.

MR. NAPODANO: I thought I had the floor.

SENATOR COSTA: You have the floor, Commissioner Napodano.

MR. NAPODANO: Thank you.

DR. BARSBY: If the purpose of the regulation is to promote efficiency, then I would not argue for the preservation of those provisions. If the primary purpose is public interest, or perceived public interest, then we have to look at the tradeoff that might result from pushing for efficiency. As an economist, by the way, I happen to believe in efficiency. I had to swear on Samuelson's textbook about efficiency.

MR. NAPODANO: Doctor, I agree 100% with what you just said. I believe in efficiency too. Now you just mentioned a segment of the population of the State of New Jersey, that you had not previously mentioned in your testimony, and that was the public. You previously testified that with respect to wholesalers being put at disadvantages, because of "cherry-pickings" by retail chains. Would not the consumer benefit from that, sir?

DR. BARSBY: Well, the consumer might benefit.

MR. NAPODANO: Might benefit? Are you sure about that?

DR. BARSBY: My research has shown that grocery stores maintain a higher percentage markup on alcoholic beverages than they do on other products that they sell. So alcoholic beverages, for grocery stores, are a profit center. They're not trying to provide these at the lowest prices for consumers.

Second, there is intense competition for products on the grocery shelves. In any store, there are a limited number of linear feet. What half of this means, and especially given computer technology now, grocery chains monitor their sales dollar -- profit dollar -- per linear foot, and carry only those products that meet their standard of profitability. This means then, that the brand mix that they carry is substantially more limited than the brand mix carried by other types of retailers.

MR. NAPODANO: Is it your position, sir, that the evolution of the grocery-chain supermarket has been a disservice to the public?

DR. BARSBY: I don't think I concluded that at all, sir.

MR. NAPODANO: I thought that you leaned toward that, sir.

DR. BARSBY: No, sir.

MR. NAPODANO: One further question. I listened to your testimony very attentively, and I respect your opinions, but I must point out that most of your testimony deals with factual conclusions. Do you have any factual data, which can substantiate your conclusions? I don't wish you to go into it now, but I would be very happy to receive that at some subsequent time.

DR. BARSBY: I don't know what factual information to which you're referring.

MR. NAPODANO: Well, you reach a conclusion that a chain that maintains a wholesale level will engage in cherry-picking to the detriment of the wholesale level that now exists. That, to me, is a factual conclusion, sir. Do you have any factual basis to substantiate that conclusion?

DR. BARSBY: I don't know if I can pull on specific research for it.

MR. NAPODANO: I have no further questions.

DR. BARSBY: It's a conclusion of economic analysis.

SENATOR COSTA: Commissioner Napodano, I admire your style, but this is not a courtroom. This is a public hearing I think that Commissioner Garrity wishes to say something.

MR. GARRITY: I'm just wondering if a hypothetical question is in order here to a, in a way, mild manner of attacking a witness and cross-examining him. I think Dr. Barsby's testimony was right on the point. I think if anyone has some questions, rather than being hypothetical, I think they should give concrete examples. In other words, so that they would be addressed, rather than hypothetical questions.

SENATOR COSTA: Thank you, Commissioner. We do have lively meetings.

DR. BARSBY: On that vein, I do have one--

SENATOR COSTA: We have them all. Go ahead.

DR. BARSBY: I'm sorry. A key example, on public perception as opposed to reality-- The raising of the minimum purchase age requirements by the Federal government, were brought about by a perceived higher accident frequency among young drivers. One of my clients is the National Alcoholic Beverage Control Association. On behalf of them I conduct a number of surveys among the control bureau stations, on rules and regulations, and factors behind those. One of the surveys I conducted addressed driving-under-the-influence laws. We surveyed the ABC commissions in these states, and requested them also to use the resources of the law enforcement agencies in their states to report on the number of alcohol-involved traffic accidents, deaths, convictions, arrests. Believe it or not, the majority of regulatory agencies and states could not even give percentages of alcohol involvement in accidents or arrests, let alone the more precise statistics on the involvement of young people. So, here we have a major change in national law taking place, based on a perceived problem that hasn't been measured.

SENATOR COSTA: Thank you. Commissioner Jerlat, and then, Commissioner Bromley.

MR. JERLAT: Dr. Barsby, in your opinion, do you think that the changes in this Tied-house -- statute -- these changes that we're talking about at the present time -- do you think that this would weaken the whole structure of the tied-house in the State of New Jersey?

DR. BARSBY: I don't think I can draw that conclusion. What I'm saying is that--

MR. JERLAT: I'm just asking for your opinion.

DR. BARSBY: I haven't studied these specific provisions that much to draw a conclusion on that. I'm sorry.

SENATOR COSTA: Commissioner Bromley?

MR. BROMLEY: Dr. Barsby, I think we've been very unfair to you, and we've asked you to comment, when apparently we have circulated to you an incorrect draft. I wonder if you would be good enough, if we were to give you the most current draft, if you would be able to return your comment to us in writing, on the specific draft that is before us.

DR. BARSBY: Yes I would.

MR. BROMLEY: Thank you.

SENATOR COSTA: Any other questions? If not, we thank you very much for coming. The next one to testify would be Mr. Fred Guarnieri, from the New Jersey Liquor Stores Association.

F R E D R. G U A R N I E R I: Good morning Madam Chairman. Hopefully, I don't have my counsel with me. I'd be scared to death that you'll cross-examine. I'm representing the New Jersey Liquor Stores Association. I want to thank you, Madam Chairman and the distinguished members of the Study Commission for the opportunity to present our testimony on behalf of our organization. I thank you for the opportunity to come before you to express the unqualified opposition of my total membership to any modification to the Tied-house law, as proposed to this Commission by Director Vassallo, in his letter of May 9th, 1986.

On July 31, 1985, Governor Thomas Kean signed into law a bill created by this very Commission and adopted overwhelmingly by both Houses of our State Legislature. That law, Public Law 1985, Chapter 258, established a modern-day statement of public policy and legislative purpose, upon which the control of alcoholic beverages in this State is to be based. It is reflective of the social attitudes and economic conditions which exist in the 1980's.

The very first section of this new law -- R.S.33:1-3 -- states that: "It shall be the duty of the Director of the Division of Alcoholic Beverage Control in the Department of Law

and Public Safety to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of this act."

Section 4 of P.L. 1985, Chapter 258 spells out that public policy and legislative intent, and one of the 10 duties of the Director of Alcoholic Beverage Control is: Subsection 3: "to maintain a three-tier -- manufacturer, wholesaler, retailer -- distribution system."

It would appear to me, and the many retailers I represent, that Director Vassallo's proposal to modify the three-tier system by amending R.S.33:1-43 clearly contravenes the duty established for him by the Legislature and the Governor in Chapter 258 of 1985, enacted less than a year ago.

Moreover, to embark on this proposed course of action would fly in the face of the other fundamental tenets of the policy and purpose set forth in the law. By allowing suppliers of any variety -- multi-national, national, intrastate or whatever -- to hold an interest in retail licences would not only be a major step toward destruction of the three-tier system, but would violate the Director's duties:

Tenet #1: To strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.

Tenet #2: To foster moderation and responsibility in the use and consumption of alcoholic beverages.

Tenet #4: To protect the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages.

Tenet #6: To provide a framework for the alcoholic beverage industry that recognized and encourages the beneficial aspects of competition.

Tenet #7: To maintain trade stability.

Tenet #9: To maintain primary municipal control over the retailing of the alcoholic beverages.

How would these tenets of public policy and purpose be violated by the subject proposal? Large public holding companies controlled by suppliers would have a primary objective of cutting costs, thus enabling them to force more and more alcoholic beverages on the public at a time when society is crying out for strict control and moderation.

For years and years, the New Jersey Liquor Stores Association has had as its motto "strict control and moderation." We believe strongly in home rule and local control and enforcement. Any move toward multi-national or national holding company control of the retail trade can only lessen local control; contribute to an uninformed, misled public; invite fraud and deception; destroy the benefits of fair competition; create instability rather than stability; and to discourage, rather than encourage moderation and the responsible use of alcoholic beverages.

The Director's proposal, a so-called safeguard in that the Director could determine and thus, presumably, prevent a supplier holding interest from exercising control over a retail or series of retail outlets. In today's sophisticated financial and economic environment, reality suggests that this would be a risky gamble to take.

Some people would suggest there are enough violations of the two-license, through hidden interests and the like existing already today, to keep the Director occupied, without giving him the awesome job of dissecting the books of multi-national conglomerates.

In sum, we believe any weakening of the three-tier system in the alcoholic beverage structure in New Jersey would be a mistake for many reasons. I have outlined some of those reasons shared by my members. At the risk of being redundant, let me repeat, this action would seriously question not only the integrity of our law regarding policy and purpose in the field of liquor control, but also the wisdom of those who

conceived, legislated, and signed into law this landmark legislation designed to bring our alcoholic beverage laws in line with the sympathies and interests of a modern-day society. Thank you, Madam Chairman.

SENATOR COSTA: Thank you, Mr. Guarnieri. Any questions from the Commission? Director Vassallo.

DIRECTOR VASSALLO: Mr. Guarnieri, I might say that I find your remarks to be most ethereal, and without too much factual basis. I'm somewhat-- You can see I'm somewhat insulted by your suggestion that my proposal contravenes my duties. May I ask you to specifically state how each of the tenets would be violated by the proposal. First of all, have you read the proposal?

MR. GUARNIERI: Yes, I have.

DIRECTOR VASSALLO: And have you read the fact that there could be no interlocking directorates? Or have you considered the purpose of it, which is to attract business into the State of New Jersey?

MR. GUARNIERI: I have not considered that aspect.

DIRECTOR VASSALLO: In that, would you be specific on how these proposals would contravene the points of the recently-enacted policy that you have referred to? And also, show that how the safeguards in it would be a risky gamble to take?

MR. GUARNIERI: I think I outlined--

DIRECTOR VASSALLO: I'm not finished yet. And any more risk, or any harder to enforce than to stop retailers from taking kickbacks from suppliers, or from wholesalers, or things like that.

MR. GUARNIERI: Would you go into the specifics of the question again. That was a very broad statement.

DIRECTOR VASSALLO: Go through each of your proposals and, tell us how specific--

SENATOR COSTA: Excuse me, Director, can I interrupt at this moment. Mr. Guarnieri, do you have the latest copy of the proposed draft.

MR. GUARNIERI: Not with me, I do not.

SENATOR COSTA: But have you read the latest one, not the previous one.

MR. GUARNIERI: I don't know. I received the packet, and I'm not sure I do have, in fact, the latest copy.

DIRECTOR VASSALLO: Madame Chairman, he referred to the letter of May 9th, so he has to have the latest one, if he did.

MR. GUARNIERI: Okay.

DIRECTOR VASSALLO: Would you explain how each of the points that you have alluded to would be contravened, or would be upset by the proposal?

MR. GUARNIERI: Well, I think, to go into each one of those, at this time, will be superfluous for the organization. I'd be more than happy to address it in written testimony at a subsequent time.

SENATOR COSTA: Okay with you?

DIRECTOR VASSALLO: That's fine, if he can, Chairman.

SENATOR COSTA: Anyone else? Mr. Sapienza.

MR. SAPIENZA: This is not a question, so much as a comment. I think everyone in the Commission recognizes the care and the courage, and the interest that you have in representing a retail association coming here and testifying as to what you sincerely agree to be the best course that the Commission might take. Even though you are, personally, someone who is subject to regulations, and subject to the daily fire, existing in a competitive situation and a regulated one. So, thank you very much for appearing and giving this testimony.

MR. GUARNIERI: Thank you very much, Mr. Sapienza.

SENATOR COSTA: Any other Commissioner wishing to ask questions of Mr. Guarnieri?

MR. FELDMAN: Madam Chairman.

SENATOR COSTA: Commissioner?

MR. FELDMAN: I think it might be a matter of record that we establish a date by which any of this other information requested is supplied to us, so that we know that in a certain period of time we would have received all documentation, and any other comments that people may want to give us. Then we can begin our deliberations.

SENATOR COSTA: We'll extend it 15 days for extra testimony, as I do have some testimony that has been sent to us too, that we will put in for the record. As there are no other questions, Mr. Guarnieri, thank you very much for testifying.

MR. GUARNIERI: Thank you, Madam Chairman.

SENATOR COSTA: Next one we call upon is Terry Micek, Esq., law firm of Buchman, Schreiber, O'Brien, Buchman and MacKnight. I hope I pronounced your name right, or is it Micek.

T E R R E N C E   M I C E K: Micek.

SENATOR COSTA: Micek. Thank you.

MR. MICEK: That's quite all right. Good morning Commissioners, Senator Costa. My name is Terence B. Micek, and I am pleased to be here today. I'm the spokesperson for the firm of Buchman, Buchman and O'Brien. It's a law firm in New York, Washington and San Francisco. I come from the Washington D.C. area. I've been with this law firm since February. Prior to that time, for two years, I was vice president and counsel for the United States Brewers Association, and for nine years prior to that I was the Executive Director for the Nebraska Liquor Control Commission, during which time, from 1979 to 1984, I served as the Executive Secretary/Treasurer for the National Conference of State Liquor Administrators.

I have a Ma Bell story for you, in as much as I traveled from Washington this morning. I generally relied on two things, that the trains would run on time, and that once I got here, I could call home and tell my wife that I'm all right. Leaving my office -- from my office -- this morning

around 4:30, so that I could make copies and finish some typing on my presentation, I found out that concurrent with the strike are some terrible telephone line problems in Washington D.C. The security doors to my office building operate by telephone lines, on the insertion of a magnetic card. With the lines and cables down, I was unable to enter my office, which found me standing on the streets for an hour-and-a-half in Washington D.C., waiting for the subway to open so that I could catch the train here. The train did arrive, and I am here.

I'm glad to be here, because I think the tied-house issue is one that needs to be addressed, not only by New Jersey, but by many of the states. It needs to be addressed, not for what it contains within itself -- as originally set 50-some years ago -- but for what it needs to be addressed also would be that which needs to be dealt with, recognizing changes since originally adopted, given the past Prohibition era.

The period of Prohibition saw many tied-house laws enacted following that, because of pre-Prohibition evils that existed, wherein a brewer, or a bottler, or a distiller may tie in with the local tavern or saloon. That seemed the way that business was, and the laws as especially presented by the representative by the A.T.F., and other witnesses here this morning, were set into motion following Prohibition to try to stop that, or at least, by law, prevent all that law could in the way of an illegal relationship.

In fact, in testimonies throughout this morning, without tied-house, as the law before you -- that being New Jersey Statute 33143 -- provides other prohibitions or prohibited activities, such as the Federal Act. You heard talk about consignment sales, tie-in sales, and various other bribes, kickbacks, gifts, offers, and loans that have much to do with tied-house, that stand alone from tied-house.

I think the question is whether or not there is something within the Tied-house Statute set forth in the

notice, that can be improved upon. If there is a need to improve upon it -- as the question by the Chair as we started -- some changes that can be used? Notwithstanding, and hopefully not infracting other positions of the State of New Jersey, as it involves other than tied-house under the statute. I think that it can be improved upon.

Examples: As we looked at the last 50-some years, we saw, for example, 50 years ago, breweries in almost every community throughout our country. Today, however, there are but a few breweries left in the United States. Yet there is a better product selection of beers, in the respective communities throughout our country now, than there were before. My comment reflecting today's better product selection also holds true for distilled spirits and wine. Efficiencies in business have contributed to the alcoholic beverage industry. The corporation, once reserved for large oil companies, railroads, steel companies, and other industrial giants, is now the typical way of doing business in today's national distribution systems of marketing.

So, true to the growth of our country's way of doing business is the formulation of multiple corporations, under a single holding corporation known as a conglomerate. In the typical conglomerate form of doing business, affiliated companies with an overall holding company structure are each managed by totally separate and independent officers and directors. In many cases, the officers and directors of one affiliate do not even know the officers and directors of another affiliate.

Literally, the only link that binds them, has become an ownership at the top of a holding company. In such cases, therefore, the likelihood of an affiliate being used to promote the alcoholic beverage products of another affiliate is remote. This likelihood becomes even more improbable when one of the affiliates is a chain, or a franchise, or a multiple

retail outlet, often independently owned, or managed, by local individual businessmen, rather than by affiliate executives.

Some see historical interest of the public's welfare and the need to provide licensed businesses with equitable and commonly accepted standards from which they might operate. It's of particular importance. The significance of the Tied-house Law is not threatened by amendments which fine-tune the law to meet the current and acceptable business practices known throughout our country today. There have not been any liberalizations that I am aware of, with any other states, that have approached or reviewed their Tied-house Laws that also liberalize or include departures from other statutes such as price-posting, price-discrimination, and laws, as I expressed, that stand apart from the Tied-house Law, which is in review before you today.

In fact, I think that the proposed amendments to the New Jersey law, as prepared and submitted by ABC director John F. Vassallo Jr., are on the leading edge of modernizing the New Jersey Tied-house Law. Director Vassallo's proposed amendments realistically respond to the business climate present in the State of New Jersey. If they are ultimately introduced, and passed by the New Jersey Legislature, I think business will neither be denied entry into your State, nor will they be denied the ability to create additional jobs and increased opportunities for the people of New Jersey. By the way, if I state that, then I should have opened with the fact that I'm not representing a particular client. Our firm--

SENATOR COSTA: I do have a question. Who are you representing?

MR. MICEK: I am here for the firm, in as much as--

SENATOR COSTA: But who are their clients?

MR. MICEK: We have no client in this matter. It's a matter of public service. Perhaps I don't want to suggest pro bono relationship with New Jersey, but we have had clients that

have obviously had problems, because of the Tied-house Law,

SENATOR COSTA: Such as? Could you give us their names, because it's unusual for a law firm just to represent themselves as a law firm. They usually represent clients.

MR. MICEK: That's true.

SENATOR COSTA: I'd like to know who you represent, or, in the past, have represented, that would bring you here today.

DIRECTOR VASSALLO: Madam Chairman?

SENATOR COSTA: Director Vassallo, the question is addressed to Mr. Micek. I'd like an answer first, before I give the floor to you.

MR. MICEK: Yes. I'm not here representing a client. Our firm has had constant communication with all ABCs, Alcoholic Beverage Control agencies, throughout the country.

SENATOR COSTA: I received a letter from you last year, but I still don't know who you're representing, or what the interest would be for a law firm to be here without a client.

MR. MICEK: You mean, when I was with the U.S. Brewers Association last year?

SENATOR COSTA: No, no, from this company last year, from Buchman, Schreiber, etc.

MR. MICEK: I think that's my point, I wouldn't know what that--

DIRECTOR VASSALLO: Madame Chairman, may I--

SENATOR COSTA: No, no, I-- Director Vassallo, I'm asking--

DIRECTOR VASSALLO: He's answered your question, Madame Chairman. You're arguing with him, and I think I can explain the relationship for you, since the initial contact was with me.

SENATOR COSTA: Then you're, in a sense-- You are his client?

DIRECTOR VASSALLO: No I'm not his client, Madame Chairman. I was approached by the law firm. They deal with, not only myself, but my fellow administrators throughout the country. One of their primary businesses is, in fact, they are probably the leading firm in alcoholic beverage control in the country. They frequently deal with it, and they do a lot of public service in the interest of modernizing and making more efficient and better the alcoholic beverage laws throughout the State. I think that Mr. Micek is being honest and forthright, that they do not have a specific client.

But the subject of the Tied-house Laws and the undue restrictions of them, have been the subject among administrators and firms like Mr. Micek's for a number of years. They approached me, and they knew my thoughts on it. They knew what I had done with the Tied-house Statute and the recommendations two or three years ago. They had discussions with me, and I could not agree with them more, in the position they had. I had some of the ideas put forth by Mr. O'Brien that I considered in making the proposal.

SENATOR COSTA: Mr. Micek, I commend you for your pro bono efforts in this direction. I assume, from what the director has said, that you're speaking on behalf of not one single client, but perhaps future clients or past clients. Correct?

MR. MICEK: Well, I am certainly not speaking for future clients, for I know not what they need representation on. And I'm not speaking for past clients, either, in as much as they haven't a moot issue before you today. I'm speaking to try to generate a total review, in response to your notice. I'm speaking because I was contacted by my firm, given my experiences as an administrator, and also as an Executive Secretary/Treasurer of the National Conference of State Liquor Administrators, where I've been exposed, through my own personal life and my personal occupations prior to being an attorney for this firm, to these types of laws.

SENATOR COSTA: Just for the record though--

MR. MICEK: Yes.

SENATOR COSTA: You're trip here, etc., the expenses incurred by you were paid by whom?

MR. MICEK: They've been paid only by myself at this point in time. I will get reimbursed by the firm.

SENATOR COSTA: From the firm?

MR. MICEK: For my expenses, yes.

SENATOR COSTA: I just want it for the record. Thank you.

MR. MICEK: Well, that's quite all right.

SENATOR COSTA: Are you finished with your testimony?

MR. MICEK: I think that at the pleasure of the Chair, I will conclude, unless you have any questions, though.

SENATOR COSTA: I will open it to questions from the Commission. Commissioner Sapienza.

MR. SAPIENZA: Mr. Micek, in your experience, are there still valid public policy reasons to maintain a separation between the supplier tier of the industry and the retail tier of the industry?

MR. MICEK: Certainly, under New Jersey law.

MR. SAPIENZA: Well, putting aside what the law requires. In your experience, are there still valid public policy reasons to maintain that.

MR. MICEK: Absolutely.

MR. SAPIENZA: Would you be kind enough to state in general terms what those public policy reasons are?

MR. MICEK: Established as the basis for the three-tier system?

MR. SAPIENZA: Whatever, either for the three-tier system, or in any event to maintain that buffer between supplier and retailer.

MR. MICEK: Yes, although I wish to confine, essentially, my response to your question as it relates to the

21st amendment, as opposed to anti-trust or other interests of other statutes or other constitutional provisions.

MR. SAPIENZA: Fine.

MR. MICEK: Each state-- I mean, the 21st Amendment is a fantastic tool when you think of what it did to the Constitution, given balances of powers and separations of control. It established, in the state, a superior position to that of the Federal government, as it dealt with the importation and distribution of alcoholic beverages within your state borders. The State of Nebraska, my home state, was the state that passed the final ballot to go into Prohibition. The State of Utah, which we see as a somewhat religiously-inclined state -- which, by the way, within the last two months liberalized its Tied-house laws -- was the state that made the casting vote to take us out of Prohibition.

My point, in the examples of the uniqueness of each state, I think, is made as to how we got in and how we got out. You, in the State of New Jersey, have a relationship with the local governing bodies in the control of retailing alcoholic beverages, that is not like every other state. You in the State of New Jersey also have a relationship with wholesaling, as established as public policy, which is based upon sound grounds. There's no doubt about it.

I think the question of tied-house, under the statute that you're looking, though, is whether or not it is over-restrictive, as it relates to a business sense. Not that it would infract, or injure, or demolish any of the tiered relationships between a supplier, a wholesaler, and a retailer, but how it would allow you to maintain business interests. For example, you do have a neighboring state, where two companies who were suppliers moved into New Jersey because of that neighboring state's Tied house laws.

MR. SAPIENZA: I'm sorry to interrupt you--

MR. MICEK: That did not lessen their company, or their relationship with the wholesaler.

MR. SAPIENZA: I was looking for a description of the public policy underlining the separation between the tiers, and whether or not it is still a valid public policy. Assuming that it is; assuming that there is a good, solid, public reason to maintain a distance or separation between the two tiers, does the proposal that you looked at dilute the legal requirements that the supplier tier and the retailer tier remain separate and important?

MR. MICEK: Does it dilute the requirements that the--

MR. SAPIENZA: Supplier?

MR. MICEK: --tier remain separate? No it doesn't. In fact, the reason for public policy on the wholesale level tier, I think, is to provide service to the retailers, and thus, to the consumers throughout the State of New Jersey, not just in the heavily-concentrated areas. I think you do--

MR. SAPIENZA: Doesn't that proposal create an exception to the law?

MR. MICEK: The one exception to the law already is created, of course, for hotels and motels. I see the exceptions doing the following: It allows an interest, not more than 10% of any corporation, the shares of which are traded on the national security exchange, and regularly traded in over-the-counter markets. If I wanted more members of the nationally -- well, my copy is not clear -- something, securities association, which corporation holds a license or has any interest in the retailing of alcoholic beverages in the State. Now, that 10%, into a nationally-held corporation, the SEC, above 10%, the disclosures require their-- Plus other laws involving interstate commerce, let alone the SEC law itself on disclosures, are there to protect the public. Number one, to give them notice, so that they can respond if they are not protected.

MR. SAPIENZA: I'm not asking about the SEC laws. I'm simply asking whether or not the proposal for change dilutes

the existing strength requiring separation between the supplier tier and the retailer tier.

MR. MICEK: It doesn't dilute it. It liberalizes it.

MR. SAPIENZA: Okay. It liberalizes it.

MR. MICEK: It doesn't wash it down. It expands the opportunity.

MR. SAPIENZA: Now, the benefit that New Jersey would get by liberalizing it -- diluting it, whatever it does, all right -- the benefit that New Jersey would get would be that corporate interests, in terms of making purchases, devising strategies, might be facilitated. Is that generally correct?

MR. MICEK: In a general sense, that is one of the properties of correcting it, yes.

MR. SAPIENZA: In other words, this change would facilitate corporations in their planning, in their activities. And perhaps from it, some corporations could come in to New Jersey and establish headquarters here, is that correct?

MR. MICEK: They certainly would.

MR. SAPIENZA: But what we had to do -- and tell me if I'm wrong -- is to balance that benefit to corporate interests, and their decision-making process, against whatever loss New Jersey might suffer, and its public policy, and its consumers, and whatever else we have here in liberalizing a statute that is relatively easy to understand, and creates a very strict separation between the two. So, we have to go for that balancing act.

MR. MICEK: As you see the need, certainly.

MR. SAPIENZA: Are there any other interests on the side of the corporations here, that you could articulate for us, other than the interest of allowing corporations to perhaps plan better and move into New Jersey?

MR. MICEK: Are there other interests besides tied-house, that would allow them to--

MR. SAPIENZA: What I'm asking is what do we get if we make this change, if we liberalize the law? I know, I think, what we lose, but what do we get? What are we doing that accomplishes something? What is the trade-off?

MR. MICEK: Certainly if you have business locate here, or expand, because of an acquisition that was made, that involved licenses, or the opportunity to have licenses, or other types of businesses, outlets, if you will, in your State, then you've created new jobs. You've created a new business, in and of itself.

MR. SAPIENZA: Do you know of any business that would move into New Jersey if this bill--

MR. MICEK: No.

MR. SAPIENZA: But we get the potential for new businesses and perhaps locations, is that right?

MR. MICEK: Yes. Yes, you certainly do. Especially on the retail level.

MR. SAPIENZA: Do you know of any retailers that would move into New Jersey if this law were changed?

MR. MICEK: Yes. You take an existing retail chain, or one that doesn't even exist, and you allow the holding company to-- Let's say a holding company with as many as five or six corporations -- not that a minimum is required, or a maximum -- but a holding company that does, in fact, have control of a brewer, or a distiller, or a vintner through other affiliate corporations held by the same holding or parent company is involved as either a chain store, or franchises to chain stores.

The power and the structure commensurate with the conglomerate itself, would allow, number one, those companies to do business, provided they don't violate your laws; notwithstanding, the Tied-house Law we're talking about. And, by the fact that you then allow them to even come under the same umbrella, you allow the potentials of those companies

to have additional revenues generated, put into and to expand those companies.

So, instead of maybe one or two outlets, serving just your centrally, high-concentrated, population areas, you have the ability to have three, five, or multiple outlets that can stretch out and reach to other people in your State, as well. And those are new businesses.

MR. SAPIENZA: We might get new retail establishments in New Jersey?

MR. MICEK: Yes, without any corporate headquarters relocating in your State. Exactly.

MR. SAPIENZA: Have you attempted to make any determination as to whether or not New Jersey needs new retail establishments to service the public in the distribution of alcoholic beverages?

MR. MICEK: No.

MR. SAPIENZA: I thank you very much for coming, and for responding so carefully to my questions. Thank you very much.

SENATOR COSTA: Commissioner Bromley, and then Commissioner Napodano.

MR. BROMLEY: Mr. Micek, before I had the extreme misfortune of becoming a liquor retailer, I was employed as a subsidiary president in a chemical contract, which was held by a conglomerate, and had a parent. I'd like to chat with you briefly about the relationship of subsidiary corporations and their parent. I'd like to ask you, am I to understand from your testimony that even though the corporate officers and even subsidiaries do not know each other, in some way they do not follow corporate policy as established by the parent?

MR. MICEK: I would think that they would follow that corporate policy, as established by the parent.

MR. BROMLEY: In other words, the control of the business in the subsidiary is going to flow back to the parent.

MR. MICEK: Yes, definitely.

MR. BROMLEY: Well, does that distinguish it, in any way, from any other kind of corporation that does not organize with subsidiaries?

MR. MICEK: Yes it does, in as much as it would relate to the alcoholic beverage law. You heard the Federal government in other testimonies, right here, from the State of New Jersey, that said because -- and with relationship to those products -- if that common parent would co-mingle through its control, or common control, the relationship through affiliates, executives, officers, or otherwise, and influence would exclude, or even offer to exclude, the competitor's product, or promote its product to the exclusion thereof, that would be a violation of the law.

MR. BROMLEY: That would be a violation of the Federal law?

MR. MICEK: As well as the New Jersey law.

MR. BROMLEY: The New Jersey law does not require exclusion.

MR. MICEK: That's right. So its even less of a standard. It only requires that you make an offer. It doesn't require the exclusion in fact.

MR. BROMLEY: New Jersey's law requires that you not hold the interest--

MR. MICEK: And perhaps, your Director can correct me if I'm wrong. Pardon me?

MR. BROMLEY: New Jersey's law requires that you not hold the interest in the first place.

MR. MICEK: That's the present law, yes.

MR. BROMLEY: That's the present law.

MR. MICEK: In fact--

MR. BROMLEY: In The New York Times, this Sunday, there was a very interesting article about the relationship of the Columbia Broadcasting System. And in that article it was

revealed that the former owner, Mr. Stanton, had reduced his stock holdings 8.7%, while Mr. Tisch had raised his holdings to 12%. And yet, if you read the whole article, it became apparent and clear that Mr. Tisch had full control of that corporation.

So, when I see figures as I see in some of the proposals, of five to ten, you must consider the fact that if there are 25 corporate officers, or 50 corporate officers, as there well may be -- vice presidents today are created with the pop of a finger -- and each one holds 5%, you can have control in a minute.

MR. MICEK: Yes.

MR. BROMLEY: The current law doesn't allow that to take place.

MR. MICEK: That's correct.

MR. BROMLEY: Okay.

MR. MICEK: And I'm not trying to be anti. In fact, before I became involved as a director for our State liquor Commission, I was the private attorney representing retailers, you know, and it was that same type of concern that you have that perhaps got me encouraged a bit further down the line. Because, so often, it was the retailer who felt the constraints of his business, based upon either a statute, or a supplier's leverage, or things of that nature. I'm trying to say that you're not immune, regardless of what occupation or level you're involved on in, within an industry -- within the alcoholic beverage industry. Neither are you immune, in fact, you are held to a higher standard.

I think the question is, all the examples you've given can exist in almost any industry, except for the alcoholic beverage industry. I'm not saying that that is an evil. And that's what you're here to study. I think that we have shown that the proposal, in response to the proposal, does not create an evil. If it does, I would like to have the record reflect

that at the time you make your findings. I think the record can be encouraging to you.

SENATOR COSTA: Commissioner Napodano.

MR. NAPODANO: Is it Micek?

MR. MICEK: Yes.

MR. NAPODANO: Mr. Micek, thank you very much for coming here. I listened very attentively, and with very great interest to your testimony. I respect your background and your expertise in this area. You say that the proposal -- and I assume that you have reviewed the proposal, and I also assume, and stop me if I'm incorrect, that you are familiar with 33143.

MR. MICEK: Thirty-three one forty-three? Yes.

MR. NAPODANO: You say the proposal does not create an evil.

MR. MICEK: I do not believe it does.

MR. NAPODANO: I have one problem. Maybe you can help me. The proposal, in my reading of it, seems to be discriminatory. It seems to permit an interest outside the State of New Jersey -- and perhaps disregard of the licensees, who are in the State of New Jersey, who adopted a method of doing business, to come into this State, and as you say, create additional retail outlets, and those retail outlets would -- again, I assume primarily the restaurants, since they have restrictions of no more than two, if they were to come in for a package door, or a tavern, if you will. Is it not discriminatory to permit a large conglomerate, holding company, that has and enjoys the benefits of having its stock traded over a national exchange, to have that opportunity, and not permit larger, smaller, privately-owned companies to do exactly the same thing?

MR. MICEK: I think your question is accurate. You certainly should, you know, look into the fact of allowing those privately owned corporations the same benefit.

The fact that I mentioned-- Excuse me if I may

clarify a point so I am not totally misunderstood. When I said new jobs, new businesses, can be created, that's true. In fact, they can be created without any change in your present tied-house law, but that creation cannot be shared or enjoyed by anyone in the alcohol beverage industry who is a supplier or a wholesaler.

SENATOR COSTA: I would like to interrupt you at this point, please. From what Director Vassallo tells us, that is existing law at the present time.

MR. NAPODANO: I'm sorry, what is existing law at the present time?

SENATOR COSTA: Director Vassallo?

DIRECTOR VASSALLO: The discrimination, as you term it, between the nationally traded corporation and others that are not nationally traded. A tied-house interest is presently allowed by 33:1-43(a), or 43.1 -- 43(a).

MR. FELDMAN: Isn't that wholesaler only, though, John? Forty-three (a) is the right to wholesale, not retail.

DIRECTOR VASSALLO: Section 4 of the proposal is only the incorporation in the one statute -- as the Commission had suggested some time ago -- of 43(a). The new proposals are in Section 5.

MR. FELDMAN: Expand 43(a) is what you're saying.

DIRECTOR VASSALLO: It slightly does, but it doesn't substantially expand it.

MR. MICEK: Madam Chairman, may I conclude on my point?

MR. NAPODANO: Yeah, I'd like to hear the rest of his answer.

SENATOR COSTA: All right, continue.

MR. MICEK: Well, my point simply is this: What I am talking about is, presently a holding company that has no subsidiary corporation involved in the manufacturing, supplying, or wholesaling of alcoholic beverages can do everything that I told you would be good for the State.

The question is, changing your tied-house law such that other holding companies that do, in fact, within the umbrella structure, also have an interest in a manufacturer, supplier, or wholesaler, can have the same opportunity. That is what it is all about.

MR. NAPODANO: Whether that company be privately owned or a national conglomerate.

MR. MICEK: Exactly.

MR. NAPODANO: Okay. And the reference the Director makes concerns an investment of, I believe, not more than 10%. It does not concern 100% ownership in the form of a subsidiary. Is that correct, or do I misunderstand your point?

DIRECTOR VASSALLO: No, Section 5 would allow it provided there were no interlocking directorates. There are so many safeguards in that. They almost have to be totally unrelated except up at the top. The stock ownership is the same.

SENATOR COSTA: Was that directed to the Director or was that directed to the speaker before us?

MR. NAPODANO: I am going to continue addressing the speaker through you, Madam Chairman, if I may.

SENATOR COSTA: Continue, Commissioner.

MR. NAPODANO: The other possible evil that I perceive -- and maybe you can help me with this, also -- is, this exception seems to work one way. It seems to permit the brewery or the wholesaler to come in and establish an interest in retailers. It does not seem to permit -- again, unless I misread it -- the retailer going in the opposite direction. Do you read it that way, sir?

MR. MICEK: I think the present law would prohibit the retailer from acquiring what, wholesalers and suppliers--

MR. NAPODANO: Exactly.

MR. MICEK: Similarly--

MR. NAPODANO: Would there be any justification to

continuing that as a prohibition if we are going to make this kind of an exception for the brewery and the wholesaler?

MR. MICEK: No, none at all.

MR. NAPODANO: Again, if we continued it, we would have, I believe, an element of discrimination.

Let me ask you this question; you don't have to answer it, but just so I have a full appreciation of your position. Would you advocate totally rescinding 33:1-43? Let's just forget about the sections. I don't want to-- I'm sorry, I am going to withdraw that question. I don't want to stick you with every verbiage that is in that section.

Would you advocate rescinding tied-house, sir, and those prohibitions?

MR. MICEK: Are you talking about without the amendments as proposed?

MR. NAPODANO: Yes.

DIRECTOR VASSALLO: That section, if I may, Madam Chairman--

SENATOR COSTA: Just a minute. Director Vassallo?

DIRECTOR VASSALLO: To clarify for Mr. Micek, who doesn't know the numbers in our State, Madam Chairman--

MR. NAPODANO: I accept the clarification, Madam Chairman.

SENATOR COSTA: All right, fine.

DIRECTOR VASSALLO: Mr. Micek, he was referring to our entire tied-house statute.

MR. NAPODANO: Exactly.

DIRECTOR VASSALLO: Asking if you would advocate the repeal of it.

MR. NAPODANO: Would you advocate our rescinding that entire statute? I am not looking to spot you, I just want to get an understanding.

MR. MICEK: No. In all honesty, I want to respond. I have looked at the added language to try to analyze whether or

not I feel it would allow businesses that have an interest in one level to do business legitimately with the other level, or tier, of the industry, provided they do not harm other than your tied-house law. I haven't looked at the existing statute as much as I have had the opportunity to look at the amendments. I suppose I am going to give you a philosophical approach because I see the special exceptions that were made for motels a few years ago -- and hotels. Possibly that came as a result of what we are talking about here today when we think of Howard Johnson's, Pepsico, and things of that nature, where large, in this case, international conglomerates had to say, "My gosh, we didn't know we were acquiring a company which held other corporations that had a liquor license in your State." Many states said, "Well, that means you can purchase and do business in our state;" other states said, "That means you cannot even sell the products under that umbrella."

What I am trying to say is, I don't know, really, if that was the problem because I, as an administrator, went through that for the State of Nebraska, and I saw no problem. I could not see damage being done. With that philosophical interest, I'm saying, to the degree that the law is saying, "You cannot 'tie the tiers' through an uninterested party, even though it is a holding corporation or other parent" -- to that degree, yes, you don't need your law.

To respond to your question, if your law is covering other things which I haven't read about or thought about, then preserve that part of it.

MR. NAPODANO: I understand. That is why I withdrew the question specifically to the statute, because I don't want to have you respond to something you are not familiar with. A philosophical answer was what I was looking for, sir.

Did the State of Nebraska have a tied-house statute at the time you were an administrator?

MR. MICEK: Yes.

MR. NAPODANO: Does it continue to have a tied-house statute today?

MR. MICEK: Yes.

MR. NAPODANO: Is that statute more liberal than the statute that exists in New Jersey, if you know?

MR. MICEK: Yes. In fact, the language of the state statute in Nebraska said essentially, "The supplier, the wholesaler, shall not have any interest, direct or indirect, of any type whatsoever, in a retail outlet." It was so tight that it imploded.

MR. NAPODANO: That is the Nebraska statute?

MR. MICEK: Yes. And that is not an uncommon statute. It is not an uncommon attitude. Any direct or indirect interest of any type whatsoever is prohibited.

Now, if I had enforced that to literal terms, it would be darned hard to have any type of communication between any of the tiers. As I say, it was so tight it imploded. It didn't make practical, realistic sense. We allowed Howard Johnson's--

MR. NAPODANO: Go ahead; I'm sorry.

MR. MICEK: We allowed that transaction. You were asking me about the example.

MR. NAPODANO: Yeah. You made a statement before, and I would appreciate it personally, and I know all the Commissioners would also-- You said -- and I hope I will not misquote you -- "Many of the states have liberalized their tied-house laws."

MR. MICEK: Yes.

MR. NAPODANO: I assume with the research facilities your firm has you might be in a position -- if you don't already have this as a document -- to send us something which would indicate those states, what their prior laws were, and how they went about liberalizing tied-house. Can you do that?

MR. MICEK: With some carry-over to the pro bono comment of the Chair, I don't know if my firm will go so far as

to do that, but I will do this for the record: I will list essentially, I think, about five categories of our research where we classify different states. Example: There are about 10 states where under their tied-house law we really could not see a new problem,, or a problem if a newly acquired company is--

Let me start over. There are about 10 states wherein if a company which is a manufacturer or supplier desires to acquire a company through a parent, not direct -- okay? -- someone who holds an interest in a retail license-- Those states would be a definite problem if both those corporations, in fact, existed in that state.

MR. NAPODANO: You mean with the principal office in the state?

MR. MICEK: Yes. There are others wherein the states would have no problem unless competitive products were excluded, similar to the Federal problem, except that the Federal would allow 100% ownership.

MR. NAPODANO: Similar, to some extent, to what we did with the hotel/motel exception?

MR. MICEK: Yeah -- I'll say maybe on that one. Go ahead.

MR. NAPODANO: Okay. I don't want to take the sign--

MR. MICEK: There were some states that had a similar type of statute to what you had, but they interpreted it differently.

MR. NAPODANO: I don't want to take the time to go through this blow by blow because I know there are a lot of other people who wish to testify. If you can present something in writing to our staff member so he can distribute it to us, I would be very appreciative.

MR. MICEK: Yes.

MR. NAPODANO: Thank you very much, again, for coming here with your wisdom.

SENATOR COSTA: Commissioner Feldman?

MR. FELDMAN: Just one simple question, Mr. Micek. I am a little confused. You said--

MR. MICEK: I would appreciate it. Sorry to interrupt you.

MR. FELDMAN: --that the modification, or liberalization, of the tied-house statute, as presented today as an example of what this Study Commission is considering, would increase -- would create more jobs in New Jersey.

MR. MICEK: I think it has that definite potential, yes.

MR. FELDMAN: Now, would you say it is going to increase consumption in New Jersey as well?

MR. MICEK: No, not if your laws are enforced as-- No.

MR. FELDMAN: In other words, what you are implying is, you have to take from Peter to get to Paul because if you are going to increase jobs-- You have to decrease jobs unless you increase consumption. So, that means that some in the State, meaning the residents of the State, the citizens of the State, who are licensees, will then-- In your opinion, would they then be subject to a reduction in the volume of business they're doing, in favor of an international conglomerate coming in and taking away some of their income?

MR. MICEK: It will not increase consumption. What we are talking about is the ability to do business as other companies would do business if they didn't have control or interest in a manufacturer/supplier. But, they would create jobs because there would be additional revenue sources which could acquire companies that had outlets here.

The retailers were an example -- perhaps a poor example -- because what it would do-- It would take a company that would have both under the umbrella structure and prevent it from entering your State, not necessarily with an alcoholic beverage product, but under an alcoholic beverage license.

MR. FELDMAN: Just for the record, Senator -- and I'm through with my question -- for the last 16 months in New Jersey, 12 and 4, through April, the State of New Jersey is down 125,342 cases of distilled spirits, of liquor. We are suffering now on the basis that we are now selling, or the industry is now conveying to consumers in this State, 125,000 fewer cases. Now, you are implying here that there would be a further-- The reduction will continue. For example, the first four months of this year, the State was behind 57,640 cases, and all of last year it was only behind 67,000 cases. So, at this rate, we will be way up close to 200,000 cases; at least 150,000 cases by the end of the year.

What I am afraid of is, we are now going to compound a problem which is reducing the volume flowing through the licensees in New Jersey. The Study Commission is not opposed to that because one of our goals, by law, is to foster moderation and responsibility in the use and consumption of alcoholic beverages.

MR. MICEK: And I think that is a meritorious goal. I don't know how this proposal would attack that one way or the other. Certainly, if it stimulated consumption, it would be in error.

SENATOR COSTA: Commissioner Feldman is our authority. We are all very pleased to have him on this Commission.

If there are no other questions, I thank you very much for coming.

MR. JERLAT: Madam Chairman, I just have one question.

SENATOR COSTA: Commissioner Jerlat?

MR. JERLAT: In other words, what you're saying -- according to Commissioner Feldman right now-- What you're saying is, if the conglomerate comes in and starts to do business in the State of New Jersey, it would be doing business at the expense of the small licensees who are out there at the

present time.

MR. MICEK: No, I haven't said that at all.

MR. JERLAT: That is the impression I'm getting.

MR. MICEK: I'm not saying that at all.

MR. JERLAT: Well, how would the consumption of alcoholic beverages be distributed?

MR. MICEK: I don't even follow. There is nothing in this law that ties into consumption. If it does, then they are violating other laws besides this.

MR. JERLAT: What I'm saying is, the business has to come from someplace. If this tied-house law was changed, and the conglomerate went into the retail business-- When they go into the retail business, they are going to have-- If there is not going to be more alcohol consumed in New Jersey, or distributed in New Jersey, they would have to be taking it away from someone. In other words, what I'm saying is, the transfer of the distribution of alcoholic beverages would be going from the small retailer to the new retailer that would come from a conglomerate. Is that true?

MR. MICEK: No.

SENATOR COSTA: Commissioner Bromley?

MR. BROMLEY: Mr. Micek, New Jersey has some unique differences from other states. One of those was expressed in Mr. Guarnieri presentation, that New Jersey relies upon the municipality to issue, discipline, and supervise retail licenses.

MR. MICEK: Yes.

MR. BROMLEY: The concept here is called home rule. If you went to New York, where your firm is located, of course, that is a state license, and they have state liquor people who supervise things. However, in New Jersey, it is quite different.

One of the things that makes New Jersey's system work very well is the fact that there is intimate knowledge and

supervision by people, many of whom are just volunteers in New Jersey, such as mayors and municipal ABCs. They supervise and make certain that all of the laws are complied with.

One of the problems I have -- and maybe you can help me -- is to understand how local municipal people are going to interface or deal with a huge multi-national corporation, or conglomerate, where the headquarters may be in Zurich, or somewhere in the bowels of Germany, and where the individual decision that is made on when the place opens and when the place shuts-- You say there is no direction or control from above. I just don't understand how it would work.

MR. MICEK: How do you deal with existing outlets, such as when you have Wigwams, 7-Elevens, and stores such as that which are chain stores?

MR. BROMLEY: We deal with them very well. They have no licenses. All right?

MR. MICEK: That is absolutely correct.

SENATOR COSTA: Director Vassallo? I think this gentleman wants to get back to Washington, but go ahead.

DIRECTOR VASSALLO: Madam Chairman, I am going to preface my question with a comment. I have known Mr. Micek for some time, probably about three years, as someone dealing in the alcoholic beverage legal field, first with the association and then with a law firm, and I am frankly insulted that he has come to New Jersey and gotten the reception he has gotten. First, there was doubt cast on the veracity of why he came. I thought more of the licensees in this industry before today.

Now, I would like to continue with my question.

SENATOR COSTA: Director, I think it is only fair that for anyone who comes before us we should know from whence they come and what their reason is for being here.

DIRECTOR VASSALLO: He answered the question honestly and he got groans and moans from the audience which were really uncalled for, and I am apologizing for the State of New Jersey's reception to a former colleague of mine.

Mr. Micek, would you say an example of what you have been talking about is the former Pepsico/Pizza Hut situation? I'll mention to you that Pizza Huts only came into New Jersey a few years ago, where they were in many other states many years ago because of the relationship that Pepsico had with a winery?

MR. MICEK: That is correct.

DIRECTOR VASSALLO: May I also point out that most, if not all, Pizza Huts in New Jersey are dry and unlicensed. I think in a couple of places they may-- In fact, I think in a couple of places they have acquired licenses because they are controlled at the municipal level. Is that an example -- Pizza Hut not having been able to come into New Jersey because of the tied-house restriction?

MR. MICEK: That would be an example, yes.

SENATOR COSTA: Is that it? (affirmative response) All right, thank you very much. We do appreciate your being here.

MR. MICEK: Thank you.

SENATOR COSTA: The next speaker will be Ralph Pears, Area Director D.I.S.C.U.S. Is he here? (negative response) All right, may we have Mr. Jorgen Roed, President Scanticon-Princeton?

J O R G E N R O E D: Senator Costa and members of the Commission: My name is Jorgen Roed, and I am President and Chief Executive Officer of Scanticon International, Inc. and Scanticon Corporation. As you can hear already, I am not from this country, but I very much enjoy being here. I have also moved my family, that is, wife, four daughters, and dogs and cats, to the United States, to create here in this country my business visions and goals. Today I am a registered alien, and I pay my fair share of taxes to your fine country.

That is me and, as you can hear, I represent a corporation now doing business in the hotel field in the United States. I have lived in New Jersey since 1980. Since then, my

company, Scanticon International, has developed and operated the 300-room Scanticon-Princeton Executive Conference Center and Hotel, employing approximately 400 people, and located in the Princeton Forrestal Center in the heart of the Route One Corridor in Mercer and Middlesex Counties.

The visions and goals that I brought from Denmark those six years ago, supported very much by my Danish banks, were to develop the \$40 million Scanticon-Princeton into a world class conference center and hotel and, as the Scanticon flagship, to serve as the base for an expansion of Scanticon projects across the United States, all managed from our headquarters in Princeton, New Jersey.

In order to accelerate our growth and development plans, I have entered into a joint venture with Inter-Continental Hotels Corporation, which has approximately 100 deluxe hotels world-wide, and we together have formed Scanticon Corporation. That is when I acutely became aware of the State of New Jersey's tied-house statutes because my partner and parent company, Inter-Continental, was, and is, owned by a British conglomerate named Grand Metropolitan, PLC in London. Grand Met's interests, in addition to hotels, include other businesses such as milk and dairy products, exercise equipment, pet foods, health care, soft drinks, and also interests in several major brands of liquor. A few of those brands readily recognizable are J&B Scotch, Bailey's Irish Cream, and Grand Marnier. Let me add to that that the entire liquor business represents approximately 10% of Grand Met's entire revenue and sales world-wide.

According to the tied-house statute, a few years ago Scanticon could not enter the planned joint venture. Inter-Continental Hotels and I were almost at a point where we had to give up, and I started to consider going back to Denmark since I could not develop the Scanticon business from New Jersey as I had planned. Thanks to the Alcoholic Beverage

Control Division and its Director, John F. Vassallo, Jr., the issue was finally resolved and, as you are aware, an amendment to the tied-house statute became effective January 17, 1984.

As a result of that, the joint venture was finalized; however, Scanticon-Princeton, as a condition, was required not to sell any of the Grand Met brands of liquor. At that time, approximately 10%, as I mentioned, of our total alcoholic beverage sales was attributable to Grand Met brands.

I believe that we can now say, after these years, that we have a success story to tell the Commission, not only in terms of Scanticon-Princeton, but in terms of our new Scanticon projects under construction and development in Minneapolis and Denver, representing an investment in the range of \$100 million, as well as an expansion recently of Scanticon-Princeton. We owe this, to a large degree, to the perseverance of the Division of Alcoholic Beverage Control and the State of New Jersey to see that a New Jersey company had the right business climate for its growth.

In the four to five years of operation of Scanticon-Princeton under the tied-house statute auspices, the only drawback we have encountered is a clientele disappointed or confused when informed by our waiters or waitresses, upon ordering a favorite drink, "We are sorry; however, we are not able to serve that brand at Scanticon due to the New Jersey tied-house statute."

We all have our own personal favorite brands of products and services in life, and this is an area of concern for us, our inability to provide our guests with the brands of liquor they request. Of course, our guests can go to our competitors in the area and obtain the brands which Scanticon cannot sell.

Liberalization of the tied-house statute, if it is carried through, would allow Scanticon to satisfy our customers with their requested brands, rather than to offer substitutes

which may or may not be accepted by the customers. This more than any other aspect of proposed tied-house liberalization would be of assistance to us in satisfying our customers.

Secondly, although liberalization of the tied-house statute would provide us with the opportunity to optimize the sale of Grand Met brands, sales would still be dictated by market preference, as we all know.

For the first five months of 1986, Scanticon-Princeton's sale of alcoholic beverages amounted to \$650,000 in revenues against total revenues for the same five months of \$7.4 million, or 8.7% of total sales. This is down from '85, where alcoholic beverages accounted for 9.4% of total sales. We have been experiencing this trend since '84, as have most of our competitors in the State.

Based upon the above percentages of sales, types of liquor, and respective brands, the most that Grand Met brands could represent in terms of total alcoholic beverage sales at Scanticon-Princeton, if there were no restrictions at all, would be in the 15% to 20% range. This, in turn, calculates to Grand Met brands accounting for only approximately 1.3% of total revenues at Scanticon-Princeton per annum.

Therefore, I think it is easy to see that liberalization to a more reasonable range of 15% to 20%, versus the contemplated 5%, would certainly still be consistent with the original spirit of the tied-house laws in preventing a monopoly sales situation to promote one's own brands. One point three percent of total sales certainly would not be monopolistic. Also, a significant number of Grand Met brands are not even imported into the United States due to a lack of market demand.

We would be pleased to provide more detail on our sales by brands currently and/or in the future if it would be of benefit to the Commission.

We would also be pleased to offer ourselves as a test

for the next 12 months, and to report actual brand sales and impact of liberalization for further studies by the Alcoholic Beverage Control Study Commission.

In summary, Scanticon supports the steps which the Alcoholic Beverage Control Study Commission is considering which would liberalize the tied-house law's effect on business operations in New Jersey to be more in line with what I would call economic realities in today's international business world, and recommends a further liberalization so as to enhance our ability to serve the State of New Jersey and its people.

(For approximately the next two minutes of testimony many portions were inaudible and thus unable to be transcribed due to an equipment malfunction.)

That is my only testimony, not because I particularly, Madam Chairman, (inaudible) push for any advantages of what I represent, but because (inaudible) and present our story where the most significant (inaudible) and amended your very, very tight Tied-house Statute. (inaudible) opened up for more international business to grow and to develop in your fine State of New Jersey.

What I am now doing is to find out that as far as we see it, the 5% (inaudible) and, therefore, please consider if it would be possible to (inaudible) to tell our customers and guests that we are sorry, we are (inaudible) we have to say that it is due to some restrictions in the (inaudible).

Thank you.

SENATOR COSTA: Thank you very much, Mr. Roed. Questions from our Commissioners? Commissioner Bevis?

MR BEVIS: Thank you, Madam Chairman. As some of you know, I live two miles from Scanticon, and consequently (inaudible) for dinner. My wife happens to like Grand Marnier, and we can't get it. (Sentence inaudible) In terms of

representing the public, that is what I am trying to get across. Forget these conglomerates (inaudible). Let's at least allow the public to buy a given brand of liquor if that is his or her preference. (Sentence inaudible) Thank you.

SENATOR COSTA: Any other Commissioners?

MR. ROED: I have a comment to that. (inaudible) as a Dane. Then, of course, I can only welcome that (inaudible) to offer, as you probably have experienced, that is, (inaudible) liquor manufacturer in Denmark. But, having said that, (inaudible) it is not a pleasant situation to say no to a customer. (inaudible) and, of course, we cannot say it is because we (inaudible) in the State of New Jersey. (inaudible) to lift that ban a little bit, so when (inaudible) here it is.

SENATOR COSTA: Your substitution (inaudible).

MR. ROED: No, but it is close. Of course, we have to make a little sales story to get the customer to (inaudible)

SENATOR COSTA: Commissioner Sapienza has a question.

MR. SAPIENZA: If the law permitted Scanticon-Princeton to offer the products of (inaudible) Do you think that the (inaudible) or as a corporation (inaudible) this might be judged, in part, upon whether or not a substantial amount of business, or a reasonable amount of business (inaudible)

MR. ROED: No, I don't think so. (inaudible) the amounts being so small, that we in the range of \$100,000 (inaudible) total revenue for that facility in Princeton (inaudible) significant business issue at all. That is also my point (inaudible). I think we should forget about any increased business, and talk more about how we, the citizens of New Jersey, can make sure that the guests, the customers, the citizens, don't feel that there is some Big Brother dictating what they can get to drink.

MR. SAPIENZA: Let me rephrase the question. If you were permitted to sell Grand Marnier, and you as the manager of

that retail outlet, the manager of Scanticon -- I'm sure manager is not the proper term, but the person responsible for its operations -- knew that someone above you in the corporate chain was the owner of Grand Marnier, wouldn't you do everything you could to increase the sales of Grand Marnier, as opposed to the Danish substitutes which you now offer people?

MR. ROED: I hear where you are coming from because that is the natural thinking of the Commission. Would we, by allowing more, encouraging more sales directly from the manufacturer-- I understand you. In this case I will say no because Grand Met is a \$7 billion to \$8 billion conglomerate working all over the world, and liquor, as I said, is less than 10% of the entire conglomerate. So, they wouldn't even spend time on a memorandum from me saying, "We have been able to increase the sales of your brands by \$30,000 or \$40,000." It wouldn't even be a part of our reporting relationship at all. I will even say that our waiters and waitresses would have no instructions other than to say, "Yes, I will bring the drink to you, sir."

MR. SAPIENZA: Suppose -- just hypothetically -- Grand Met had no business other than being a distiller of a product. Suppose its only product was Grand Marnier. In that situation, do you think your performance, in terms of managing Scanticon, would be judged, in part, upon whether or not Scanticon was able to successfully sell Grand Marnier?

MR. ROED: If that were the case, then I should not have become the Chief Executive Officer developing more Scanticons in the magnitude of the dollar amounts I mentioned, because that is where future development lies, not in the few dollars more or less in the liquor.

MR. SAPIENZA: Thank you.

SENATOR COSTA: Commissioner Napodano?

MR. NAPODANO: I heard you say before that your greatest concern was saying no to a customer. I assume,

therefore, you would have that great concern also about saying no to a customer on a competitor's brand, assuming you were not stocking that brand, would you not?

MR. ROED: Are you saying that if we had a competitor's brand--

MR. NAPODANO: The concern I think some of the Commissioners have -- or at least I have heard others express -- is that if we were to permit you to stock your brand, you may do so at the exclusion of other brands. Is that a realistic concern?

MR. ROED: No, it is not. I think it would be absolutely wrong for a company to begin to, shall we call it label, what we want to sell, compared with what the customer would like to buy. Therefore, no policy, no procedure, would instruct any of our people to say no to a competitor's brand versus a Grand Met. That would be wrong customer service.

MR. NAPODANO: And your business is service.

MR. ROED: That is definitely correct.

MR. NAPODANO: And, if you didn't serve your customers, you would not have grown in the manner you have grown so far, nor would you have any vision for the future, would you?

MR. ROED: Thank you for having made my policy so clear. (laughter)

MR. NAPODANO: I see your situation, sir, as somewhat different from the overall--

MR. ROED: Yes?

MR. NAPODANO: --proposal we have before us. I think your situation is more akin to our having permitted you to come into this State to do business, and then deciding to tie one of your hands behind your back. I am not convinced that we are being fair to you on that score.

MR. ROED: I would also like to add to that that I am still going to think it is a great country to do business in,

especially, of course, since the State of New Jersey invited me to come over, and since we finally resolved the main problem. So, it is not a major concern. It is more for the Commission to reevaluate that round number 5% because that has already put some restrictions on us.

In your final Commission work then, please have my comments in your work papers because then probably we can combine both sides of the table. That is what you are here for, to find the right balance, and also to consider the right balance to satisfy the end consumer, that is, you and me as guests of a retail outlet.

SENATOR COSTA: Are there any other questions for Mr. Roed? (no response) I appreciate your being here, Mr. Roed. I have just one thing I would like to throw out. I'm sure that as you put it is just as it is, that the business we would like to see you operate we know you operate honestly, etc. But, in changing this law, we would be concerned about opening the floodgates for so many others. I think this is a great concern. I just wanted to make that comment.

MR. ROED: Chairman Costa, in my own country we have the same thing, but not as restrictive as you have it now. I don't want to go into any lengthy discussion about it, but I do appreciate, and I do respect, that there have to be these kinds of laws; there have to be these kinds of restrictions in our society. But, some of what we experience today is a reflection of, may I call it the old century, not today, and not the future. That is what we are all working on now, you, the Commission; that is, how should the statute be written to serve the future business environment?

So, I am the first one to support what you have, and furthermore, also, I can see when we look around in the United States, and at your sister states, that they have, of course, all the tied-house statutes, but some of them are more liberal than what you have. I would like to see the State of New

Jersey not looked upon as a more difficult State to be in than some of your sister states.

Thank you.

SENATOR COSTA: Just one more question. Commissioner Feldman?

MR. FELDMAN: As you can understand from conversations with the members of the Commission, they are very sympathetic -- as Ross indicated to you -- about the problem you have with Grand Marnier. When we look at the problem, though, we have to include J&B and Bailey's Irish. Those are two of the leaders in their categories. The question is, can you then take one brand and say, "But you can sell Grand Marnier because it is unique by itself, whereas there are other Scotches and there are other Irish creams"? Do you have a suggestion on that?

MR. ROED: Thank you for your question because your point is, how could we get closer to being, may I call it constructive, toward the point, that is, to serve the guest when he or she has a special brand they would like to see on their table?

There is no doubt that Grand Marnier is known world-wide. I would say yes to you, we couldn't identify a few brands -- Grand Marnier definitely being one of them -- and then say your ceiling was 5%, or else you would end up being more liberal in terms of one or two or three world-wide known brands. I would support that.

MR. FELDMAN: Thank you.

SENATOR COSTA: Thank you very much, Mr. Roed. I would like to call on Robert Wilenski, New Jersey Licensed Beverage Association.

ROBERT WILENSKI: Madam Chairman, Commissioners: My name is Robert Wilenski. I am an attorney and I represent the New Jersey Licensed Beverage Association, which Association represents the retail consumption licensees in the State of New Jersey.

Alongside of me today is the President of our State Association, Mr. Dominic Bossone.

My remarks will be rather brief because I know this has been a long session and there is still a long way to go. On behalf of the Association, we take the position that we are strongly against any amendment to the tied-house statute. The restriction was needed when it was promulgated, and we feel with the corporate sophistication, the intricacies of corporate life today, that it is even more needed than it was at the time it was promulgated.

We feel, also, that there has been no demonstrated need for a change, a need that would override the public policy which initially created the tied-house statute. I will address our concern particularly to Proposal #5, which permits a corporation owning an interest in a brewery or a distillery to also own a retail liquor license. This gives us great concern because it purportedly sets up safeguards.

The first safeguard says that there will not be any influence. Now, as a practical matter, how can this be prevented? I don't think it can be prevented. There is no way you can prevent the holding company from, by implication or innuendo, getting the word down to the retailer that one brand is to be preferred over another. There is just no practical way it can be done.

What is to prevent the head of a holding company from letting it be known that he favors "X" brand Scotch, and he doesn't know why the retail subsidiary would be carrying "Y" brand Scotch? How would you ever enforce that? I don't think there is any way.

I represent a small corporation. This is not a licensee corporation. I represent a small corporation that was taken over by a holding company. At the meetings, if an important decision is to be made, word somehow gets down to the local board of directors, who are supposedly totally severed

from the holding company directorate, that the New York office, or whatever it might be, would favor this, or would like this to be done. The word gets down, and I don't see any practical way that you could prevent that. That is just human nature; it is going to be done, and it is done.

Another concern we have is on the question of exceeding 5% of the total gross derived from the sale of alcoholic beverages. Again, I don't see how that can be effectively controlled, or how you are going to check it. It brings back the ghost of the infamous Green Sheets. Are records going to be kept to check on this, to make sure that this is being adhered to? If it is going to bring back the Green Sheets, or some reporting requirements like that, I don't feel that the Department has enough enforcement people today to enforce these types of exceptions, to see that they are being carried out.

In the undisclosed interest field today, the Department takes a long while, of necessity, to check just on a corner tavern that may have an undisclosed interest. Some of these cases take a year or more to investigate. And, if it takes that long for a small licensee, how long is it going to take for a conglomerate or a holding company to be investigated if there is a suspicion that the law is being violated?

So, I think that despite the fact that there are these exceptions in here-- I don't see how they can be effectively enforced today. Also, I would suggest, or point out, that we don't feel there is any need, or necessity, for this change because apparently there is a procedure which was availed of itself by an applicant, reflected in Bulletin 2423, where on a specific set of facts, and in a specific situation, the Director was able to make a determination that tied-house would not bar the acquisition of an interest in a license at that point. We would suggest that there is no need, therefore, to change the legislation, when with a specific set of facts, with

specific information, where the Director has all the information made available to him, he can make a determination.

In conclusion all I would say is, our Association is very seldom unanimous on any position, but on this particular issue-- This is one of the few instances where we are incomplete-- We unanimously agree that we strongly oppose these proposed changes to the tied-house statute.

Thank you.

MR. BROMLEY: Thank you. Mr. Wilenski, does Mr. Bossone wish to say anything?

D O M I N I C   B O S S O N E: No, I have no statement.

MR. BROMLEY: Madam Chairman having returned, I will turn the hearing back over to her.

SENATOR COSTA: Thank you. Do any Commissioners wish to question the witness? (no response) Thank you very much. We appreciate your being here.

I would like to call Mr. William Schreiber of the law firm of Schreiber, MacKnight, and Simmons.

DIRECTOR VASSALLO: Madam Chairman, he spoke to me earlier in the week and indicated he would try to be here, but if he weren't, he was going to submit written comment. So, I assume we can expect that.

SENATOR COSTA: Thank you. Mr. Paul Samperi, Samperi Restaurant Services.

P A U L   S A M P E R I: Madam Chairman, I have a prepared statement I would like to read. I would also like to make a few comments at the end.

Madam Chairman, members of the Commission: My name is Paul Samperi. I represent a statewide food and beverage trade organization which aids, counsels, and promotes restaurants, taverns, and motels in New Jersey.

A few years back, as you all know, an exception was made to the tied-house statute permitting ownership of hotels by producers or wholesalers of alcohol beverages, either

directly or indirectly. Its main provision forbade the sale of their own products in the hotel or restaurant they owned or in which they had an interest. Now a change is being sought to allow these establishments which have an interest in any brewery, retifying, or blending plant, or wholesale operation, to sell their own product if it does not exceed 5% of the total alcoholic beverage product purchased by the hotel or related entity.

In September, 1983, a bill by Assemblyman Joseph Bocchini, A-3667, sought to amend the alcohol beverage statute N.J.S.A. 33:1-43, which many people have commented on this morning. The latter bill would have allowed 10% of the product to be sold. We opposed that bill, and we feel the proposed change is detrimental also.

SRS feels that allowing this change will encourage other manufacturers or producers of alcoholic spirits to enter the hotel and restaurant field. A separation of wholesalers and retailers has been a part of our code -- State code -- almost since the inception of the ABC back in the early '30s. It was created to protect legitimate retail businesses from infiltration by bad elements of the Prohibition era. The restriction was recognized as a necessary one. Today, legitimate retail businesses need protection from complicated international corporate setups whose ownerships are not always known. We feel the claim by proponents of this change that it is needed to attract large corporations to New Jersey is not a valid enough reason to institute a 5% provision.

Madam Chairman, the main concern of most of our clients, the hotels and the restaurants, is that other corporations with big corporate setups, foreign or domestic, will be coming in and giving a lot of competition. They feel -- as one of the Commissioners said -- if they can come in and sell their own liquor, why can't the retailer, in turn, go out and become a wholesaler? That is one of their legitimate concerns.

Now, I can understand the limitations that have been put on corporations such as Scanticon. It is a very fine corporation; we welcome their business in New Jersey. We know they are going to open other places throughout the nation and be a credit to the industry. But, we did put limitations on them before. We allowed them to come into the State. We said, "Yes, we will change our rules. You can come in, but you can't sell your own product." They realized this and they knew this, and yet now they are coming forward and saying, "Well, we are not doing what we should be doing, selling a popular product."

Grand Marnier -- and I had a restaurant for many years -- is a very fine product. Maybe I am going to go out on a limb and be criticized by a lot of my restaurants and a lot of the hotels which belong to my group, but maybe if an exception can be made where they can sell maybe one product, put a limitation on it, and forget the 5%-- Because I don't think that is going to work at all. This is something to consider. If there are other corporations that have a popular product, give them the same leeway to sell one of their products, but restrict it to the organizations of the hotels and corporations that are in New Jersey, so that we don't attract others coming in and saying, "Well, we don't mind the 5%. We don't mind coming in so long as we can sell one of our products."

That is just a suggestion. As I said, I may get a lot of flack from my restaurants and hotels on that. But, forget the limitation if you do decide on that because it is going to be very difficult to check on. At least that is what I think, Mr. Vassallo.

That's it. Are there any questions? Thank you, Madam Chairman, for allowing me to testify.

SENATOR COSTA: Thank you very much for coming. Are there any questions from the Commissioners? Director Vassallo?

DIRECTOR VASSALLO: Mr. Samperi, I didn't ask the prior witness this question, but I will ask you since you both

alluded to it. What makes you think that we would have difficulty in checking that? It is a simple matter of looking at invoices and seeing the amount of a product that is purchased and sold.

MR. SAMPERI: If you have the manpower and it can be done, but I know there is a shortage in New Jersey in a lot of the agencies.

DIRECTOR VASSALLO: We can make them give us the information. It is very simple.

MR. SAMPERI: And how will it be done, on a yearly basis?

DIRECTOR VASSALLO: It can be done on a yearly basis; it can be done on a monthly basis; it can be done on a weekly basis, however we felt it necessary. That is the simplest part of it.

MR. SAMPERI: I have no objection to that point. If you feel you can police it that way, fine. We just don't like to see the 5% come in. But, we would go for allowing one of their products to be sold.

SENATOR COSTA: That isn't what the Director just said.

DIRECTOR VASSALLO: Wouldn't that be discriminatory, though? What if a company only had one product?

MR. SAMPERI: So long as they sold a competing product and didn't say they were restricting any particular product. Grand Marnier has competitors.

DIRECTOR VASSALLO: That is where the problem is. What is a competing product? It's a matter of very subjective definition. There is no objective definition, in most cases, as to what is a competing product.

MR. SAMPERI: I know there are several that come close to Grand Marnier and are considered competing products.

MR. BEVIS: My wife doesn't think so, sir. (laughter)

DIRECTOR VASSALLO: That is exactly what I meant. It's very subjective.

MR. SAMPERI: What I'm saying is, don't allow Grand Marnier to come in and then say that "X" brand, which is similar to Grand Marnier, cannot be sold anymore in a restaurant or a hotel.

DIRECTOR VASSALLO: There is nothing in that to say that. In fact, if that happened, that might verge on the Federal violation. That may get them into the Federal problem.

SENATOR COSTA: Are there any other questions from the Commissioners? (no response) Thank you, Mr. Samperi.

MR. SAMPERI: Thank you, Madam Chairman.

SENATOR COSTA: Are there any comments from the Commissioners? Mr. Bevis?

MR. BEVIS: I think what we are seeing here today is the problem that regulation creates. Once you start to regulate, you continue to regulate, only it just gets tighter. If we take some of the examples, for instance, that Commissioner Sapienza gave us, we make the net so small that nobody can swim through it. That is not good public policy. We realize we are dealing with an industry that has to be regulated. My problem is that I don't think that what we are looking at is necessarily in the best interest of the consuming public.

I remind all of us, once again, they are the ones who pay the taxes, and they are the ones who support this industry. Thank you.

SENATOR COSTA: Any other comments from the Commissioners? Director Vassallo.

DIRECTOR VASSALLO: I would hope that the Commission would look at it that I made this proposal based on four years of experience and, certainly, my job is to promote the public interest. That is my primary job. I don't have anybody in mind that this would benefit, except I know it would help Scanticon, which has been one of the finest additions we have made to the State. Through the concurrence of the Legislature

a couple of years ago, we allowed Scanticon International to remain in New Jersey. If we had not done that, they had no choice but to leave.

I have only proposed this because I have had overtures made to me by companies which would like to move their corporate offices out of one of our sister states which is overly restrictive. They are looking for a state which will allow it. I proposed it much in the same sense that we have allowed hotels and motels to do it, to come into it where they might have-- The example hasn't been used, although I alluded to it with that Pepsico situation. Pepsi Cola, at that time, had a winery interest, a very small winery interest, but it kept Pizza Huts from coming into New Jersey because they wanted to come in and try to acquire retail licenses.

We also have to remember that retail licenses don't come automatically to anybody coming into the State. Practically speaking, the only way to get one is to buy an existing license, or to populate a town, in most cases in southern or northwestern New Jersey, to the point where it can issue another license. That is a virtual impossibility, and certainly nobody is going to come in to do that. They have to buy an existing license. It is not going to increase an outlet if another retailer, retail chain, retail group, or what have you, a franchise -- and in many cases these large ones are franchises-- They are owned by local people. They are Mom & Pop businesses that happen to operate under a franchise contract.

I only felt that we should be in the forefront, be the first to do it, so that when these companies look to relocate corporate offices into another state, they will look to New Jersey; they won't look elsewhere. It will by no means increase competition to retailers, or hurt retailers, although retailers, emotionally, will say that it will. There is no way it will. To allow Scanticon, as an example, to sell the

products of Grand Metropolitan-- You know, I talked to them when we had it originally, when the proposals originally-- Grand Metropolitan Inter-Continental Hotels really doesn't care about any sales being made. They don't care that they make sales. They don't make them directly. They are made through wholesale chains. The products would be bought through wholesalers. They wouldn't have any idea whether sales were being made there or not. It's purely, as Mr. Bevis has pointed out, for the convenience of the customer, the citizen of this State who we are trying to serve. There is no good reason in 1986 -- and that is what this Commission is for -- not to update the laws to get them out of being archaic. There is no good reason to continue such restrictions.

Now, I proposed it with 5%. The 5% is not a sacred figure; 10%, 15%, 20%, the whole idea is so that they can't be an exclusive outlet in case somebody would want to be. That is why you put a figure on it. You police it by having a sense of what they are doing. If you see that they are pushing their product exclusively, then you do the audits. You don't have to do them otherwise.

We have so many other restrictions, similar type laws. We don't go in and count unless we have to. I just urge you, as my fellow Commissioners, to recommend to the Legislature that we be in the forefront and adopt these proposals. It will give us a chance to attract even better and more business to our State without hurting anyone who is here. There is nothing in here that can, in any way, hurt anyone, and there are so many safeguards built into it that you can fall back on if necessary, that it couldn't possibly hurt anyone.

Thank you, Madam Chairman.

SENATOR COSTA: Thank you, Director Vassallo. Once again, before I close the public hearing, is there anyone else who wishes to say anything? (no response)

If not, I want to thank all of those who came here to

testify. I would also very much like to thank those of you in the audience who came to hear what was said at this public hearing. We appreciate your taking the time out of your, I know, very busy days to be here with us.

This Commission will meet next month. We will get a date when everyone can make it, and we will vote to see what this Commission decides to recommend to the Legislature and to the Attorney General.

Once again, thank you one and all for coming.

(HEARING CONCLUDED)

## **APPENDIX**



**WINE & LIQUOR SALESMEN OF THE STATE OF NEW JERSEY  
LOCAL 19**

Affiliated with Distillery, Wine and Allied Workers' International Union AFL-CIO/CLC  
1767 MORRIS AVENUE, UNION, NEW JERSEY 07083  
Telephone (201) 964-3050

EMIL VERDONI  
President

KENNETH R. SMITH  
Secretary-Treasurer



June 9, 1986

Sen. Catherine Costa  
Alcoholic Beverage Control Study Commission  
Room 457B, State House Annex,  
CN-068,  
Trenton, New Jersey 08625

Dear Sen. Costa:

**Public Hearings on "Tied House" Law**

I have received an announcement indicating that on Friday, June 13, 1986, the Study Commission will hold a public hearing on New Jersey's "tied house" statute. The announcement states that those unable to attend may forward written testimony to the Commission at their address. Please accept this letter in lieu of my formal appearance.

I am the President of Local No. 19, affiliated with the AFL-CIO, which has 900 members throughout the State, all are salespersons employed by licensed Wine and Spirit Wholesalers. I would estimate that there are an additional 150 persons who are salespersons for Wholesalers, but not members of our Union. Irrespective of their Union affiliation, all salespersons have a strong personal interest in maintaining State statutes which separate and insulate the three levels of distribution from each other. This separation has been a cornerstone of the alcoholic beverage industry on a National and State level for a long period of time.

Prior to prohibition, suppliers commonly owned retail outlets and used them to promote their own brands. The number of such outlets grew and suppliers used various devices to encourage sales of their products. Most consumption during this time was on-premise, and the suppliers efforts to stimulate demand were readily apparent.

Supplier ownership of retail stores was cited as a major contributor to the evils which led to prohibition. In addition, a number of other commercial practices which bound retail outlets to suppliers were noted such as credit extension, the furnishing of substantial equipment, payment of rebates, etc.

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When prohibition was repealed by the 21st Amendment (1935), States were given virtually unlimited power over the distribution and sale of beverages within their borders. Most States, including New Jersey, opted to place alcoholic beverages in the private sector and established a regulatory framework to protect its citizens against the evils which preceded prohibition. These States are commonly called "license States". In addition, Congress enacted the Federal Alcohol Administration Act (FAA) which, among other things, prohibited suppliers from having any interest in retail outlets and from engaging in the types of commercial practices which were associated with the "tied House" that occurred prior to prohibition.

All of the "license" States adopted provisions prohibiting suppliers and Wholesalers from having ownership interests in retail outlets and vice versa. Many enacted laws similar to those at the Federal level regarding commercial practices in areas such as credit, rebates, gifts, etc. The result became known as the three-tier system in which the commercial entities of suppliers, Wholesalers and retailers are separated with each "tier" independent of the other. In short, the license States established a framework of commercial regulation designed to insulate the retailer from influence of the supplier, make enforcement of State laws easier and assure full voluntary payment of State taxes. These concerns are still paramount today.

In 1986, more than any other time save the disastrous era of prohibition, our industry is at risk. Powerful temperance movements are operative in many sections of the United States, and their influence in Congress is readily apparent. Many States, including New Jersey, have adopted tough laws governing who may consume alcoholic beverages (21 year drinking age) and vigorously enforce other laws such as the drunk driving statutes. Harsh penalties for violations are common. Consumers have had their health consciousness heightened by medical and scientific reports dealing with the impact of intemperate alcohol consumption. Finally, tax reform and deficit reduction are certain to add an additional Federal tax burden to the already heavy load that beverage alcohol products must bear. The result is that consumption of beverage alcohol products in general and distilled spirits in particular has been steadily declining over the past years and that pattern will continue for the foreseeable future.

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With the advent of reduced consumption, it is only natural that competition among suppliers, Wholesalers and retailers will become more intense. Each supplier, hoping to keep the share of the market that he has today, will increase his effort to take a portion of his competitor's share in whatever way possible. It is extremely important that statutes which create a buffer between independently-owned retailers and suppliers/Wholesalers be maintained.

My members go about their business each day in a marketplace that is beset with pressure to move merchandise. Existing laws require that Wholesalers treat all retail customers in an evenhanded, non-discriminatory fashion. Similarly, the State laws require that suppliers not discriminate among Wholesalers. Despite these good laws and relatively efficient enforcement, many small retailers are in desperate financial situations. Clearly, many would be easy targets for suppliers who wish to carve out retail outlets for themselves and encourage consumption of their brands to the exclusion of their competitors. In addition, large more prosperous retailers would like to have the opportunity to control a Wholesaler or supplier in order to gain a further advantage over other retailers in an already fiercely competitive situation.

I was extremely satisfied to see the Legislature adopt Public Law 1985, Chapter 258, which is a restatement of the public policy and legislative purpose for the control of alcoholic beverages. That statute notes that is the public policy of this State to:

1. Strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.
2. Foster moderation and responsibility in the use and consumption of alcoholic beverages.
3. Protect the collection of State taxes imposed upon alcoholic beverages.
4. Protect the interest of consumers against fraud and misleading practices in the sale of alcoholic beverages.
5. Protect against the infiltration of persons with criminal records, etc.
6. Provide a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition.

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7. Maintain trade stability.
8. Maintain a three-tier (manufacturer, wholesaler, retailer) distribution system.
9. Maintain primary municipal control over the retailing of alcoholic beverages.
10. Prohibit discrimination in the sale of alcoholic beverages to retail licensees.

All these principals would be severely undermined if the State permitted cross-ownership between supplier/wholesaler entities and retail licensees. In addition, the jobs and livelihood of my members would be directly affected. We strongly urge you to maintain N.J.S.A. 33:1-43, N.J.S.A. 33:1-26 and N.J.A.C. 13:2-23.25. Anything else would be adverse to the public's interest and to the well being of a significant segment of this State's labor force.

Very truly yours,

WINE & LIQUOR SALESMEN OF N.J.  
LOCAL 19

Emil Verdoni  
President

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