

**TESTIMONY OF JOHN DILORENZO, JR.  
ON BEHALF OF GROCERY OUTLET INC.  
BEFORE THE SENATE COMMITTEE ON BUSINESS,  
TRANSPORTATION AND ECONOMIC DEVELOPMENT  
IN SUPPORT OF S.B. 296**

April 16, 2013

Good Afternoon, Mr. Chairman and Members of the Committee. My name is John DiLorenzo. I am a partner at the law firm of Davis Wright Tremaine and am appearing here today in support of S.B. 296 on behalf of my client, Grocery Outlet, Inc.

I began my representation of Grocery Outlet in December 2007 when the Oregon Liquor Control Commission made an about-face of a 21-year written policy and informed my client that it could no longer receive shipments of wine from distributors at its own warehouse in Clackamas County and reship the wine to the various Grocery Outlet stores it owned throughout the State. That model, which had been approved by the OLCC since 1986, has been responsible for much of the growth of Grocery Outlet from a very few stores to 36 throughout the State of Oregon. Only after the intervention of a Circuit Court and a formal injunction against the Oregon Liquor Control Commission have we have been able to continue our business in this state. Our stores are located near every major Oregon town and serve over 500,000 Oregonians per month, especially those Oregonians who are in need of food at very inexpensive prices.

For more than 25 years, Grocery Outlet has used its Clackamas facility to receive and store wine.

In December of 2007, at the urging of the Beer and Wine Distributors, the OLCC disclaimed its 1986 policy and informed us that the practice of central warehousing would no longer be permitted. When all extensions ran out, we took the OLCC to court. On July 25, 2008, Judge Steven Maurer of the Clackamas County Circuit Court issued an injunction expressly prohibiting OLCC from taking any adverse action against Grocery Outlet based on its new position concerning central warehousing. Following the injunction, administrative proceedings commenced at the Commission. On October 20, 2009, Administrative Law Judge Alison Webster issued a 16-page opinion and proposed order in favor of Grocery Outlet and in support of central warehousing. However, at its April 2010 meeting the Liquor Commission, by a 3-2 vote, voted to overturn Judge Webster's decision and issued a final order against Grocery Outlet. On June 17, 2010, while still protected by the injunction, Grocery Outlet filed its appeal in the Court of Appeals.

On July 25, 2012, the Oregon Court of Appeals affirmed the decision of the Liquor Commission. Its analysis was driven by ORS 471.405(1) which provides that "[n]o licensee shall sell or offer to sell any alcoholic beverage in the manner, or to a person, other than the license permits the licensee to sell." Because it deemed that section to be "prohibition on the sale of alcoholic beverages", the

court concluded that Grocery Outlet could not undertake activities like storage or shipping wine from one store to another unless the O License specifically allowed them to do so. Because “off-premises storage” was not one of the O License privileges, the court concluded that Grocery Outlet could not store wine at any location where it did not intend to sell the wine.

This means that once wine is delivered to a licensed premises by a distributor or the holder of a direct distribution permit, the wine may not leave a store until such time as it is sold to customers.

This bill, which is identical to SB 1501 (which this committee approved unanimously in 2012), would allow retail licensees to store and ship their own wine from one of their own licensed premises to another provided the licensee owns or leases the premises. It creates a central warehouse license which would permit a central warehouse to receive, store and distribute wine which it receives from a wholesaler or a winery/manufacturer that holds a direct distribution permit. It provides for the payment of privilege taxes at a central warehouse and allows the central warehouse to ship wine it receives to a licensed premises owned or leased by the holder of the central warehouse license or to a member of a cooperative that holds a central warehouse license. The printed bill allows cooperatives like United Grocers to establish a central warehouse for the benefit of its members under

certain conditions and creates a license fee and a bond for the central warehouse license.

This committee recognized during the 2012 legislative session that there are no public policy reasons why retailers should not be able to utilize central warehouses for their own inventory to keep prices affordable to the consuming public.

The distributors argued at that time that the legislature should not weigh in on this controversy because the matter was in litigation. Well, now the litigation is over and the courts have determined what these very confusing statutes mean. Failure to act by the legislature will retain these antiquated rules which do not permit retailers from even moving product from one of their own stores to another. Inaction by the legislature will retain a system which is protectionist and which guarantees that one category of businesses will always make profits at the expense of consumers. The OLCC has admitted in its fiscal report on earlier versions of this bill that retailers (and therefore consumers) could realize substantial savings by eliminating costs which are otherwise embedded by virtue of the current statutory scheme.

And so now, the question is clearly before you. Should the status quo be the law or should retailers be permitted to centrally warehouse their own product and ship product between their own stores?

Grocery Outlet, for one, has been reliant upon the central warehousing model for over 25 years. The former director of the OLCC admitted to your interim committee, in response to a question posed by Chair Beyer, that over those 25 years Grocery Outlet has engaged in this practice without incident. In fact, in his injunction, restraining the OLCC from interfering with Grocery Outlet's operation, Judge Stephen Maurer said "[t]he OLCC has shown no tangible harm that would flow to them or to the public if the current system of over 20 years existence is allowed to remain in place while this controversy proceeds to final determination."

Although this bill means a great deal to consumers, it means even more to those who work at Grocery Outlet and the low income customers they serve.

Grocery Outlet currently sustains and supports over 1,000 jobs and it is only Judge Maurer's injunction that has preserved those 1,000+ jobs up until recently. If the Distributors ultimately get their way, many of those jobs will go away. At least 45 will immediately be lost at the Clackamas Central Warehouse and others will be lost at stores which are reliant for their economics on bargain hunters who search for the variety made possible by the current wine distribution model. Many of you know that Grocery Outlet is interested in expanding its operations in Oregon and in many of your districts. The consumer need for lower priced products is certainly present in many parts of our state. Our planned expansion of

twenty more stores in Oregon would create an additional 600 jobs. Without Senate Bill 296 those plans must be substantially curtailed. However, if this bill is enacted, your actions will not only secure the current 1,000+ jobs, but will provide the security and predictability of fostering expansion and creation of 600 more jobs.

Mr. Chairman and Members, thank you for your time and attention given to this matter. I have asked Mr. Mike Luna to say a few words. Mike and his wife Kathryn operate our new store on SE Flavel Street in Portland. This store, like many Grocery Outlet stores, is located in a “food desert”, and is the only option that community has for fresh produce and groceries. No other full-service grocer will locate there. Before Grocery Outlet located on Flavel, it was less expensive to visit a fast food restaurant than to take mass transit to purchase groceries at the nearest store. I think you will be impressed with his story. I urge that you favorably consider Senate Bill 296 and move it to the Ways and Means Committee with a do-pass recommendation. I am available to answer any questions you may have following his presentation.