

**DISTILLED  
SPIRITS  
COUNCIL  
OF THE  
UNITED  
STATES**

Testimony Provided by David E. Wojnar  
The Distilled Spirits Council of the U.S.  
Senate Bill 1287  
Pennsylvania Senate Law and Justice Committee  
January 24, 2012

Chairman Pippy and members of the committee, good morning my name is David Wojnar and I serve as the Vice President of State Government Relations for the Distilled Spirits Council, a national trade association representing the makers and marketers of distilled spirits sold in the United States. Thank you for giving me the opportunity to speak on SB 1287. First, regarding provisions pertaining to personnel issues, we support the Pennsylvania Liquor Control Board's effort to modernize their administrative practices and their attempt to hire the best and brightest. We applaud the PLCB's recognition of their limitations and the antiquated procedures under which they operate and we are encouraged that they are trying to take steps to improve their system.

While we applaud the PLCB's attempt to modernize, we have grave concerns about the language contained in the bill which would provide the PLCB with unfettered and unchecked authority over agency initiated pricing, mark-ups and fees. While we have had informal discussions with the PLCB, we have yet to hear a formal strategic plan and explanation of how they intend to use this authority if it is granted. The issue of pricing is very complex and detailed oriented. Prior to deciding on a price point on a particular brand, suppliers go through a very detailed and sophisticated analysis of what the market will accept and a stable control state pricing environment is part of that equation. The language contained in the bill encourages vagueness rather than certainty and does not guarantee industry input.

In addition to concerns about the pricing legislation there are still many unresolved issues pertaining to the PLCB and decisions they have made that impact pricing. For instance, last April the Wine Institute and the Distilled Spirits Council addressed the PLCB with serious concerns about a plan to convert the Logistics, Transportation and Merchandizing Fee (LTMF) to a percentage fee on all spirits and wine bottles. Prior to the installation of now Chairman Skip Brion, the previous Board moved forward with the plan despite economic analysis and policy input from industry suppliers that showed the PLCB's handling fees to be excessive when compared to similar costs in open states. We were disappointed to recently learn that the PLCB is now taking first steps toward implementing this LTMF increase. In our opinion the need to increase the LTMF, or the bottle handling fee, has not been adequately justified by the Board or the staff other than to say "it hasn't been increased since 1993." The fact remains that for a typical 750 ml bottle of distilled spirits, the \$1.20 fee previously assessed compares very poorly to the \$.40 per bottle cost incurred by open state wholesalers. The same is true for a 750 ml bottle of wine with a \$1.30 handling fee under previous LTMF rates. This fact leads to one of two conclusions: a) the LTMF is actually a markup / tax more than it is a handling fee; or b) there are inefficiencies in the state's wholesaling functions that should be addressed before the need for higher fees is considered.



While the prior LTMF rate structure was somewhat proportionate to real handling costs – rates on larger bottles, for example, were higher than rates for smaller bottles – the new structure will change the flat per-bottle fee into an escalating percentage fee over time. The new LTMF rate on a super premium bottle will be substantially higher than the rate on a value brand despite the fact they are the same size, and the true cost to handle the product is also the same. Furthermore, the new proposed system of variable LTMF rates is certain to result in confusion on the part of both the PLCB and suppliers. The PLCB has thousands of different brands and will now have to maintain thousands of different LTMF rates.

As you well know, the state already has a 30% markup, an 18% Johnstown Flood tax and a 6% sales tax on all wine and spirits – each one is an ad valorem tax that raises more money as prices go up. Once again I would like to reiterate that when private sector suppliers raise their prices, it is done on a careful calculation that any lost sales will be more than offset by increased revenues. This logic and approach also benefits the state treasury. The PLCB's LTMF policy change, however, strikes us essentially as a new ad valorem tax on wine and spirits, disguised as a handling fee. This is an inappropriate action, in our view.

At this time the PLCB is now preparing to implement a bailment system in which wine and spirits suppliers will continue to hold title to their products and will be responsible for inventory management until their goods have left the state warehouse. Our understanding is the state will reap substantial cost savings from this arrangement while our companies bear the additional costs. If indeed there are savings to the state, there should be no need to increase the LTMF. In fact, we would strongly argue that the LTMF should be reduced if not rescinded. If there are no savings, then we question the rationale for moving to bailment.

Mr. Chairman, we appreciate your willingness to listen to our concerns regarding the LTMF and language contained in this bill, but at this time we cannot support language that looks to broaden the PLCB's authority over PLCB initiated pricing. Additionally, although it is not being heard today I want to register our support for legislation that would increase the PLCB's ability to open on Sundays. In closing we are happy to work with you and the PLCB in developing a marketplace that suits the needs of the Commonwealth of Pennsylvania. Thank you again for your attention.