



Testimony of MBDA

November 16, 2016

The Malt Beverage Distributors Association appreciates the opportunity to submit testimony. With the enactment of HB 1196, we believe the General Assembly has served the consumer well by creating an ultimate outlet for total beer – a business whose livelihood depends upon effectively and efficiently marketing malt or brewed beverages while maintaining the kind of control that all Pennsylvania taxpayers expect. We are important to everyone in Pennsylvania:

If we lose our license, we lose our livelihood.

If we lose our status as the best place in our local market to buy malt or brewed beverages, we lose our livelihood.

If stores that sell thousands of other products, or enjoy two-thirds of their sales and the bulk of their profits selling motor fuel, manage to engulf our markets, we lose our livelihood.

Every day we are reminded of an ancient proverb, “nothing succeeds like success.” You have delivered a challenge to us and we gladly accept.

For 1,200 families there is no choice – we must succeed.

Here are some facts about our business and the niche market we serve:

- We are limited to one license per person.
- We are limited to one location per license.
- We are limited in the products we sell.
- Now, thanks to your actions just a few weeks ago and Governor Wolf’s signature, we are no longer limited in the packages of beer that we sell.
- Now, for the first time, consumers will decide the packages that distributors carry.
- Our competitors always have been and still are – yes – other distributors. Consumers recognize our value, service, variety and selection. Thus about 75% of the sales of beer for off-premises consumption are made by distributors.
- High volume stores such as ours specializing in malt or brewed beverages are a real value for consumers and absolutely essential for those who want to enjoy price, variety and selection. This is easily explained by examining the business model of Costco, which does not provide any real consumer selection. It sells the 20% of the products that create 80% of the sales; thus each of its stores limits consumer choice in the types of products, the brands of products, the packaging and quantities of products. This is sometimes called Pareto’s Law or the 80/20 rule. However, better unit prices come at a cost to consumers -- it severely limits selection and a requirement to buy large quantities – an economic fact that has far different ramification when selling bottled water instead of our product, beer.
- The competition in the market that was once limited to the so-called “six pack” shop reduced our sales and thus impacted on our ability to cover fixed costs and invest in inventory – consumers call it selection. More stores competing in this arena, particularly those who already have a steady flow of foot traffic buying either groceries or motor fuel, have an even more devastating effect on our ability to properly serve the marketplace.

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- Floor debate and published comments by a restaurant lobby group made it clear that your recent changes will not impact on the food service industry, only on the “six pack shop” which is truly an abrogation of the General Assembly’s original plan for distribution. Off premises sales were never intended to be the focus of an R, E or H license.

Pennsylvania exited prohibition by establishing what our Supreme Court has recognized as niche markets, each of which enjoys a somewhat different definition in the Liquor Code:

- The food service licensee is allowed to serve all alcoholic beverages for on premises consumption, without limit, except they cannot sell to minors or those who are visibly intoxicated.
- Distributors originally were allowed to sell in quantities of 288 ounces (cases) which paralleled the pre-Prohibition rule that limited them to packages containing not less than 12 pints.
- State stores were established to sell wine and spirits in any quantity but only for off-premises consumption.
- Taverns were allowed to sell a single six pack to go – the rationale being to limit “one for the road”.

During Prohibition the number of vehicle registrations rose from about 6 to 20 million. DUI had already become a priority.

Since then, changes in the Liquor Code have been incremental:

- 1949 – Two six pack rule.
- 1960 – Sunday sales.
- 1980 – Allowing minors to frequent a licensed premises with “proper supervision”.
- 1982 – Pizza Hut rule eliminating “proper supervision” if 70% of sales for food.
- 1987 – Beer to go for restaurants increased to 192 ounces.
- 1996 – Expansion of Sunday sales by reducing the food requirement threshold.
- 1998 – Municipal Transfers authorized.
- 2002 – “Bar seats” allowed to meet the seating requirement.
- 2003 – Bars may sell a “partially consumed” bottle of wine to go.
- 2010 – The LCB interpreted the Liquor Code to allow grocery stores, which would not meet the strict definition of a “restaurant” under the law by allowing them to acquire and use a restaurant liquor license using the board-created fiction of an “interior connection”, a concept developed for bowling alleys. The Supreme Court permitted this even though it was a momentous transformation which impacted on the legally recognized “niche market” of distributors.

The question at the conclusion of the 2015-2016 Legislative session is what changes, if any, will occur in the market as a result of the new law.

1. This new law will give 1,200 family-owned distributors a fighting chance to grow and prosper by meeting the needs of our customers.
2. State action over the last decade has given the consumer more access, meaning simply that customers will have more places to stop and buy beer. These are particularly places that our customers now routinely stop to meet other important needs in their lives – gas stations and grocery stores. For most of us, stops at both grocery stores and for motor fuel are a necessity.
3. Better selection, however, does not come with increased access. On the contrary, more stores decrease the ability of the specialty retailers to provide price, selection and service. Giant Eagle in Pittsburgh advertises “over 150 varieties” while distributors in the same market will offer customers at least 800 to a thousand packages or more. Some of our distributors offer the same selection as the stores with a national following.

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4. In gas stations, the consumer choices are even more limited. A Shippensburg convenience store that operates as a licensed restaurant sells singles, sixes and twelves and wine by the bottle. The selection is limited in both beer and wine.
5. The "six pack" shop will continue as our competition and both of us will now face many new competitors with R, E and H licenses.

Here is what will not change if distributors respond aggressively to the changes in the rules that have been made by state government:

1. Grocery stores will compete for customers not in their sale of alcoholic beverages but, as now, with the consumer's overall perception of value and convenience.
2. Gas stations and convenience stores will compete for customers not based upon their sale of alcoholic beverages but, as now, with the consumers overall perception of value and, in particular, convenience. Our business experience and common sense tells us that gasoline customers are not going to drive out of their way because another gas station's beer choices are better. Fact is, gas customers will find themselves a hostage in their purchase of beer. They might, however, start to respond when gas stations begin to implement a "happy hour".
3. The primary market for the R, H or E licensee will continue to be the on-premises consumption of food and alcohol, and the sale of beer to go should retain its original purpose, namely to eliminate "one for the road."
4. Changing the law again to provide larger packages to six pack shops, grocery and convenience store gas stations will only hurt the consumer's ability to find the products they want at the prices they are willing to pay.
5. The only real competition in the market for malt and brewed beverages – variety, price, selection and service – occurs among the specialty retailers who are in the market – the beer distributors.

Thus, in the final analysis, we believe that our success will create a strong, competitive marketplace for malt or brewed beverages. We believe this is good for:

- Our customers, the beer drinking public.
 - o They will continue to enjoy not just access but variety, selection and service.
 - o Since all local markets for groceries and gasoline today are an oligopoly, a market form in which the industry is dominated by a small number of sellers, beverage customers in these stores will get lost and be subject to arbitrary pricing. Oligopolies result from various forms of collusion which reduce competition and lead to higher prices for consumers. Competition in this market is not based on the specialty items, such as beer, but an overall perception of value.
- Those who do not consume our products will be more secure knowing they are being sold by businesses that depend upon obeying the law for their livelihood.
- The Pennsylvania brewers, will have strong outlets for their products; particularly outlets that do not control very large portions of the retail market such as the chain grocery and convenience stores.

Thank you for the opportunity to present this testimony.