Testimony Presented to the Members of The Pennsylvania House of Representatives Liquor Control Committee

Chairs: The Honorable C. Adam Harris (R-82)
The Honorable Paul Costa (D-34)

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Pennsylvania Food Merchants Association

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Introduction

Honorable members of the House Liquor Control Committee and guests, I thank you for the opportunity to present testimony on the implementation of Act 39 and related matters. The information outlined in this testimony represents the consensus of PFMA's 800 corporate members who operate over 4,000 grocery, convenience stores and supermarkets in the Commonwealth. We believe that, if implemented, the suggestions for legislative enhancement to the Liquor Code will benefit consumers by creating a competitive and efficient privately operated beer, wine and spirit sale and distribution systems in Pennsylvania.

I will begin by congratulating the members of the General Assembly for passing HB 1690, now Act 39, on June 1, 2016, and to Governor Tom Wolf for signing it into law. Finally, my personal thank you to the PLCB professionals who have worked tirelessly to implement the act.

My testimony consists of three sections plus one attachment:

A. Recommendation for Act 39 changes
B. A summary of comments on Act 39 implementation from the holders of enhanced wine sale permits
C. A plan for creating a competitive retail adult beverage sale system in Pennsylvania

Attachment: The 2014-15 PLCB balance sheet and media analysis by Chris Comisac, Bureau Chief of the Capitolwire published on September 6, 2016.

A. Recommendations for Legislative Change to Act 39

1. The PLCB prices products sold to R licensees with expanded wine sale permits at the retail shelf price minus a net 8% discount. It is recommended that the PLCB will charge R licensees with approved wine expanded permits the published cost of goods from the licensed manufacturer, which includes the cost of warehousing and delivery, plus the 18% Johnstown Flood Tax. PA Sales Tax will be charged only at the point of retail sale by the licensee and remitted to the PA Department of Revenue. PLCB prices shall be published quarterly with either the wholesale price or the flexible markup of all SKUs within each of the top 150 brands.

2. It is recommended that the 3L wine sales volume limit be modified to allow the sale of single containers up to 5L in volume. Sales and delivery made by licensed wine importers, vendors, vintners and brokers shall not be subject to PLCB charges other than the 18% Johnstown Flood Tax paid by the importer and PA Sales Tax charged at the point of sale by the retail licensee. It is also recommended that limits on consumer purchases be eliminated for beer and wine.

3. Wine sales should be extended from 11:00 p.m. to 2:00 a.m. This will make beer and wine sale hours the same.

4. It is recommended that a PLCB licensed premises within a food store not require an exterior or separate entrance. NOTE: This much needed change is included in HB 1196 p.n. 4132. Thank you!

5. It is recommended that since the current process for investigating landlords often adds substantial cost for applicants and delay in license transfer approvals, that an affidavit from landlords stating that "to the best of the landlord's knowledge, neither the landlord nor its principals, officers, directors, owners, shareholders, members, partners and the like have interlocking or conflicting interest."

B. PFMA member survey on Act 39 implementation.

1. On October 19, 2016, approximately 50% of the 243 approved "enhanced wine" licenses are food stores holding R licenses.
2. Seven retail companies hold most of the enhanced wine sale licenses in food stores.
3. PLCB associates have assisted all of the license holders in developing marketing, purchasing and distribution plans.
4. All seven companies have opened prototype stores selling 30-80 SKUs. Product ordering utilizes the PLCB's LOOP system and the method of distribution depends on the location of stores and company preference.
5. The suggested legislative improvements include:
   - The elimination of the separate exterior entrance – see introduction
   - The creation of a non-PLCB managed wholesale distribution system
   - The elimination of per customer transaction volume requirements
   - The end of double sales tax collection
   - Expedited R license approval process including standards on property owners leasing to licensees

C. 2016 CUSTOMER CENTERED PENNSYLVANIA ADULT BEVERAGE SALE INITIATIVE

A group of stakeholders meeting recently have developed a legislative PLCB Reform Business Plan that will meet consumer demand for convenient adult beverage access, generate revenue for the Commonwealth, treat state workers and current licensees fairly and increase the collection of state taxes levied on beer, wine and spirits. Pennsylvania stands 37th (2015 statistics) in the sale of wine out of the 50 states, and the PLCB balance sheet shows a $238.7 million deficit. Pennsylvania needs a new adult beverage sale system that will successfully compete with surrounding states and maintain stable tax revenue.

Plan Outline

- The current holders of retail adult beverage sale "D" licenses will have the option of remaining in business under current laws and practices, converting "D" licenses to retail beer, wine and spirit sale licenses, or selling the licenses to interested parties including food stores meeting the following definition:

  "Grocery Store" shall mean a reputable place of business operated by persons of good repute, which sell food, supplies for the home and table, pharmaceuticals and other products for human use and consumption. This definition will be applied to all stores with 1,500 or more square feet of floor space.

- Current holders of D licenses interested in selling wine and spirits for off premises consumption would pay a one-time fee for the privilege. They would become freestanding adult beverage stores.
- Acquirers of D licenses who convert them to G permits for the sale of beer, wine and spirits off premises would also pay the state for the privilege for each location permit.
- Quantity per transaction sale restrictions for beer, wine and ultimately spirit sales must be eliminated.
- Holders of malt beverage distributor licenses can sell them to anyone interested in developing a free standing beer and wine sale business or a company interested in converting the license to a grocery store permit for beer, wine and spirit sales.
- A small business facing a competitive disadvantage in the marketplace if unable to acquire an existing "D" or adult beverage sale license and meeting "Grocery" licensing/permitting requirements, may apply for a Grocery Adult Beverage retail sale permit if the corporation or partnership employs not more than 300 or has sales of less than $30 million annually.
- Placement services available to full-time PLCB retail store personnel should include private sector employer tax credits to encourage employment transition, tuition credits and for each interested state worker an individualized career development plan and counseling provided by the appropriate agencies of state government. Revenue from license sales could fund employee transition services.

ATTACHMENT

POINT OF ORDER: PA's PLCB 'asset' has far more liabilities than it appears able to cover.

POINT OF ORDER

A Capitolwire Column

By Chris Comisac
Bureau Chief
Capitolwire

HARRISBURG (Sept. 6) - The Pennsylvania Liquor Control Board last week once again touted record sales, but despite recent efforts to make the state-run monopoly look more like a competitive private sector-driven system, the agency continues to be mired in significant debt.

Fiscal Year 2015-16 did see record retail sales of $2.43 billion, from both liquor – for which the agency has the power to set the price without competition - and sales taxes on the liquor; that was a 4.1-percent increase over the prior year's sales, which were, at the time, also a record.
But looking at the PLCB's unaudited financial statement shows things are not getting much better, fiscally-speaking, at the PLCB. That's due in no small part to increasing costs associated with the operations and duties of the agency, as well as the transfers it made to the state's General Fund and other items.

Gross revenue – once the price of the goods sold by the PLCB is subtracted from the stores' sales net of taxes – was likewise up by about 4.2 percent. That $605.6 million total was good for an increase of $24.5 million over FY2014-15's gross revenue from sales, and 2015-16 gross revenues were $115.3 million more than they were five years ago.

However the agency's operating and other costs also continued to increase.

The costs for things, like pension and medical benefits for both active and retired employees, continued to rise during the past year, with overall operating expenses increasing by $4.2 million, to a total of $473.8 million. Five years ago, those costs were nearly $90 million less, at $386.1 million in FY2010-11.

So while gross revenue has been increasing – it's up 23.5 percent from where it was five years ago – so have the agency's operating costs, by 22.7 percent.

License fees, enforcement fines and interest income increased a bit last year, but that was still more than offset by the costs associated with the licensing and investigation work done by the agency, as well as the administrative law judges and other legal work required by the PLCB. Once all accounted for, that took another $1.8 million off the gross sales revenue.

Those non-operating costs were slightly less than the prior year, but that difference was offset by the slightly higher amount of money transferred to the Pennsylvania State Police for their PLCB-related enforcement efforts (a total cost of about $26.1 million) compared to last year.

On top of all of that, the Legislature decided to transfer from the PLCB a little more than $103 million, with most of that ($100 million) going to the General Fund along with some funding for drug and alcohol programs – something they do every year. Last year, and dating back to FY2011-12, the annual transfer to the General Fund has been $80 million. Prior to FY2011-12, in FY2009-10 and FY2010-11, the General Fund transfers were $105 million, with additional funding for drug and alcohols programs of between $1 million and $2 million.

So when it's all said and done, only $528,890 of the $605.6 million in gross revenues they reported is left.

That's about $1.4 million less than was left over after everything in FY2014-15, although, as noted, that was helped significantly by the transfer of only $80 million, not $100 million, to the General Fund.

Which means the system, that had a net financial position showing a $238.7 million debt at the end of FY2014-15, was only able to reduce that debt to $238.2 million during FY2015-16. Yes, there's also close to half-a-billion dollars in taxes remitted to the state because of liquor sales, but those would occur with or without the PLCB liquor sales monopoly.

So when you hear people talking about how the system is an asset for the Commonwealth of Pennsylvania, remember that asset's net value (assets minus liabilities) is well in the negative, and it's only just covering its costs of operations while also trying to justify its existence by supplying the General Fund with revenue.

In FY2009-10 and FY2010-11, the PLCB couldn't even say that, when it spent and transferred more money than it took in those years. So the Legislature started transferring less money to the General Fund – meaning taxpayers were, for a few years, subsidizing what the PLCB had been transferring to the General Fund.

With new pension accounting standards in place, the PLCB's overall long-term debt of $598.1 million (its noncurrent liabilities listed on the agency's financial statement) is properly reflected on its balance sheet, with most of it ($449.2 million) due to its portion of the Pennsylvania State Employees' Retirement System (PSERS) unfunded liability. As anyone who has followed Capitolwire's coverage of the state's pension crisis knows, the ones most on the hook for that debt are the taxpayers, even those who don't drink alcohol.

If the Legislature were to trim the PLCB's General Fund transfers - as they did for a few years – that would still mean the taxpayers are subsidizing the agency, given it would be an admission of the PLCB's inability to transfer to the General Fund what it once did, forcing taxpayers and/or other government operations to come up with those savings.

And all that assumes the agency can continue to set sales records every year, making enough money to cover its various duties, operating costs and transfer responsibilities – which it barely did this past year.

For 83 years and counting, Pennsylvania has eschewed a market-driven alcohol sales solution and clung to the state-run PLCB monopoly - but does the system sound like an invaluable asset of which we now can't afford to rid ourselves?

Of course, given the state's proclivity to want to control alcohol sales, if you had the money to buy it, would you?
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