PROPOSED STATUTORY AMENDMENTS OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

1) <u>Allow the PLCB to implement a Consumer Relations Marketing ("CRM") Program and issue its own coupons to customers:</u>

- The Liquor Code currently prevents the PLCB from recognizing and rewarding regular customers through the use of what is commonly referred to as a Consumer Relations Marketing ("CRM") program (e.g., supermarket or retailer loyalty programs).
- Such a CRM program which would allow the PLCB to offer exclusive product coupons, award points to returning customers which could be redeemed for discounts on products, and alert customers to upcoming sales and promotions.
- With respect to the issuance of coupons, the PLCB currently envisions issuing three (3) different types of coupons: 1) discounts that are not specific to products or brands, but may be used towards any product of the customer's choosing (e.g., 10% off all purchases throughout the store); 2) volume discounts (e.g., 10% off your entire purchase if you make a purchase of more than $100.00; and 3) product giveaways based upon an aggregate purchase amount (e.g., get a free sample bottle of X when you purchase more than $25.00).
- New Hampshire, a control state, has a successful CRM program (including the issuance of coupons), and it has been well-received by consumers.
- Language which would have allowed the PLCB to implement such a CRM program had been included in Senate Bill No. 81, which was signed by both the House and Senate but was ultimately vetoed by Governor Rendell in May 2010 (it should be noted that the veto was **<u>not</u>** due to this provision).
- In the current session, HB 260, which would effectuate the intent of this initiative, was recently introduced and referred to the House Liquor Control Committee.
- FISCAL IMPACT:
    - There are three (3) primary objectives for this initiative: 1) coupons and loyalty programs are industry-proved consumer drivers which get customers into stores; 2) offering discounts on slower selling / lower velocity items allows the PLCB to sell

inventory which may otherwise languish in its warehouses, while passing significant savings on to Pennsylvania consumers; and 3) offering discounts on higher-quality items may encourage buyers to "trade-up" for higher priced items, yielding higher markups for the PLCB.

  - As an example, following a recent e-mail blast advertising a sale on the PLCB's Sommelier Collection items, resulting sales totaled more than one hundred fifty thousand dollars ($150,000.00) and many of the sale items were depleted within a week.

2) <u>Direct Shipping/Direct Delivery</u>

- Various measures have been introduced in both houses of the General Assembly in the last few sessions to address the issue of direct shipment, in light of recent cases addressing the disparities of the direct shipping privileges of in-state and out-of-state wineries, and due to increasing consumer interest in having wine, regardless of its point of origin, shipped directly to a consumer's residence.
- As a result of recent court decisions, any winery that produces less than two hundred thousand (200,000) gallons of wine annually, whether located in-state or out-of-state, that applies for and obtains a limited winery license from the PLCB may ship wine directly to Pennsylvania residents, at their homes, who have placed orders to such entities via telephone or the Internet. Such wines are subject to the applicable state sales tax, but not the eighteen percent (18%) "Johnstown Flood Tax." It should be noted, however, that only five (5) out-of-state wineries have applied for and acquired a limited winery license: Kistler Wineries of California, My Wines Direct, Inc. of California, Johnson Estate Winery of New York, Hopewell Valley Vineyards of New Jersey, and Thorn Hill Vineyards, Inc., of California. In addition, there is one (1) out-of-state application pending: Robert Mazza, Inc. of New York.
- The Board is not opposed to the idea of allowing direct shipment of wine by retailers and manufacturers, located in-state or out-of-state, to Pennsylvania residents for personal consumption, provided that certain controls remain in place.
  - Minors – there must be a mechanism in place to guard against the sale and delivery to persons under the age of twenty-one (21).
  - Safeguarding Commonwealth Revenue –

        - To safeguard against lost Commonwealth tax revenue, all sales should be subject to the six percent (6%) sales tax and the eighteen percent (18%) "Johnstown Flood Tax."
        - Further, as such sales would be exempt from the Board's mark-up (currently thirty percent (30%)), resale of such wine should be expressly prohibited. This would preclude licensees from circumventing the state store system (and the PLCB's mark-up) by having all of their products shipped directly to them.
- If the General Assembly decides to permit direct shipment by out-of-state retailers, the PLCB believes that it should be given the corresponding authority to deliver or ship directly to residents and/or licensees of other states.
    - As one of the world's largest purchasers of wine and spirits in the U.S., the PLCB believes that it can exercise its significant market leverage in other state's markets, representing a significant revenue opportunity for the Commonwealth.
    - The PLCB is currently evaluating the concept of <u>direct delivery</u> to residents and licensees of Pennsylvania, which would not require a legislative amendment.
    - However, a legislative change to section 207 would be required to authorize the PLCB to sell and deliver its products to out-of-state individuals and entities.
    - The PLCB has identified more than a dozen states where it might be permitted to ship directly to residents and/or licensees, including California, provided that it complies with all state and federal requirements.
        - Pursuant to section 23661.2 of California's ABC Act: "Notwithstanding any other law, an individual or retail licensee in a state that affords California retail licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Delivery of a shipment pursuant to this subdivision shall not be deemed to constitute a sale in this state."

        In 2006 the state asserted a no-enforcement policy of the reciprocity provision in response to a lawsuit filed by a retailer trade association. Although the litigation has since been dismissed, the policy apparently remains in force.

3) <u>Remove the restriction regarding the percentage of stores which may be open on Sundays, and extend Sunday sales hours:</u>

- Under the Liquor Code, only 25% of stores may be open on Sundays. With the introduction of the wine kiosks, since each kiosk constitutes a store, kiosks are also subject to the 25% restriction. To achieve any meaningful success, kiosks <u>must</u> remain open on Sundays, the second busiest retail day of the week.
- Without legislative change removing the current restriction, as new stores are opened or kiosks are rolled out for operation, the PLCB must either close down a number of "brick and mortar" stores or shut down certain kiosks on Sundays in order to remain within the legislatively-imposed 25% limitation.
- The PLCB has suggested removing the current 25% restriction, allowing the Board the complete discretion to make necessary business calls on whether to operate any given store or kiosk on Sunday. The Board has also suggested allowing stores to operate until 9:00 p.m. on Sundays, instead of the current 5:00 p.m. closing time. The PLCB believes that extending Sunday hours will enhance revenue and offer greater customer convenience.
- House Bill 160 would remove the 25% restriction as contained in section 304(b) of the Liquor Code; the measure would not, as drafted, extend Sunday hours. However, HB 260, which was recently introduced and referred to the House Liquor Control Committee, would remove the 25% restriction **<u>and</u>** extend Sunday hours to 9:00 p.m.
- FISCAL IMPACT:
    - The potential fiscal impact of allowing the Board complete discretion to determine whether to operate its stores or kiosks on Sundays is difficult to quantify. Sunday is considered to be the second busiest retail day of the following, following Saturday. Sales numbers would be further enhanced with the proposed extension of Sunday hours.
    - Currently the PLCB operates one hundred sixty (160) stores on Sunday. Sunday sales total $22,094,926.00 for the thirteen (13) Sundays, beginning December 5, 2010 and ending February 27,

2011, averaging $1,699,609.00 per Sunday, $10,622.00 per store, and $2,124.00 per hour based on one hundred sixty (160) stores operating from 12:00 p.m. to 5:00 p.m. Expanding Sunday hours from 5:00 p.m. to 9:00 p.m. at stores currently able to sell on Sundays should increase sales between 10% to 25% overall, translating into additional revenue of between $160,000.00 to $400,000.00. This will also spread a portion of a store's existing Sunday sales over the extended hours. It is estimated that opening additional stores from 12:00 p.m. to 5:00 p.m. or longer in areas that currently do not have a store would increase Sunday sales by $10,000.00 or more per store.

4) <u>Allow the PLCB to be a Pennsylvania Lottery Retailer:</u>

- Lottery ticket sales are commonplace at the licensed liquor stores of other states. The State Lottery Law already allows "all departments, commissions, agencies and instrumentalities of the State" to be licensed as Lottery Sales Agents. However, section 207 of the Liquor Code does not specifically authorize the PLCB to sell lottery tickets.
- The PLCB has met with lottery representatives of the Pennsylvania Department of Revenue ("Revenue"), which agrees that the concept of allowing automated, self-service lottery machines on the premises of the PLCB's wine and spirits stores would increase the Commonwealth's revenue from lottery ticket sales, while adding to the convenience of the Pennsylvania consumer.
- FISCAL IMPACT: Recent data submitted by Revenue indicates that if the PLCB were permitted to sell lottery tickets through counter sales and vending machines in its state store system, and retained the 5% retail commission (plus bonuses) as other lottery sales agents are permitted to retain, it could see an increase in revenue of approximately $8,000,000.00 per year (or approximately $2,000,000.00 per year for sales through vending machines only).

5) <u>Increase fines for violations of the Liquor Code and the PLCB's Regulations:</u>

- The structure of fines in the Liquor Code has not been changed since 1987.

- The amount of fines collected fall short of covering the costs of enforcement, as demonstrated in the following chart:

	Total # of Citations Issued	**Total Funds Collected Through Enforcement**	**Amount Appropriated from PLCB to BLCE** [1]	**Operating Budget of OALJ** [2]	**Cost of Enforcement** [3]
2008	3,216	$2,468,538.33	$21,624,590.00	$2,059,227.82	$23,683,817.82
2009	3,050	$2,187,492.72	$23,242,342.00	$1,997,402.65	$25,239,744.65
2010	2,783	$ 1,835,110.39	$25,252,000.00	$1,506,860.52	$26,758,860.52

- As noted in the above chart, the amount of fines collected fall significantly short of covering the costs of enforcement each year, a trend which continues to worsen each year. For example, in 2008, the total funds collected through enforcement efforts covered approximately <u>10.4%</u> of the overall costs of enforcement, while in 2010, the funds collected covered less than <u>6.9%</u> of the overall costs of enforcement. It should be noted that the differences between funds collected and costs borne by the Board result in reduced contributions to the General Fund.
- With the enactment of table games (Act 1 of 2010), slot machine licensees are now subject to a higher range of fines (between $250.00 and $25,000.00) for all types of liquor-related offenses. However, no other licensees have experienced an increase to the fine structure of the Liquor Code in <u>twenty-three (23) years</u>.
- Among other "control" state jurisdictions, Pennsylvania's structure of fines falls into the lower range of fines for violations. The chart provided below demonstrates where Pennsylvania's fines for two (2) of the more serious violations among a sampling of a few other control jurisdictions:

[1] Figures are based on fiscal years (i.e., FY 2007-08, FY 2008-09, and FY 2009-10).

[2] Figures are based on fiscal years (i.e., FY 2007-08, FY 2008-09, and FY 2009-10).

[3] It should be noted that there are other costs not included in this calculation, including the PLCB's costs associated with handling appeals of OALJ decisions, borne by the PLCB's Office of Chief Counsel.

	Sales to a Minor	Sales to a Visibly Intoxicated Person
Alabama	$750.00 - $1,000.00	$300.00 - $1,000.00
Pennsylvania	$1,000.00 - $5,000.00	$1,000.00 - $5,000.00
North Carolina	$1,200.00 - $3,500.00 + 5 days suspension	$1,000.00 - $5,000.00 + 20 - 60 days suspension
Montgomery Co., MD	$1,000.00 - $20,000.00	$1,000.00 - $20,000.00
Virginia	$2,000.00 + 25 days suspension	$2,000.00 + 25 days suspension

- An amendment to section 471 of the Liquor Code would be required to increase the current fees.
- In the current session, two (2) measures, namely HB 260 and HB 1231, have thus far been introduced which would effectuate the intent of this initiative. Both measures would increase fines for non-enhanced citations to a maximum of $2,000.00 (currently, $1,000.00), and increase the range of fines for enhanced citations to a range of $2,000.00 to $10,000.00 (currently, the range is $1,000.00 to $5,000.00.
- FISCAL IMPACT: If all fines imposed in 2010 had merely been doubled by the OALJ, the Commonwealth would have realized an approximate increase in revenue of nearly $2,000,000.00.

6) <u>Increase Licensing Fees by Assessing an Administrative Fee on Licensing Applications:</u>

- The existing fee structure has remained the same since 1991, twenty (20) years ago. While most fees are set forth in the Administrative Code of 1929, some are defined by the Liquor Code or the PLCB's Regulations.
- Altogether, approximately sixty thousand (60,000) individual fee transactions are processed through the PLCB's Bureau of Licensing ("Licensing") each year.
- For FY 2009-10, more than $15,900,000.00 was collected by Licensing for fees associated with licensing transactions. Of that amount,

approximately 28% (or $4,500,000.00) was returned to municipalities (via the Liquor License Fund) in which the licensees are located, pursuant to section 801 of the Liquor Code.

- As originally intended by the General Assembly, such licensing fees, coupled with fines assessed against licensees in enforcement actions, would cover administrative licensing costs and fund enforcement efforts. However, the current fee schedule only partially funds the administrative costs associated with processing licensing applications, and does not provide sufficient revenue to cover the PLCB's costs in funding the operational budget of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") for compliance and enforcement efforts.
- Below is a chart which compares many of the PLCB's existing licensing fees with those of neighboring states. It should be noted that many of Pennsylvania's licensing fees are far less than those assessed in other states. It is recommended that, at the very least, licensing fees be raised so that they are comparable to the fees assessed in other neighboring states for similar licensing transactions.

Compiled Licensing Fee Comparison

License or Permit Type	Pennsylvania	Average Other States
Restaurant Liquor License	$250.00 - $700.00	$1,509.50
Club/Catering Club License	$150.00	$1,025.19
Eating Place Malt Beverage License	$200.00 – 400.00	$582.63
Hotel License	$250.00 - $700.00	$1,584.19
Distributor License	$600.00	$2,054.00
Special Occasion Permit	$30.00 - $85.00 per day	$547.50
Brewery License	$1,425.00	$3,261.57
Limited Winery License	$385.00	$519.89
Winery License	$385.00	$1,049.43
Distillery License	$5,400.00	$6,819.07

License or Permit Type	Pennsylvania	Average Other States
Private Golf Course Restaurant License	$250.00 - $700.00	$1,744.43
Private Golf Course Club License	$150.00	$1,753.17
Public Golf Course Restaurant License	$250.00 - $700.00	$1,946.67
Transporter-for-Hire License	$160.00 - $265.00	$171.67
Bailee/Warehouse License	$265.00	$1,159.50

- Accordingly, an increase to the current fee schedule is recommended for licensing applications in order to cover the costs associated with processing licensing applications and in funding the operational budget of the Bureau for compliance and enforcement efforts.
- Given that certain licensing fees are retained by the Board, while others are remitted to municipalities where the licensees are located, increasing fees across the board will not allow the PLCB to capture the full value of the fee increases. In order to realize 100% of the increased revenue associated with increasing licensing fees, it is recommended that an administrative fee be assessed for all license renewal and validation applications.
- FISCAL IMPACT: It is estimated that if, for example, a $700.00 administrative fee were assessed on all renewal and validation license applications, this would result in approximately $14,000,000.00 in additional revenue per year.
    - To cushion the impact that an increase in licensing fees would have on the licensee community, the PLCB submits that the increase could be phased in over a number of years. Once the fee reaches the level necessary to cover all licensing and enforcement costs, it is recommended that the legislation allow for incremental increases tied to the Consumer Price Index ("CPI") to cover future administrative cost increases.

7) <u>Authorize the Board to charge bailment fees to suppliers:</u>

- The PLCB is working towards changing its inventory management to a “bailment” system, so that its warehoused product would be owned by the supplier until it is sent to stores. Presently, the PLCB purchases, upfront, 100% of the inventory stored in its three (3) warehouses throughout the Commonwealth.
- Under a bailment model, vendors/manufacturers/suppliers of liquor, including both wine and spirits, will retain title to merchandise through the importation and, subsequently, the storage of the merchandise in a warehouse operated by a PLCB contractor.
    - Title will only pass to the PLCB when merchandise is actually sent to a Pennsylvania wine and spirits store.
    - Vendors/manufacturers/suppliers of liquor will be contractually obligated to maintain a supply of merchandise in PLCB warehouses sufficient to satisfy the Board’s projected inventory needs.
    - It should be noted that the bailment model for importation and storage of alcohol has been in existence since 1936 and is now utilized by all eighteen (18) control states with the exception of Pennsylvania and Wyoming.
- A pilot bailment program will be initiated in January 2012. It is expected that the majority of vendors will be moved into bailment through the 2nd quarter of 2012; any remaining targeted vendors will be moved into bailment early in the 3rd quarter of 2012.
- While the Liquor Code grants the PLCB broad authority and such authority could be read to include the implementation of a bailment model for the storage and distribution of liquor within the Commonwealth, neither the Liquor Code nor the Administrative Code of 1929, provides the Board with the specific authority to assess “bailment fees” on the PLCB’s vendors.
- Some states which utilize a bailment model assess a “bailment fee,” where manufacturers are charged a reasonable fee in order to store inventory at a warehouse which is operated by a warehouse operator under contract with the state. If such fees were assessed in Pennsylvania, the funds could be utilized to off-set any costs associated with maintenance of these warehouses.
- FISCAL IMPACT:
    - One of the major advantages of a conversion to bailment is the freeing-up of operating capital, which has been estimated to

present the PLCB with a one (1)-time cash realization of between $60,000,000.00 – $80,000,000.00.

        - This one-time cash realization is the result of depletion of existing Board-owned inventory as conversion to bailment takes place.
        - In simpler terms, if the PLCB converts to a bailment model, it would not purchase new merchandise until its existing stock is utilized. This immediate reduction in purchasing will result in increased capital that may be utilized by the Board.
    - With respect to bailment fees:
        - If the Board were to move to a bailment model, and were to charge suppliers a fee of $1.00 per case per month (a figure that is in line with fees assessed in other states utilizing bailment), such a fee would generate approximately $1,000,000.00 per month, or $12,000,000.00 per year, based on the number of cases currently moving through the Board's warehouses.

8) <u>Allow the PLCB to acquire goods and services without the restrictions of the Commonwealth's Procurement Code:</u>

- The General Assembly, recognizing that the PLCB's legislatively-mandated functions are unique, exempted the PLCB's purchases of wine and spirits and alcohol-related accessories from the provisions of the Commonwealth's Procurement Code.
- In addition to being one of the largest purchasers of wine and spirits in the United States, the PLCB has a significant need for supporting goods and services in carrying out its statutory functions under the Liquor Code (e.g., goods – shopping bags, computers and software; services – information technology services, warehousing functions, and marketing and advertising services).
- To acquire other goods and services, however, the PLCB must comply with the Procurement Code and the regulations of Department of General Services ("DGS").
- While the PLCB recognizes that the careful review and analysis of bids and proposals are necessary for projects of large magnitude or potential impact, the PLCB can cite to numerous examples of instances in which

the procedural dictates of the Procurement Code have resulted in lengthy delays and unfavorable results.

    - For example, the Board initiated a Request for Proposal ("RFP") committee for the purpose of consolidating two (2) of its three (3) distribution centers in January 2010, to realize significant cost savings for the Commonwealth, but due to the procedural mandates of the Procurement Code, an RFP was not issued until July 2010, and responses were not received until September 2010. Ultimately, the Board rejected all proposals in February 2011, as the marketplace had changed in the preceding thirteen (13) months. Another RFP committee to consolidate all of the PLCB's warehouses is being convened. The time-consuming and laborious process inherent in the Procurement Code may nullify the very cost savings the Board initially intended to produce by exploring this initiative.

- Therefore, the PLCB requests that the General Assembly, in furtherance of its recognition that the PLCB is unique given its statutory mandates, permit the PLCB to establish its own procurement procedures in acquiring all of its goods and services.
- To ensure that procurement decisions would be made with an adequate level of control in the absence of the Procurement Code, the PLCB proposes to develop and promulgate regulations, through the Independent Regulatory Review Commission ("IRRC"), to establish consistent and judicious procurement policies designed to maximize the Commonwealth's savings. This will allow for public comment and an opportunity for the standing liquor committees to provide input relative to the Board's procurement policies.
- Further, the PLCB believes that its demand for goods and services, and its ability to exercise significant market leverage in applicable markets, could represent a significant revenue opportunity for the Commonwealth if the PLCB is permitted to sell its goods and services to out-of-state entities and governments.
    - By way of example, another "control" state or local entity looking to acquire liquor and liquor-related products may benefit from being able to purchase such products via the PLCB, through the PLCB's market leverage, at lower prices than it could on its own in the marketplace.
    - Further, other "control" jurisdictions may need the services provided by the PLCB's customized Enterprise Resource Program ("ERP") and compensate the PLCB. Accordingly, if such an

    - arrangement were permitted, the PLCB would realize additional revenue from sales to the other state.
    - The converse may be true for certain goods or services in which the PLCB may benefit from lower prices in acquiring certain goods or services through another state or local entity, resulting in cost savings to the PLCB.
    - Such potentially beneficial arrangements, however, would only be permissible with a specific statutory amendment to section 207 of the Liquor Code.
- FISCAL IMPACT: Ultimately, the PLCB believes that, if given the authority to establish its own criteria for procuring goods and services (via an informal bid process for goods and services under a certain threshold amount, or via a formal bidding process for higher value goods and services), it can acquire goods and services on its behalf in a more expeditious fashion, and, in certain instances, at more competitive prices.

9) <u>Changes to Staffing and Human Resource Management:</u>

- Restrictions imposed on the PLCB by the Civil Service Act and the Administrative Code impair its ability to effectively hire the right employees with the right skill sets in a timely fashion, remove under-performing or insubordinate employees, and establish the right amount of pay and benefits to its employees. These existing limitations hamper the PLCB's ability to effectively operate as a business and create inefficiencies within the agency.
- Assuming that the below statutory changes would be implemented, the PLCB would ensure that appropriate employment, classification, and salary policies would be put in place to provide necessary controls and structure to the Board's decisions.
- Exemption from Civil Service coverage for future hires -
    - Section 302 of the Liquor Code provides that employees of the PLCB shall be appointed and employed subject to the provisions of the Civil Service Act.
    - Section 741.3(d)(1) of the Civil Service Act provides that all positions (with limited exceptions such as department heads, PLCB members, attorneys, unskilled labor and public relations positions) created by the PLCB are covered by Civil Service.

    - The PLCB currently pays the Civil Service Commission approximately $1,000,000.00 per year to administer examinations. This money would be directly saved by the PLCB.
    - The Civil Service process is cumbersome and discourages recruitment of qualified candidates from outside state government. It is also extraordinarily difficult to remove unsatisfactory employees once hired under Civil Service.
    - When qualified candidates from the private sector are persuaded to come to the PLCB, a lengthy process is required to get that candidate actually working.
    - It should be noted that if legislative measures are enacted, thereby exempting future hires from Civil Service, current employees would remain Civil Service until such time that they are promoted to another classification. This would effectuate a gradual shift of the Board's current complement to non-civil service status, similar to what occurred for the Pennsylvania State System of Higher Education.
- Ability to classify or reclassify its own positions -
    - Because of the PLCB's retail functions, many positions are unique to the PLCB.
    - Under current practices, the Governor's Office of Administration ("OA") approves the classification of positions. However, OA lacks the operational knowledge of the unique functions of the PLCB to properly classify many positions.
    - Allowing the PLCB to classify these positions in accordance with the candidates' actual duties will allow the PLCB to fill the positions with qualified candidates who possess the right skill sets.
    - This proposal is revenue neutral as some costs associated will be higher and some lower.
- Ability to set compensation of all employees –
    - The PLCB is a unique organization within Pennsylvania government in that it possesses not only a significant and far reaching regulatory function, but that it also has a massive retail function as the sole retailer of alcoholic beverages in Pennsylvania. As a result, many of its job titles are unique to the PLCB and many of the titles it shares with other state agencies involve a number of duties beyond a traditional governmental function.
    - Given these highly specialized needs, it is imperative that the PLCB be given the discretion as to compensation and pay scale, because it is most familiar with its position requirements.

    - This proposal is revenue neutral, as some costs associated will be higher and some lower for individual employees.
- It should be noted that, in its enabling legislation (Act 188 of 1982), the Pennsylvania State System of Higher Education ("PASSHE") was not made subject to the Civil Service Act; rather, the agency was given the authority, subject to existing collective bargaining agreements and policies of the agency, to "appoint such employees, professional and noninstructional, graduate assistants, etc. as necessary, to fix the salaries and benefits of employees, professional and noninstructional, and to establish policies and procedures governing employment rights, promotion, dismissal, tenure, leaves of absence, grievances and salary schedules."
- FISCAL IMPACT: The PLCB is in the best position to understand the operational needs of the agency, and the qualifications an individual needs for a specific role. The primary goal of this initiative is the autonomy and independence needed by the PLCB to place the right people in the right positions at the right rates of pay and benefits. The PLCB firmly believes that this will result in efficiency across the agency, leading to cost savings, better service for the residents of Pennsylvania (the PLCB's shareholders), and vastly improved profitability.

10) <u>Allow market-based pricing:</u>

- Under the Liquor Code, the PLCB must apply its markup (currently 30%) equally on all products (i.e., it must adhere to proportional pricing on all products).
- Flexibility would allow the PLCB to function more like a private retailer, with the ability to increase revenue and profitability on certain products, while being able to offer better deals to consumers on other products.
- Private retailers enjoy complete flexibility to mark-up their products.
    - Some may argue that because the PLCB has the ability to adjust its markup, albeit proportionally, it already has the ability to establish its own pricing. However, the PLCB's prices are inextricably tied to the price vendors charge for their products. For example, if the PLCB decided to increase its mark-up by 5%, it would have to increase the mark-up on all products across the board, without regard to how a particular vendor may subsequently adjust its price to the PLCB. The ability to have readily adjustable and dynamic

pricing authority is key for any retailer to maximize profits. The PLCB is merely asking for the ability to adjust pricing based on fluid market conditions, as any other retailer could.

- The PLCB is not seeking “variable pricing;” for example, the PLCB intends to charge the same price for a bottle of Grey Goose Vodka regardless of whether it is sold in Pittsburgh, Harrisburg, or Philadelphia, thereby eliminating any potential regional bias.
- An amendment to the Liquor Code which would effectuate the intent of this initiative has been introduced in the current session, as HB 159.
- On a separate but related note, consideration should be given to allowing the PLCB to adjust the licensee discount (currently 10% pursuant to section 305(b) of the Liquor Code) on a periodic basis to provide an incentive for licensee participation in various initiatives, such as, utilizing the PLCB’s licensee service centers.
    - In addition to amending section 305(b), any proposed amendment would need to explicitly supersede the Regulatory Review Act, given that the Regulatory Review Act currently defines a regulation, among other things, as any action by the PLCB which has an effect on the discount rate for retail licensees.
- FISCAL IMPACT: While it is difficult to quantify the actual fiscal impact of the initiative, granting the PLCB the discretion to make such pricing decisions could easily lead to an increase of between $25,000,000.00 to $75,000,000.00 per year, depending on market conditions and timing of implementation. The PLCB is awaiting an analysis of market surveys designed to evaluate the competitiveness of the prices currently quoted by various vendors to the PLCB.