Testimony of Mark Gorman
Senior Vice President of the Distilled Spirits Council of the United States
Before the
Senate Law and Justice Committee
Tuesday, June 4, 2013

Chairman McIlhinney and members of the Committee, my name is Mark Gorman, Senior Vice President of the Distilled Spirits Council of the United States. Our organization, often referred to as DISCUS, is the principal national trade association for the makers and marketers of distilled spirits. DISCUS member brands account for about 80% of spirits sales nationwide. This Committee has spent many weeks studying options for modernizing and, possibly privatizing, the Pennsylvania liquor control system, so we appreciate this chance to share a perspective from the supplier tier of the hospitality industry.

Overview

Our member companies have done business successfully in the 17 control states as well as the 33 private sector states across this country. While DISCUS has never led a campaign for privatization in any of those states, our experience does lead us to conclude that – if you decide to privatize one tier of business – you would be best served by privatizing the whole thing. We believe the Chairman has taken an important step in this direction by introducing SB 100 which could add well over 1,000 private sector retailers. For the sake of efficiency and modernization of the hospitality economy, we urge him to consider reporting legislation at the end of this process that would also privatize the wholesale tier.

Retail Tier

The bill would substantially increase the number of stores eligible to sell spirits and wine. A state with a population in excess of 12.7 million people cannot be adequately served by just 600 state-run package stores. A number closer to 3,000 spirits retail outlets would be in line with the national per capita average. While SB 100 would allow the existing state Wine and Spirit Stores to continue operating, the most significant provision of the bill would also make wine and spirits retail licenses available to restaurant and hotel licensees. Doing so would also enable grocery stores that have "R" licenses to sell wine and spirits. Not only could this achieve the goal of increasing retail access, it would dramatically increase customer convenience by creating a one-stop shopping experience for all beverage alcohol. This is a creative approach that builds on the existing alcohol license system.

Wholesale Tier

Mr. Chairman, we know you have given a great deal of thought to SB 100 and have consciously decided to not include privatization of the wholesale tier at this time. We are concerned, however, that the PLCB as we know it today could not keep up with the expansion of private sector retailers under your bill. Just to service their 600 state-run stores, they have recently imposed bailment fees and handling fees (the LTMF) on top of their 30% across-the-board markup fees. Our economist estimates the cost to PLCB of expanding common carrier delivery to 1,200 new package store retailers would be $54 million a year. Expanding delivery to all 15,000 restaurants, bars and hotels that serve alcohol could be as high as $770 million a year. One has to question whether the Commonwealth could – or should – spend taxpayer dollars to expand into a business with which they have little experience.

Providing just-in-time product delivery, modernized warehousing and a well-trained sales force is exactly what private sector wholesalers do best. By some estimates, the Commonwealth could expect to reap over $500 million from the sale of its wine and spirits brands at the wholesale tier. Wholesalers would then invest hundreds of millions of dollars in warehouses and trucks. They would create several thousand good-paying jobs. And, they would ensure the best possible selection, availability and prices to Pennsylvania consumers. We believe if the Legislature is going to privatize the beverage alcohol retail tier, that privatizing the wholesale tier presents an opportunity to modernize that shouldn't be passed up. It would be a win-win-win.

In concluding, I would point out one issue over which we occasionally conflict with some of our wholesale partners: it is language known as "franchise protection" that appears in the laws of a dozen states. Unfortunately, it appears in the Governor's privatization proposal and in HB 790 passed by the House. It would interfere with a supplier's right to freely contract with a wholesaler and gives him franchise rights to the supplier's brands. This creates the likelihood of expensive legal battles if suppliers determine for any reason that they wish to move their business to a different wholesaler. Franchise protection laws have the effect of excluding competitors from the marketplace and are not supported by all wholesalers. So, if the Chairman does decide to move forward with wholesale privatization, but remains committed to ensuring an open and competitive marketplace, we would strongly urge him to reject franchise language in his final bill.

Mr. Chairman, you and the Committee should be congratulated on a thorough and deliberate process. Thank you again for your interest in the views of the Distilled Spirits Council.