

The Wine and Spirits Advisory Council
Of The Pennsylvania Liquor Control Board

Response to Mr. Conti's Delivery/Shipping Survey
Delivered May 20, 2011

I. Background

On February 23, 2011, during the regular business meeting of the Wine and Spirits Advisory Council (the "Council"), Mr. Conti discussed several concepts being evaluated within the Liquor Control Board (the "Board") associated with delivery and shipment of wine and spirits to consumers and licensees. On March 12, 2011, the members of the Council received a written summary of the delivery and shipment concepts discussed at the February meeting, along with a request that the Council deliberate and deliver to the Board a statement in response to several questions posed on behalf of Mr. Conti (attached as Exhibit A). This document comprises the requested response. After receiving Mr. Conti's survey, the Council members conferred with the members of their Regional Advisory Panels ("RAP"), and the responses of the RAP members were considered along with the opinions of the Council members. A draft of this document was prepared by the President of the Council, the draft was distributed to the Council members, and was modified, voted upon and approved during a regular meeting of the Council conducted on May 18, 2011. Accordingly, this document represents the consensus opinion of the Council.

II. Council's Adoption of Prior Statements of the Former Wine Advisory Council

In December 2009, the predecessor to the Council, the Wine Advisory Council, delivered to the Board a consensus statement under the title: "**POSITION ON WINE SHIPPING LEGISLATION, PA LCB WINE ADVISORY COUNCIL**". That statement, attached hereto as Exhibit B, has been ratified by the current Council, is incorporated by reference herein, and should be considered by Mr. Conti and the Board along with this document.

III. Responses to Mr. Conti's Questions

a. **E-COMMERCE DELIVERY**

i. Should the agency change its policy to permit home delivery for ecommerce shoppers?

Emphatically, yes. The ability of the retail arm of the Board to meet the service and convenience expectations of its Internet-enabled consumer base in Pennsylvania is being impaired by the current antiquated process for acquiring online and telephone

orders. The Board should, as expeditiously as possible, eliminate the current requirement that online orders must be picked up at one of the Board's retail stores and should make arrangements for those orders to be shipped directly to its customers.

One RAP member noted that many high-end spirits enthusiasts would be much more likely to use the Board's online system if home delivery were provided, and that the Board would benefit by not having to wrestle with the issue of keeping small-volume, high-price units on valuable shelf space in numerous stores across the state.

Council notes that many Pennsylvania consumers currently obtain wine and spirits from out-of-state sources, including sources that make home deliveries. These sales contribute nothing to the state's coffers. Providing the convenience of home delivery for the Board's products would likely re-capture some portion of these sales.

Finally, purchasers for home delivery will expect, and should be given, some representation as to the temperature and other conditions under which wine has been stored before and during shipment. This information is customarily provided by other on-line vendors.

ii. If online items are available for delivery, should in-store items also be made available?

Yes. While the Council understands that there may be technology-based limitations on the Board's current ability to make its entire product inventory available online, provisions should be made to facilitate the ordering and shipment of in-store items for home delivery, even if only by telephone for now. However, the Council encourages the Board to develop a centralized logistical system for ordering and delivery of in-store items, based upon the impression that involving individual retail stores in the order and delivery chain will result in inefficiencies and inconsistent consumer experiences.

iii. Should minimum orders or sliding-scale shipping prices apply?

The Council does not believe that minimum order limitations should be applied. If a consumer desires to purchase a limited quantity of product and is willing to pay the fees fairly levied by the Board for product handling and delivery, the Board should not require the consumer to purchase more product to qualify for delivery. Requiring larger orders may also be viewed as encouraging intemperate behavior.

However, the Council requests that the Board refrain from establishing handling and delivery fees for small orders that are effectively subsidized by larger orders.

The Council encourages the Board to establish a pricing framework for product handling and delivery fees that proportionately passes on to the ordering consumer any savings realized by economies of scale. If, for example, case-sized orders can be delivered to a consumer for a lesser per-bottle charge than a single-bottle order, that should be reflected in the total fees charged to the consumer.

Council also requests that the Board consider whether the presumably larger margins on per-unit revenues for higher-priced products can be used to offset handling and delivery fees.

iv. If so, could these be misconstrued as incentives to overindulge?

No, and, in any event, Council does not believe that the Board is capable of moderating potential overindulgence by way of regulating product handling and delivery fees and logistics. Council fully expects and encourages the Board to introduce appropriate controls for the delivery of its products to consumers, including reasonable limitations on maximum order quantities and requirements for the collection of an adult signature at delivery. The Board should make a substantial effort to communicate how these controls will be implemented, in order to educate potential consumers as well as the citizens of the Commonwealth who generally oppose the wider distribution of beverage alcohol.

b. DELIVERY TO LICENSEES

i. Should the agency change its policy to permit delivery to licensees?

Emphatically yes. The members of the Council's licensee subcommittee have repeatedly expressed to Mr. Conti and the Board the frustration and inconvenience they experience dealing with the current system. The licensees' provision of wine and spirits to their customers is governed by requirements for compliance with responsible sales controls, so delivery to licensees should not generate any additional concerns for increasing intemperate behavior.

The licensees on the Council strongly encourage the Board to establish delivery procedures for delivery of SLO items by PA-licensed distributors directly to licensee establishments. Since direct-shipped SLO items would not be handled by the Board,

Council encourages the Board to consider passing on to the licensees any savings realized by such direct shipment. Also, to the extent that licensees have already made arrangements under the existing system for the pickup and delivery of their orders, care should be taken to preserve that option if desired by the licensees.

ii. If sliding-scale shipping prices are provided for consumers, should these also apply to licensees?

Yes.

c. DELIVERY TO OUT-OF-STATE PURCHASERS

i. Should the agency take advantage of its buying power and competitive pricing to sell wine and spirits to non-PA purchasers?

Council was unable to reach consensus on this question. Positive responses to this question were based upon the largely unsupported assumption that allowing sales to out-of-state individuals and entities will result in increased sales volumes and revenues for the Board, thereby increasing tax revenues for the Commonwealth, and would also improve the Board's ability to negotiate favorable prices by increasing its already-substantial purchasing power. To the contrary, comments were received suggesting that in-state prices and selection could be negatively impacted by allowing the Board to conduct out-of-state sales. For example, there is a concern that much of the product within the popular Chairman's Selection program is favorably priced precisely because the producers and distributors know that the below-market prices will be available only within Pennsylvania. Other comments were received indicating that the significant internal resources the Board would have to dedicate to managing logistical, legal and taxation issues associated with interstate marketing and delivery of beverage alcohol may make this effort less profitable than anticipated. The Council encourages the Board to fully study the economics of this concept before embarking on an out-of-state sales program.

Care should be taken to ensure that this effort does not shift the focus of the Board from its efforts to provide improved service to its primary constituencies – consumers and licensees located within Pennsylvania. For example, the Council would discourage the Board from making sales to consumers in other states at prices lower than the Board charges to in-state consumers.

One RAP member observed that taking this route would likely increase the criticism leveled at the Board with respect to its conduct of non-governmental activities. The Board should be prepared to answer these criticisms. In a similar comment, a RAP member suggested that the Board's retail function be split away from the control function and into an entirely separate corporation owned by the Commonwealth.

It is the position of Council that if the Board is enabled to sell its products online for delivery in areas outside of Pennsylvania, then the customers in Pennsylvania should also be able to purchase from retailers in those areas, and have the purchased items delivered in Pennsylvania.

ii. Would the possible benefits for PA stakeholders justify the required investment in marketing?

The Council is not adequately informed to provide a meaningful cost/benefit analysis. If the Board desires a reasoned response to this question, the Council requests that Board first provide it with any projections or studies it has conducted or commissioned. However, in the general opinion of Council, the Board should only embark on an out-of-state sales program upon a well-vetted determination that the program would result in increased tax and other revenues to the Commonwealth at large, and/or lower product prices within Pennsylvania.

d. DELIVERY FROM OUT-OF-STATE ENTITIES

i. If the agency's policy on shipping is revised as discussed above, should PA consumers be permitted to receive goods from licensed limited wineries directly to their homes?

Emphatically yes, see the attached Position Paper. However, Council requests clarification from the Board as to why this question is explicitly limited to "licensed limited wineries", and, presumably, to wine products. As set forth on the attached Position Paper, Council expects the Board to establish reasonable licensing and taxation frameworks, but Council discourages the Board and the Legislature from prohibiting otherwise qualified and responsible out-of-state retailers from selling to Pennsylvania consumers.

While Council is in favor of permitting direct shipping for all categories of products, including products that the Board is currently offering for sale, Council believes that

it is most important to allow for direct shipping of products not available in the Board's inventory and products with limited allocation and availability.

As noted above, many Pennsylvania consumers currently obtain wine and spirits from out-of-state sources, and these sales contribute nothing to the state's coffers. Explicit legalization of out-of-state deliveries into Pennsylvania may provide a tax stream or other source of revenue for the Commonwealth.

Council also notes that comments were received from a RAP member expressing serious and reasonable concern that permitting direct shipment into the state would have a significant negative impact on the Pennsylvania businesses that currently act as importers and suppliers of SLO items to the Board. On balance, and keeping a consumer-centric focus, Council does not believe that this issue should stand in the way of allowing direct shipping to Pennsylvania consumers. However, Council encourages the Board to consider the potential impact on its current in-state business partners as it makes its determinations, and to make clear to those businesses in advance of implementing such changes how the current SLO system would or would not fit into a scheme that permits direct shipment to consumers.

As stated above, It is the position of Council that if the Board is enabled to sell its products online for delivery in areas outside of Pennsylvania, then the customers in Pennsylvania should also be able to purchase from retailers in those areas and have the purchased items delivered in Pennsylvania.

ii. If this is permitted for consumers, should this also apply to licensees?

Yes. Council is not aware of any reason to discriminate against licensees in this regard.

iii. Should the PLCB take a position supporting legislative changes to permit direct acquisition from other entities, such as online and out of state retailers?

Yes. The Council is willing to assist the Board in disseminating position statements in support of such legislative changes, consistent with the consensus positions of Council as stated above.

IV. Conclusion

Council strongly encourages the Board to expeditiously conclude its determinations as to whether it can and should implement the programmatic changes discussed above. Council is seriously concerned that, unless the Board makes real and discernable progress in implementing these changes in the very short term, the Board's discussion regarding shipping and delivery initiatives will be viewed as an artificial defensive response to the current debate over the potential privatization of the Board's retail function. Council has not yet been asked to take, and has not taken, any official position on privatization. In general, Council's charted role is to assist the Board in improving the consumer and licensee purchasing experience within the confines of the state-controlled retail system. Council acknowledges that privatization could provide consumers and licensees with more varied, and potentially better, options for purchasing wine and spirits. However, Council also believes that the Board has made progress in improving its retail system over the past several years, is committed to continuing its improvements efforts, and that the substantial investment made to implement those improvements should be acknowledged. Council understands that some of the shipping and delivery concepts discussed above will require legislative action that is largely out of the control of the Board. Still, Council believes that making the delivery and shipping changes discussed above in the short term, thereby immediately providing wider purchasing options to consumers and licensees, will allow the privatization debate to run on a much less frantic pace, and will allow the Legislature to make a reasoned and fully-informed evaluation.

Officers	Voting Members
Tim Wolfson, President Brent Means, Vice President Dan Tunnell, Secretary	Alex Sebastian JoEllen Lyons Dillon Barry Magarick Tony Lawrence Bill Eccleston Ray Hottenstein