Remarks to Senate Law & Justice Committee on PLCB
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·Wine Institute is a non-profit trade association representing more than 1,000 California wineries. Together, California wineries produce 90% of US wines. According to PLCB's Marketing Division, California wines account for 64% of wine dollars generated and 53% of wine units sold by PLCB. More than half of all PLCB wine sales - both dollars and units - is from California wine.

·Wine is an agricultural product. Weather, labor, cross-country transportation, land values, glass and other packaging prices, rising state alcohol taxes and fees, and other factors contribute to rising wine prices. While PLCB permits suppliers to increase prices of a particular item 4 times per year, wineries generally set pricing in a given market for an entire year. Price increases are directly related to increased product cost, as even minor increases result in sales lost to thousands of competitor brands.

·Wine Institute members have grown extremely frustrated with 1) PLCB's haphazard imposition of new fees and fee increases, 2) a lack of notice to industry with sufficient time to prepare for such increases, and 3) the systemic lack of transparency in all PLCB activity.

"HERE WE GO AGAIN..."

Logistics, Transportation and Merchandising Factor (LTMF)

·On July 13, 2010, PLCB notified suppliers of plans to raise the LTMF, formerly the Occupational Cost Component (OCC) or bottling handling fee. It notified this Committee of the increase by letter dated August 20, 2010. The LTMF for wine was to be raised from $1.30 to $2.05 per 750 ml bottle, an increase of $0.75. Following fierce industry opposition and Governor-elect Corbett's objections, in November PLCB announced a 6-month moratorium on accepting price increases resulting from an LTMF increase.

·On April 15, 2011 suppliers received an e-mail indicating that in May PLCB would convert the LTMF from a flat per container fee to a percentage based on the current cost of the product by size. This shift will affect the shelf price following any supplier price change.

·For example, the LTMF on a 750 ml bottle of wine that costs PLCB $10 is currently $1.30. If the LTMF shifts from a flat fee to a percentage, the LTMF will remain $1.30, but become 13%. If the supplier increases the wine to $12, the new LTMF continues at 13%, but the fee will be $1.56. A future price increase to $14 will result in the LTMF being $1.82. Since the 18% Johnstown Flood tax is imposed on top of the price containing the LTMF, the resulting consumer price increase is even higher.

·Specifically, under this proposed change to the LTMF, raising the price of a 750 ml bottle of one of the most popular wine brands in the US by $1.00 will result in the winery collecting 23% less than the current product cost. Raising the price of that wine in the 1.5 liter size by $1.00 will capture 14% less than the current product cost. Wineries must raise their prices to capture these losses. PLCB suggestion that suppliers absorb increased costs and fees rather than pass them along to consumers is commercially impossible.

"REASONABLE PENALITIES ARE OK, BUT NOT FEES TOO!"

Transition to Bailment

·Wine Institute has supported PLCB's transition to a bailment system in anticipation of efficiencies and cost savings that should result. The legal theory of bailment is that supplier retains ownership of product stored in the PLCB's bailment warehouse until it leaves there bound for a retail store. Under the current system, PLCB takes ownership upon receipt in a PLCB distribution center. As PLCB Chair PJ Stapleton observed to the House Liquor Control, and this Senate Committees on 4/14/10, "[A] major advantage of a conversation to bailment is cost-savings and a freeing-up of operating capital....Such fees could be used to increase Commonwealth revenue and off-set the PLCB's costs associated with the operation of the Board's warehouses."

·Suppliers will incur significant expenses under a bailment system. They will continue to pay freight to ship product to the bailment warehouse dock. Suppliers will insure product in the bailment warehouse; currently PLCB bears that risk. Suppliers will maintain their own inventory at bailment warehouses under threat of penalty for inventories above or below forecasts; PLCB currently manages inventory for all suppliers.

·Wine Institute acknowledges that bailment penalties for over and under stocking are commonly charged by other bailment states. However, we must insist that these penalties be reasonable. According to one supplier, the PLCB bailment penalties as proposed would be the highest penalties of all 14 bailment states.

·Wine Institute opposes a transition to bailment becoming an excuse for imposing unjustified fees on suppliers. Throughout this transition, PLCB has assured suppliers it would impose no new bailment FEES, only bailment PENALTIES for supplier over and under stocking. Imagine the shock of suppliers when, on April 27, PLCB announced at a bailment meeting that it was in "legislative discussions" for authority to charge bailment fees in addition to bailment penalties. We oppose new bailment fees under these circumstances. None of the other 15 bailment states charge both bailment fees and handling charges.

·Suppliers should NOT be required to pay both the LTMF and bailment fees. Under bailment, suppliers will assume logistics and transportation costs, and PLCB will discontinue doing the things LTMF was created to cover. The PA Attorney General has twice opined that PLCB may charge an operations or LTMF fee so long as it bears a relationship to actual costs incurred (PA AG Opinions No. 77-18 and 80-1). Wine Institute is of the opinion that PLCB costs recovered by the LTMF will no longer exist under a bailment system. Before the LTMF may continue, PLCB must provide legislators and suppliers with specific evidence of actual costs the fee will recover.

"NICKELING AND DIMING SUPPLIERS TO DEATH"

PLCB Pricing and Payment Terms

Purchase Order Cost of Wine to PLCB:	**$10.00**
X Prompt Pay Discount of 1% ($0.10) w/in 10 days	**10.10**
+ Freight, Duty & Taxes, if applicable	**0**
X Standard Mark Up of 30% ($3.03 + round up $0.06 to "9)	**13.19**
+ LTMF flat fee on 750 ml ($1.30)	**14.43**
X Emergency Tax of 18% ($2.61 round up $0.09 to "9)	**<u>17.19</u>**
+ "9 Rounding" (twice for $0.16) = SHELF PRICE	**$17.19**

·PLCB discounts payments to each supplier by a 1% "Prompt Payment Discount" when it pays within 10 days of receipt of product. Wine Institute members report that PLCB charges suppliers this 1% on EVERY transaction, but NEVER makes payments for 90 days. Under a bailment system with 90 day payment terms, PLCB will gain revenue 45 to 60 days ahead of having to pay suppliers. All other bailment states pay under net 30 day terms. It is estimated that this accounts for $18 million in revenue.

·PLCB rounds up all retail prices to end in "9" after calculating both the mark up AND the emergency tax, but will not break the nickel. For example, if the price is $9.95, PLCB rounds up to $9.99. If the price is $9.96, however, PLCB rounds up to $10.09. There is not necessarily rounding to the closest "9". Even these small price changes impact sales.

·PLCB requires specific case code labels on every case shipped into the commonwealth, only state in the US with this practice. They are also alone in requiring that these case codes being applied on two sides of the cases. This is an additional cost that suppliers do not have in any other state.

"CAN SOMEONE PLEASE TURN ON THE LIGHTS IN HERE?"

Systemic Lack of Transparency in PLCB Actions

·Following the July 13, 2010 industry notice of the pending LTMF increase, I requested from PLCB under the Pennsylvania Right to Know Act all records since January of 2010 related to the change to LTMF/OCC and the transition of PLCB warehousing to a bailment system. The Agency Open Records Officer was "unable to find any records related to the substitution of the OCC with the LTMF or the transition of PLCB warehousing to a bailment system. Further, there are no records in existence relating to presentations made by the Board members regarding these matters." My requests were denied "because the records [I sought were] protected from disclosure" under an exception for predecisional deliberations, "recommendations which have been considered or are currently being considered by the PLCB in the development of operational policy." My request was made 31 days AFTER PLCB e-mailed suppliers about the proposed LTMF increase. How are vital policy decisions being made and recorded at PLCB?

·In summary, the Pennsylvania Liquor Control Board operates in a culture of closed door decision-making that impact thousands of suppliers. A lack of thoughtful evaluation of policy changes, sufficient industry notice of such changes, and opportunity for meaningful industry input on important policies demonstrate PLCB's a lack of cooperation with industry partners. Looking at liquor control boards in other states, Wine Institute proposes specific recommendations to improve relations between PLCB and its suppliers.

RECOMMENDATIONS:

1. Require that substantive and specific agendas for PLCB Board meetings be posted on the PLCB web site 3 days prior to the meeting;

2. Webcast all PLC Board meetings;

3. Require that all changes to any PLCB fee or policy with a fiscal impact be discussed and voted upon in an open meeting of the PLCB;

4. Require that the written minutes of PLCB meetings be substantive and posted on the PLCB web site as soon as possible after the meeting, and kept there for at least a year;

5. Mandate 60 days advance notice of ANY increase or decrease to a fee or any consideration of a new or existing fiscal policy be given to suppliers, with a reasonable opportunity for industry to respond before enactment;

6. No new fees, penalties or changes to fee schedules without legislative oversight and a demonstration of the actual costs the fee is intended to alleviate;

7. Suspend the Prompt Pay Discount unless there is prompt (within 10 days) payment;

8. Legislative evaluation of all other bailment state penalties before the final PLCB bailment penalty schedule is set;

9. Statutorily mandate a net 30 day payment to suppliers;

10. Imposition of either the current, fixed LTMF or reasonable, justified bailment fees following the transition, but not both;

11. Create an industry advisory board which considers and gathers information about the impact of potential decisions upon suppliers before the decision to proceed is finalized; and

12. Round final retail prices ONCE, both up and down to the closest "9".