

Testimony by Wendell W. Young, IV  
President, United Food and Commercial Workers Local 1776  
Chairman, UFCW PA Wine and Spirits Council

Pennsylvania House Liquor Control Committee  
Hearing on Updates and the Implementation of Act 39  
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On behalf of the more than 22,000 members of UFCW 1776 I am proud to represent, including the 3,500 of them who work in the PA Wine and Spirits Shops, I want to thank Chairman Harris and Costa for providing me with the opportunity to provide testimony regarding the implementation of Act 39 of 2016. Before we dive into the nuts-and-bolts of Act 39, I feel compelled to remind the Committee, and all lawmakers, that we are here today to discuss a law that was passed this year. This statute is brand new and the PA Liquor Control Board (PLCB) has just begun to implement many of its key provisions.

There is no sound reason why this Committee should rush to amend this statute before we all see what impact this law will have on consumers and on the state's precarious financial situation. You have done your jobs; now let the PLCB do theirs. As you now, we opposed Act 39 and I could very easily provide pages and pages of detailed testimony explaining why we believe this statute will ultimately cost taxpayers millions of dollars in lost revenue and thousands of family-sustaining jobs. Outsourcing the sale of wine to more than 10,000 potential licensees will cost taxpayers millions in lost revenue. I will also add that those states that have outsourced the sale of wine, including Iowa and West Virginia, ultimately lost their agency – a valuable public asset - to the private sector. Iowa, within just three years after wine sales were privatized, experienced a 25% drop in revenues.

But my members are working to implement this statute. We accept the fact that Act 39 is the law and it includes many provisions that, frankly, are long overdue. We have long supported bipartisan, common-sense proposals to modernize the PLCB to improve consumer convenience and help this asset generate more revenue for taxpayers. These proposals included the expansion of Sunday sales and what we call the “right placing” of our stores in higher traffic areas, such as next door to grocery stores. These are important steps in the right direction.

Today, we're here to discuss the provision in Act 39 that gives the PLCB greater flexibility in how it sets prices for wine and spirits. This provision, apparently, has created some concern among the handful of mega-producers of wine and spirits who have launched a media campaign asking you to open Act 39 and repeal this section.

I am surprised at the industry's position for three main reasons: first, they feign surprise that Act 39 included this important change. Every lawmaker here today knows that the PLCB has long sought greater flexibility in pricing. Second, these interests have accused the members of this Committee and all lawmakers of using a “bait and switch” tactic by including this provision in the statute. In an op-ed that was published by The Pittsburgh Post-Gazette and other outlets, David Ozgo, the chief economist for the Distilled Spirits Council, wrote, “Allowing the

Pennsylvania Liquor Control Board flexible-pricing authority as part of market modernization was a bait-and-switch tactic.” I am not sure what bait you used and what you switched, exactly, but I think the council owes this Committee an explanation.

The fact is that this pricing mechanism that you have proscribed is commonplace in our industry.

Finally, and perhaps most glaringly, these critics do not really explain why, exactly, they are so opposed to this provision. They contend that consumers will somehow suffer as a result of this provision. That simply is not the case.

Any notion that the flexible pricing component of this legislation was “tucked away” or somehow slipped into this bill is simply not true. Simply because one special interest was unaware of the legislation doesn’t mean that this legislature or the PLCB tried to pull a fast one. This Committee and your counterparts in the Senate have focused on the pricing issue, among others, in previous hearings. The PLCB and others have made the compelling public case for this change many, many times over the years. I have spoken directly to lawmakers in both chambers from both parties about the importance of this provision. Just last year, industry representatives appeared before this Committee to discuss the pricing issue, among others. They argued against any changes to the PLCB’s handling fee or to the agency’s competitive mark-up rate. One witness said directly that “we’re happy with the prices” while raising concerns about its members losing some profits.

Last year, Representative Chris Ross pressed the PLCB repeatedly – and appropriately – to clarify its current pricing practices. The testimony makes it very plain that the agency was at the mercy of the seller who was in a position to “dictate” the price that the state pays for each and every bottle it purchases:

Representative Ross: Well, my question is: Why didn’t you get the best price?

Mr. Holden: Because we’re not allowed to. We must mark-up proportionally. We do not have the ability to take advantage of our buying power. I mean, we’re in a card game with the industry; and our cards are on the table and their cards are down. They know exactly what we can do. If we were, legislatively, given the ability to negotiate ... we’d be in a much better situation.

Appropriations Committee Budget Hearing, Thursday, March 19, 2015, 14.

Representative Ross went on to ask the agency, “Why didn’t you get the best price?” and “why are you asking- why are you letting them dictate your purchase price, or why are you letting them dictate your retail price?” *Id.*, 14, 17. Now, the agency has clearer statutory authority to do such negotiating with the industry, and it should be allowed to do so, just as Representative Ross urged them to in the above hearing.

I would encourage Committee members to challenge industry leaders about the very specific way that prices are set in virtually every market in the nation and why this provision is not poisonous to their members.

Finally, there seems to be some confusion regarding the potential impact that this change will have on consumers. The question, really, becomes: why are these interests opposed to flexible pricing changes? If the PLCB asks for a lower acquisition price, who suffers? It is not the consumer. It is the industry.

The industry contends that the PLCB will use this new tool to raise the retail shelf price on customers, and that is just not the case. The agency has always had the ability to increase the mark-up from 30% prior to Act 39 if they needed more money but they have not done so. Why would that change now?

I can't speak for everything the agency will do in terms of retail shelf price, but this is a logical explanation as to why the Board would like to negotiate lower prices from suppliers: If the agency can reduce the purchase cost of a bottle of, for instance, vodka, to \$9 from \$10 and were to apply a slightly higher mark-up to that bottle with the new pricing flexibility tools in Act 39, the consumer will still pay less and the state will realize more revenue. It's simple math.

A slightly higher mark up on a cheaper bottle of liquor enables the agency to collect more revenue for taxpayers on that product, while keeping the shelf price the same or lower. Who would be opposed to this? Let me be crystal clear: the industry is not opposing flexible pricing on behalf of a single consumer. Not one of your constituents will benefit if the PLCB loses this new flexibility. This change simply provides the PLCB to negotiate for a better acquisition price from the wine and spirits producers so they can provide more revenue per bottle and keep prices competitive for your constituents.

This provision will allow the PLCB to better leverage its buying power and that will translate into more revenue for the Commonwealth. It is important to remember that the PLCB's shareholders are your constituents. The revenue that the PLCB generates doesn't benefit the PLCB- it benefits the residents of Pennsylvania by funding public services. If the PLCB is able to generate more revenue through better product acquisition practices, the agency is benefiting taxpayers and residents of Pennsylvania. The PLCB is not in some conspiracy with members of this Committee to pull a fast one on consumers, your constituents and every taxpayer in this state as the industry representatives here today might lead you to believe. The PLCB itself is an incredibly valuable public asset that ought to be given the tools to thrive in its business with others in the industry. Despite its privatization provisions, Act 39 does provide the PLCB with pricing tools that will allow it to acquire product like other businesses do and use its purchasing power for the benefit of its owners: *the public*.

I urge the General Assembly to take pride in this public asset rather than undermine it further. by letting it thrive as a business, continue to provide great selection at competitive prices, and ultimately serve the residents and taxpayers of the Commonwealth. Remember- every taxpayer benefits as the PLCB returns more taxes, profits and other transfers to the state.

Thank you.

On behalf of the Pennsylvania Restaurant & Lodging Association, we thank the committee for allowing us to provide testimony regarding Act 39 and to discuss our association's perspective on the important issues that it has raised.

- 1) We believe that there needs to be consideration of a statewide auction so that licenses go to the counties that really need them. In the current auction, which closes today, only one license is available in Cumberland County. In reality, a statewide auction would likely result in multiple license winners in this county because the demand there is substantial and the supply of available licenses is so low. This change will make Pennsylvania more responsive to consumer demand and give businesses a better opportunity to serve customers.
- 2) Another change that should be made with regard to the license process involves the payment regulations. The new rules require the full amount of a winning bid to be paid within two weeks of winning the auction. While grocery stores and big box chains have the financial capital to make that type of payment, independent restaurateurs cannot get cash that quickly. Until now, license award winners were allowed to provide a promissory note from a bank to demonstrate proof of funds. This should be allowed to continue so that small business owners are able to compete for licenses.
- 3) Finally, we believe that a new license should be created for grocery stores. Restaurants have a different business model than grocery stores, but both are lumped into the same license category. This makes it even more difficult for new independent restaurateurs to enter the market and obtain liquor licenses. A new license category will let restaurants be restaurants and grocery stores be grocery stores, and will benefit businesses and customers alike.

We are in general very happy with the outcome of the Act and hope that this legislative year will come with conversations and corrections to some of the unintended situations. We as an industry association are supportive of the efforts to modernize or privatize the liquor code of Pennsylvania as long as it helps to grow our small business industry.