



**Joint Hearing Convened by the House Liquor Control Committee and Senate Law and Justice Committee
June 3, 2019**

Testimony of the American Distilled Spirits Association (ADSA)

Chairman Pyle, Chairman Deasy, Chairman Stefano, Chairman Brewster, and members of the Senate Law and Justice Committee and House Liquor Control Committee, thank you for allowing us, the American Distilled Spirits Association (ADSA), to share our member companies' experiences and viewpoints on Act 39's flexible pricing provision. ADSA is a group of leading domestic and global companies with common interests in manufacturing, distributing, and marketing distilled spirits in the United States and Pennsylvania. Member companies represent approximately 55% of all distilled spirits sales in the US and Pennsylvania.

ADSA firmly believes in and supports a State's right to choose how alcohol is regulated inside its borders, as envisioned by the 21st amendment. Because of this, ADSA has been longtime supporters of National Alcohol Beverage Control Association (NABCA), and state liquor commissions and boards, like the Pennsylvania Liquor Control Board (PLCB).

As a distilled spirits supplier organization, whenever we see a proposed change to how liquor is purchased, distributed, or sold in a state, we pay close attention. When Act 39 of 2016 was passed, we had some concerns of how the mechanics of 'flexible pricing' would work. While we firmly believe in a State's right to control alcoholic beverages, we also believe we must always be serving the consumer with quality products at a fair price. Now that we have worked within the system for almost three years, we feel we can accurately state that Pennsylvania's system is no longer fair or balanced for the supplier and that the consumer in the commonwealth is paying the price with higher retail costs.

Prior to Act 39, Pennsylvania had a strict pricing formula that required prices to be proportional, a fair system that treated all suppliers equally. Any discounts offered by a supplier would directly benefit consumers in Pennsylvania with a lower retail cost. The mechanics of the system were transparent. Suppliers were able to hit key retail price targets by using the fixed formula to calculate their unit cost or FOB. Consumers could expect stable, competitive prices.

Retail pricing is a complex process. ADSA member companies spend a tremendous amount of time calculating their suggested retail prices, to both maximize value to the consumer and properly represent their products in the marketplace. A retail price can infer quality, it can drive sales, it can demonstrate value, and most importantly it allows consumers to have options.



The creation of flexible pricing was championed by the PLCB as a way to more effectively negotiate with liquor suppliers and increase revenue. It was also purported to be a mechanism to give the PLCB better bargaining power with suppliers that would lower the consumer retail price. In actual practice, retail prices on dozens of members products have been increased by the PLCB, increasing cost to consumers in the commonwealth. These prices have been raised against supplier request and recommendation, with limited notice from the PLCB and little room for negotiation. There is limited transparency in the new flexible pricing process, both for the suppliers and the consumers.

Because the mechanics of the new flexible pricing process limit a supplier's ability to negotiate, we either accept the arbitrary PLCB retail price increases or we remove our product from the market. Act 39 has become a defacto tax increase on whatever products the PLCB chooses. A tax increase not paid by the supplier, but rather one paid by the citizens of Pennsylvania at the cash register. For those that live close to a border, it could incentivize them to make their alcohol purchases in a neighboring state. For those that don't, they just have to pay more since the commonwealth is the only retailer of distilled spirits. It doesn't have to be this way.

Legislation has been introduced by Representative Jesse Topper, PA HB 1512, that would repeal flexible pricing and revert back to pre-Act 39 pricing process. This is a proven system that works, a system with transparency, and one that treats all suppliers fairly. It protects consumers by keeping pricing directly proportional to the supplier unit cost or FOB.

Our products are sold in every state in the US, be it an open state or a control state. While we defer to each state to choose its preferred methods of wholesale and retail, we worry about consumer price, choice, access, and breadth of product. Act 39 has proven problematic for our member companies, and the group that will continue to suffer the most are the consumers of our products in Pennsylvania.

Respectfully,

A handwritten signature in black ink, appearing to read 'Matt Dogali', written in a cursive style.

Matt Dogali
President, American Distilled Spirits Association



Addendum to ADSA written testimony

This is a real example of a 'negotiation' that occurred between a member company and the PLCB. I have changed the name to protect the company, and this is just one of dozens of examples I have received.

Marine Spirits has a product that has been selling very well in Pennsylvania at a retail price of \$26.99. That price is also in line with their national suggested retail price and part of their national sales strategy.

Out of the blue, the Marine Spirits sales manager received an email from a PLCB product manager notifying them they would be increasing the retail price on their product to \$29.99, with no adjustment to the unit cost (just increasing the PLCB margin). Marine Spirits emailed back the PLCB product manager and offered to lower their unit cost (aka FOB), amongst other concessions, IF the PLCB would keep the retail price at \$26.99.

Several weeks later the sales manager at Marine Spirits received an email back notifying him that the "PLCB accepts the offer, and the new retail price will be \$28.00." That is not what Marine Spirits offered, and now they have only one option: accept or pull the product.

And, the only thing the consumer sees is an increased price. Marine Spirits was willing to lower its unit cost and the PLCB chose to increase its margin, not keep prices competitive. Had flexible pricing not existed, and Marine Spirits wanted to make sure their product was listed at \$26.99, they could easily calculate the unit cost with the PA pricing formula.