

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE LIQUOR CONTROL COMMITTEE HEARING

STATE CAPITOL
MAJORITY CAUCUS ROOM 140
HARRISBURG, PENNSYLVANIA

TUESDAY, SEPTEMBER 10, 2019

IN RE: HOUSE BILL 1512

BEFORE:

HONORABLE JEFF PYLE, MAJORITY CHAIRMAN
HONORABLE DANIEL DEASY, MINORITY CHAIRMAN
HONORABLE MATTHEW DOWLING
HONORABLE BARRY JOZWIAK
HONORABLE ANDREW LEWIS
HONORABLE GREG ROTHMAN
HONORABLE FRANCIS RYAN
HONORABLE JESSE TOPPER
HONORABLE JEFF WHEELAND
HONORABLE DAVID DELLOSO
HONORABLE MARIA DONATUCCI
HONORABLE MARYLOUISE ISAACSON
HONORABLE STEVEN RICHARD MALAGARI

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ALSO IN ATTENDANCE:

**MICHAEL BIACCHI, EXECUTIVE DIRECTOR, REPUBLICAN CAUCUS
ERICA GODSEY, ADM. ASST., CHAIRMAN PYLE
PAM HUSS, FUTURE ADM. ASST, CHAIRMAN PYLE
ABBY KRUEGER, PRC, CHAIRMAN PYLE
TRACY POLOVICK, PRC, CHAIRMAN PYLE
LYNN BENKA-DAVIES, EXECUTIVE DIRECTOR, DEMOCRATIC CAUCUS
BRITTNEY RODAS, RESEARCH ANALYST, DEMOCRATIC CAUCUS**

**JEAN M. DAVIS, REPORTER
NOTARY PUBLIC**

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1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRMAN PYLE: The hour of 11 o'clock
4 having arrived, we call this meeting of the House Liquor
5 Control Committee here in the beautiful Main Capitol here in
6 Harrisburg to order.

7 This dapper young man to my right, your left, is
8 Mr. Biacchi, who is my Executive Director. Here in a second
9 I will turn it over to my counterpart Chairman, Mr. Deasy,
10 for his introductions and whatnot.

11 Just a few comments. It's been a busy summer for
12 the Liquor Control Committee. We've toured Philadelphia,
13 Uniontown, Bethel Park, listening to the concerns from
14 everybody all over the Commonwealth. In one case it was a
15 microbrewer. In another case it was the microwineries, and
16 another case, etc., etc., etc.

17 Today follows much in that same vein where we're
18 going to be taking public input on a bill that's been
19 offered by Committee Member Jesse Topper, who sits a couple
20 of seats to our right. On that note, I'm going to turn it
21 over to Chairman Deasy for his comments before we call the
22 roll.

23 MINORITY CHAIRMAN DEASY: Good morning. Thank
24 you, Chairman Pyle.

25 Great to be here. Welcome back to Harrisburg to

1 everybody. It looks like a quiet day up here since we have
2 so many folks here. Everybody is anxious for the fall
3 session it looks like. Great to be here.

4 Thank you to all the members and staff for
5 putting such a great panel together. We look forward to
6 hearing from all the stakeholders today. So thank you all
7 for being here.

8 MAJORITY CHAIRMAN PYLE: Thank you much,
9 Chairman.

10 For the members and all that have gathered, this
11 meeting is being recorded and televised later on PCN.
12 Please silence your phones. It would be much appreciated.

13 On that note, we're going to jump over to
14 Ms. Erica Godsey, who is on her way out the door in more
15 ways than you know.

16 I'm sorry. We're going through a transition
17 right now. That wonderful person we just called out and
18 made run in front of the camera is Erica Godsey. She is
19 retiring soon and we are transitioning into another AA for
20 the Committee, Ms. Pam Huss.

21 Would you give a wave? Thank you.

22 One of you two, call the roll.

23 (Roll call)

24 MAJORITY CHAIRMAN PYLE: Okay. Great.

25 Folks, this hearing has been convened to discuss

1 House Bill 1512. We're very happy to have the prime sponsor
2 of that with us, Jesse Topper. Jesse -- or pardon me --
3 Representative Topper, would you please give a brief
4 description of your bill.

5 REPRESENTATIVE TOPPER: Sure. I appreciate it,
6 Representative Pyle, Chairman Pyle, and Chairman Deasy for
7 having this hearing and for all those who are going to enter
8 into this discussion, which I'd very much like to continue
9 to have as we take a look at flexible pricing, which, as you
10 know, we granted the LCB in Act 39 of 2016.

11 And, you know, as I look at this, I see that what
12 we have are certainly increased revenues to LCB, which, you
13 know, we've talked about and touted, but I also see a
14 potential for what we actually have in practice is forcing
15 lower acquisition costs on our vendors, those who do
16 business here in Pennsylvania, and increasing prices for our
17 consumers.

18 And while that certainly will lead to more
19 revenue, I am concerned about the overall effects that that
20 will have on the market here in Pennsylvania and how we're
21 going to look at this into the future, which I think is an
22 important distinction that we as public policymakers, you
23 know, all of our jobs are temporary.

24 For some of us, I'm sure people wish they would
25 be more temporary than many of the others. I understand

1 that. But as we look at that, we have to think of in the
2 future, is this a tool that is truly going to benefit our
3 consumers and those who want to do business in Pennsylvania
4 or is it a potential tool that would discourage business in
5 Pennsylvania and could possibly harm our consumers?

6 Some of the questions that, you know, have arisen
7 since the previous hearing we had on this legislation is the
8 methodology that we're using to set these prices. Is this
9 putting some products at a competitive disadvantage than
10 others? Exactly how much of the additional revenue that
11 we're gaining is because of market or is it truly because of
12 flexible pricing?

13 And I think a recent letter that we received last
14 month from an international trade group questioning whether
15 this was violative of International Trade Law is something
16 that we also want to take a look at and, again, continue to
17 have this discussion about where we are now, where we want
18 to see this in the future. And that's why I appreciate the
19 hearing as we look at this legislation.

20 Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN PYLE: Thank you,
22 Representative Topper.

23 Offering comment first today is our very own
24 Pennsylvania Liquor Control Board -- lady, gentlemen, good
25 to see you again -- who are chaired by Tim Holden.

1 So please, Mr. Holden, the floor is yours.

2 PLCB CHAIRMAN TIM HOLDEN: Chairman Pyle,
3 Chairman Deasy, members of the Committee, thank you for
4 inviting us to be part of this hearing today.

5 I'm accompanied by my fellow Board Members, Mike
6 Negra and Mary Isenhour; our Executive Director, Charlie
7 Mooney; our Director of Marketing and Merchandising, Dale
8 Horst; and our Chief Counsel, Rod Diaz, to answer your
9 questions.

10 The General Assembly and the Governor, through
11 Acts 39 and 85 of 2016, fundamentally changed the
12 Pennsylvania Liquor Control Board's product pricing
13 authority, which is now commonly referred to as flexible
14 pricing. Over the past three years, the PLCB has sought to
15 implement flexible pricing in a fair manner for both our
16 suppliers and customers.

17 This morning I will briefly provide background on
18 the Agency's pricing history and summarize our current
19 policies related to flexible pricing.

20 Prior to Act 39, the Liquor Code required that
21 the PLCB apply a uniform mark-up on all products. It is
22 often stated that the Agency is one of the largest
23 purchasers of wines and spirits in North America. However,
24 proportional pricing prevented the PLCB from reaping any
25 benefit from its economy of scale or applying basic

1 supply-and-demand principles to pricing products.

2 Throughout the history of the Agency, the product
3 mark-up structure has varied. Immediately before the
4 implementation of Act 39, the PLCB assessed two standard,
5 straight percentage mark-ups, a 1 percent, then a 30 percent
6 mark-up, and a handling fee called the Logistics,
7 Transportation and Merchandising Factor, LTMF.

8 The statutory 18 percent liquor tax was applied
9 to the retail price after the PLCB's mark-ups were assessed.
10 Act 39 did not change the liquor tax or how it is applied to
11 the retail shelf price.

12 While the PLCB had discretion to set the mark-up
13 structure, the mark-up had to be applied equally across the
14 product portfolio regardless of whether an item was a
15 mass-market Chardonnay or a limited-release Bourbon. The
16 General Assembly and the Governor recognized this
17 opportunity to reform the pricing structure.

18 As a result, Act 39 allowed the PLCB to no longer
19 use a proportional mark-up structure when pricing its
20 best-selling, limited purchase, and discontinued items. As
21 a practical matter, flexible pricing under Acts 39 and 85
22 provided the Agency with discretion to negotiate product
23 acquisition costs and set the retail price of an item based
24 on the specific business factors rather than a
25 one-size-fits-all mark-up.

1 Three years have passed since Act 39 became
2 effective. During this time, the PLCB's approach to
3 flexible pricing has become a standard part of our business
4 model. The Agency remains focused on two priorities
5 regarding product pricing.

6 First, maintain fair and competitive prices for
7 consumers on an assortment of products that delivers
8 quality, value, and variety. Second, maximize revenue for
9 the Commonwealth of Pennsylvania to support important
10 General Fund programs that benefit all Pennsylvanians.

11 Flexible pricing negotiations are not one-off
12 meetings but are rather perpetual conversations with our
13 suppliers. Cooperation between suppliers and the PLCB is
14 central to the success of both parties and the customers we
15 ultimately serve.

16 Our product category managers work closely with
17 the suppliers to access products based on a wide range of
18 market-driven criteria. Product acquisition costs,
19 incremental margin considerations, projected category
20 trends, and the manufacturer's suggested retail price are
21 all analyzed as part of the product evaluation process.

22 Retail price adjustments are determined on an
23 item-by-item basis after examining Nielsen sales data from
24 retailers in states bordering Pennsylvania, market demand,
25 key price points, thresholds, and comparison of items priced

1 to its category peers. While the PLCB ultimately determines
2 a product's retail price, some price adjustments are
3 implemented at the request of suppliers.

4 It is also important to note that all special
5 pricing allowances, which are limited-time, supplier-funded
6 product sales, are all passed along directly to customers.

7 The 2016 liquor reforms have had a multifaceted
8 impact on the PLCB and the alcohol beverage marketplace in
9 Pennsylvania. Given the complexity of these changes, it is
10 difficult to isolate the exact fiscal impact of flexible
11 pricing. Perhaps the best indicator of the financial impact
12 of the flexible pricing is the PLCB's financial returns
13 since Acts 39 and 85 were implemented. While not solely
14 attributable to flexible pricing, one indication of the
15 impact of flexible pricing is the substantial growth in the
16 PLCB's net income since Act 39 became effective.

17 Net income increased from \$103.9 million in
18 fiscal year 2015-2016 to \$158.2 million in 2017-2018 and
19 \$191 million in the most recent fiscal year.

20 The PLCB has been and continues to be receptive
21 to feedback from its suppliers and the stakeholder community
22 regarding the imposition of flexible pricing, and changes to
23 procedures have resulted from such engagement.

24 For example, suppliers have recently communicated
25 concerns about the timing of retail price changes and the

1 impact of these changes to suppliers' annual marketing
2 plans. We are currently evaluating possible solutions to
3 these concerns and optimistically anticipate a mutually
4 beneficial resolution.

5 The PLCB would also like to address a recent
6 letter sent to Governor Wolf from a coalition of
7 international wine and spirits trade associations that
8 asserted the flexible pricing model from Act 39 violates
9 international trade law. Foremost, international trade law
10 actions cannot be taken by industry trade groups but rather
11 occur between countries regarding behavior between Federal
12 Governments.

13 We are unaware of any government seeking review
14 or repeal of Pennsylvania's flexible pricing. Further,
15 while the World Trade Organization does prohibit a higher
16 tax on imported goods than on a domestic product if the
17 intent is to protect the domestic marketplace, that does not
18 mean a standard alcohol mark-up is the only way to ensure
19 fair treatment of international producers.

20 Let us affirm the PLCB does not engage in
21 preferential treatment of any supplier or country of origin
22 and therefore passes the three-part test established for
23 evaluating trade law violations.

24 Regardless, the PLCB has reached out to both the
25 National Alcohol Beverage Control Association and the Office

1 of the U.S. Trade representative to pursue conversations
2 ensuring Pennsylvania's law doesn't run afoul of
3 international rules.

4 With that, Mr. Chairman, we are happy to be here
5 and look forward to taking your questions.

6 MAJORITY CHAIRMAN PYLE: Thank you very much for
7 your testimony, Chairman Holden.

8 Any questions from the panel?

9 Mr. Topper.

10 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.

11 And thank you, Chairman Holden, for your remarks
12 and for all of you who have gathered here once again to
13 continue in this discussion.

14 One thing, Mr. Chairman, in your remarks, about
15 three-quarters of the way through, you had talked about
16 passing along some savings to the consumers based on, you
17 know, flexible pricing. But I also heard maximizing revenue
18 as a goal for the flexible pricing. Ultimately, the revenue
19 that we get is from the consumer.

20 So I'm trying to reconcile those two statements
21 where we're maximizing our revenue from the consumer while
22 passing on our savings to them. Could you help me
23 understand that better?

24 PLCB CHAIRMAN TIM HOLDEN: I think what I
25 referenced was any special programs that the producers

1 present to us we pass on all of that to the consumers. As
2 far as our FOB negotiations, you know, we don't transfer all
3 of that on to the consumer. Dale could address it further
4 how we negotiate with the suppliers and how much.

5 MR. DALE HORST: Representative, we work with the
6 suppliers on both the cost side and the retail side.
7 Sometimes we will initiate a discussion or they will
8 initiate a discussion and they may want to lower the retail
9 price as compared to their competitors. And we work with
10 them on how to get that done.

11 Sometimes that involves cost reduction to us so
12 that the LCB and the State is not hurt in the middle of that
13 to get that retail price down. And we continually watch --
14 as Chairman Holden said, we continue to watch the prices
15 around us to all the competitive states on our borders to
16 know what their selling prices are of each of our products.

17 REPRESENTATIVE TOPPER: And finally, do you feel
18 -- and anyone can answer this -- that there are -- as you
19 heard me mention in my opening remarks, looking into the
20 future, is this a tool -- even if we're using it exactly the
21 way it should be used now, do you feel there are enough
22 checks and balances within this flexible pricing system to
23 ensure that it will always be that way or is there a
24 potential to really hurt either our suppliers or consumers,
25 depending on how this tool is handled into the future? And

1 if there is, what would that check and balance be?

2 PLCB CHAIRMAN TIM HOLDEN: Well, you know,
3 obviously the world changed in 2016 and PLCB became the
4 controller of the retail price. And that's a whole
5 different world for our friends who are going to testify
6 after this. But as I mentioned in my remarks, we think we
7 are fair. We think it's a give and take. Obviously, there
8 were bumps in the road that we never negotiated before. We
9 think we are past that. Suppliers weren't used to
10 negotiating.

11 But we have a perpetual relationship and we're at
12 it every day. Dale's team is doing this every day. So who
13 knows what the future will bring. Whatever the General
14 Assembly and the Governor can agree on, we'll implement and
15 execute. But we think --

16 REPRESENTATIVE TOPPER: Well, that's always
17 something that's very easy for us to accomplish so that
18 should be fine.

19 MR. MIKE NEGRA: When you talk about checks and
20 balances -- and Dale can speak to this as well. I'll go
21 over it from a generality standpoint. We have buyers, we
22 have our pricing coordinator, we have a gentleman by the
23 name of Tom Bowman who is -- what's his title?

24 MR. DALE HORST: Director of Product Selection.

25 MR. MIKE NEGRA: -- the Director of Product

1 Selection, we have Dale, we have Charlie, and we have the
2 Board. All of us review every single price. It's on our
3 Board work. We have a Board meeting tomorrow. In our Board
4 work is all of that, all of those prices.

5 We have a meeting and we go over any concerns
6 that we have. In every meeting, Dale always gets a question
7 or two, maybe sometimes more, or will point out things.
8 We're looking for inconsistencies. We're looking for
9 fairness. We're looking for a variety of things like that
10 that come up the ladder. But at the end of the day, it's on
11 the Board as to making sure that those checks and balances
12 are in place. So I feel pretty good about it personally.

13 PLCB EXECUTIVE DIRECTOR CHARLIE MOONEY:

14 Representative Topper, I'll add that we testified previously
15 that we also are very transparent with our suppliers. We
16 take every meeting they request. We go to their meetings.
17 We go to their group meetings, their lobbyists meetings.
18 But if a supplier asked to come in and talk to any of us, I
19 assemble the team and we'll talk to them at length about
20 their products from all the way down to the FOB, all the way
21 to the retail price and what their future plans are and how
22 it fits with ours.

23 And I don't think there's anybody in the industry
24 that will accuse the Pennsylvania Liquor Control Board of
25 not granting a meeting and having a good discussion.

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REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.

MAJORITY CHAIRMAN PYLE: And I would like to speak on LCB's behalf. There have been meetings between suppliers and the Board that I've requested that you all sit down and you were more than gracious taking those meetings. I appreciate it.

Representative Ryan.

REPRESENTATIVE RYAN: Good morning, everyone. Congressman Holden, always great to see you again.

PLCB CHAIRMAN TIM HOLDEN: Thank you.

REPRESENTATIVE RYAN: Congressman Holden, by the way, met my son over in Iraq. And you were very gracious with him when he was there. He's currently deployed as well. So thank you for your concern in the past.

My question is more of a philosophical question concerning state-owned enterprises and things as opposed to not. And so the question I would ask you is, is that when -- and I think Representative Topper's question was getting at a question I similarly had so I'm going to ask it from a slightly different perspective.

LCB's profit is actually in a State-owned enterprise concept, actually somebody else's tax, so the consumer is actually paying a price that may or may not be reflective of what current market conditions would be if it

1 were not a State-owned enterprise. I'm not sure if that
2 question makes sense. But devoid of having free markets --
3 as an example, I heard the question that you would meet with
4 suppliers all the time. I frequently have constituents come
5 in who are consumers and are asking the same question, where
6 are they as part of the equation?

7 So the first part of the question is, what would
8 the market look like in Pennsylvania if it were more
9 competitive?

10 And then the second question that comes into this
11 process is, I recognize the Board meets. But in the world
12 that I'm familiar with after 45 years in industry is the
13 market would be the Board. And the market would determine
14 what's going to transpire versus not. So the question is,
15 how do we reconcile the two, recognizing our profits at the
16 LCB, which I think you've done a magnificent job of, really
17 reflects the fact that the consumers may be paying what they
18 might pay or may not be paying in a free-market environment.

19 MR. DALE HORST: So I think to answer that
20 question, as I stated previously, the first thing we look at
21 is what selling prices are around us. And then one thing
22 that Act 39 gave the WEP permits out to -- we currently have
23 over 1,000 WEP permittees that can sell wine. They buy off
24 of us at the licensee discount rate. So they are a
25 double-check to us. Competition on the wine side of their

1 product portfolio, yes, they buy it from us but they get to
2 price it as long as they do not price it lower than they
3 acquired it. But they acquired it cheaper than what we are
4 retailing it at.

5 So that is, in essence, a competition keeping our
6 prices where they are with the consumers of Pennsylvania.

7 MR. MIKE NEGRA: I think also, you know, with the
8 advent of the Internet, you know, we've got direct wine
9 shipping that gets brought in as part of Act 39. I think
10 the goal for direct wine shipping is \$100 million. And so
11 that's kind of a market barometer as well. You know,
12 currently the direct wine shipper has to be a supplier
13 supposedly. However, we certainly know a lot of retailers
14 that are shipping it into the state.

15 People can cross the border. The days of State
16 Police sitting at the border in Delaware I think are over,
17 thank God. So I think that there is competition out there
18 from a pricing standpoint, which I think might be where you
19 were going. We're there.

20 Dale's team does a good job in terms of looking
21 at other states. Are we the cheapest out there? No. I
22 mean, we have an 18 percent, you know, liquor tax. Delaware
23 has, you know, no sales tax. They have a smaller liquor
24 tax.

25 So I think we're at a competitive disadvantage

1 when it comes to that. Where the landscape might be in
2 terms of a more competitive environment, to be honest with
3 you, I really don't know. I mean, you can look at other
4 non-controlled states, more open-market states and get a
5 better answer to that. I don't know what that landscape
6 would look like.

7 You can see Washington. That's changed. Some
8 people can talk about that, the state of Washington, what
9 happened with their taxes and what happened with their
10 selection in various stores. So I think it can go a lot of
11 different ways.

12 Again, from a competitive price standpoint,
13 Dale's team does a pretty good job of making sure that we
14 are competitive on a SKU-by-SKU basis.

15 REPRESENTATIVE RYAN: I would very much like to
16 see that in a non-controlled state versus a controlled
17 state. And again, it's got nothing to do with -- I think
18 the performance of the LCB has been, you know -- I think
19 you've all tried to do what I think is a great job. What I
20 worry about is in my experience of markets is that whenever
21 there's a distortion between a marketplace and what can
22 happen, it inadvertently encourages a black market.

23 As you mentioned, the Delaware/Maryland issue,
24 that's happened where those kinds of things can happen when
25 you've got an 18 percent PA liquor tax. Those in and of

1 itself create that. So, I mean, I would personally like to
2 see that if the Chair agrees.

3 Thank you.

4 PLCB CHAIRMAN TIM HOLDEN: Representative Ryan,
5 if I could just add one thing. We got a little bit talking
6 about taxes here. You know, besides the 185 million
7 transfer, we transferred \$571 million in taxes at 6 percent.
8 If it's the Pennsylvania Liquor Control Board, they take
9 that money every week. If it's to Mary, Tim, and Mike
10 Liquor Store, we're hopefully going to pay you. We're not
11 paying you every week. There is some advantages of it.

12 REPRESENTATIVE RYAN: You mean to say that
13 there's some people who don't pay their sales and use tax?
14 Really?

15 PLCB CHAIRMAN TIM HOLDEN: Surely you gest.

16 REPRESENTATIVE RYAN: That never happens.

17 MS. MARY ISENHOUR: Representative, may I go back
18 to your original inquiry about market-driven?

19 REPRESENTATIVE RYAN: Yes.

20 MS. MARY ISENHOUR: And I would just suggest to
21 you that our decisions, the decisions that Dale makes and
22 his department, the decisions we make as a Board, they have
23 to be market-driven or else we wouldn't be doing as well as
24 we would be and we'd be out of business. So I'd just like
25 to make that suggestion.

1 REPRESENTATIVE RYAN: I'm certain no one else
2 wants to get into any elasticity or inelasticity demand
3 discussion right now. And I've been ordered by the Chair
4 not to even discuss that. So with all those comments,
5 unfortunately, the demand for the product is highly
6 inelastic and so you have to be a little bit careful with
7 that type of concern as well.

8 And, Mr. Chairman, that will be the last time I
9 use that term.

10 MAJORITY CHAIRMAN PYLE: Colonel, you can use
11 whatever terms you want. But that elasticity stuff, I saw a
12 commercial on TV. It's a pill that makes your skin supple.

13 Next up, Representative Isaacson.

14 REPRESENTATIVE ISAACSON: Thank you, Mr.
15 Chairman.

16 Reading through your testimony here, you are
17 talking about the flexible pricing coming online in these
18 past three years. You've been able to increase obviously
19 the profitability of the Commonwealth's asset on our behalf.

20 As a Representative that has border states, both
21 Delaware and New Jersey, close to our area, I find it
22 obviously makes us very competitive in being able to compete
23 with those border states and not necessarily losing that. I
24 just want to make sure that -- you said it in your testimony
25 that you've been able to try and keep the negotiations to

1 keep us competitive as we move forward, especially with the
2 border states. And by the way, I think it's my District
3 that generated a lot of that spirits sale.

4 PLCB CHAIRMAN TIM HOLDEN: We appreciate it.

5 MAJORITY CHAIRMAN PYLE: It's my District
6 generating a lot of the spirits. No. We don't talk about
7 that.

8 Any others? Representative Delloso.

9 REPRESENTATIVE DELLOSO: Thank you for testifying
10 today. My question is going to be brief.

11 It's been insinuated, I guess, that the increased
12 revenue, the increased profit, that the LCB is enjoying is
13 an excessive tax on the consumer. Would you speak to volume
14 and would you speak to the benefit with being able to
15 bargain with the major manufacturers, how that's turned into
16 profit versus what some people may think is an excessive tax
17 on a consumer?

18 I mean, obviously you haven't generated all of
19 this revenue on the back of the consumer. You have to have
20 derived some of this revenue from bargain pricing with
21 manufacturers.

22 PLCB CHAIRMAN TIM HOLDEN: Absolutely. From
23 negotiating with manufacturers, from the options of zombie
24 licenses, for surcharges on licensees was all part of the
25 (unintelligible) that helped us increase the revenue over

1 the past three years. So it was all three of them.

2 As far as the price -- I don't know if you want
3 to get into anything about the pricing -- 84 percent of
4 products have not been increased or 88?

5 MR. DALE HORST: 84 percent in the last year the
6 listed price portfolio remains the same. Those are the
7 products that we warehouse and almost every store has.

8 Our unit volume since pre-2016 to present is up,
9 number of units. So they're continuing to increase. So to
10 the competition and what keeps pricing in effect, product
11 sales are still growing. I will also -- you know, part of
12 this is about a comparison to a proportional pricing model
13 and flexible pricing.

14 Prior to 2016, the suppliers submitted cost
15 increases and we had to adjust the retail price. We really
16 didn't have a choice. Subsequent to 2016 and Act 39, now we
17 can talk about that cost increase. We can say no, we don't
18 want it. Here's what's going to happen to the price. And
19 the supplier will react to where we think the price is going
20 to go.

21 So we have a lot more discretion in dealing with
22 the suppliers now and looking out for the retail price and
23 what the citizens of Pennsylvania are going to pay where we
24 really didn't have that flexibility prior. And we were
25 forced into that formula on every product.

1 So, you know, if you go back to prior to 2016,
2 suppliers took cost all the time to cover their expenses or
3 the reasons they do that. Now we're able to acquire and
4 negotiate a lot of decreases in FOB. And that is most times
5 passed on or part of it's passed on at the citizen's benefit
6 out of that.

7 PLCB EXECUTIVE DIRECTOR CHARLIE MOONEY:

8 Representative, I'll add to the Chairman's comments and
9 Dale's to your point. Our sales are up. That's testament
10 to how we are doing, what we call flexible pricing. The
11 prices are fair. Unit sales are up, both in spirits and
12 wine. When we initially started up all the grocery stores
13 and all the convenience stores, our sales transactions took
14 a dip. That has all recovered. We are less than 1 percent
15 sales transactions lost, over 1,000 different locations now
16 selling wine to go.

17 It's very complex because we're opening up
18 beautiful new stores. We have 350 stores completed in our
19 branding action. We just opened one in Representative
20 Ryan's District in Lebanon. And we just opened two
21 beautiful stores in Pittsburgh last week. So we're on an
22 accelerated pace to get convenience out to the consumers in
23 Pennsylvania.

24 And the reaction is our units are up so I think
25 we're doing something right.

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REPRESENTATIVE DELLOSO: Thank you.

MAJORITY CHAIRMAN PYLE: Representative Malagari.
Representative Delloso, I don't want to cut you
off.

REPRESENTATIVE DELLOSO: Thank you, Mr. Chairman.
I'm done.

MAJORITY CHAIRMAN PYLE: Thank you, David.
Take it away, Representative Malagari.

REPRESENTATIVE MALAGARI: Thank you, Mr.
Chairman.

I just have a few questions. So we talked about
the border states and trying to maintain pricing that is
competitive within our border states. So, for instance, in
the southeast where I'm from -- many of us are from up
here -- we have New Jersey, we have Delaware, we have parts
of Maryland, if you can argue along Chester County.

I wanted to ask, along those border states with
where we have PLCB stores located, can we show that after
2016 the implementation of flexible pricing has helped
increase the sales in those stores? Do we have data on
that?

PLCB CHAIRMAN TIM HOLDEN: We probably do. And
we also have made a conscious effort to make sure we improve
our stores on the border, make them more attractive for the
consumers.

1 I don't know if Dale wants to elaborate or
2 Charlie.

3 MR. DALE HORST: Well, our sales continue to
4 grow. The first store that we rebranded in 2010 was New
5 Hope right on the New Jersey line. And that store continues
6 to increase business. And the amount of New Jersey license
7 plates that are observed in that store continues to grow.

8 We have a store down in Glen Mills down on the
9 Delaware border. It has done very well. Now, it's helped
10 through, as Charlie talked about, our rebranding effort. We
11 also tried to locate stores next to a major draw, which in
12 that case is a Wegmans. And so the customers from Delaware
13 come up to shop at our store and come up to shop at Wegmans
14 and we benefit from that.

15 We're in a battle there with our competitor
16 across the border who does not have the tax issues that we
17 have. And we do very well compared to them.

18 MR. CHARLIE MOONEY: Representative, we also
19 opened a store in Kennett Square last week right on Route 1.
20 So we're picking strategic -- to Dale's point, we're picking
21 strategic locations to react to what is commonly referred to
22 as border bleed, with better stores, bigger locations,
23 better selections, better parking, and so on and so forth.

24 But as an Agency, the price of the product in
25 Glen Mills and Kennett Square is exactly the same as it is

1 in State College and Punxsutawney. So around the 600 stores
2 that we have, the prices remain consistent. So we're
3 reacting to that with better locations, better selection,
4 better sales, flash sales, and just overall more customer
5 convenient stores.

6 REPRESENTATIVE MALAGARI: I appreciate that.

7 And I wanted to ask you, is it possible that you
8 could give me a couple examples of some realtime, real-life
9 products that prior to this law change in 2016 to now where
10 you're able to get a better price on the acquisition
11 currently versus what it was before? Do you have any
12 examples that you could give?

13 MR. DALE HORST: We can send that to you. Now,
14 it's been three years. So, you know, it may have -- we can
15 show definitely initially we negotiated a lower cost and the
16 retail went down. Now, I would have to look at what has
17 happened to that product since that time in three years.
18 The supplier may have come back with cost increases.

19 But I know there's still products that were
20 negotiated down when Act 39 gave us flexible pricing. And
21 they're still below where they were.

22 REPRESENTATIVE MALAGARI: Thank you.

23 Mr. Chairman, thank you for the time to ask those
24 questions.

25 MAJORITY CHAIRMAN PYLE: Representative Delloso

1 for the second time.

2 REPRESENTATIVE DELLOSO: Thank you again for
3 testifying.

4 You're a major employer in the state of
5 Pennsylvania. Has flexible pricing done well for your
6 employees? I mean, are we employing more people at the LCB
7 now?

8 PLCB CHAIRMAN TIM HOLDEN: The LCB has entered
9 into a new contract with the United Food and Commercial
10 Workers. I think it's a very good contract that reflects
11 the dedication and hard work of our employees. I think it
12 shows that. Yes. But on the numbers of employees, I think
13 it's pretty much stable. I think county part-time may be
14 5,000. Wendell is here so you can ask him exactly when he
15 gets here, but I think it's like 3,500 full-time employees.

16 But I think they're doing well. I'm proud to
17 have been part of having that contract being extended.

18 REPRESENTATIVE DELLOSO: Thank you.

19 MAJORITY CHAIRMAN PYLE: Thank you,
20 Representative Delloso.

21 Any more questions for the Board?

22 Okay. I have a couple of questions. So you're
23 saying in 2016 the LCB's contribution to the General Fund
24 was \$103.9 million. And with the advent of Act 39 and Act
25 85, in '17, that number jumped from 103.9 to 158 and we

1 currently stand at 191?

2 PLCB CHAIRMAN TIM HOLDEN: That's net income.

3 MAJORITY CHAIRMAN PYLE: Net income.

4 PLCB CHAIRMAN TIM HOLDEN: Not the transfer.

5 MAJORITY CHAIRMAN PYLE: Interesting.

6 PLCB CHAIRMAN TIM HOLDEN: The transfer has been
7 at 185 for the last three years.

8 MAJORITY CHAIRMAN PYLE: Chairman, I'm sorry.

9 Chairman, you were fond of saying competitive
10 prices for consumers. What was the other quote? Most times
11 the savings are passed on. How do we know which one of
12 those products we're going to be able to get savings from?
13 Like, do you run specials and whatnot and pass the savings
14 on to people?

15 MR. MIKE NEGRA: Exactly. It's called a
16 special-price adjustment.

17 MAJORITY CHAIRMAN PYLE: Do you have like whiskey
18 month or vodka week? How do you do this?

19 MR. MIKE NEGRA: I guess we do, yeah, from time
20 to time. But you'll see sale prices. It could be a dollar
21 or two dollars, five dollars. It could be flash sales that
22 occur that's only for a week. Typically our SPAs are for a
23 month at a time. And every one of those dollars that's
24 provided by the suppliers are passed through in their
25 entirety to the final user, the consumer. It can also be

1 the licensee.

2 MAJORITY CHAIRMAN PYLE: Final user. I've got to
3 write that down.

4 MR. MIKE NEGRA: So any way, those savings are
5 passed along. When Dale and his team negotiate a lower cost
6 for a product, that doesn't necessarily mean that that lower
7 cost is passed along proportionally.

8 MAJORITY CHAIRMAN PYLE: No, I know.

9 MR. MIKE NEGRA: Because with 80 million or 100
10 million to 185 million from a transfer standpoint and our
11 expenses go up.

12 MAJORITY CHAIRMAN PYLE: Well, we've heard about
13 our friends who abut New Jersey and Delaware. Let me give
14 you a different spin. You guys can't compete with Maryland.
15 They're totally privatized. I can buy a bottle of Makers
16 Mark for five bucks a jug less. Too bad that's illegal,
17 driving into Maryland, huh?

18 I'm really getting stuck. And I mean, I should
19 be tipping my hat to you. You just drove revenue from 103.9
20 million to 191 million. And you're passing on those savings
21 to consumers while showing an \$87 million improvement.

22 PLCB CHAIRMAN TIM HOLDEN: We're not passing on
23 all of them.

24 MAJORITY CHAIRMAN PYLE: What do you mean?

25 PLCB CHAIRMAN TIM HOLDEN: Negotiated on the

1 freight onboard. We're not passing 100 percent on.

2 MAJORITY CHAIRMAN PYLE: So you pick which ones
3 get passed on and which ones don't?

4 PLCB CHAIRMAN TIM HOLDEN: Yes.

5 MAJORITY CHAIRMAN PYLE: I'd like to get a peek
6 at that list.

7 PLCB CHAIRMAN TIM HOLDEN: A lot of people would.

8 MAJORITY CHAIRMAN PYLE: Yeah. No doubt.

9 I don't know anything about International Trade
10 Law so we'll skip over that.

11 Now, Charlie, this is way out of latitude, but
12 there's a lot of places where we're not getting new wine
13 stores and new and improved liquor stores. There's a lot of
14 places that are watching their five-day liquor stores be
15 scaled back to three days, which is a death spiral. Okay.

16 Armstrong will soon have one liquor store. If
17 that's part of your design, congratulations. Again, I have
18 friends in Maryland. Yeah, I'd like to talk to you more
19 about that later but I don't want to hold this meeting up.
20 We're ahead of pace right now. I'd like to stay that way.

21 Oh, Dan, please. Chairman Deasy. I'm sorry .

22 MINORITY CHAIRMAN DEASY: I saw an opening there.

23 MAJORITY CHAIRMAN PYLE: Steelers didn't take
24 those over. Please feel free.

25 MINORITY CHAIRMAN DEASY: I do know a little bit

1 about International Trade Law, but I'm going to keep it to
2 myself at this particular time.

3 I do want to thank everybody for being here. I
4 just got a couple brief comments.

5 First of all, Act 39, a lot of changes throughout
6 the Commonwealth. And I've got to commend you guys because
7 there were many requirements placed upon the agencies and
8 looking at the revenue numbers here to see how things have
9 increased and ultimately that direction. I mean, that's a
10 big business nowadays. The industry has changed. And we've
11 got to be willing to adapt along with it.

12 We had this hearing in March or February I
13 believe -- the hearing that we had flexible pricing, the
14 annual meeting required.

15 PLCB CHAIRMAN TIM HOLDEN: It was June.

16 MINORITY CHAIRMAN DEASY: Was it June? I don't
17 know. I lose track of time.

18 PLCB CHAIRMAN TIM HOLDEN: June.

19 MINORITY CHAIRMAN DEASY: It was great to have
20 that discussion back then. And I don't want to sound like a
21 broken record, but I think I brought it up then. Part of
22 Act 39 required a Commission -- a study to talk about many
23 different factors of how the legislation has changed the
24 industry in Pennsylvania.

25 And three months later, we still haven't had that

1 Commission and we need to talk about that. We do. And
2 whether it's a letter from both Chairmen to make sure that
3 all those positions are filled and the Commission meets and
4 talks about things and we talk about how things are going in
5 Maryland, let them take a look at it. I don't think another
6 set of eyes hurts anything.

7 So I look forward to making that request in the
8 fall when we get back here to make sure that Commission gets
9 put together. And before we make any big changes, let them
10 take a look at things and see what has worked and what
11 hasn't worked and sit down with all those stakeholders and
12 get their input as well. So I think communication is
13 important. So hopefully we can work together on that
14 Commission in the fall.

15 Thank you all for being here.

16 PLCB CHAIRMAN TIM HOLDEN: Thank you.

17 MR. MIKE NEGRA: Thank you.

18 PLCB EXECUTIVE DIRECTOR CHARLIE MOONEY: Thank
19 you.

20 MS. MARY ISENHOUR: Thank you.

21 MAJORITY CHAIRMAN PYLE: The Chairman is wise. I
22 agree. We do need to get that Commission going.

23 Ladies and gentlemen of the Liquor Control Board,
24 thank you very much for your time today.

25 PLCB CHAIRMAN TIM HOLDEN: Thank you.

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MR. MIKE NEGRA: Thank you.

MR. DALE HORST: Thank you.

MS. MARY ISENHOUR: Thank you.

PLCB EXECUTIVE DIRECTOR CHARLIE MOONEY: Thank you.

MAJORITY CHAIRMAN PYLE: Next we're going to have industry stakeholders, David Wojnar, Vice President of Distilled Spirits Council of the United States; David Ozgo, Chief Economist for the Distilled Spirits Council; Matt Dogali, American Distilled Council; Terri Beirne, Eastern States Council, Wine Institute; and C.J. Helie. I hope I'm not butchering anybody's name. Was I close? All right. C.J. Helie, Executive Vice President of the Spirits Canada Board. Give them a second to get set up.

We are making great time today, Committee, like five minutes ahead of schedule. That's how Liquor rolls, man. We get it done. Move to the next.

Hi, everybody. Welcome. Welcome. Welcome. Good to see you all. You've seen our format. We're going to let you present. And then hopefully you can give us a couple of minutes for my members to ask questions.

So please feel free.

PRESIDENT AND CEO MATT DOGALI: Sure. I'll start it off.

MAJORITY CHAIRMAN PYLE: Take it away, Matt.

1 PRESIDENT AND CEO MATT DOGALI: Thank you for
2 allowing me to come to speak with you today. I am Matt
3 Dogali, President of the American Distilled Spirits
4 Association, a trade association representing suppliers of
5 distilled spirits.

6 Our 27-member companies represent over half of
7 all distilled spirit sales in the U.S. and Pennsylvania.
8 ADSA firmly believes in and supports a state's right to
9 choose how alcohol is regulated inside its borders, as
10 envisioned by the 21st Amendment. We also want consumers of
11 our products to pay a fair price and know their
12 state-controlled system treats all products sold in the
13 Commonwealth fairly.

14 At the joint hearing on June 3rd, we submitted
15 testimony similar to what we have submitted today. Act 39's
16 flexible pricing was supposed to be a mechanism to get the
17 PLCB better bargaining power with suppliers and lower
18 consumer retail price.

19 In practice, we don't see much bargaining. And
20 we certainly don't see consumer prices being lowered on our
21 products. In fact, since the June hearing, several
22 additional ADSA member companies have notified me of more
23 price increases with little to no room to negotiate.

24 While several companies have offered discounts
25 after they are notified of a price increase, the retail

1 prices on our products are still going up. This is
2 increasing margin which benefits revenue collection, not
3 consumer cost.

4 The current flexible pricing process lacks
5 transparency. Suppliers receive price increase notices out
6 of the blue. The consumer has no way to know why the price
7 on their preferred product or brand has increased or when it
8 will increase again. This does nothing to make Pennsylvania
9 more competitive with neighboring states or better serve
10 their customers.

11 My member companies are competitors that also
12 compete with DSCUS member companies and yet here we are
13 today, ADSA and DSCUS and Wine Institute, in complete
14 agreement that this current system harms the consumer, lacks
15 transparency, and harms the marketplace in Pennsylvania. I
16 think all three organizations being here today expressing
17 concerns about Act 39's flexible pricing speaks volumes to
18 the problems it has created.

19 Represent Topper's House Bill 1512 would repeal
20 flexible pricing and revert back to the pre-Act 39 pricing
21 process. We, the members of the ADSA, would like to request
22 members of this Committee consider revisiting flexible
23 pricing and also consider supporting Representative Topper's
24 House Bill 1512.

25 I thank you for your time today. I've supplied

1 written testimony as well. And I'm happy to try and answer
2 any questions you may have.

3 MAJORITY CHAIRMAN PYLE: Any questions for
4 Mr. Dogali?

5 You got off easy, Matt.

6 Take it away, David.

7 CHIEF ECONOMIST DAVID OZGO: Well, thank you so
8 much. I want to thank you all for having me here today. I
9 thank the Committee.

10 My name is David Ozgo and I'm the Chief Economist
11 for the Distilled Spirits Council of the United States.
12 This is now, I believe, the third time that I'm coming
13 before this Committee to talk to you about flexible pricing.
14 I promise, I will try to be brief.

15 The last time we were before a joint session --
16 and Senator Williams corrected me when I referred to the
17 PLCB as earning profits. He noted that the PLCB does not
18 earn profits from the sale of wine and spirits here in
19 Pennsylvania.

20 I must admit I was initially confused about the
21 Senator's statement since the PLCB had just spent 40 minutes
22 testifying about their increased profits. But the Senator's
23 claim is actually very, very consistent with a white paper I
24 wrote almost 20 years ago where I argued that many
25 controlled State mark-ups would not be sustainable in the

1 face of competition and are, therefore, really taxes.

2 Now, while I suspect Senator Williams and I came
3 to our respective conclusions from very different analytical
4 frameworks, anytime two different thought processes reach
5 the same conclusion, you've probably found the truth.
6 Senator Williams and I both can't be wrong now, can we?

7 One can easily describe the PLCB as providing
8 wine and spirits wholesaling and retailing services for a
9 fee to the people of Pennsylvania. But, a legitimate fee,
10 of course, would only cover the PLCB's operating expenses.
11 Any amount above that is a tax.

12 Now, while I made the theoretical case for
13 mark-ups really being taxes some time ago, the courts have
14 ruled that while government agencies may impose fees for
15 their services, anytime an agency's fees exceed their cost
16 of operation, the additional amount is a tax. This is one
17 of those rare instances where both lawyers and economists
18 are in agreement with each other.

19 The so-called flexible pricing program at the
20 PLCB has allowed this government-run Agency to operate in
21 the shadows, place excessive pricing mark-ups on spirits,
22 and pass those costs on to the hardworking Pennsylvania
23 consumers. The Legislature should act swiftly to restore
24 transparency at the PLCB and reinstate a clear proportional
25 pricing formula.

1 Now, make no mistake, if the PLCB were a private
2 company operating in an open market, such an arrangement
3 would be perfectly fine. But the PLCB is a State-sponsored
4 enterprise that is not constrained by market competition nor
5 government regulation.

6 I believe Mr. Holden just talked about the laws
7 of supply and demand. Trust me, I spent many, many hours in
8 classrooms looking at economic models. And the laws of
9 supply and demand work really well but you assume
10 competition from the beginning. We simply don't have that
11 kind of competition here.

12 Given that the PLCB is a State-sponsored
13 enterprise, any revenues generated that are greater than
14 operating costs are a tax. Thus, flexible pricing really
15 means that the PLCB, in practical terms, has created a
16 system of random taxation.

17 Obviously, it is only the Legislature that is
18 allowed to impose and set the level of a tax. Further, the
19 Legislature would do so in a consistent pattern, not the
20 random fashion chosen by the PLCB. I doubt that anyone in
21 the Legislature realized the implications of flexible
22 pricing when it was passed as part of Act 39. I urge you to
23 support HB 1512 and repeal flexible pricing in Pennsylvania.

24 I thank you all for your time.

25 MAJORITY CHAIRMAN PYLE: Thank you, Mr. Ozgo.

1 Third disclosure, I had a chance to sit with this
2 guy once. I mean, his master of economics is pretty
3 staggering.

4 Sorry for the wind-up, Terri. But you're next.

5 MS. TERRI COFER BEIRNE: That's all right.

6 I'm Terri Beirne. I'm Eastern Counsel with the
7 Wine Institute. We're the California wineries who produce
8 about 81 percent of all domestic wine.

9 40 percent of the PLCB's revenue comes from wine.
10 And the California wine industry accounts for about 53
11 percent of that 40 percent by those sales and volumes. So
12 we're particularly interested in how PLCB prices their
13 products.

14 We opposed flexible pricing three years ago and
15 we are here today to support House Bill 1512. The return to
16 a standard mark-up will support lower consumer prices and
17 increase the transparency of pricing discussions to ensure
18 that the PLCB doesn't pick winners and losers in the alcohol
19 marketplace.

20 Wineries remain agricultural enterprises that
21 made their decisions about their own costs and their
22 required revenue often years before a consumer picks up
23 their bottle. Retail pricing influences about 72 percent of
24 consumers' buying decisions.

25 Prior to Act 39, the wineries looked at their

1 expected costs, the national wine market, and their
2 competitors' prices, and they targeted a suggested retail
3 price. And then we used the PLCB markup formula to back
4 down to our wholesale cost.

5 And because all the brands were subject to the
6 same mark-up, we knew the details of our own brands, of
7 course, but we could also figure out what our competitors
8 were selling their wines to the PLCB. And this was an
9 effective formula. The mark-up was an effective system of
10 commercial checks and balances to make sure that the PLCB
11 wasn't singling out any suppliers or certain brands for
12 unique treatment.

13 Since the passage of Act 39, PLCB has changed
14 both the method of pricing and the transparency surrounding
15 it. With flexible pricing, PLCB is negotiating the cost and
16 the mark-up on every item. But they're keeping the details
17 of those negotiations confidential.

18 It provides no justification or schedule for the
19 categories or specific brands that it targets for wholesale
20 or retail price changes and often gives the suppliers little
21 lead time to respond to their notice of intended price
22 changes.

23 While private wholesalers in licensed states may
24 operate like this, PLCB is not a private wholesaler and we
25 are not in a licensed state. Wineries cannot fire the PLCB

1 as they might fire a wholesaler in another state that was
2 making unreasonable demands upon them. In short, there's no
3 negotiating with a monopoly. Wineries accept the PLCB's
4 terms or they risk losing access to a lucrative wine market.

5 You'll all recall that Act 39 was intended to
6 apply flexible pricing to all products. It was not
7 originally intended to apply flexible pricing to all
8 products. Initially it was giving flexible pricing to the
9 top 150 best-selling items. And then in Act 85 they
10 expanded that to 150 best-selling brands and product types.

11 Then in March of 2018, last year, the PLCB asked
12 this Committee for authority to extend flexible pricing to
13 all of their items and that was denied. Two months later
14 the PLCB exercised some administrative discretion and they
15 did extend flexible pricing to all of their products in
16 their stores. So what started out as a trial of flexible
17 pricing on 150 wines for us has turned into flexible pricing
18 of all 2,600 wine items.

19 Nor did anything in Act 39 eliminate the need for
20 transparency and the accountability that we all expect from
21 the PLCB as a governmental body. In fact, the statute
22 suggests that there was a tool for pricing oversight that
23 PLCB, in my opinion, is not currently utilizing. The law
24 does require the PLCB to publish on its website, quote, a
25 listing of the wholesale and Pennsylvania liquor store

1 retail prices, unquote. Knowing the delta between these two
2 numbers would allow anybody to figure out the PLCB's mark-up
3 on every product.

4 Instead, the PLCB directs someone that's looking
5 to a quarterly retail price listing of how much stuff costs
6 in their stores and then a footnote that says, the wholesale
7 prices are calculated at 10 percent off the retail price.
8 Well, what they're doing is just saying that's the discount
9 that we're giving to licensees. That's not the wholesale
10 cost.

11 We all hoped that PLCB would use flexible pricing
12 like volume discounts, where the wineries would sell more
13 wine at lower cost to our wholesaler and the savings would
14 be passed along through the retailers to consumers who would
15 buy more wine at lower prices. That's what we all hoped
16 for. That way everyone, the winery, the wholesaler, which
17 is PLCB, and the retailer, which is also PLCB, would sell
18 more wine and we'd make more money.

19 Unfortunately, flexible pricing is not volume
20 discounting. Any savings on the cost of goods are merely
21 being absorbed into the PLCB's higher operating costs and
22 Pennsylvania consumers are not paying less for alcohol.

23 At the June hearing, PLCB noted that it dropped
24 the retail price on 167 wine and spirits products and it
25 raised the retail price on 570. So that's a net increase in

1 consumer prices on 403 items in 2018.

2 Here's one specific example of how one of my
3 wineries has lost in an era of flexible pricing. The PLCB
4 buyers identified one high-volume value, which is a
5 lower-end brand, as underpriced. And they raised the retail
6 price by \$1 on two different occasions within a short time
7 period. Eventually our winery noticed a decline in their
8 sales and asked the PLCB to reduce the price. They gave it
9 a partial reduction. In exchange, however, the PLCB had
10 asked for a new lower cost of goods going forward.

11 In short, that winery had to buy down their own
12 retail price, which eliminated any funding that it had for
13 price supports, which it normally would have devoted to
14 marketing that line to consumers alongside of the PLCB's
15 efforts.

16 Wine Institute members have also described to me
17 other scenarios where they have taken financial hits in
18 Pennsylvania ranging from \$100,000 to over a million
19 dollars. A handful of PLCB buyers can't be expected to do
20 the pricing work that hundreds of wineries' sales teams have
21 done for decades using national sales data. They've made
22 marketing and forecasting mistakes that the suppliers are
23 having to underwrite.

24 With flexible pricing, the PLCB can extract a
25 lower wholesale price from us, the suppliers at the front

1 end of the transaction, and then raise the retail price on
2 the back end. Any new PLCB revenue is derived from
3 suppliers' margin and is ultimately paid for by consumers.

4 Suppliers feel like they're giving the PLCB a
5 lifeline in the form of lower costs of goods to cover their
6 rising operational costs. But at some point sales will
7 start to slide.

8 In closing, there's no question that PLCB is
9 saving money buying alcohol under flexible pricing. But
10 there are plenty of questions about whether this results in
11 higher consumer prices or suppliers being squeezed too far
12 or even both. 86 years ago the Federal Government
13 acknowledged that prohibition was a noble but failed
14 experiment. And now would be a perfect time for this
15 Committee to do the same for flexible pricing by supporting
16 House Bill 1512.

17 Thanks.

18 MAJORITY CHAIRMAN PYLE: Are there any questions
19 for Mrs. Beirne?

20 Representative Donatucci.

21 REPRESENTATIVE DONATUCCI: Thank you, Mr.
22 Chairman.

23 And thank you for being here today.

24 So I'm really confused right now. I'm going to
25 tell you why. I buy liquor in Pennsylvania. All right.

1 They have the sales just like New Jersey does. That's
2 privately owned. Every municipality in New Jersey has
3 different liquor laws. It's amazing. I can go, you know,
4 five blocks and it's different.

5 So I look at like what we're paying for things.
6 And then I'm down there looking at what they pay. So I like
7 this one whiskey, Yamazaki. It went up \$20 in Pennsylvania.
8 Guess what? It went up \$20 in New Jersey. It went up \$20
9 in Delaware. And it's \$10 cheaper in Philadelphia, in
10 Pennsylvania.

11 I look at -- I go into like places where it's
12 privately owned and I see at the beginning like they do in
13 food markets where they have a display. So I'm figuring a
14 deal was made between the supplier and the owner of the
15 business that puts them there at a little bit of a cheaper
16 price. And then when it's on the regular counters, it goes
17 back to that regular price. So I don't know what's
18 happening there. I don't think we do that in Pennsylvania.

19 So I'm getting confused here about, you know,
20 where the market is so much different, how we're doing it,
21 because I don't know if negotiations in New Jersey are
22 public. I think it's different, like I said, in every
23 municipality. I see so many of our prices are now so
24 competitive with New Jersey, especially since their tax went
25 up in New Jersey.

1 So that's where I'm a little confused here like
2 where it's so unbalanced in Pennsylvania. Because I see
3 this in every state. I also see us having the same exact
4 sales that they have in other states for the same exact
5 products. So that's where my confusion is coming in here.

6 MS. TERRI COFER BEIRNE: Well, the primary
7 difference between New Jersey and Pennsylvania is the fact
8 that New Jersey, like you said, is a licensed state. And in
9 that case, it's actually down to the municipality level, so
10 their negotiations with wholesalers, private wholesalers,
11 many of them that are selling products to retailers in New
12 Jersey as opposed to in Pennsylvania where there's only one
13 wholesaler.

14 So from the suppliers' perspective, we come into
15 Pennsylvania and we can sell to one customer who then pushes
16 it into the stores. In New Jersey I can go into a dozen
17 wholesalers that are selling my wine across the state of New
18 Jersey. And if I'm not happy with the negotiations between
19 one of those wholesalers, I can fire them and pick up
20 another wholesaler who's going to treat me better, in my
21 opinion.

22 So that's the prime difference in negotiating
23 with one wholesaler in Pennsylvania who can say, you know
24 what, I'm not going to buy that product at that price. So I
25 don't have any choice. I don't have anyone else with whom

1 to negotiate. Whereas in New Jersey, I can. And the
2 pricing that you're seeing, the inconsistencies in the
3 pricing, those are ranging from one-time sales or closeouts.
4 The pricing structures in New Jersey and Pennsylvania are so
5 very different.

6 In Pennsylvania there's only a limited number of
7 ways that the prices can change. Whereas in a state like
8 New Jersey, there are -- it's both the competition that
9 changes, that makes prices go up and down. And in some
10 cases, wineries are selling one product at a lower price so
11 they can get a higher price on the other. So there's a lot
12 even within suppliers. There's negotiations between
13 products.

14 I don't know if that helps or not.

15 REPRESENTATIVE DONATUCCI: No. Because I think a
16 lot of what I'm seeing, though, is that I'm paying the same
17 amount in New Jersey that I'm paying in Pennsylvania for
18 these same products. I'm really seeing a lot of this now.

19 But then the thing that I don't like in New
20 Jersey is I don't have the time to run over here and I go
21 over there. Sometimes there's like a three- to four-dollar
22 difference. Whereas in Pennsylvania, we're uniform. No
23 matter what liquor store you go into, this is what you're
24 paying.

25 You know, you want to talk about the

1 competitiveness. But I don't know if it's always -- if it's
2 always fair, especially when you start doing like what the
3 supermarkets do. You get it at a special price. And I also
4 see things in Pennsylvania where they do have special
5 prices. So it's not that it isn't happening here.

6 CHIEF ECONOMIST DAVID OZGO: All that's true, I
7 mean, obviously when you're dealing with private operators,
8 as you are in the state of New Jersey. Well, they're in
9 different neighborhoods. They cater to different types of
10 audiences. So, yes, you're going to see a certain amount of
11 variety. That's because you have stores that in these
12 instances are probably catering to, you know, as I said, a
13 different neighborhood or a different kind of audience. So
14 that kind of variety is to be expected. And it's really
15 something that's very, very positive.

16 I have a store that's catering more to my needs,
17 wants and needs, than say, you know, the PLCB might be able
18 to do because obviously they do have to offer the same
19 prices across the state.

20 REPRESENTATIVE DONATUCCI: But they will offer
21 different products in different stores and I do see that.
22 So I'm just not buying this whole thing. I'm sorry.

23 Thank you for your testimony.

24 MAJORITY CHAIRMAN PYLE: Thank you,
25 Representative Donatucci.

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Any more questions for Mrs. Beirne?

Now we'll take it away to C.J.

And help me with the last name. I don't want to
butcher your name.

EXECUTIVE VICE PRESIDENT C.J. HELIE: Thank you.

House Majority Chairman Pyle, Minority Chairman
Deasy, Representative Topper, Committee members, my name is
C.J. Helie. I am the Executive Vice President of Spirits
Canada, Canada's only national trade association
representing Canadian spirits manufacturers, marketers,
importers, and exporters.

However, I have the honor of appearing here today
representing not only Spirits Canada but also Australia
Grape & Wine, spiritsEUROPE, FIVS, Comite Vins, the National
Tequila Chamber, New Zealand Spirits, the Scotch Whisky
Association, and United Kingdom's Wine & Spirits Trade
Association.

We greatly welcome the opportunity to support
Bill 1512 calling for the repeal of the Pennsylvania Liquor
Control Board's flexible pricing model. At the outset, I
would stress that as representatives of international wine
and spirits trade associations located outside of the
Commonwealth of Pennsylvania, we tread lightly in offering
recommendations to foreign agencies or governments as it is
they who are best able to determine the most appropriate

1 rules to meet their communities' specific needs.

2 We are here today because Pennsylvania is an
3 important and valued U.S. wine and spirits market for the
4 companies we represent. And as leading wine and spirits
5 international trade associations, we are not shy about
6 stating our longstanding, strong, and vocal support for open
7 and fair trade in beverage alcohol.

8 We also sympathize with the state's motivation in
9 wishing to maximize state revenue from the sale and
10 distribution of alcohol within its borders. However, a
11 rules-based international trading system is at the very core
12 of the peace and prosperity citizens of the world have
13 enjoyed over the last many decades. And we firmly believe
14 these rules must continue to be supported and defended.

15 The government of the United States has
16 historically been a leading voice for ensuring the
17 application of GATT and WTO consistent spirits and beverage
18 alcohol taxation measures by national and subnational
19 governments around the world.

20 Our previously circulated brief identifies a
21 number of these cases and the relevant precedents that
22 emanate from their settled jurisprudence. Perhaps the two
23 most relevant cases are the 1988 Panel on Import,
24 Distribution and Sale of Alcoholic Drinks by Canadian
25 Provincial Marketing Agencies and the 1992 Canada - Import,

1 Distribution, and Sale of Certain Alcoholic Drinks by
2 Provincial Marketing Agencies.

3 I'll summarize a few of these key findings of
4 these cases. Number 1, liquor board mark-ups such as those
5 applied by the PLCB are subject to GATT's national treatment
6 in most-favored-nation non-discriminatory obligations. Two,
7 these liquor board mark-ups are considered as internal taxes
8 or other charges. There is no de minimis in regards to
9 these internal charges. Any amount of differentiation is
10 too much.

11 Sub-national liquor boards are state-trading
12 enterprises under the WTO agreements and are subject to
13 specific disciplines. The commercial behavior of
14 state-trading enterprises are not necessarily the same as
15 when undertaken by a private enterprise operating in a
16 competitive market; that is to say, STEs and liquor board
17 monopolies are not like any other retailer.

18 This is particularly true where an STE also has
19 certain regulatory functions as is the case of the PLCB.
20 And transparency in the operations of State-trading
21 enterprises is of the highest importance.

22 Perhaps most relevant is the argument that is
23 being made that the PLCB is simply applying retail mark-ups
24 that while they may be different than that imposed on
25 certain like or directly competing products, the higher

1 mark-up might be justified by some unstated commercial
2 rationale, such as what I heard earlier, price elasticity
3 differences, difference in brand equities, or other such
4 consideration.

5 A similar argument was proffered by Canada in the
6 1988 case. And the panel similarly rejected the argument.
7 So what does this all mean? In essence, it means that
8 imported wines and spirits must be provided unconditionally
9 and immediately the best policy treatment and the lowest
10 mark-up afforded to any similar domestic product.

11 I would add that just because the PLCB may also
12 impose that same higher mark-up on some other American-made
13 wine or spirits does not take them off the hook of providing
14 imports the lowest mark-up applied on any domestic product.
15 In very simplified terms, the lowest mark-up the PLCB
16 applies on a domestic product becomes the ceiling for its
17 mark-up on any like imported product.

18 Its operations must be transparent enough to
19 demonstrate that this is the case or this obligation becomes
20 meaningless. Governments could simply discriminate against
21 certain products or countries by simply refusing to publish
22 their tax rates and charges.

23 In closing, I would reiterate that it is not our
24 intention by our appearance here today to question the right
25 of Pennsylvania to establish a monopoly importer,

1 distributor, and/or retailer of wine or spirits in the
2 state. We are simply instead requesting that the PLCB
3 reinstate its historic practice of transparent, posted,
4 standardized product mark-ups. The experience elsewhere is
5 that such standardized product mark-ups consistent with
6 International Trade Law can be set at the rate sufficient to
7 raise any revenue target established for the Board.

8 Attached to our testimony is a short description
9 of the various international wine and spirits trade
10 associations in support of the repeal of the PLCB's flexible
11 pricing model, as well as a more detailed International
12 Trade Law assessment of the measure.

13 Thank you very much.

14 MINORITY CHAIRMAN DEASY: Thank you for your
15 testimony.

16 Chairman Pyle had to step out for a minute. We
17 will start with Representative Topper.

18 REPRESENTATIVE TOPPER: Thank you.

19 And thank each one of you for your testimony. I
20 just wanted to ask Mr. Dogali to go back to -- you added an
21 addendum to your written testimony about a negotiation that
22 occurred with Marine Spirits. And as somebody who is, you
23 know, learning quite a bit about the industry, maybe more
24 than I ever needed or wanted to know, so what prevents
25 someone like Marine from just saying, look, we're not going

1 to offer the product in Pennsylvania anymore? Is the market
2 that strong here that they feel they have to participate in
3 it? Are we getting to that point? Could you see a point
4 where folks like Marine Spirits says we're not going to do
5 business in Pennsylvania anymore, it's just become too cost
6 prohibitive?

7 PRESIDENT AND CEO MATT DOGALI: Representative
8 Topper, thank you for the question.

9 Your assumption is pretty close to accurate,
10 which is when Marine Spirits, which is a made-up company so
11 we don't reveal any number of company negotiations, receives
12 notification from Pennsylvania of a price increase, that
13 notification comes in an instant. There's no calendar of
14 when they're allowed to notify. There's no phone call
15 before a notification of increase.

16 So what happens is you have a product on the
17 shelf in Pennsylvania at your retail price. You get an
18 e-mail from one of the people that works at the PLCB with a
19 notification of a price increase. Now, generally speaking,
20 depending upon the product, we obviously have room in our
21 margin. So if it was a high-dollar-value product we might
22 say to the PLCB, we can take a little off of our case price
23 because it's very important for us to keep our product on
24 the shelf at that specific retail price. That's how this
25 was envisioned to work.

1 What actually happens is we make that offer and
2 they say thank you very much. Congratulations. Here's your
3 increased price. That's not negotiating. So then what
4 happens is we want to keep the product on the shelf because
5 it is still selling well in Pennsylvania and Pennsylvania is
6 a healthy marketplace for our members. But there will be a
7 break-even point where we say, well, we'll sell at other
8 places because there's no longer a value for us to take
9 another hit on our margin in the Commonwealth.

10 REPRESENTATIVE TOPPER: All right. Thank you.

11 PRESIDENT AND CEO MATT DOGALI: Sure.

12 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.

13 MINORITY CHAIRMAN DEASY: Thank you.

14 Anyone else?

15 Seeing no further questions, thank you all for
16 being here.

17 PRESIDENT AND CEO MATT DOGALI: Thank you.

18 CHIEF ECONOMIST DAVID OZGO: Thank you.

19 MS. TERRI COFER BEIRNE: Thank you.

20 EXECUTIVE VICE PRESIDENT C.J. HELIE: Thank you.

21 MINORITY CHAIRMAN DEASY: Next -- we are moving
22 ahead of schedule here -- we have UFCW, Wendell Young and
23 Chris Naylor.

24 Good afternoon, gentlemen. Thank you for being
25 here. We look forward to your testimony.

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UFCW PRESIDENT WENDELL YOUNG: Good morning.

Chairman Pyle, Chairman Deasy, and members of the House Liquor Control Committee, I appreciate the opportunity to testify in front of you today. On behalf of the 35,000 members of our union at UFCW Local 1776 Keystone State and the 3,500 members at our Pennsylvania wine and spirits stores, we are testifying today to oppose House Bill 1512. House Bill 1512 would repeal the flexible pricing policy that was signed into law as part of Act 39 of 2016.

Act 39 was a broad, comprehensive overhaul of Pennsylvania's alcohol market that substantially changed the Liquor Code. While we opposed this legislation when it was moving through the General Assembly, mostly due to concerns of some of the provisions we viewed as revenue losers, including private-sector wine sales and the reduction of the SLO mark-up from 30 to 10 percent, there were also key modernization initiatives in Act 39 to help offset any potential revenue loss.

Some of these modernization initiatives, which UFCW Local 1776 Keystone State worked on for years with both Democrats and Republicans, included expanding the number of stores open on Sunday, increasing the hours of operations on Sunday, Lottery sales, implementing a consumer relations marketing program, and flexible pricing, which is in front of this Committee today.

1 And despite what you will hear in testimony -- or
2 did hear -- from some of the spirits industry about how bad
3 this policy is for consumers, I am here to tell you that
4 this was actually the most important provision that was
5 included in Act 39 because of the benefits it creates for
6 your constituents. Instead of repealing the flexible
7 pricing policy, we should be looking for ways to strengthen
8 it to help Pennsylvania acquire the very best pricing from
9 suppliers while delivering significant amounts of additional
10 revenue for our Commonwealth.

11 Here is how flexible pricing works. Prior to the
12 2016 law change, Pennsylvania by law was confined to a rigid
13 mark-up structure that meant the PLCB had to mark up every
14 wine and spirits product at the same percentage. What this
15 means is that every single product that was sold in a
16 Pennsylvania wine and spirits stores had to be marked up at
17 the same exact percentage.

18 This rigid mark-up structure meant the
19 high-volume, fast-moving products that were confined to the
20 same exact percentage mark-up as your specialty products
21 that are now low-volume and can sit on the shelves for
22 months, your bourbons, your chardonnays, your wines and
23 spirits from different countries and regions all with
24 different sales trends and market dynamics, are all confined
25 to one uniform mark-up.

1 Now, I do not think I have to explain to the
2 Committee that no retailer marks up every single one of
3 their products at the same exact percentage. We know this
4 because we represent more than 20,000 retail employees
5 throughout the Commonwealth of Pennsylvania, nearly a
6 million nationwide.

7 Retailers provide discounts on certain products,
8 raise prices on others, and experiment with all types of
9 mark-up formulas to meet market demand. What the flexible
10 pricing provision allows the PLCB to do is to enact this
11 same practice, a practice that operates exactly like the
12 private sector. This is a phrase we've heard from numerous
13 lawmakers who have complained in the past about the PLCB,
14 that it does not act like the private sector.

15 Prior to 2016, if the suppliers increased prices
16 for Pennsylvania, that meant the suppliers were raising
17 prices on your constituents, not the PLCB. This is a
18 critical distinction that some in the industry seem to have
19 forgotten throughout this debate. The flexible pricing
20 provision changed all of this for a more modern and fair
21 system that benefits all Pennsylvanians.

22 After the 2016 law change, the PLCB was no longer
23 confined to this rigid mark-up structure and could ask
24 suppliers for even lower prices than they currently received
25 to benefit consumers and taxpayers.

1 For example, if a spirits producer is offering a
2 product at \$14 at acquisition price before the law changed,
3 the PLCB can now ask for a fairer price of, for example, \$13
4 from the producer. After getting the lower acquisition
5 price, the PLCB can slightly increase the mark-up on that
6 product, however, maintain the same retail shelf price or,
7 in some cases, lower the price. The result is increased
8 revenue on every bottle of alcohol the State sells all while
9 protecting consumers in the process.

10 After the first full year of implementing
11 flexible pricing, the PLCB's net profit jumped 58 million.
12 This allowed lawmakers to pull more resources from this
13 profitable asset for our State budgetary needs.

14 Now, clearly, this is upsetting to some in the
15 spirits industry. They are upset the PLCB is asking for
16 fair prices to better benefit consumers and taxpayers. Some
17 spirits producers cry poor despite the fact that the
18 industry just recorded its ninth straight year of record
19 sales in the U.S. and have the largest market share of
20 alcohol sales over wine and beer.

21 In fact, Diageo, the largest supplier within the
22 Distilled Spirits Council of the United States, stated their
23 profits went up by a third after recent Federal tax breaks.

24 I state this so we can all be clear about where
25 we stand. Supporting and strengthening the PLCB's flexible

1 pricing policy means helping deliver more revenue for the
2 budgetary needs of Pennsylvania. It means we are securing
3 fairer pricing from suppliers and protecting consumers.
4 This is incredibly pro-Pennsylvanian and is absolutely in
5 the best interest of Pennsylvania residents. Repealing this
6 policy is just another handout to out-of-state wealthy
7 spirits producers who are just looking to add to their
8 already massive bottom line, all at the expense of
9 Pennsylvania taxpayers and consumers.

10 We stand with Pennsylvanians and oppose House
11 Bill 1512.

12 Now, I was here for earlier testimony. I'd like
13 to add a few comments. I think you've already heard from
14 the PLCB about the results. And the results are what really
15 matters here because this proposal has been somehow
16 portrayed as, you know, trying to protect consumers.

17 Well, we heard that in the year -- the last year
18 prior to the change to flexible pricing, there was about 560
19 price increases from the producers. There was about 140
20 price decreases. In the first full year of implementing
21 flexible pricing, the PLCB increased about 400 items less
22 than what the industry themselves had done prior. And they
23 reduced the price on about 170 items, nearly 200 items more
24 than the industry had done themselves.

25 And if there's a statement that this is going to

1 affect consumers adversely or the producers and sellers,
2 well, the evidence and the facts show otherwise because we
3 already heard testimony that not only did dollar revenue go
4 up from these sales, but there was an increase in units as
5 well. If we were to believe what the industry was here to
6 say today, we would have lower unit sales.

7 There was some discussion here and questions
8 about pricing. And this is really an interesting point
9 about, are we competitive or not with other states? I
10 firmly believe -- and I've said this before. I've been
11 fighting privatization of liquor for about four decades now.
12 And the latest push since Mike Turzai took up this quest in
13 2010 and 2011 when he became Leader -- and I firmly believe
14 that if Pennsylvania's prices were out of line, not only
15 with neighboring states but other states all across the
16 country, that you would have been buried in paper over the
17 past ten years showing that.

18 In fact, I listened to the industry's testimony
19 today. And I'm sure they selected some individual, you
20 know, examples of why they think this is unfair. But what
21 they didn't come in here and show you how as a result
22 Pennsylvania's prices are so much worse than everywhere
23 else.

24 I have experienced what Representative Donatucci
25 just got done speaking about. And anybody that's gone past

1 a few outlets across the bridge from Pennsylvania has, too.
2 New Jersey's prices are vastly higher than Pennsylvania on a
3 wide margin of products.

4 There was testimony before this Committee back
5 in, I believe, it was 2011, July, at a township building
6 just outside of Hershey, PA. I was there. I heard industry
7 executives and retail representatives claim that they
8 couldn't acquire for their retail stores in other states the
9 product as cheap as Pennsylvania both acquired it and in
10 some cases actually sold it. And I believe they're doing a
11 better job at it now.

12 If you look at the only published studies -- and
13 they are few and far between -- going back decades and they
14 are done by newspapers who overwhelmingly and, in fact
15 universally, are in favor of privatization, the actual price
16 comparisons show that Pennsylvania is better than almost
17 every other state we border with.

18 You've heard testimony about Delaware. They
19 don't have a retail tax on alcohol. Maryland has a very
20 small excise tax. So when we stack up and actually look at
21 the price comparisons, we're competitive with Delaware,
22 although they're a little bit better. We're about even with
23 Maryland. Some products more, some less.

24 But every other state, we really blow them away.
25 New York is the most expensive. Ohio I believe is second.

1 Don't hold me to it. And Jersey is third. But again, it's
2 also very regional, but overall it's far more expensive.
3 They know this. They have the data.

4 Just like they know the industry here. Just like
5 they know what Pennsylvania charges all across the state,
6 the same price in every community regardless of where you
7 live for those products. They know in every other state
8 what those retailers are charging. And if we were not
9 competitive, they'd be here showing you that.

10 You know, I just think that it's disingenuous to
11 sit here and say that this is about consumers. There's no
12 line of consumers ready to testify here about how they got
13 hosed because they didn't.

14 And it's not about taxpayers because I think
15 they're all pretty happy with the fact that Pennsylvania has
16 a valuable asset. You know a far more overwhelming majority
17 of Pennsylvanians do not drink a lot all the time, yet they
18 all benefit in this. So if you're a drinker or not, we're
19 all benefiting from it in terms of funding for schools,
20 solving budgets, things like that.

21 You know, I started in this very room after the
22 wave of 2010 and 2011, my first hearing. I'm sorry. When
23 the Republicans won such big margins, I started here when
24 Leader Turzai pushed his initiative. I was here for his
25 first testimony. He was the first to testify. And he said

1 at that time that this system was broke.

2 Well, he was wrong. He said it was going to be
3 broke fast. He's wrong. Back then we took in less than a
4 half million in profit, grand total contribution. Today
5 we're at over three-quarters of a billion.

6 If we listened to some of the same people, David
7 Ozgo has had a long consistent history of being against the
8 PLCB, period, being against the state being in the business,
9 period. That's what the real issue is here. They're not
10 getting as much profit but they are still profiting off of
11 Pennsylvania.

12 I don't run from where I'm at. I'm here to
13 protect my members' jobs. But as a Pennsylvanian, I also
14 enjoy the fact that I enjoy these assets in terms of the
15 money it helps offset and contribute to the budget.

16 I think we should just recognize what their real
17 interests are, too, because it's not the consumers that
18 they're most worried about. Otherwise, maybe we should be
19 asking why they charged so much all those years.

20 With that, I'd like to thank you for taking the
21 time to have this hearing. I'd be happy to answer any
22 questions.

23 MAJORITY CHAIRMAN PYLE: Thank you, Mr. Young.
24 I'm sorry for being late. All this talk of liquids, you
25 know.

1 UFCW PRESIDENT WENDELL YOUNG: I tried to wait
2 for you.

3 MAJORITY CHAIRMAN PYLE: Thank you, man.
4 Representative Topper.

5 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.
6 Thank you. I appreciate it, Mr. Young. I hope
7 you guys are enjoying Corey Dickerson down in Philadelphia.

8 UFCW PRESIDENT WENDELL YOUNG: Absolutely.

9 REPRESENTATIVE TOPPER: You're welcome for
10 another product that we're sending from the Pittsburgh
11 Pirates to the other side of the state.

12 UFCW PRESIDENT WENDELL YOUNG: It'll change again
13 sometime.

14 REPRESENTATIVE TOPPER: That's our contribution.

15 You know, sticking with the baseball theme, I
16 went to umpire school coming right out of high school. And
17 I remember when they were talking to us about diffusing
18 manager situations when they would come out and argue with
19 us on the field.

20 I remember a mistake that I made early on was
21 that I would tell a manager, one of our instructors would
22 come out to manage, well, hey, that play wasn't even close.
23 And the answer was, if it wasn't close, I wouldn't be out
24 here. And that was probably a pretty good answer for me as
25 a young umpire to learn that lesson.

1 If everything was going great, you know -- and I
2 do think there have been some very positive, as you
3 mentioned, changes from Act 39. And I think we've seen some
4 things.

5 But do you think there are still some more, for
6 instance, changes that we could make in terms of flexible
7 pricing, ensuring that moving forward that we are benefiting
8 everybody or that the potential, there's still a check and
9 balance for the consumer?

10 I assume by your testimony that the answer for
11 the check and balance of the consumer is that all of a
12 sudden people would just stop buying alcohol, period, from
13 the state stores if they didn't feel like it was
14 competitive. But in reality, in a lot of districts, that's
15 not an option.

16 UFCW PRESIDENT WENDELL YOUNG: Well, in reality
17 the unit sales have gone up. The profits have gone up. And
18 the customer responses, especially to new or remodeled,
19 better located stores, you know, the evidence is clear. You
20 look, for example -- and I think some of the team from the
21 PLCB can answer it best. But, you know, they shared
22 information with us, our members, and they closed one or
23 more stores in there and put a better, newer, bigger store
24 up that combined overall sales exceed by multiples what took
25 place in these other stores or by large amounts. I

1 shouldn't say multiples. That's evidence that the consumers
2 like it better.

3 When you see -- they see -- I'm sure they see a
4 lot more data than I'll ever see. But, you know, the
5 indication like the New Hope store about the Jersey license
6 plates, you know, our members hear it all the time that
7 people came over here.

8 When border bleed is talked about, it's always
9 from those who want to get rid of the PLCB or restrict it, a
10 one-way conversation. They only see taillights leaving.
11 They don't pay attention to what comes in. You know, when
12 you're in southeastern, PA, everybody, with few exceptions,
13 goes to Delaware to buy everything, consumer goods, because
14 of the tax issue. It's not unique to liquor. And to single
15 out liquor is just not fair.

16 And it's the same. Some people leave the
17 neighborhoods along the river wards of Philadelphia and jump
18 the bridge to go to some of these newer, bigger, fancier
19 shopping centers right in South Jersey for everything. I
20 hear it from my kids' friends for back-to-school shopping,
21 for college shopping, all of that. It's not unique to
22 liquor.

23 But what is consistent is that -- and you can go
24 back as far as you want -- the PLCB, you know, despite any
25 other business, some ups and downs from time to time, has

1 consistently grown in units sold, customer appreciation, and
2 rankings in dollar value profit and return to Pennsylvania.

3 The transfer in 2011 was around \$80 million.
4 Today it's almost \$200 million. So this is a big deal. And
5 so I think the evidence is in those numbers that we're doing
6 a good job. Is there room for more improvement? Yeah.

7 One of the things I would like to see out of Act
8 39 -- and it's not a criticism. It's just there was a lot
9 in 39. And if you're going to get it right, you can't do
10 everything at once immediately Day 1. I'm looking forward
11 to the Consumer Marketing Program that was not permitted
12 prior to 39. You know, in all the border states, everybody
13 else is doing that. We're not.

14 It's kind of interesting to me. I've listened to
15 this debate for years. As I've said, I've been in part
16 engaged in debate. And I hear those who want to get rid of
17 a restricted PLCB complain that they don't act or operate
18 like a business and therefore, they're somehow a government
19 bureaucracy that's inefficient and does a bad job. Well,
20 they actually do a good job.

21 But when they start acting like a private
22 business and doing the same thing, then we have the folks
23 come in and say, awe, that's not fair. They didn't come in
24 here and tell you what all their prices were that Costco and
25 Wal-Mart and everybody else is negotiating in those other

1 states nationwide compared to Pennsylvania. I mean, they
2 could have come in with a lot more evidence to show that
3 they were being treated unfairly. They didn't.

4 And so I would like to see the Consumer Marketing
5 Program be a big focus in the future. I would like to see
6 them get what they asked for in terms of completely letting
7 -- you know, not restrict them to the 150 brands in each
8 category and let them do this across a broader margin.

9 I think it will be better for consumers. It
10 would be better for you at budget time. You'll have more
11 money to work with. These are simple things. I don't know
12 why we wouldn't use our buying leverage that way because
13 that's what the private sector does.

14 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.
15 I'll be sure to stop by my border counties on the way home
16 and see how many Maryland license plates are in our PLCB
17 stores.

18 MAJORITY CHAIRMAN PYLE: I'm not touching that.
19 I was going to make a snarky comment. But at
20 least it ain't Jersey.

21 Representative Delloso .

22 REPRESENTATIVE DELLOSO: Thank you, Mr. Chairman.
23 President Young, I asked earlier to the PLCB
24 about employment. PLCB being a major employer in the State
25 of Pennsylvania, has Act 39 had a positive or negative

1 impact on employment?

2 UFCW PRESIDENT WENDELL YOUNG: It has not had an
3 impact from a numbers point of view. We're at about the
4 same numbers as we were before. And it's important to
5 understand the nature of retail. It's cyclical within a
6 year. You know, we have different times a year that's
7 different. So there's no one time that's going to be the
8 same throughout the year. So we kind of look at what we
9 average over the year. And then there's some seasonal
10 employees that enter and leave at different times of the
11 year.

12 But when we look at that, the pattern is very
13 consistent to prior to Act 39. We were very concerned that
14 the cannibalization that would occur through these R
15 licenses and the private sector for wine, that we would
16 really face some trouble. We've worked very closely with
17 the leadership of the PLCB. I think they're doing a great
18 job at avoiding that.

19 There was clearly some cannibalization. There
20 was some impact, as you heard testimony earlier about the
21 impact at first. But this particular feature helps them
22 overcome that. They have also been pushing to open up more,
23 I would say, right locations and better locations and
24 upgrading stores. They could use your help on that. It's
25 been a long proposal here that gets some relief from the

1 long process it takes them to go through General Services to
2 get leases done. A streamlined process would allow them to
3 move even faster than they are and would bring even better
4 results.

5 So while by itself if it was just this that 39
6 did, this flexible pricing, I think we would have had an
7 uptick in employment with the increase and pulling some
8 sales back in from out of state. But I think it's been
9 offset by the cannibalization. So it's right about the same
10 place.

11 And as Chairman Holden said earlier, we did just
12 recently negotiate a new contract. Our members
13 overwhelmingly accepted it. You know, going to our members
14 and asking them to work more hours, later in the evenings,
15 and more evenings and Sundays and more holidays is not easy.
16 But we have worked and partnered with the PLCB to help that
17 happen to better serve the consumers.

18 So, you know, I think they've got a great team.
19 They've been doing a good job. But I'd like them to be able
20 to do more.

21 REPRESENTATIVE DELLOSO: I have one more
22 question. You mentioned that once you get beyond -- when we
23 talk about border bleed, once you get beyond that initial
24 over-the-bridge big liquor store, that prices change
25 throughout the state, when I go over to Jersey -- I mean,

1 I'm a Pennsylvania guy. I buy everything in Pennsylvania.
2 I try to buy everything that I possibly can in Pennsylvania
3 stores, you know, Union stores.

4 But when you cross into Jersey, my friend Jack
5 Daniels costs the same at my local liquor store as it does
6 in State College. And there's no border bleed in State
7 College.

8 UFCW PRESIDENT WENDELL YOUNG: That's correct.

9 REPRESENTATIVE DELLOSO: Can you speak to what
10 happens in these border states that when you do initially
11 get past these big box stores, I mean, what happens to the
12 consumer in those states?

13 UFCW PRESIDENT WENDELL YOUNG: A couple of things
14 I'll say about it. First of all, it is different in every
15 state because you have different tax situations. You have
16 different regulatory environments. So it's not like every
17 other state that borders PA is one way and we're another
18 way. It is a little different.

19 And as I said earlier -- I don't want to repeat
20 too much -- you know, the only studies that have been done
21 and published over recent decades were done by newspapers,
22 and I say that were published, and showed Pennsylvania's
23 pricing overall is better than its border states with the
24 exception of Delaware. It was about even with Maryland.
25 Better in the others.

1 In 2011, my Union hired a bunch of college
2 students for the summer as interns. We gave them a job. We
3 took right from the PLCB's sales data one of the top 150
4 wines in terms of most frequently purchased, top 150
5 spirits, and we sent them out into every border state. And
6 we gave them -- we didn't tell them which stores to go to.
7 We told them to pick them. But here's the criteria we gave
8 them. Go to a little convenience store like the gas station
9 in Ohio or West Virginia or something like that but also go
10 to one of the big retailers that specialized in liquor like
11 a total wine and spirits and then go to something in between
12 like the supermarket that sold some things that was a bigger
13 supermarket. They came back and matched those newspaper
14 industry surveys exactly. We presented them at that 2011 --
15 the findings.

16 So there was also a gentleman, Nathan Lutchansky,
17 who testified. He has nothing to do with us. Never met him
18 before. He gave extensive testimony about pricing,
19 acquisition pricing, retail pricing, that backed up what we
20 said. And the PLCB at that time had also presented some
21 information. So anytime there's been something published,
22 the results are always favorable to Pennsylvania. They know
23 exactly what the acquisition prices are. They know exactly
24 what the retail prices are in all those places.

25 If it was true that Pennsylvania consumers were

1 getting hosed, they'd bury you in paper here with those
2 studies. It's not here. And it's never been here in the
3 past more than a decade now.

4 REPRESENTATIVE DELLOSO: Thank you, Mr. Chairman.
5 That's all I have.

6 UFCW PRESIDENT WENDELL YOUNG: Thank you.

7 MAJORITY CHAIRMAN PYLE: Thank you,
8 Representative Delloso.

9 Anybody else?

10 I think you just got lucky, Wendell. Everybody
11 is feeling peaceful and it's lunchtime. Thank you very
12 much.

13 UFCW PRESIDENT WENDELL YOUNG: It's your
14 leadership, Chairman Pyle.

15 MAJORITY CHAIRMAN PYLE: Thank you, sir.

16 We're going to pass it over to Chairman Deasy.

17 MINORITY CHAIRMAN DEASY: Thank you very much. I
18 appreciate it. I have got a couple real quick comments. I
19 appreciate everyone's time today.

20 Basically it was a great experience for us
21 hearing from three different panels. The industry has their
22 stakeholders, their constituents that they answer to. UFCW,
23 same thing. The PLCB has a little different set of
24 circumstances. They have a fiduciary responsibility for 12
25 million Pennsylvanians. They have a lot of balls to juggle

1 in the air, whether it's in regards to pricing, selection,
2 capital investments in the store, which they have done a
3 great job of recently. They have a lot of constituents to
4 answer to.

5 Are they doing a perfect job? No. Nobody is
6 doing a perfect job. I think the important thing that we
7 learned here is maybe we need to improve communications
8 amongst the stakeholders and the LCB.

9 And I think we've heard that those doors are
10 always open. We need to make sure that we continue to have
11 those discussions. And if there's something we can improve
12 upon, we all need to work together to do that.

13 As I said before, our doors are always open.
14 Anything we can facilitate, we're here. It's a great
15 industry. It's important to 12 million Pennsylvanians. We
16 need to make sure we do our job to make sure things are
17 running as smoothly as possible.

18 So thank you all for being here.

19 MAJORITY CHAIRMAN PYLE: You know, Dan, if you
20 and I were the Liquor Control Board, we could have fixed all
21 this stuff like last week, man.

22 We're going to close it up now. I have got a few
23 observations from what I've heard that I feel deserve
24 further discussion. As written in Act 39, flexible pricing
25 only applied to 150 items. And through administrative law,

1 LCB chose to apply it across the whole spectrum of all the
2 products sold.

3 I remember Act 39 very well. I voted for it 14
4 times over six years. Okay. In the end it came down to --
5 and I remember sitting with the Speaker and saying, Mike,
6 you've got to give them what they want. They want to buy
7 beer at Sheetz. And we delivered.

8 Now, there's been some problems from Act 39.
9 That's where Dan and I and the rest of this Committee
10 focused our attention and we're banging those things out one
11 at a time.

12 A couple other things. I really wish I could
13 tell you about all these brand-new stores and all these
14 wonderful sales points and all that, but I don't know. I
15 don't have a liquor store. Make a note, fellas. I'm a good
16 customer there. Thank you.

17 From suppliers we've heard there's no heads-up on
18 these price changes. And here's where the wheels are
19 falling off for me. And I'll need somebody who is better
20 with math later to explain this. I don't know how you jack
21 profits over the space of two years from 104 to 191 and
22 still pass on all those tremendous savings to customers
23 because I don't recall seeing them, you know.

24 It's going to cost me more to buy a bottle of
25 Woodford Reserve or Makers Mark in Pennsylvania than any

1 other place I know. Do better.

2 The transparency thing, I'd like to actually
3 stick up for LCB. These guys have been great. Every time I
4 call them, they answer the phone, which is more than I can
5 say for some of the Committee members. I'm looking at
6 Lewis, not you, Topper.

7 And on that note, yeah, Mr. Young, you brought up
8 some really good points, man. Act 39 brought about sweeping
9 change. And, you know, anytime you do something like
10 sweeping change, there's going to be people aggrieved and
11 there's going to be people in support. And right now this
12 Committee's goal is to make sure the field is flat for
13 everybody to do business and for Pennsylvanians to realize
14 the utmost savings on all these fine quality products.

15 Chairman Deasy, another meeting, nobody swung at
16 each other.

17 MINORITY CHAIRMAN DEASY: Good job.

18 MAJORITY CHAIRMAN PYLE: Good job.

19 Thank you.

20 (Whereupon, the hearing concluded.)
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I hereby certify that the proceedings and
evidence are contained fully and accurately in the notes
taken by me on the within proceedings and that this is a
correct transcript of the same.

Jean M. Davis
Notary Public