



**DISTILLED SPIRITS COUNCIL**  
OF THE UNITED STATES

**Testimony of David M. Ozgo, Chief Economist  
Distilled Spirits Council of the United States  
Before the House Liquor Control Committee  
September 10, 2019**

I would like to thank the committee for this opportunity to speak before you today. My name is David Ozgo and I am the Chief Economist for the Distilled Spirits Council of the United States.

This is now, I believe, the third time that I am coming before you to talk about flexible pricing. I promise, I will try to be brief.

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

I must admit I was initially confused by the Senator's statement because the PLCB had just testified that their profits had increased. But the Senator's claim was consistent with a white paper I wrote almost 20 years ago where I argued that many Control State mark-ups would not be sustainable in the face of open competition and therefore, are really taxes. While I suspect Senator Williams and I came at our respective conclusions from different analytical frameworks, anytime two different thought processes reach the same conclusion, you have probably found the truth. We cannot both be wrong.

One can easily describe the PLCB as providing wine and spirits wholesaling and retailing services, for a fee, to the people of Pennsylvania. But, a legitimate fee, of course, would only cover the PLCB's operating expenses. Any amount above that is a tax. While I made the theoretical case for mark-ups really being taxes, the courts have ruled that, while government agencies may impose fees for their services, anytime an agency's fees exceed its cost of operation, the additional amount is a tax. This is one of those rare instances where lawyers and economists agree.

The so-called 'flexible pricing program' at the PLCB has allowed this government-run agency to operate in the shadows, place excessive pricing mark-ups on spirits, and pass those costs onto hard-working Pennsylvania consumers. The legislature should act swiftly to restore transparency at the PLCB and reinstate a clear proportional pricing formula.

Make no mistake, if the PLCB were a private company competing in an open market, such an arrangement would be perfectly fine. But, the PLCB is a state sponsored enterprise that is not constrained by market competition nor government regulation.

Given that the PLCB is a state sponsored enterprise any revenues generated that are greater than operating costs are a tax. Thus, flexible pricing really means that the PLCB, in practical terms, has created a system of random taxation. Obviously, it is only the legislature that is allowed to impose and



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set the level of a tax. Further, the legislature would do so in a consistent pattern – not the random fashion chosen by the PLCB.

I doubt that anyone in the legislature realized the implications of flexible pricing when it was passed as part of Act 39. I urge you to support HB 1512 and repeal flexible pricing in Pennsylvania.