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## Flexible Liquor Pricing Harms Consumers and Businesses

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### Introduction

For three years, Pennsylvania has experienced the effects of [Act 39](#) or “liquor modernization.”<sup>1</sup> The 2016 law expanded retail availability of beer and wine outside of state stores, but it also granted the Pennsylvania Liquor Control Board (PLCB) greater monopoly pricing power. Where the PLCB previously sold alcohol at a simple 30 percent markup, Act 39 gave it full pricing discretion. The PLCB could have used its new flexibility to benefit consumers, and it led the public to believe it would do so.<sup>2</sup> Instead, the PLCB has used flexible pricing to benefit only itself.

### Higher shelf prices

Shelf prices paid by consumers [have risen](#) under Act 39.<sup>3</sup> The average markup today is extremely high, up to 65 percent above the free-on-board (i.e. direct from the maker) price, according to the [Distilled Spirits Council](#).<sup>4</sup>

### Flexible pricing raises major fairness issues

Pricing discretion in the hands of a government monopoly amounts to taxing power, and taxing power properly belongs to the elected legislature alone. Moreover, under the old pricing formula the PLCB was required to treat all suppliers and brands equally. Retail prices today are the result of closed-door deliberations. Producers, particularly foreign ones, are concerned about price discrimination. Foreign producers [have warned Governor Wolf](#) that PLCB business practices are likely impermissible under the rules of the World Trade Organization.<sup>5</sup> Closed door pricing deliberations also give consumers no assurance that the PLCB is trying to save them money. High prices in the stores suggest it is not.

### PLCB’s finances continue to deteriorate

The PLCB does not earn “profit.” The PLCB is a government monopoly, not a business: income is extracted from citizens who have no choice but to pay or forego drinking. That said, the

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<sup>1</sup> Liquor Code Omnibus Amendments: Act of June 18, 2019, P.L. 273, No. 39  
<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=39>

<sup>2</sup> Tim Holden, chairman of the board: “By engaging suppliers in collaborative, cooperative discussions about how to optimize revenue for the commonwealth, we can both generate additional revenue and achieve more competitive retail prices through cost reductions, rather than broad price increases.” Op-Ed, *Pittsburgh Post-Gazette*, October 28, 2016,  
<https://www.post-gazette.com/opinion/2016/10/28/Flexible-pricing-is-good-for-Pa/stories/201610280084>

<sup>3</sup> “Liquor Board Increases Prices on 422 Popular Wine and Spirits Products”. *Penn Live*, August 2, 2017.  
[https://www.pennlive.com/politics/2017/08/liquor\\_board\\_votes\\_to\\_increase.html](https://www.pennlive.com/politics/2017/08/liquor_board_votes_to_increase.html)

<sup>4</sup> “It’s Time to Repeal Flexible Pricing for Liquor.” Op-Ed, *Philadelphia Inquirer*, September 4, 2019  
<https://www.inquirer.com/opinion/commentary/flexible-pricing-liquor-control-board-pennsylvania-20190904.html>

PLCB's current level of remittances to the state are not sustainable. Over the last four fiscal years, the PLCB has transferred \$582 million to the state General Fund but earned only \$451 million.

Three years ago, the PLCB had \$540 million of retirement liabilities on its books.<sup>6</sup> Those liabilities have since been re-stated, doubling in the process: as of June 2018, they were reported at \$1.2 billion. The PLCB's negative net position, the gap between total liabilities and total assets, **is now more than \$1 billion**. Given the PLCB's high fixed costs and unionized workforce, the claim that it was going to improve earnings by cutting costs was never an honest one.

## **Restaurants, bars and private stores remain captive to PLCB bureaucrats**

Unlike private wholesalers, the PLCB doesn't deliver products to retailers: they must make their own arrangements to pick it up. It is also under no competitive pressure to fill orders or pay invoices quickly. In some cases, its arbitrary rules even prevent retailers from properly marketing: wholly responsible advertising can be prohibited as an "inducement to purchase alcohol."<sup>7</sup>

## **Policy solutions**

Privatization remains the solution to the state's liquor control problems. A winding down of the PLCB, a sale of its facilities or a rescission of its monopoly privilege would address the issues listed above. In the meantime, four bills introduced are strong incremental steps forward:

- **Repeal of flexible pricing.** [HB 1512](#) (Rep. Topper) would reinstate the proportional pricing formula to which the PLCB was bound before Act 39. Under this measure, consumers would benefit any time that sellers to the PLCB cut their prices. Sellers to the PLCB, meanwhile, would be assured of equitable treatment.
- **Convenience permits.** [HB 1644](#) (Rep. Dowling) would allow any restaurant license holder to purchase a \$25,000 annual license to sell beer and wine. Minimum seating rules would be abolished.
- **Wine freedom.** [HB 1346](#) (Rep. Masser) allows liquor license holders to purchase wine from private wholesalers. This change allows sellers to circumvent the PLCB's lack of delivery services and choose wholesalers that better meet their needs.
- **Franchise licensing.** [SB 548](#) (Sen. Yaw) allows wine and liquor stores that are licensed by the PLCB but privately controlled. Licensees would also enjoy delivery services.

All of these proposals would be a welcome step toward a fairer and more flexible liquor system for Pennsylvania consumers and businesses.

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<sup>5</sup> Letter to the governor is presented with article: "Groups warn Pennsylvania About Setting Liquor Prices 'In Secret, Behind Closed Doors.'" *Philadelphia Inquirer*, August 8, 2019. <https://www.inquirer.com/business/plcb-prices-violate-international-trade-20190808.html>

<sup>6</sup> Financial statements: <https://www.lcb.pa.gov/About-Us/News-and-Reports/Pages/Financial-Reports.aspx>

<sup>7</sup> Most recently the board issued a legal opinion that local wineries may not advertise volume discounts. Advertising the plain fact that a case of 12 bottles, for example, costs less per unit than a single bottle can constitute an impermissible inducement to purchase. <https://collab.pa.gov/lcb/Extranet/Advisory%20Opinions/19-268.pdf>