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# Empire State Restaurant & Tavern Association

*Report From The Executive Director...Scott Wexler*

## Summer 2019

Association Starts Campaign to Stop Wholesaler Overcharges - After several years of discussion with no progress, the Association has ratcheted up our efforts to put an end to the pricing practices of wine and liquor wholesalers that cause small retailers to be charged substantially more than large retailers. We're launching a campaign to rally support for our proposals to level the playing field so Mom and Pop retailers don't continue to be taken advantage of by these very large alcohol distributors.

We raised these concerns in 2015 as part of the ABC Reform Task Force the State Liquor Authority convened. We urged steps be taken to protect small retailers from the abuses of these large corporations that hold a monopoly over the products they sell but their representatives on the Task Force refused to even have a discussion about it. In 2017, when the Liquor Authority sought to amend its price posting regulations, we called attention to the fact that these wholesalers were in direct violation of the regulation's provisions governing split case and delivery charges.

We recently met with SLA Chairman Bradley and his senior staff to again raise our concerns. The meeting gave us a chance to demonstrate (as we have before) that legislation authorizing quantity discounting by wine and spirits wholesalers in 1989 has produced a result never imagined - it's possible for the public to purchase products at a liquor store substantially less expensive (20 - 40 percent) than a small retailer can purchase the same products from their wholesaler. We documented that Empire Merchants and Southern Wine & Spirits are imposing split case charges 15 - 20 times that stipulated under the regulation and are imposing delivery charges not authorized by the regulation - singling out Mom & Pop retailers for delivery charges. We estimated that a typical small retailer is paying more than \$8,000 annually in split case and delivery charges - a substantial premium for small retailers to have to pay just because they're small businesses.

Following the meeting we discovered that Empire Merchants North had instituted a new "handling charge" for all Will Call pick-ups. The charge is the same as their delivery charge. This is the first time we're aware of a wholesaler imposing a charge for picking up an order at their facility and only the most distorted view would see this charge as permissible. This latest action by Empire Merchants North underscores just how serious a problem we have. They get away with charging 15 times the lawful split case charge without sanction so why wouldn't they think they can get away with imposing a "handling charge" on orders picked up at their facility.

We know these wholesalers are quite powerful – but that doesn't make their actions right. We've taken the first step – asking the State Liquor Authority to investigate our concerns. We've also called on the Authority to permanently eliminate the split case and delivery charges since they're obsolete under today's statutory framework. And this is just the first step.

We're going to spend the next few months educating legislators, their staffs, and the public at large about this issue. We need them to understand how these wholesalers impose economic harm on Mom & Pop operators. And we're going to try to persuade them to our solutions – allow on-premises licensees to purchase alcohol from liquor stores, allow retail licensees to join a co-operative buying group, and to require prices for wine and liquor to include all costs including any charges for splitting a case or delivery.

We're going to need you to help spread the word to your fellow business owners, to your legislators, and to your friends & neighbors. We'll be using a variety of means to get our message out and asking you to amplify our communications so we get the broadest reach possible. Over the course of the campaign we'll ask you to take specific actions – we could ask you to write a letter/email, call an elected official, attend a meeting, share a tweet or post, or some similar action. Change doesn't come easy, but it doesn't come at all if you don't try. We know we have a daunting task ahead of us - with your support we might just make a difference.

Damage Being Felt by Changes to Quick Draw - The New York State Division of Lottery has been forced to stop its Thursday Quick Draw bonus play and Quick Draw agents and their employees are feeling the loss. According to the Lottery Director, the Quick Draw bonus and other prize supplements had been funded through lapsed prizes (uncollected winnings). This year during the state budget process most of the lapsed prize funds were redirected from the Lottery Division to education aid. In other words, legislators wanted the money distributed to schools rather than used to supplement prizes. This fund was used to enhance many lottery games, not just Quick Draw.

Not surprisingly we've been receiving anecdotal reports of the impact this is having on Quick Draw agent's lottery sales. And a loss of Quick Draw sales is followed by a loss of food & beverage sales which results in lost income for your staff. We don't have sufficient information to estimate the losses to the industry and to the state through lost sales and income taxes, but you can be certain the losses are significant.

This is not the first time we've seen government cut off its nose to spite its face and it usually doesn't work out well. State Legislators may have had good intentions in repurposing the uncollected winnings to education aid, but the ripple effects of this action make you wonder if on balance it makes sense – and did anyone think about these implications...I doubt it.

While the Lottery Division is looking at options for enhancing the game long-term, we need to deliver a clear message to legislators that this type of action is counter-productive. Please contact the State Association office to share your story about the impact of the elimination of the Quick Draw bonus and to let us know if you're willing to participate in meetings with state legislators to help them understand the broader implication of this change.