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# Empire State Restaurant & Tavern Association

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

## March 2022

**Governor Hochul Announces Plan to Limit Split Case Fees** - The Governor announced at a press conference in Brooklyn highlighting the steps being taken to support the recovery of the hospitality industry that the State Liquor Authority will be seeking to amend the existing rules on fair limitation on split case fees. Governor Hochul explained that these extra fees are charged to restaurants and bars who lack the cash flow, resources, or storage space to purchase full cases of liquor and wine they sell to the public. The Governor pointed out that “these split case fees can be as much as \$3 per bottle, a significant extra expense which has a disproportionate impact on smaller neighborhood bars and restaurants.”

We started our campaign to reduce or eliminate split case fees more than three years ago. After our efforts to get legislative action were thwarted by Empire and Southern, we brought our concerns to the State Liquor Authority, filing a formal complaint in July 2020. The Authority notified us in the Fall that they were inclined to accept our position – that the current split case fees were unreasonable and should either be eliminated or substantially reduced. The Authority is expected to propose adjusting the fee last set in 1981 (\$1.92 per case) by the annual rate of inflation as determined by the Consumer Price Index resulting in a new split case fee of about \$8.00 per case. That’s less than Empire (\$30 per case) and Southern (\$36 per case). The public statement from the Governor is a public commitment to that relief from split case fees is on the way.

It will take about six months for this to be implemented. The SLA has to develop a proposed regulation, publish it for public comment, review the comments, and respond as necessary before the new regulation can take effect. Our research shows that split case fees cost small restaurants and taverns thousands of dollars each year, so cutting the fees by as much as two-thirds should make a big difference to you.

**Take Action to Support Drinks-to-Go** - Governor Hochul’s proposal to allow on-premises licensees to sell drinks-to-go on a permanent basis remains up in the air as negotiations over the state budget head into the final two weeks. The State Assembly and Senate both rejected drinks-to-go in their One-House Budgets released past this week, but there are indications that they remain open to it during the final budget negotiations.

The fight over drinks-to-go hasn’t changed since last year. While the public overwhelmingly supports allowing restaurants and taverns to sell drinks-to-go and our industry is excited to have new revenue opportunities, the liquor store lobby sees this as an existential threat.

## **There's still time to get it included in the final budget, but you need to act now!**

Working with our friends at the Distilled Spirits Council (DISCUS) we have set up an online site for you, your employees, and your customers, so all you have to do is connect to the website (<https://p2a.co/nr0Yso4>) and click on the link to send letters to your representatives asking them to support drinks-to-go as part of the final budget.

Drinks-to-go served as an important lifeline for many on-premises operators over the past two years. Even with the relaxation of restrictions it's going to take time to recover. Bringing back drinks-to-go will make the recovery a little bit easier. Please join in this fight to bring back drinks-to-go and make sure you have this option available to you.

**Online Betting Is Now Legal in New York State** - Online betting went legal in New York State at the beginning of 2022. In the first two months of legalized online gambling in New York State, New Yorkers surpassed Las Vegas and Atlantic City to become the #1 place in America for gamblers to bet by wagering a staggering \$2 Billion on the approved mobile apps. This, in turn, brought much-needed relief in the amount of \$80 million to the state treasury.

### ***So, what does this new law mean legally for our ESRTA members?***

With the NCAA Road to the Final Four set to start, we thought it would be a good time to review the laws and regulations for our members to keep everyone compliant.

The new law makes a contradiction of an existing law. The New York State Liquor Authority advises that ***on premise betting still remains illegal*** per Alcoholic Beverage Control Law Section 106(6) which states that any business licensed to sell alcoholic beverages including restaurants and taverns -- cannot "suffer and permit gambling on the licensed premises." However, the new online sports betting law advises that patrons who are physically in a retail licensed bar, tavern or restaurant can now legally place bets ***on their own personal mobile device*** through the 9 mobile apps that have been approved by the New York State Gaming Commission. While ABC Law Section 106(6) is still an active law, the SLA has declared that they will not be charging licensees if individuals are placing bets on their telephones with legally authorized sites while at the premises of a licensed retailer. ***The bottom line*** – the only form of betting that can legally happen in your licensed premises is on a patron's own personal mobile device, and only through the nine approved sports betting apps by the NYS Gaming Commission.

The new online betting law, while contradictory in nature to the existing SLA law, remains clear for our hospitality partners – you can ***permit*** your patrons to legally gamble on their own personal mobile device on one of the 9 approved sites by NYS. However, per the SLA, it is still illegal for licensees to permit sports betting pools, raffles or any other form of gambling on your premises. If caught suffering and permitting gambling onsite in a retail licensed premise, the State Liquor Authority stated the licensee will be violating the law and subject to charges.

This article has been researched and written for you by the lawyers at Linnan & Associates PA. Linnan & Associates is your one stop shop for all matters pertaining to the State Liquor Authority. Whether it be a renewal, licensing issues or disciplinary hearings, Jim Linnan has been representing the members of ESRTA for over 43 years. As the corporate counsel to ESRTA for 4 decades, Jim's in-depth legal knowledge of the State Liquor Authority is unsurpassed in New York State. Visit us at [www.linnanassociates.com](http://www.linnanassociates.com); contact us at 518.449.5400.