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# Empire State Restaurant & Tavern Association

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

## June 2022

Members of Liquor Authority Advance Proposal to Limit Split Case Fees - After years of our persistent advocacy, the State Liquor Authority has initiated a formal rulemaking process to prevent liquor wholesalers from charging split case fees in any amount they choose. Currently Empire charges a \$30.00 split case fee (\$2.60 per bottle – 12 bottle case) and Southern charges a \$36.00 split case fee (\$3.00 per bottle – 12 bottle case). Under the SLA's proposal, wholesalers would be authorized to charge a split case fee no more than \$7.39 per case (\$0.62 per bottle – 12 bottle case) – that's a savings of more than 75 percent!

The pricing practices of Empire and Southern have been a priority of our advocacy efforts for some time. We've advanced legislation to allow on-premises licensees to join purchasing groups in order to take advantage of quantity discounts and to allow you to purchase from liquor stores, but these initiatives have been blocked by the wholesalers. We've also raised concerns about the delivery fees and split case fees forced upon small retailers by the major wholesalers. An analysis we compiled last year found that a typical small tavern owner ordering two mixed cases of liquor each week pays more than \$8,000 each year in delivery and split case fees – that's a lot of money so we dug in further.

We discovered an SLA regulation covering split case fees which, while last updated more than 40 years ago, was apparently still “on the books” even if it hadn't been enforced in years. Beginning in 1969 the State Liquor Authority mandated that liquor wholesalers charge a split case fee in order to be compensated for the cost of opening a case of liquor and taking one or more bottles out for a retailer seeking to purchase less than a full case. The purpose of the regulation was to prevent unlawful price discrimination – to ensure wholesalers charged all retailers the same fee under the same conditions and that the charge was reasonable (otherwise they're subsidizing larger purchasers). The fee was set at \$1.00 per case in 1969 and had increased to almost two dollars per case by 1980.

It's unclear why the Liquor Authority stopped enforcing this regulation, but as a result the major wholesalers have continued to raise this fee over the years without any limitations. The Association's Board met with the SLA in June of 2020 to press them to act on this. The Authority agreed to set up a meeting with the wholesalers – including the other major on-premises trade representatives - and when that meeting produced no meaningful conversation, we filed a formal complaint with the State Liquor Authority charging Empire and Southern with violating the regulation limiting split case fees.

After two years of inquiry, investigation, research, and legal analysis, the State Liquor Authority has now confirmed their commitment to limiting split case fees in order to prevent unfair discrimination against small retailers. At their Board meeting on June 8<sup>th</sup> the Liquor Authority made clear they intend to use this regulation to prevent unfair discrimination through the charging of exorbitant split case fees. They proposed adjusting the fee set in 1980 by using the Consumer Price Index which result in the proposed new split case fee of \$7.39.

This is good news, but it's not a done deal. Within the next few weeks the formal rulemaking process will begin and members of the industry and the public will be able to comment on the proposal. We're going to need to file comments for the record and we'll need to make sure our voices are heard at a public hearing the SLA is hosting on September 14<sup>th</sup>. We'll be in touch with the details.

Tavern Owners Take Over Cronin's Golf Resort - Twenty-two teams teed off at Cronin's Golf Resort for the annual "Cleo Emmer Open for Hospitality" earlier this month. Thank you to Anheuser-Busch, the Adirondack Pub & Brewery, Boston Beer Company, Keegan Ales, Mill House Brewing, Newburgh Brewery, and Warsteiner for providing us with an abundant supply of beverages to enjoy over lunch and on the course. Special thanks to Deep Eddy Vodka for pouring their products for our golfers to sample. We also appreciate the donation of door prizes from Cronin's, Deep Eddy Vodka, Roger Martel, and Tammy Timmerman.

In addition, we benefited from the support of our many Tee Sponsors including the Albany County Restaurant & Tavern Association, the Cortland County Restaurant & Tavern Association, Golden Rail Alehouse, Hotel Solsville, the Madison County Restaurant & Tavern Association, McCarthy's Pub, My Place, the Orange County Restaurant & Tavern Association, O'Tooles Pub, Park Inn Lounge, Ray Brothers BBQ, Slick's Restaurant, the Schenectady/Saratoga County Restaurant & Tavern Association, the Suffolk County Restaurant & Tavern Association, Tobins II, the Tompkins County Restaurant & Tavern Association, Verona Hotel/Hotey, and Willowbrook Golf Club. And thanks to our Green Sponsors - the Candlelight Inn and Fleury Risk Management.

Legislative Session Ends - The State Assembly and Senate completed their work for the year earlier this month. Left undone (thankfully) were a number of measures of concern to the Association including elimination of the tip credit, creation of a lien for employees filing wage and hour claims, and expansion of the bottle bill to include wine and liquor bottles. But the climate change advocates did advance legislation on "equipment efficiency" that if signed by the Governor will delegate to a state agency the power to regulate all sorts of equipment in buildings – both commercial and residential. Now that the legislature has left Albany we'll work to persuade the Governor to veto this bill or, at the very least, to seek to minimize the impact of this measure on our members.

There were a number of bills introduced late in the year that represent a hodgepodge of changes to the Alcohol Beverage Control law. These suggested "reforms" to the law represent some of the issues that will likely be raised during the discussions of the ABC Law Reform Commission agreed to as part of the State Budget. No members of the Commission have been named yet, but we expect the proceedings to get underway sometime over the summer. Past history suggests that little will come from this Commission, however, we will need to keep a close eye on their deliberations.