
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

January 2024

ABC Reform Coalition Launches – The Association joined with the Business Council, the NYS Latino Restaurant Bar + Lounge Association, and the NYS Restaurant Association to launch a coalition to advocate for changes to the Alcoholic Beverage Control laws – New Yorkers Cheers for Change (nycheersforchange.com). The coalition is calling for the legislature to consider the 18 recommendations of the Commission to Study Reform of the Alcoholic Beverage Control law created as part of the 2022 state budget agreement between the Governor and the legislature.

Our work with the coalition is focused on advancing the proposal to allow bars and restaurants to make limited purchases from liquor stores. We're also supporting proposals to give applicants for liquor licenses in New York City the same opportunity to obtain temporary licenses for alcohol sales as applicants in the rest of the state. And we support modifying the 200 and 500-foot rules to avoid extended delays in licensing when local communities do not object to locating new bars and restaurants in their neighborhoods.

These recommendations, and others, were approved by the Commission and deserve consideration by the legislature. There were also some issues considered by the Commission that were not recommended due to the stubborn opposition of entrenched interests. These issues deserve an honest policy evaluation to see how the state's broader economic interests would be best served.

We've seen some encouraging signs recently including the adoption of the temporary cocktails-to-go law in 2022 and enactment of extended hours for grocery beer licensees and liquor stores last year. Governor Hochul has started the conversation in 2024 by including several ABC reform proposals in her budget. While inconsequential to your operation, by raising the subject she's provided an opportunity for us – and our friends in the legislature – to inject our proposals into the conversation. We intend to do that and hope you'll join us. See more info below on our 2024 Albany Lobby Day.

For too long, too many members of our industry have been hampered by outdated and out-of-touch liquor laws. Now's our chance to change that – to update the Alcohol Beverage Control law to meet the demands of the modern era.

State Court Voids SLA Split Case Rule – In a decision earlier this month, State Supreme Court Judge Roger McDonough determined that the Liquor Authority’s regulation of split case fees exceeded the authority they’ve been given by the legislature making the rule null and void. The SLA regulation imposed a limit on split case fee of less than \$8.00 per case after Empire and Southern failed to cooperate in an SLA inquiry seeking justification of split case fees of as much as \$36.00 per case.

The wholesalers claimed in court that the legislature did not give the SLA the power to set prices, that the law only requires them to post a case price and a bottle price, and the legislature could prevent this if they didn’t want the wholesalers to act this way. These assertions by Empire and Southern were far less surprising than the judge’s view that they’re right. But the judge’s ruling is all that matters and we heard the judge – if the legislature doesn’t want the wholesalers to treat small business owners this way, they can do something about it. Or put another way – **if we want this to stop, we have to get the legislature to take action.**

So that’s what we’re doing. We’ve joined with other industry groups trying to break the liquor wholesalers’ stranglehold on the retail and manufacturing trades. Instead of clinging to outdated business models that only work when one tier exercises undue control over the others we need to change the model. Our surveys regularly find that the public can purchase products at retail from local liquor stores cheaper than our members can buy them at retail – usually 25% cheaper or greater. The combination of imposing split case fees and delivery charges on small operators and offering massive discounts on quantity purchases to large volume retailers has distorted the marketplace. Something needs to give or small restaurants, taverns, and bars won’t be able to survive.

And that’s where our proposal to allow on-premises retailers to make limited purchases from liquor stores comes in. Senator Skoufis and Assmeblyman Bronson sponsor a bill, S2853-A7540, that will permit restaurants, taverns, and bars to buy up to 12 bottles of wine and liquor each week from a liquor store. This will provide small operators a means to purchase products they don’t use in quantity without paying split case fees or delivery charges. It will also be a great relief to owners and managers when they run out of product on a Friday night and won’t get a delivery for several days.

You can help by speaking with your legislators, joining us for our lobby day in Albany on February 13th, or by talking to your local liquor store to make them aware of this opportunity. Let us know if you can join the fight!

Association Sets Albany Lobby Day for February 13th – As you can see from this report, we’re dialed in on trying to bring resolution to the pricing issues with liquor wholesalers. The effort we started more than 5 years ago has succeeded in getting the Liquor Authority’s attention and eventual action. Now that the court has tossed the SLA regulation, the legislature is squarely in our sights. We’re hosting a Lobby Day in Albany on Tuesday, February 13th so we can talk to legislators directly about this problem and we could use your help. You’re the best advocates for your business to your legislators. Give us a call or send us an email (518.436.8121 or esrta@verizon.net) to let us know you’re coming to town and we’ll make all the arrangements.