
Empire State Restaurant & Tavern Association

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TESTIMONY OF

SCOTT WEXLER

EXECUTIVE DIRECTOR

EMPIRE STATE RESTAURANT & TAVERN ASSOCIATION

SUBMITTED TO THE

JOINT PUBLIC HEARING OF

THE SENATE COMMITTEE ON CORPORATIONS, AUTHORITIES & COMMISSIONS

AND

THE SENATE COMMITTEE ON INVESTIGATIONS & GOVERNMENT OPERATIONS

TO EXAMINE THE PROCEDURES AND PRACTICES OF THE STATE LIQUOR
AUTHORITY, ASSESS RECENT CHANGES TO THE ALCOHOLIC BEVERAGE
CONTROL LAW, AND GATHER RECOMMENDATIONS TO IMPROVE THE
EFFICIENCY, RESPONSIVENESS AND TRANSPARENCY OF THE SLA TO BUSINESSES
ACROSS THE STATE

MARCH 1, 2024

NEW YORK, NEW YORK

Drink Responsibly.
Drive Responsibly.

Hello, I'm Scott Wexler, Executive Director of the Empire State Restaurant and Tavern Association. The Association represents on-premises licensees throughout New York State – businesses that operate restaurants, taverns, bars, and other establishments where they sell alcohol for on-premises consumption. The Association's members are small, independent, local business people – not large chains or franchisees that are part of a large national network.

The Association was founded in 1934 and I've had the honor to serve as Executive Director since 1985. In my nearly 40 years representing the organization I've engaged with the SLA on behalf of our members on a regular basis, ranging from ministerial matters to serious problems. I've served on numerous "Alcohol Beverage Control Law Review" or "Reform" panels. I've trained thousands of licensees and managers in the key provisions of the ABC law and I've trained more than 25,000 alcohol beverage servers in the tools and techniques to prevent sales to individuals who are underage or intoxicated.

I've been around and I've seen a lot. My years of experience informs me that over the past 40 years there have been a number of constants:

- Obtaining a liquor license has always been a lengthy process. We've suffered through backlogs before – just none as severe and seemingly never-ending as our current situation.
- The laws are complex making for a complicated and deliberate process. They establish specific standards for being granted a license. Applicants have to demonstrate that they meet the standard and the licensing staff has to painstakingly review applications to ensure the applicants meet the requirements.
- There are lots of opportunities for errors by applicants or by inexperienced, or perhaps incompetent, licensing consultants that lead to extended delays as the SLA staff uncovers those errors, identifies them for applicants, and assists in their resolution.
- The staff of the State Liquor Authority are hard working and dedicated to getting the job done. This was true 40 years ago when I began this work and if at all possible, it's even more so today than ever. The staff is painfully aware of the licensing delays and the difficulties it imposes on businesses – this predicament is not their fault.
- Funding for SLA staffing has been continuously reduced over the years – forcing the agency to do more with less and less each year – until Governor Hochul with the legislature's support infused the SLA with a substantial budget increase last year.

The senior staff and leadership of the State Liquor Authority have had to develop and implement new programs and policies over the years to keep the applications moving. Numerous administrative changes have been made to improve processing times and responsiveness and most made a meaningful improvement at that moment in time, but the underlying complexities created by the statute and the strains of diminishing staff made the improvements short-lived. Things got better, but then they got worse – again and again. And technology has not been the SLA's friend. The state's central IT agency, which is in charge of every agency's IT services, has been unable to effectively implement online licensing despite years of work.

So how do we get out of this mess – this cycle of one step forward, two steps back? The first steps have already been taken. Allocating additional resources for the Liquor Authority last year was a good start. Once the SLA fills the positions and trains their new staff, applicants should see a noticeable improvement in processing times. The SLA’s creation of the “Backlog Committee” to examine license applications that have been waiting for the longest time and seeking to resolve the outstanding issues holds promise as an effective strategy to help dig out of the current hole. Similar to strategies used by the Authority to eliminate past licensing backlogs, this approach holds promise to substantially reduce the current waiting period. But the improvements will fade quickly if nothing else changes – if the laws remain complex and impose unnecessary barriers and delays in obtaining a license.

We’re fully on board with improving the process for obtaining a license to sell alcohol, but our members caution that it’s not worth fixing the licensing process if you don’t modernize the business environment. Existing licensees know what new licensees soon find out – surviving the licensing process is only the beginning. The rules for operating a licensed establishment, as provided by the Alcohol Beverage Control Law, run counter to modern business practices and common sense. The vast majority of the provisions of the law were drafted during the Prohibition era, nearly 100 years ago, and they fit the needs of those time. But in the modern era the public’s needs have changed. Some of these antiquated laws merely add unnecessary hurdles to operating a business and add untold costs to owners’ bottom lines. They stand in the way of job and tax growth from the state’s agricultural, alcoholic beverage, and hospitality industries.

In 2022 the Legislature and Governor agreed as part of the state budget to form a panel of industry leaders to review various changes to the Alcoholic Beverage Control Laws. The Governor and each of the legislative leaders selected industry members to serve on this panel, which met over a period of months, considered more than 30 policies to improve the SLA operations and modernize the laws governing the industry, and advanced 18 recommendations as part of their final report issued in May of last year. The legislature adopted two of the recommendations – extending Sunday hours of sale for liquor stores and for grocery/convenience stores – before adjourning last year.

We’re big proponents of ABC Law reform. We support many of the recommendations of the Commission and think there may be other policies worth considering as part of this discussion that didn’t make the cut during the Commission’s deliberations. Governor Hochul included several proposed changes to the ABC Law in her Executive Budget. The Governor’s continued leadership in fixing both the operational and business issues with the ABC Law is noted – and she put her money where her mouth is by allocating additional resources for the SLA.

The Senate has done its part – and then some. Senator Skoufis and the Senate Investigations Committee have worked diligently to highlight the problems with the SLA and the ABC Law and to push for systemic change to benefits the licenses and the public. S6785B, sponsored by Senator Skoufis, addresses some of the most significant operational and business challenges the SLA and the industry faces. Adoption of these proposals will streamline the SLA’s licensing and operations process and will improve the business climate for business owners.

I've attached a section-by-section commentary of the parts of S6785B of interest to the Association, but our highest priority is Part D which authorizes restaurants, taverns, and bars to purchase up to 12 bottles of wine and liquor each week from liquor stores – which is currently illegal. The legislature granted liquor wholesalers the right to have exclusive arrangements with brands in 1992. As a result, wholesalers have established a monopoly over each of the brands they distribute, giving retailers only one place to purchase each product and small retailers are bearing the brunt of this.

Small retailers pay a substantial surcharge on products to wholesalers – split case charges of about \$3.00 for each bottle ordered in less than a full case quantity and delivery charges that run from \$3.00 - \$35.00 per order depending on where your business is located and the size of your order. The costs for these surcharges add up: a typical tavern owner ordering two split cases each week pays about \$10,000 in these surcharges each year, not to mention the higher price paid for buying in smaller volume. The pricing practices of the liquor wholesalers are so discriminatory against small retailers that it's usually cheaper to purchase at retail, where they don't pay the surcharge and benefit from volume discounts, than it is for our members to make purchases at wholesale – often 25% cheaper or more. But it's illegal for a retailer to buy from a retailer even if it's cheaper and more dependable than buying from the wholesalers.

S6785B, Part D makes it lawful for a retailer to purchase from another retailer. It's modeled on similar provisions in other states and on New York's Class C beer wholesale license which includes retail privileges. Almost all of these "Class C licensees" primarily function as retail outlets selling beer, soda, and related products to the public but they also sell beer at wholesale to small restaurants, taverns, bars, and stores. The existing systems in New York and other states provide for tax collection and sales reporting to prevent tax avoidance and have functioned well for years. Liquor wholesalers don't lose any sales since all sales still flow through them, but perhaps in a more efficient and environmentally friendly "last mile" delivery process. And it helps small retailers on both sides of the transaction.

The Governor's proposal to make cocktails-to-go as part of her 30-day budget amendments is also of importance to our members. The ability to sell drinks-to-go during the early stages of the pandemic was a lifeline to many of our members and their employees and vendors. Many of our members, their servers, and delivery staff continue to reap additional income from this new source. Customers enjoy the ability to get a drink-to-go with their take out or delivery without having their delivery service have to make two stops – one to pick up the meal and another to grab the ingredients for your cocktail. But the current law needs to be tweaked to eliminate barriers added to prevent the sale of full bottles of wine and liquor. Restaurants should not become retail stores, but ordering a bottle of wine or a cocktail-in-a-can is commonplace when dining in our establishments so it's silly and environmentally irresponsible to require restaurants to pour these beverages into other containers before selling them to go.

We thank the Senate for its continued leadership. We urge you to respond to Governor Hochul's proposals to revise the ABC Laws by advancing S6785B and the proposal to make cocktails-to-go permanent. These proposals make critical operational and business improvements that benefit the public, our members, and their employees. We're committed to working with you to engage the Assembly and the Executive in a serious discussion about reforming the ABC Law so they better function in the modern era. Thank you for your consideration.

S6785B – Parts of Interest to ESRTA

Part A (Sole Administrative Authority - Powers of the Chair) - Permanently extends the administrative powers granted to the Chair of the SLA (e.g. everyday administrative operations including all hiring, firing, and spending decisions). This Part incorporates the Executive's proposed FY 25 State Budget language found within PPGG Part J. *We support this proposal in order to provide clear responsibility and accountability for the agency's functions.*

Part B (Temporary One-Day Catering/Retail Permits) - Adds cider, mead, braggot, and liquor as permissible beverages for temporary one-day permits for events. Allows for outdoor catering permits. This Part incorporates the Executive's proposed FY 25 State Budget language found within PPGG Part H, amending sections 98 and 97 of the ABC Law. *We support this proposal and encourage it to be approved.*

Part C (Special NYE On-Premises Retail Permit) - Allows restaurants and bars to apply for a special permit to stay open on January 1 between 4AM and 8AM when it falls on a weekend. This Part incorporates S4742A of 2023 (Cooney), amending section 99 of the ABC Law. *We support this common sense proposal to permit "all night" permits for weekend days since they're allowed for weekdays.*

Part D (Retailer-to-Retailer Sales) - Allows on-premises retail licensees like bars and restaurants to buy and resell up to 12 bottles of wine and liquor per week from off-premises retailers, as well as for off-premises retailers to sell such bottles. This Part incorporates S2853 of 2023 (Skoufis), amending sections 105 and 106 of the ABC Law. *This is the Association's top priority and urge its adoption.*

Part H (Revising the Public Convenience and Advantage Standard) - Changes the standard with respect to issuing new retail licenses to sell liquor/wine for off-premises consumption to a "good cause for disapproval" standard, the same as for on-premises applicants. Amends sections 63 and 79 of the ABC Law. This change modernizes the standard for issuing a retail liquor license abandoning a Prohibition-era standard that asks the State Liquor Authority to decide whether a new outlet is "needed" or not. No government agency should tell an entrepreneur that their business isn't needed, that it will fail due to existing market forces and therefore can't have a license to operate. And the process the SLA uses to evaluate the current system sucks valuable resources from the Liquor Authority while high paid consultants battle it out one license application at a time – causing a significant slow down to the rest of the Authority's business. *We support this change which will help put small businesses into operation, generate additional tax revenue, create jobs, and will speed up the licensing process for all applicants.*

Part J (Revising Municipal Notice Period) - Allows individuals to apply for a license with the SLA without having to wait thirty days for the municipal notice period to lapse. This Part incorporates the Executive's proposed FY 25 State Budget language found within PPGG Part H, amending section 110-b of the ABC Law. *This makes sense and we support its enactment.*

Part K (Changes in Membership or Corporate Structure) - Requires the SLA to act on changes in membership or other corporate structure to a limited liability company (LLC) within ninety days of receipt of an application. The application would be deemed approved if the SLA takes no action prior to ninety days. This Part incorporates the Executive's proposed FY 25 State Budget language found within PPGG Part H, amending section 99-d of the ABC Law. *Long delays in processing corporate changes can be disruptive to the operation of a business so we support enactment of this proposal.*

Part L (Temporary Retail Permits) - Allows for the issuance of temporary retail permits, permanently extending the SLA's authority to issue temporary retail permits, allows businesses to apply for a permit for locations that have not had an active licensed retailer in the prior two years, gives permit holders the ability to purchase alcohol for sale on credit, and allows permits to be extended for 90 days. This proposal removes the need for there to have been an active retailer within the previous two years and maintains the ban on issuing a permit if a location had a license previously suspended, canceled, or revoked in the two years prior. This proposal lengthens the 30-day extension period to 90 days with the payment of a fee. This Part incorporates the Executive's proposed FY 24 State Budget language found within PPGG Part 0, amending section 97-a of the ABC Law. *We support this proposal – temporary permits have become an essential element of the SLA's licensing process so the Liquor Authority should be able to issue them on an ongoing basis.*

Part N (200' Rule) - Modifies the 200' rule that prevents the issuance of a retail license for on-premises consumption when the premises is on the same street and within 200' of a school or place of worship. This proposal would allow the SLA to issue such retail licenses when the owner or administrator of a school or place of worship affirmatively states its support, amending sections 64, 64-a, 64-b, 64-c, and 64-d of the ABC Law. *We support this reasonable modification to the 200-foot rule which will cut months off of the application process without jeopardizing public safety.*

Part O (500' Rule) - Limits the applicability of the 500' rule that prevents the issuance of a retail license for on-premises consumption when the premises is within 500' of three or more licensed and existing premises to a county having a population between one million six hundred thousand and one million seven hundred thousand, amending sections 64, 64-a, 64-b, 64-c, and 64-d of the ABC Law. *The 500-foot rule may need modification but we do not support this proposal which removes most municipalities from its application. We helped enact the 500-foot rule because we thought some limitations on density were appropriate in most communities – we still do.*

