



December 7, 2022

The Honorable Tim Moffitt
P.O. Box 768
Hendersonville, NC

Representative Moffitt,

On behalf of the North Carolina Retail Merchants Association (NCRMA), I too would like to thank you, Representative Bradford, Senator Johnson, and Chairman Bauer for the extensive amount of time you all provided the North Carolina Beer and Wine Wholesalers Association (NCBWWA) and NCRMA last week to discuss split case fees. It was a very good dialogue, and we sincerely appreciated the opportunity to learn more about the concerns and challenges faced by NCBWWA's wine wholesaler members.

NCRMA felt it was important to respond to NCBWWA's letter dated December 2, 2022, as follows:

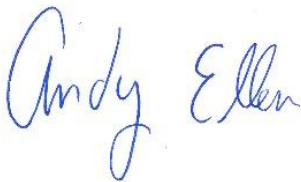
- The State of North Carolina and its consumers, independent wine and bottle shops, retailers, and restaurants will be disproportionately affected by split case fees.
 - A reduced selection of wine will negatively impact consumers – as evidenced by one retailer already eliminating well over 150 SKUs of wine from their stores. In another example, higher prices resulting from the \$0.36 split case fee recently announced by Empire, or the \$0.72 split case fee announced by Johnson Brothers will inevitably be passed along to the consumer.
 - North Carolina wineries will be affected as they battle for shelf space and will likely see their wine priced higher than similarly situated national brands due to the additional split case fee.
 - Small wine and bottle shops along with independent grocery stores, retailers, and restaurants will face cash flow issues as they either buy wine by the case to stay price competitive while having to pay cash on delivery with no ability to return the wine or pay a split case fee and have higher prices.
 - Retailers will also be faced with the dilemma of how to buy and price wine at different prices due to split case fees. Their computer and inventory systems are not set-up to navigate through multiple prices per brand of wine. This will ultimately increase delivery times for wine wholesalers because retailers will not accept orders until they can verify the number of bottles and the price per bottle.
- One item not addressed in NCBWWA's letter is the elephant in the room that split case fees constitute an illegal quantity discount. If a retailer buys six bottles of a brand of wine, the retailer pays the base price of the wine plus either a \$0.36 or a \$0.72 split case fee. If the retailer buys twelve bottles of wine, the retailer only pays the base cost of the wine and avoids the \$0.36 or \$0.72 split case fee. As an example, if the base cost of a brand of wine is \$10, and the retailer buys a case of twelve bottles, the retailer would pay \$120 for the case of wine at \$10 per bottle. However, if the retailer buys six bottles of wine because they must pay cash upon delivery, cannot return the wine, or are uncertain if they can sell an entire case of the wine, the retailer will pay \$62.16 (\$0.36 split case fee) and \$10.36 per bottle or \$64.32 (\$0.72 split case fee) and \$10.72 per bottle for the six bottles of wine. Under this scenario, buying the wine by the case results in a cheaper price and an illegal quantity discount.

- NCRMA acknowledges labor costs have increased across the board for all industries and this certainly holds true for wine wholesalers. However, as you heard at the meeting, wine is one of many goods sold in commerce where items are removed from a case by a wholesaler and sold individually by retailers to consumers. Additionally, the same “picking” of products out of cases occurs in warehouses throughout the state of North Carolina and is not unique to the wine industry.
- As mentioned, NCRMA’s members proposed a solution to offset additional labor costs faced by wine wholesalers which was a slight increase across the board on each bottle of wine. It should be noted that Johnson Brothers implemented a similar plan in 2019 rather than proceed with a split case fee and current wine wholesaler, Winebow, recently implemented an across-the-board increase on every bottle of wine to offset its labor costs. Additionally, NCRMA and its members are committed to working with wine wholesalers and NCBWWA to “smooth” out the ordering process for wine to hopefully reduce large volumes of orders on certain days and transfer some of the orders to slower days.
- Whereas NCBWWA utilizes a \$4 increase on a \$100 bottle of wine as its example to demonstrate inequity in an across-the-board price increase, it should be noted that the \$100 bottle of wine is an outlier in the current wine market especially for cost conscious consumers.
- Retailers ordering by the bottle is not a new phenomenon for wine wholesalers. For decades, North Carolina has been a “bottle-one” state with 75%-80% of wine ordered in North Carolina ordered by the bottle and the cost to pick a bottle(s) of wine for their customers considered part of the service provided by the wine wholesaler to the retailer. To begin charging for this “service” now after it has been the industry standard for years lacks free market components because in any other business, the retailer would simply seek the wine wholesaler’s product from a competitor.

As we stated throughout the meeting, NCRMA acknowledges wine wholesalers in North Carolina are experiencing increased labor costs – this is true of every industry in North Carolina. However, it is our hope NCBWWA and its wine wholesaler members can resolve their increased labor costs in a manner that is operationally and financially workable and acceptable to their customers and does not harm North Carolina consumers and wineries. We stand committed to continuing the dialogue to try and reach a resolution which accomplishes all of these goals.

Thank you again for your leadership on this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Andy Ellen". The signature is written in a cursive, flowing style.

Andy Ellen
President and General Counsel
North Carolina Retail Merchants Association

Cc: The Honorable John Bradford, N.C. House
The Honorable Todd Johnson, N.C. Senate
Mr. Hank Bauer, ABC Commission chairman