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Liquor Advisory Group Regulation of Retail Operations Subgroup
 Meeting Minutes
 May 18, 2023

Seat	Representative	Attendance
Tavern	Erika Zierke <i>Englewood Grand</i>	Present
County Sheriffs of Colorado	Vacant <i>Jefferson County Sheriff's Department</i>	
Restaurant Licensee	Dana Faulk Query <i>Big Red F Restaurant Group</i>	Present
MADD	Executive Director Fran Lanzer <i>Mothers Against Drunk Driving</i>	Present
Law Enforcement Representative	Chief W.J. Haskins <i>Glendale Police Department</i>	Present
Off-Premises Retailer (Medium)	Edward Cooper <i>Total Wine & More</i>	Absent
Tavern/Large Dance Entertainment Venue	Andrew Feinstein <i>Tracks Denver, ReelWorks Denver, & RiNo Art District</i>	Absent
Minority Owned Off-Premises Retailer	Gonzalo Mirich <i>Jimbo's Liquor</i>	Present
Off-Premises Retailer (Large)	Sara Siedsma <i>Kum & Go</i>	Present
Wholesaler (Malt)	Yetta Vorobik <i>Crooked Stave Artisan Distribution</i>	Present
Minority Owned On-Premises Retailer	Veronica Ramos <i>The Electric Cure</i>	Present

- I. Welcome and Introductions
- II. Subgroup Process and Expectations Overview
 - A. Review of timeline of topics (from page 2 of the [May meeting agenda](#))
 - B. Volunteer to provide subgroup updates at the June LAG meeting.
 1. Yetta Vorobik will present the subgroup's discussion at the June LAG meeting.
- III. Topic Discussion: Make To-Go Drinks/Bottles Permanent.
 - A. Background:

1. Currently, there is an effective repeal date of July 1, 2025 in the statute for this privilege.
2. On-premises establishments are currently allowed to sell the following quantities of alcohol as to-go:
 - a) 1.75 liters of wine;
 - b) 144 ounces of beer; and
 - c) 1 liter of mixed spirits.
3. Having alcohol to-go was helpful to restaurants during the pandemic. For some smaller restaurants that lost in-house dining, it helped with their income. The restaurant industry would like to see this in perpetuity, as long as the group can figure out how to standardize the guidelines and guardrails around it.

B. Overview of Discussion

1. There was brief discussion around whether or not it's pragmatic to address this topic in the Liquor Advisory Group, given the repeal date currently in statute. An argument was made that perhaps the conversation should wait until the repeal date has passed and then extend the privilege or make it permanent.
 - a) Representatives of the restaurant industry remarked that any proposal drafted in the LAG would need to pass the legislation before the repeal date in order for to-go privileges to be extended/made permanent. The Liquor Advisory Group is the appropriate place to have this conversation rather than pushing it out.
 - b) There was general agreement to have this conversation in the LAG due to the positive recommendations that can come out of group discussions.
 - c) Overall, the subgroup members agreed to start the conversation during today's meeting and then bring the discussion and/or a proposal to the June 1 LAG meeting to continue it as a whole group.
2. There was brief confusion around whether this discussion was to address "standardized containers" or standardizing the definition of how to-go alcohol is to be packaged for customer sales. It was clarified by the division that "standardized containers" are defined in law and pertain to the size of containers into which wine, beer, and spirits can be placed for off-premises consumption. The standards around containers for to-go alcohol beverages are in rule, not statute. The division also noted that the federal authority is revisiting and revamping these issues, so it's possible that federal laws could supersede any proposals from the LAG.
3. There are two main parts to this discussion: Should this be made permanent and what are the boundaries and limitations around it that everyone would be comfortable with?
 - a) Should the privilege for on-premises establishments to sell alcohol beverages to-go be made permanent?
 - (1) The restaurant industry feels having alcohol to-go was a "silver lining" that came out of the pandemic. Alcohol-to-go sales hasn't been a huge portion of all restaurant sales, but has proven to be an extra bump to revenue in certain circumstances (for example,

seasonal gifts). The restaurant industry feels that it hasn't harmed off-premise sales because of the low volume limits that determine what on-premises establishments can sell to customers.

- b) What are the boundaries and limitations that should be in place?
 - (1) Container Guardrails
 - (a) Representatives from the restaurant industry expressed a desire to see the current guardrails around to-go containers continue. These include the font size of the sealing label, the printing of the to-go regulation, et cetera. From a public safety perspective, this was also a matter of concern, with a strong desire to make sure the containers are reasonably sealed to prevent any open container violations.
 - c) What are the major concerns and considerations around this topic?
 - (1) Competition and/or Conflict with Off-Premises Retailers
 - (a) A representative of retail liquor stores expressed opposition to an extension of this privilege. The repeal date was for on-premises establishments to recoup their losses from the pandemic and was not intended to be made permanent. There have also been on-premises locations with bottle shops for customers to purchase from a selection of alcohol. This is harmful to off-premises retailers and makes bars and restaurants into off-premises businesses (liquor stores).
 - (b) The restaurant representatives disagreed that making alcohol to-go sales permanent turns their establishments into retail liquor stores. The emergency rule, which did not place limitations on the volume of alcohol that could be sold to-go, expired on May 11, 2023 and on-premises businesses are now required to apply online for a delivery/to-go permit, and the permit places limits on the amount of alcohol they can sell.
 - (c) Restaurants are very cautious about violating the allowed limits for to-go alcohol sales and utilize their own volume limits (e.g., one bottle of wine per ticket) to keep the alcohol to-go sales low.
 - (d) To-go alcohol sales are not a major part of restaurant revenue and it has been their experience that customers would rather purchase the bulk of their alcohol from off-premises retail stores, not at on-premises locations.
 - (2) Public Safety
 - (a) One of the most prominent public safety concerns is to-go alcohol beverages being consumed while the

vehicle is in operation. MADD noted a dramatic increase in drunk driving crashes and deaths since 2019 (176 crashes/deaths to 289 in 2022). It was also noted that alcohol seems to be more available in Colorado, though more research is needed to determine how much of an impact to-go alcohol sales is having on drunk driving.

- (i) It was noted by another member of the subgroup that the National Restaurant Association has produced some data that indicates the pandemic has changed the way people dine, that they are dining at home rather than at restaurants, and allowing people to purchase alcohol to take home with them is another incentive to have them consuming alcohol at home and not driving after consuming alcohol at a bar or restaurant.
 - (b) There was robust discussion around preventing the consumption of alcohol beverages while the customer is driving. There was a suggestion for law enforcement to aid in the collection of data by checking for to-go beverages in the vehicle during a drunk driving investigation. The division appreciated the perspective of this proposal but pointed out that this is a difficult data point for law enforcement to try and collect (i.e., just because an open to-go container can't be located at the time of the crash doesn't mean it wasn't present).
 - (i) The purpose of the tamper-evident seal was to make consumers aware that the beverage is not to be consumed in the vehicle; however, it has been expressed by members of the public that there was the temptation to consume while driving because the alcohol was in the driver's area. The division pointed out that other states that allow alcohol-to-go sales require that the alcohol must be placed in the trunk at the time of pick up, and perhaps Colorado could implement this requirement to remove temptation.
 - (c) There was overall support for to-go alcohol purchases to be placed in the trunk or in the back of a vehicle, away from the driver's area.
4. Approximately twenty other states in America currently allow the to-go sales of alcoholic beverages. There was a suggestion for the subgroup to look at the following states to see what process and limitations have been put into place to address alcohol to-go sales and see what can be incorporated into the Colorado model. This data was received from the [National Restaurant Association](#).

- a) Arizona
- b) Arkansas
- c) Delaware
- d) Iowa
- e) Florida
- f) Georgia
- g) Kansas
- h) Kentucky
- i) Maine
- j) Missouri
- k) Nebraska
- l) Ohio
- m) Oklahoma
- n) Oregon
- o) Rhode Island
- p) Texas
- q) Washington
- r) West Virginia
- s) Wisconsin
- t) D.C.

C. Potential Proposals and Discussion

1. One proposal put forward suggested to remove the repeal date in statute; set the amount of alcohol that can be purchased and removed from the on-premises location (e.g, 1 bottle of wine, 8 ounces of wine, spirits only in the form of mixed drinks); allow for corkage in restaurants; and implement higher penalties (e.g., loss of license) for violations (e.g., bottle shops in on-premises locations).
 - a) Under this proposal, it was suggested that it might be appropriate to link the consumption qualities for off-premises tasting privileges with the volume limits for alcohol-to-go purchases. The division stated that off-premises tasting privileges are currently being discussed in the Marketplace Structure subgroup and the voices present in that subgroup are not fully represented in the Regulation of Retail Operations subgroup. The division requested that the subgroup members stay focused on the points of this topic.
 - b) A subgroup member asked that the subject of corkage fees be removed from the proposal as it is on the schedule to be discussed at the August subgroup meeting.
 - c) In considering any amendments to the volume limits, it was heavily recommended that the Brewers Guild be contacted for input on the amount of beer that can be purchased to-go.
 - d) It was also emphasized that full bottles of spirits should not be allowed for sale, only as the contents of a mixed drink (e.g., cocktails).
 - e) Following some discussion around whether volume limits should be in statute or rule, the division stated that it was the group's decision and

explained that these limits currently exist in rule to allow the division to amend quickly and as needed.

f) There was pushback from the restaurant representatives against the suggested penalty of losing their on-premises license for a violation. This feels extreme.

(1) It was clarified that the proposal was for a “three strikes” practice and it wouldn’t be for a first-time offense.

(2) The division advised the subgroup members that a rule concerning penalties was drafted just a few years ago; the division feels this rule is well written and reasonable, and would ask the subgroup to review these rules before they draft additional penalties specifically for this topic into statute.

g) Additional discussion was had around the subject of including sale price in the proposal. The retail representative advocated for alcohol being sold at either fifty percent of the purchase price or at the price as served on the premises (for example, a bottle of wine purchased from a retailer at \$10.00 must be sold for \$15.00 at the restaurant). This was proposed to prevent on-premises businesses competing with the retailers.

(1) There was pushback on this from the restaurant representatives. They stated they would not support a proposal that has the state telling them what they have to charge. They did agree to any aspect of the proposal that requires alcohol to not be sold below cost, but disagreed with any further cost-related restrictions.

2. Another subgroup member recommended that the current delivery/to-go permit fee be raised to, for example, fifty dollars. This was proposed with the intent of benefiting the division and ensuring that on-premises business owners would understand what they’re agreeing to under this permit.

D. General Proposal

1. Make to-go alcohol sales permanent, with the caveat that the subgroup will need to revisit what the specific guardrails and limitations are and/or should be around making to-go sales of alcoholic beverages permanent.

2. The following elements of the proposal were initially proposed by the subgroup members:

a) Volume limits are as follows:

(1) 750 mL of wine;

(2) 72 oz of beer (1 six-pack);

(3) 1 L of mixed spirits;

b) The delivery/to-go permit fee should be increased;

c) The products must not be sold below cost;

d) The to-go drink must be placed in the trunk or away from the driver’s area of the car.

E. Public Comment

1. Nick Hoover, Colorado Restaurant Association

- a) Mr. Hoover thanked the subgroup members for this discussion. The limitations on takeout and delivery for alcohol have only been in place for less than a week (they went into place on May 11), so Mr. Hoover thinks it's a little early for conversation on changing them already. There's been no way to evaluate how they have gone into effect or have been used. In the two times that laws have been passed on this issue, something that has been talked about and worked on, so would caution making a dramatic change until we see how this is impacting how things are done. The association would strongly support moving forward with this issue; it is something their members have indicated that this is something their customers are interested in. Looking forward to future discussion.
2. Joan Green Turner, Distilled Spirits Council
 - a) Ms. Green Turner echoes a previous comment that this is just going into place right now; the council thinks it's a great idea and supports this concept. It can be done safely, it has been done safely and is currently being done safely, and the council thinks it's really important that it continues so that the council's restaurant friends can continue this as another way to market to the public.
 - b) Ms. Green Turner feels that some of the suggestions that were brought up by Mr. Shpall are going to make the issue very complicated. Ms. Green Turner has lobbied for about thirty years, and the more complicated you make it, the harder it is to get through. She understands that the Liquor Advisory Group has a lot of power and that people will be listening to the group, but at the same time there are a lot of other interests that may not be on the call. The simpler the group keeps this issue, the better it is. Some of the conversations can happen at the capital if need be; they just happened but they can happen again. Would respectfully suggest that the group remove the repeal date, make this simple, and then let the conversations go on.
 - c) As an aside, she had a family dinner at a Mexican restaurant earlier this week, and they ordered a pitcher of margaritas that the family wasn't able to finish. They were able to take it home and were able to drive safely. They were able to have a cocktail, bring it home, and have it later if they wanted to. There is a positive safety aspect to this.
 - d) When you start putting corkage, how much it can, what percentage, whether it's below cost, it just makes it complicated.
3. *No additional public comment was offered during the allotted time.* Public comments can also be submitted on this proposal to the division by emailing dor_led_rulemaking@state.co.us.
4. There was general agreement among the subgroup members that keeping the proposal simple was the ideal approach. Also, the limitations that are currently in place seem to be effective at this time and there isn't a clear need to amend them.
 - a) The existing volume limits, as specified under statute, are as follows:

- (1) 1,500 mL (approximately 50.8 fluid ounces) of vinous liquors;
- (2) 144 fluid ounces (approximately 4,259 mL) of malt liquor, fermented malt beverage, and hard cider; and
- (3) 1 Liter (approximately 33.8 fluid ounces) of spirituous liquors.

F. Motion

1. Erika Zierke made a motion for the sale of to-go alcohol beverages permanent with the existing limits and with LED being allowed to regulate the penalties for violations and with labeling and sealing of container requirements. Motion seconded by Dana Faulk Query.
2. A member of the subgroup requested to see the current regulations, which took effect on May 11, before any voting is conducted on the proposal.
 - a) The statute reference is [44-3-911, C.R.S.](#)
 - b) The to-go rule under the Code of Colorado Regulations, is [47-1101](#).
3. Because the subgroup decided to not take a vote during this meeting, Dana Faulk Query will prepare the written proposal to make the sale of to-go alcohol beverages permanent under the current statute and submit it to the division at dor_led_rulemaking@state.co.us for distribution to the rest of the LAG.
Requested deadline is prior to the June 15, 2023 subgroup meeting.

IV. Topic Discussion: Standardize Container Definitions.

A. Overview of Discussion:

1. The subgroup members decided to move this topic to the June 1, 2023 LAG meeting agenda to see if other members can give direction as to why this topic was placed on the Retail Operations list of topics to discuss.

B. *Any comments or concerns that the public would like the subgroup to consider on this topic can be submitted to the division by emailing dor_led_rulemaking@state.co.us.*

V. Topic Discussion: Standardize Responsible Vendor Training.

A. Background

1. The locals can set their own ordinances and resolutions on what type of training they require for their programs. The division does have authority to set the minimum requirements of responsible vendor training, but the division does not have the authority to override local authorities if they deem extra requirements necessary for their jurisdiction, nor can the division dictate the fees set for this training by the locals. In other words, the division sets the minimum standards for this training and the local authorities have the ability to go above and beyond these minimum requirements.
2. These base requirements are currently set in rule and were worked on during the 2022 working group session. If the subgroup members would like to see these requirements set in statute rather than rule, the division is willing to hear the argument and have the discussion. If there is not a strong push for the requirements to be set in law, any amendments or changes to the requirements can be addressed in the upcoming summer work group sessions.

B. Overview of Discussion

1. There was very brief discussion around this topic, most of which focused on a public safety perspective. With the primary goals of limiting underage access to

alcohol, preventing overservice of alcoholic products, and preventing drunk driving, it was proposed that the summer rulemaking sessions might be the better place to have this conversation.

2. Additionally, after further consideration, the subgroup member who originally proposed this topic for discussion stated that the LAG doesn't feel like the right place to address this issue, as it is a local control matter. The subgroup member proposed that the matter be removed from the subgroup's discussion topics.

C. *Any comments or concerns that the public would like the subgroup to consider on this topic can be submitted to the division by emailing dor_led_rulemaking@state.co.us*

VI. Topic Discussion: Measures to Promote Public Safety.

A. Background

1. Some of the key items that were initially discussed as falling under this conversation were:
 - a) Prevent underage drinking;
 - b) Reduce alcohol above; and
 - c) Engage law enforcement.

B. Overview of Discussion

1. The subgroup members briefly discussed some items that they would like to consider in advance of a more in-depth discussion at the next subgroup meeting. Highlights of this discussion were as follows:

- a) A data request was made for how many liquor licensees currently exist and how many enforcement officers are currently employed with the LED.
 - (1) There are currently 14,000 licensees in the state of Colorado.
 - (2) The division has approximately 16 enforcement officers currently employed.
- b) Representatives from the restaurant industry mentioned a lack of penalties for individuals trying to use fake IDs and that the onus falls on the establishment to bear the punishment. There are a lot of sophisticated fake IDs and the restaurant industry is unclear as to what the penalties, if any, are for those individuals who are caught using fake identification. Perhaps if the penalties were more severe, there would be less abuse of fake IDs.
 - (1) The division stated that there might be more support for going after the companies that are fraudulently selling the IDs than the specific individuals. However, some of these companies function online and operate out of other states, meaning the division doesn't have any jurisdiction over them.
 - (2) Additionally, there has been a push to not take extensive criminal action against the minor using the ID, as this would put a permanent mark on their record which could prevent them from getting employment in adulthood.
 - (3) There was overall support from the subgroup members to discuss this aspect further at the next subgroup meeting.

- C. *Any comments or concerns that the public would like the subgroup to consider on this topic can be submitted to the division by emailing [dor led rulemaking@state.co.us](mailto:dor_led_rulemaking@state.co.us)*
- VII. Action Items
- A. Dana Faulk Query will prepare a written proposal to make the sale of to-go alcohol beverages permanent under the current state. The proposal will be submitted to the division at [dor led rulemaking@state.co.us](mailto:dor_led_rulemaking@state.co.us) for distribution to the rest of the LAG.
 - B. **The deadline for the proposal is prior to the June 15, 2023 subgroup meeting.**

The next Regulation of Retail Operations subgroup meeting will be on June 15, 2023 from 11:00 a.m. to 1:00 p.m.