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Liquor Advisory Group Regulation of Retail Operations Subgroup
 Meeting Minutes
 March 16, 2023

Seat	Representative	Attendance
State Licensing Authority	Executive Director Mark Ferrandino <i>Department of Revenue</i>	Absent
Tavern	Erika Zierke <i>Englewood Grand</i>	Present by Proxy Phillip Zierke
County Sheriffs of Colorado	Division Chief Todd Reeves <i>Jefferson County Sheriff's Department</i>	Present
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>	Present
Tavern/Large Dance Entertainment Venue	Andrew Feinstein <i>Tracks Denver, ReelWorks Denver, & RiNo Art District</i>	Present
Minority Owned Off-Premises Retailer	Gonzalo Mirich <i>Jimbo's Liquor</i>	Present
Off-Premises Retailer (Large)	Jason Bassett <i>Kum & Go</i>	Absent
Wholesaler (Malt)	Yetta Vorobik <i>Crooked Stave Artisan Distribution</i>	Present
Minority Owned On-Premises Retailer	Veronica Ramos <i>The Electric Cure</i>	Absent

- I. Welcome and Introductions
- II. Subgroup Process and Expectations Overview
 - A. Review of Timeline of Discussion Topics (from page 2 of the [March meeting agenda](#))
 - 1. No amendments or objections from subgroup members.

- B. Volunteer to Report Subgroup Proposals at April LAG Meeting
 - 1. Fran Lanzer volunteered to be the spokesperson for the Regulation of Retail Operations subgroup at the large April LAG meeting.
- III. Topic Discussion: Mandatory Christmas Day Closure
 - A. High Level Discussion Points:
 - 1. Licensed retailers are currently prohibited from selling alcohol beverages in sealed containers on Christmas day.
 - 2. There was a proposal to remove these prohibitions from statute and make it a business owner's decision as to whether they want to close their business on Christmas day or stay open, with nothing in law prohibiting them either way.
 - 3. This change would primarily affect retail liquor stores, liquor-licensed drugstores, and fermented malt beverage and wine retailers.
 - B. Group Decision:
 - 1. No concerns expressed from the subgroup members with removing these prohibitions from statute.
 - 2. No dissenting opinions presented.
 - 3. Unanimous opinion of the subgroup to have the Liquor Advisory Group consider this preliminary proposal for inclusion in the final report.
- IV. Topic Discussion: Soft Close Proposal (continued discussion)
 - A. High Level Discussion Points:
 - 1. With the topic discussion as it currently stands, there would need to be a statutory change to give the business the ability to be open until four a.m. and consumers would be able to finish their drinks inside the establishment. No more alcohol sales would happen after two a.m.
 - 2. What are the guardrails that need to be put in place?
 - a) Limit one drink per person at the two a.m. last call.
 - (1) Discussion was had around the size of the drink that could be sold at last call. There is no specific rule or law that addresses the size of the drink that can be sold; this is only addressed in that an establishment is not to sell alcohol to a visibly intoxicated person.
 - (2) Concern was expressed that any restrictions on the size of the beverage could be operationally challenging for some establishments.
 - b) It was brought up that some businesses may want to start last call earlier if it makes sense for them to do so; for example, an establishment that has five people ordering drinks at last call versus an establishment that has twenty or more ordering drinks. It was suggested that this decision should be left up to business owners to decide what's best for their business.
 - 3. From an enforcement standpoint with LED, this will probably be a compliant-based matter (e.g., if someone is reported as making a sale after two a.m.). Concerns from the division around how the model is allowed to work and certain businesses trying to "play" the system. If this recommendation passes into law and this situation is found to be happening, LED would look to rulemaking to address this.
 - a) A recommendation was made for statutory language to read, "Prohibited to sell or provide alcohol after two a.m."
 - B. Group Decision:
 - 1. Additional items to be added to the recommendation:

- a) What is the proper drink limit for last call?
 - b) How many drinks and the volume/size of the drinks that can be ordered?
 2. Best business practices should be left up to business owners.
 3. Provide LED with rulemaking authority, should the recommendation be passed into statute.
- V. Topic Discussion: Expand Opportunities for Off-Premises Retailers to Offer Educational Classes
 - A. Background:
 1. Currently, there are businesses that can hold an educational session *provided they do not tie it to the tasting statute* (44-3-301, C.R.S.). Part of the reason for this is because the business wants to charge for the consumer to be part of the event in order to recover the costs associated with the educational setting. The current tasting laws allow for consumers to have a sample of a specific product free of charge; they don't have to pay for any type of product. The local licensing authority issues these permits and have expressed to the division that this is "not broken."
 2. The division is curious if something can be put into law that allows for the educational experience, food and alcohol and samples provided, without an off-premises retailer to turn into an on-premises business. This would be for a limited time period to showcase products and how they can be mixed and/or paired with food.
 - B. High Level Discussion Points:
 1. Question of how it can be incorporated in statute that a nominal fee is allowed to be charged for these types of experiences.
 - a) Recommendation from the subgroup to not charge on a per beverage basis; keep it as a nominal fee.
 - b) One suggestion was to make it mandatory that any fees associated with these educational programs must be shown to be put towards the creation and labor associated with the classes. This could be put in place as a statutory requirement or have the General Assembly write in language under the tasting law that states a fee can be charged for a limited portion of the law.
 - c) There was concern expressed over the latter recommendation; a solution might be to write a new statute that gives the ability to retail liquor stores/liquor licensed drug stores/FMB and Wine retailers to have an educational setting and then include specific guardrails around this.
 2. Public Safety Considerations:
 - a) Keep the size of samples small, depending on the time and duration of the classes. Typically, the classes are between one to one-and-a-half hours.
 - (1) Could use the existing restrictions under the tastings statute as a model for the educational classes:
 - (a) One oz of malt or vinous;
 - (b) Half oz of spirituous liquor;
 - (c) Only 4 samples allowed per consumer.
 - b) Regulate the time and duration of the classes.
 - (1) Suggestion was to mirror the Tastings restrictions; classes could not be held earlier than eleven a.m. and no later than nine p.m.
 - (2) Another suggestion was to keep the class times limited to after work hours (e.g., begin the class at 6:30 p.m.).
 - (3) Duration of the classes may be dependent on the type of alcohol

beverage being discussed in the class (e.g., whiskey versus wine).

c) Distinguish educational classes from tastings.

- (1) Idea was to keep these separate due to concerns that a consumer could feasibly go from intaking alcohol through the educational setting and then immediately go to a tasting setting and ingest more alcohol. A recommendation was made to identify the educational patrons via a wristband, so that if a tasting event was being held at the same time as the educational class, that patron would not be allowed to attend the tasting.

C. Potential Proposals:

1. Create a new statute that would give off-premises retailers the ability to hold classes in an educational setting with the following guardrails:
 - a) Keep the existing sample size/limitations as currently exist under the Tastings statute.
 - b) Allow a nominal fee to be charged for the classes.
 - c) Utilize an identifier for patrons of the educational classes to keep them from attending a tasting event immediately after.

VI. Topic Discussion: Limits on the Amount of Alcohol an On-Premises Retailer Can Purchase from an Off-Premises Retailer

A. Background:

1. The current limit allots two-thousand dollars within a calendar year for an on-premises retailer to purchase from off-premises retailers.
2. These purchases usually occur when the on-premises retailer runs out of a certain product; if the wholesaler and/or manufacturer can't deliver the product in time, they usually go to the off-premises retailer (e.g., a local liquor store) to purchase the product instead.

B. High Level Discussion Points:

1. There seems to be some issues around taxation and what happens when an on-premises retailer seeks to buy something from an off-premises retailer that has already paid taxes on a product. This seems to be part of the discussion in other states when determining whether or not this practice is permissible.
 - a) Currently, if you are an on-premises retailer and run out of the alcohol product, you still have to pay the sales tax if you purchase a product from an off-premises retailer. When purchasing through a wholesaler, that tax is included elsewhere.
 - b) If this is something that the Liquor Advisory Group wishes to discuss further, the LED would like the Tax Division to be involved in the discussion.
2. Should the existing purchase limit be amended?
 - a) Other states that allow for these purchases (e.g., South Carolina and Texas) do not currently have purchase limits in place.
 - b) Input from some on-premises retailers is that there should not be any purchase limits. There might be some key things that a retailer may need to purchase from an off-premises retailer and the purchase limit is restrictive.
 - c) On-premises retailers can sometimes get a better deal from the local off-premises retailer due to the quantity discounts associated with wholesalers, especially with spirituous products.

C. Group Decision:

1. The general consensus was that the subgroup should receive input from/have conversation with representatives of the restaurant industry before finalizing and/or expanding on this proposal.

VII. Public Comment

A. Nick Hoover, Colorado Restaurant Association

1. On-Premises Purchases from Off-Premises Retailers:

- a) Restaurant Association would support an increase in the monetary amount that can be purchased by on-premises licensees from off-premises retailers. One comment about the amount being unlimited (i.e., the purchase limit removed entirely) is this could be more difficult to pass at the legislature level; recommendation is for the subgroup to determine an increased amount of some kind.
- b) Additionally, the restaurant industry tends to see a need for purchasing products from local retailers in situations where patrons request a specific product that the restaurant doesn't have and/or the stock is low. In short, there are different uses for the amount of alcohol purchased from a retailer liquor store.

2. "Soft Close" Proposal for Closing Time:

- a) The association would support guardrails being put around this proposal, however, there may be significant concerns around limiting the size of beverage that can be served and consumed at last call. There are enforceability concerns with this; also, outside of takeout and delivery rules, unaware of any current restrictions around limits on the size of drink that a restaurant is allowed to sell. The association members may be concerned about this implication being put in place and then possibly being used in other restrictions (for example, restaurants can no longer sell more than a 12 oz glass of wine).
 - (1) Amending the limit to, for example, a two drink limit without any restrictions on the size of the drink may be a more acceptable solution; not having spoken directly to the association members, more input on this will be provided.
 - (2) Additional input from the subgroup members was to not make any special limits or exceptions for the size of drink served at last call; in other words, maintain the size(s) of drinks that have been served throughout the evening. Also, no special pricing at last call (e.g., no late-night Happy Hour purchases).

B. Tony Ryerson, Applejack Wine & Spirits

1. Educational Classes for Off-Premises Retailers:

- a) Would like the ability to have the wholesalers provide free goods and products, exclusively for tasting/educational events.
 - (1) A regulatory concern expressed from LED is if the retailer is choosing to provide an educational event, not sure that the wholesalers should be required to provide free goods if they are

unwilling to do so. However, if a wholesaler is interested in providing these goods for the classes, they would be free to do so.

- b) May want to amend the sampling limits (e.g., six or eight allowed samples) with a decrease in the individual serving size. Want to be mindful of not having customers become intoxicated while allowing them to get a broad scope of the available options.
- 2. On-Premises Purchases from Off-Premises Retailers:
 - a) In support of this.
- C. Steve Findley, Executive Director, Colorado Beer Distributors Association
 - 1. On-Premises Purchases from Off-Premises Retailers:
 - a) Agree with a previous comment that removing the purchase limit completely would create problems, not just with the legislature but also for the beer industry. Beer is a perishable product; if the beer goes out of code while in the market, the distributor is responsible for picking up and replacing the product at the distributor's cost (e.g., picking up beer in Steamboat Springs that was purchased in Denver). This is a very significant issue for beer and the association would be leery of either removing or increasing the purchase limits for this reason.
 - 2. Educational Classes for Off-Premises Retailers:
 - a) To address a previous comment about wholesalers providing free goods and products for tastings/educational events, more conversation needs to be had with the association before providing official public comment on this matter. It will be discussed among the association members and then feedback will be provided to the LED and LAG group members.
 - b) There was agreement expressed with LED's point on this matter, that the option should be left open with the wholesalers deciding whether they want to provide the free product or not.

VIII. Action Items

- A. LED will provide Fran Lanzer with bulleted discussion points from this subgroup meeting to use during the April 6 LAG meeting.

The next Regulation of Retail Operations Subgroup meeting will be on April 20, 2023 from 11:00 a.m. to 1:00 p.m.