

**Testimony in Opposition to House Bill 12 (2021)**

Alcoholic Beverages - Sale or Delivery for Off-Premises Consumption  
*Before the Economic Matters Committee: February 19, 2021*

House Bill 12, cross-filed with Senate Bill 205, would make permanent the policy set by an Executive Order issued by Governor Hogan on March 19, 2020 in response to the COVID-19 pandemic.<sup>1</sup> The Executive Order allows bars, restaurants, breweries, wineries, distilleries, and other licensed entities to sell alcohol in sealed containers for off-premises consumption.

House Bill 12 is very similar to the Executive Order, but is more restrictive in the type of entities included and adds qualifying factors. House Bill 12 would allow restaurants, bars, and taverns with licenses to sell alcohol for on-premises consumption to sell mixed drinks and carryout cocktails, provided the following requirements are met: (1) the beverage is purchased with a prepared food, (2) the purchaser is at least 21 years old and provides valid ID, (3) the drink is in a sealed container, and (4) the beverage is not sold after 11 p.m. It also permits these licensees to engage in off-premises delivery, if the same conditions are met and the alcoholic beverage is not delivered to another premise licensed to sell alcoholic beverages or an address outside of the licensee's county. This bill will make it easier for underage persons to purchase alcohol by expanding the number of entities permitted to sell carryout and delivery cocktails beyond the current capability of enforcement agencies and may have long-lasting public health implications.

**Underage Access to Alcohol**

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<sup>1</sup> Md. Exec. Order No. 20-03-19-02 (Mar. 19, 2020). <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-THIRD-AMENDED-3.23.20.pdf>

The most pressing public health concern stemming from House Bill 12 is the potential for an increase in underage access to alcoholic beverages. The Centers for Disease Control links underage drinking to a multitude of issues including: higher rates of school absences and lower grades; unwanted, unplanned, and unprotected sexual activity; disruption of normal growth and brain development; physical and sexual violence; increased risk of suicide and homicide; alcohol-related motor vehicle crashes and other unintentional injuries, such as burns, falls, or drowning; misuse of other substances; and alcohol poisoning.<sup>2</sup> People who use alcohol when they are young are more likely to develop alcohol dependency later in life.<sup>3</sup> Additionally, as it is written, House Bill 12 does not require that the cocktails are labeled to show that the drink contains alcohol. It is hazardous to have unlabeled containers of alcohol, as children or underage persons may mistake a cocktail for a non-alcoholic beverage. House Bill 12 creates a new avenue for underage persons to access alcoholic beverages, without increasing the resources necessary to conduct enforcement operations.

### **Local Alcohol Enforcement Cannot Keep Up**

Since the Executive Order's effective date in March 2020, local alcohol enforcement agencies and officers have struggled to keep up with the influx of new carryout and delivery licensees. Liquor boards saw the number of licensees permitted to sell alcohol for carryout or delivery expand from primarily liquor stores to all bars, taverns, and restaurants that would normally only be selling alcoholic beverages for on-premises consumption. With no increase in

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<sup>2</sup>*Underage Drinking*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/alcohol/fact-sheets/underage-drinking.htm>

<sup>3</sup> Arlette F. Buchmann, Bridgitte Schmid, Dorothea Blomeyer, et al., *Impact of age at first drink on vulnerability to alcohol-related problems: Testing the marker hypothesis in a prospective study of young adults*, 43 J. PSYCHIATRIC RES. 1205 (2009).

personnel or funding, these enforcement bodies and agents found themselves either working on their own personal time to perform compliance checks or unable to keep up entirely.

In conversations with members of local liquor enforcement entities from across the state, a vast majority of the counties reported either limited or nonexistent enforcement operations since the Executive Order's implementation. Many county enforcement agencies are overwhelmed by the increase in volume of licensees because the agencies are either understaffed, underfunded, or a combination of the two. The Montgomery County Alcohol Beverage Service performed a mystery shopper operation and found that 55% of restaurants did not check the purchaser's ID when they picked up their order, which included a carryout cocktail. Only 15% of the restaurants told the purchaser at the time of the order that an ID would be required for order pickup.<sup>4</sup> In Queen Anne's County, ID check compliance has dropped from 98% to 52% since the Executive Order's implementation. Additionally, three out of four businesses failed to check ID during curbside pickup compliance checks.

Local enforcement agents also reported concerns with the additional complexity and cost of conducting enforcement operations. When observing transactions, it is difficult to determine whether a delivery includes an alcoholic beverage and whether the person accepting the order is over age 21. Instead of observing, an agency could conduct sting operations but would be required to order both food and drink, which would increase the cost of these underfunded operations significantly. Furthermore, enforcement agents expressed concern regarding labeling of carryout and delivery cocktails. Unlabeled containers of alcohol are more difficult to detect and enforcement agents are worried that people will walk around in public spaces drinking from

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<sup>4</sup> Alcohol To Go Mystery Shopper, MONTGOMERY COUNTY ALCOHOL BEVERAGE SERVICES DIVISION OF LICENSURE, REG., AND EDUC. (2021).

unlabeled alcohol containers, which is illegal in most jurisdictions. Overall, local enforcement entities are struggling to keep up with the increase in enforcement operations necessary to prevent underage persons from purchasing alcohol via the methods temporarily allowed by the Executive Order. This would become a persistent problem if House Bill 12 passes with similar methods of access allowed.

### **Sunset Provision**

If this Committee is inclined to give House Bill 12 a favorable report, I strongly recommend an amendment to include a sunset provision. A sunset provision would require that the bill be examined a few years after implementation to determine whether it is still necessary and evaluate its true effect.<sup>5</sup> After one or two years of having this policy in place, enforcement agencies will have a better understanding of the bill's impact on underage access to alcohol and the efficacy of enforcement mechanisms.

### **Conclusion**

The scale of this proposed change would exceed the bandwidth of liquor enforcement entities, without providing any mechanisms for increasing enforcement capacity, making it far easier for underage persons to purchase alcohol. House Bill 12 aims to assist restaurants who are struggling to stay afloat due to the public health emergency, but may be creating another serious public health issue.

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<sup>5</sup> Brian Baugus & Feler Bose, *Sunset Legislation in the States: Balancing the Legislature and the Executive*, MERCATUS CTR RES. PAPERS (Aug. 27, 2015) (<https://www.mercatus.org/publications/regulation/sunset-legislation-states-balancing-legislature-and-executive>).