



Mission: To improve public health in Maryland through education and advocacy

Vision: Healthy Marylanders living in Healthy Communities

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**SB205: Alcoholic Beverages--Sale or Delivery for Off-Premises Consumption**

**Hearing Date: March 5, 2021**

**Committee: Education, Health, and Environmental Affairs**

**Position: OPPOSE**

**Co-signatory: Baltimore Good Neighbors Coalition**

On behalf of the Maryland Public Health Association's Alcohol & Tobacco Network, we would like to thank you all for your work to evaluate and establish alcohol regulations that will keep our youth and communities safe. We are opposed to SB205 as it is written, which would make the Governor's Executive Order (E.O.) on off-premise sales from restaurants, bars, or taverns permanent.

Public health and substance misuse experts and advocates from across the state have shared their concerns on the possibility of making to-go alcohol sales permanent in Maryland without additional considerations. Many of our previous laws and policies regulating the availability and access to alcohol have been based on years of scientific evidence and practice to reduce underage drinking, excessive alcohol consumption, alcohol-related injuries, alcohol-related hospitalizations, and alcohol-related deaths. This legislation does not fall under this process.

Presented as a way to address declining sales due to COVID-19, we have seen an increase in alcohol sales nationwide. Increased alcohol sales with a pandemic accompanied by worsening mental health issues among Marylanders is a real concern for professionals. Addressing economic impact is important. However, doing so in an irresponsible and money-driven manner with little-to-no consumer protections is concerning and will put our youth, vulnerable populations, and communities at risk.

In response to anecdotal evidence that there have been no problems associated with to-go alcohol sales, the evidence has not suggested this to be the case; however, because of limited resources, robust assessments of the temporary allowance are yet to be performed to assess its impact fully. In fact, we are only aware of one mystery shop evaluation performed in Montgomery County. They found that **only 15% of restaurants noted that an ID would be required to pick up an order and 55% of restaurants did not check the ID when the order was picked up.** We only know this because MoCo has the resources to conduct this compliance activity, but most other jurisdictions likely do not. This is unacceptable when trying to create safe, well-thought out and researched policies.

Further, the current structure of alcohol regulation in Maryland puts the licensing and regulatory oversight of the producer and wholesaler tiers under State while the retail tier is the responsibility of the Local Liquor Boards. This bill changes this structure by allowing the State to license alcohol to-go for retailers, not the Local Liquor Boards. This will cause confusion for license holders, furthering challenges between State oversight and the Local Liquor Boards that are responsible for monitoring the license holders in their jurisdiction. Historically, there has been poor communication between the State and the Local Liquor Boards, and this could exacerbate these issues by putting the licensing function for alcohol to-go at the state level.

To put it simply, we have concerns about the unintended consequences of to-go alcohol sales in Maryland.

To reduce these effects, we propose:

### **Adding a 2-Year Sunset Clause to Temporary Allowance**

- A sunset clause of a maximum of two years after the Governor’s E.O. expires. This allows time for monitoring, evaluation, and re-visiting of the issue when adequate data is available of the possible unintended consequences or benefits of the legislation.
  - Other states (e.g., Michigan) have adopted similar sunset clauses to allow for the assessment of the temporary allowance.

### **Implementing a Compliance Check/Mystery Shopper Program to Assess the Allowance**

- Require the local liquor boards collect data that will be used by the Department of Legislative Services to conduct a formal evaluation of the temporary policy for the purpose of making recommendations on the legislation as the sunset time period comes to an end.
- Provide funding to each jurisdiction to conduct alcohol compliance checks and/or mystery shops to ensure the local liquor boards have adequate funds to conduct these operations that will be key to evaluate compliance and report results.

### **Allowing Local Liquor Boards to Assess an Administrative Fee for the Additional Privilege**

- Local jurisdictions should not be barred from charging an administrative fee. This is not in lieu of the funding recommended above, as license fees are rarely high enough to cover adequate enforcement activities.

### **Ensuring Secure and Tamper-proof Sealing Requirements for Containers**

- Tamper-resistant packaging with labels clearly marking the contents as “alcohol”. Labels should also include instructions for consumers that packaging should not be opened in a vehicle and that they must be transported in the trunk of the vehicle.
  - Some states have found they are in violation of their open container laws jeopardizing their federal highway funds.

### **Limits on the Amount of To-Go Alcohol Permitted**

- Place limits on the number of drinks per patron to two drinks and limit the alcohol content contained in the cup. Drinks with several shots (Long Island Iced Tea) or doubles or triples of a drink should not be allowed. Retail bottles of liquor (e.g., small bottles or “nips,” 750mL of bourbon) should also be excluded. *As written, this legislation allows for the purchase of a side of fries, a case of beer, and a fifth of vodka, for example.*

### **Requiring Responsible Beverage Service Training for Staff Permitted to Transport To-Go Alcohol Sales**

- Staff permitted to transport alcohol to-go orders must obtain their Alcohol Awareness Certificate for responsible beverage training to ensure they understand how to verify the age of purchaser and identify and manage intoxicated patrons, including delivery drivers and for cashiers, servers, and bartenders or anyone else who may deliver food/alcohol orders to patrons in vehicles or hand it off at pick up.

## **Instituting Penalties for Illegal To-Go Alcohol Sales**

- Penalties for sales to minors or to intoxicated patrons is generally set at the state and occasionally enhanced at the jurisdictional level, but we also recommend loss of the license for a 12-month period for any sales to minors or sales to intoxicated patrons.
- Clarify whether it is the employee or the license holder who is ultimately responsible for any inappropriate sales leading to administrative or criminal penalties.

## **Adding Opt-out Provision to Permit Local Jurisdictions to Allow or Not Allow To-Go Sales**

- Provide clear language allowing jurisdictions to opt out of the license type or to create rules and regulations that are more detailed than and enhance this legislation.
- All jurisdictions have zoning requirements and distance restrictions (e.g., surrounding primary schools, places of worship, other alcohol outlets) for traditional off-premise outlets that should now also be applicable to restaurants, bars, and taverns who wish to sell for off-premise consumption.

Overall, this vague legislation creates a situation where restaurants, bars, and taverns permanently become de facto off-premise outlets, which have been documented to be the type of alcohol outlet that has a stronger association with crime, underage drinking, and violence. It is concerning that the state will create this license, but makes no provisions for regulation, enforcement, or compliance of it. This further takes away the opportunity for jurisdictions to monitor and control their own alcohol environments.

Further, MD Code, Alcoholic Beverages, Section 1-308 (effective January 1, 2021) states that "The [Alcohol and Tobacco] Commission shall develop best practices for: (8) the development of a public health impact statement for all changes to the State alcoholic beverages laws.

Given the substantial changes to the manner in which alcohol can be sold and distributed and the potential, serious health and safety harms that could result from expansion of license privileges without adequate enforcement/compliance, no further action on BS205 should be taken without a public health impact statement. At a minimum, if passed, this proposed legislation should be subject to a formal, comprehensive review after one to two years to determine the consequences and impact of the legislation based on data obtained from the monitoring and evaluation of the initial implementation.

As Marylanders and professionals, we ask you to continue to protect our youth and strengthen our communities by taking a very cautious look at the expansion of availability in Maryland as well as any attempts to weaken alcohol policies.

We urge an unfavorable report on SB205 as it is currently written.

*MdPHA is a nonprofit, statewide organization of public health professionals dedicated to improving the lives of all Marylanders through education efforts and advocacy of public policies consistent with our vision of healthy Marylanders living in healthy communities. MdPHA is the state affiliate of the American Public Health Association, a nearly 150-year-old professional organization dedicated to improving population health and reducing the health disparities that plague our nation.*