

Maryland Department of Health
Issuance of Alcoholic Beverages Licenses to Tobacconists Workgroup Meeting
Thursday, November 21, 2024
3:00 - 4:30 pm

MINUTES

Attendees:

Members:

Steven Arentz
Finnie Pecunes Helmuth
Carl Jackson
Nilesh Kalyanaraman
Jeffrey Kelly
Clarence Lam
Ronald Watson

Staff:

Subha Chandar
Victoria Marte-Tiburcio
Christopher McGrath
Clifford Mitchell
Dana Moncrief
Jody Sheely

Public:

Morgan Carroll
Norlene Cash
Aleks Casper
Mr. C's Cigar Lounge
Nancy Crawford
Madalyn Farrar
Laura Hale
Jeffrey Hann
Isai Hernandez
Kathi Hoke
Chris Jivers
Lance Kilpatrick
Brown Leaf Cigar LLC
Glynn Loope
Meghan Lynch
Bobby Oler
Samuel Paul
Tonya Pease
James Price
Raj Singh
Jane Springer
Scott Tiffin
Brooke Torton
Jacki Wobser
Alex Wolde

Meeting Notes:

Welcome & General Business

- Nilesh Kalyanaraman opened the meeting and welcomed attendees.
- Jody Sheely reminded the Workgroup of the Open Meeting Act and conducted roll call.
- The Workgroup members adopted the October 17, 2024 meeting minutes.
- Nilesh Kalyanaraman provided a meeting overview.

Overview of U.S. Cigar Bar Laws

- Dana Moncrief provided an overview of the cigar bar state laws related and listed states with recent legislative attempts to make exemptions in their CIAA laws. She highlighted that Connecticut is the only state to pass legislation making an exemption for certain cigar bars.
- Niles Kalyanaraman announced the next item on the agenda, a cigar retailer representative from Connecticut.
 - Finnie Helmuth shared that she is not sure the speaker will not be able to join the call due to a scheduling conflict. Niles Kalyanaraman transitioned into the discussion and provided an overview of the recommendation options.

Discussion

Option 1: Prohibit Issuance of Alcohol Licenses to Tobacconists

- Niles Kalyanaraman explained how prohibiting tobacconists from obtaining alcohol licenses would require an amendment to the CIAA to clarify that incidental sales do not include alcoholic beverages. He noted that 13 businesses in eight counties sell tobacco and were issued alcohol licenses.
- Clarence Lam suggested preserving the status quo as an additional option for discussion.
- Dana Moncrief shared that the eight counties previously mentioned include: Anne Arundel, Calvert, Cecil, Charles, Hartford, Howard, Prince George's, and St. Mary's.
- Finnie Helmuth stated that the Cigar Retailers Association would be opposed to this option as it would be devastating for tobacconists.
- Carl Jackson asked for further clarification on the number of tobacco businesses with alcohol licenses in each county. Dana Moncrief provided the breakdown by county.
- Senator Ron Watson asked whether there were any cases where compliant tobacco businesses were shut down by the State or significantly affected by loss of revenue due to State intervention.
- Cliff Mitchell explained that in 2008-2009, a couple of businesses attempted to create cigar bars and that these businesses did go out of business as a result of CIAA enforcement. He emphasized that the majority of this activity occurred during the initial stages of implementation.
- Clarence Lam highlighted that with cannabis legalization delta THC business were effectively shut down. He asked to what extent alcohol sales would affect tobacco business revenue.
 - Carl Jackson asked if there is any data on how cigar bars affect surrounding alcohol businesses. He clarified that delta THC businesses were closed down because these businesses fell out of the scope of the law.
 - Jeffrey Kelly further explained that the Maryland Hemp Coalition filed an injunction in Washington county effectively stopping ATCC enforcement activities for businesses operating since July 1, 2023. Senator Clarence Lam and

Jeffrey Kelly both agreed that, once the lawsuit is settled, the intention is to remove those products from the stores.

- Finnie Helmuth offered to share additional data for the 13 businesses in Maryland that sell tobacco and were issued alcohol licenses.

Option 2: Allow Tobacconists to Obtain Bring-Your-Own Alcoholic Beverage Licenses

- Nilesh Kalyanaraman explained how Bring-Your-Own (BYO) laws vary by jurisdiction. He highlighted that this option would require a statewide BYO licenses subordinate to the tobacconists license.
- Steve Arentz highlighted the importance of alcohol sale revenue for tobacco retailers.
- Finnie Helmuth considered this a viable option for retailers who do not want a liquor license.
- Clarence Lam asked if the BYO practice is compliant with CIAA laws. Cliff Mitchell stated there is no precedent where it has been tested. Jeffrey Kelly clarified that BYO is usually allowed in cases where there is no specific law addressing this practice.
- Kathi Hoke further clarified that the CIAA tobacco retailer exception does not restrict any business activity as long as their primary activity is the sale of tobacco and the sale of other products is incidental.
- Jeffrey Kelly highlighted that ‘primary’ and ‘incidental’ are not defined in statute. He shared that the tobacconist class was initially intended for premium cigar and pipe tobacco retailers.
- Clarence Lam emphasized that businesses could still generate revenue through BYO by implementing a corkage fee.

Option 3: Create a Special Alcohol License for Premium Cigar Sellers

- Nilesh Kalyanaraman explained how creating a special license to limit the scope builds on the earlier discussion.
- Carl Jackson shared how it would be helpful to understand what businesses are classified as tobacconists.
- Finnie Helmuth expressed her support for this option.
- Steven Arentz asked whether the intent of this option is to expand opportunities for new tobacconists in every county. Nilesh Kalyanaraman clarified that since the tobacconists definition is very broad the purpose of this option is to hone in on premium cigar sellers.
 - Jeffrey Kelly further explained the intent of the tobacconists license. He highlighted that the license was intended to help premium cigar and pipe tobacco retailers because it was difficult to obtain in the standard OTP market.
- Ronald Watson explained how Prince George’s County local government determined that the county would have no more than four cigar lounges. He suggested the Workgroup set parameters such as standard definitions and hours of operation. He also highlighted that the revenue generated by alcohol can be vital to a business's success.
- Carl Jackson suggested the Workgroup set standard definitions and allow local government to decide hours of operation and other parameters.

Option 4: Allow Alcohol Sales by Tobacconists Under CIAA

- Nilesh Kalyanaraman explained the current state of the law and the challenges created by its broad definitions.
- Carl Jackson asked if all tobacco sellers can potentially sell alcohol. Nilesh Kalyanaraman highlighted how the differences at the local level and lack of definition for incidental sales has created enforcement challenges. Jeffrey Kelly further explained that there are 25 alcohol jurisdictions in the state with varying rules and how the tobacco industry has expanded in products since the exemption was created. He emphasized that independent review is necessary to ensure tobacconists are meeting the required percentages.
- Steven Arentz shared how a vape shop in his jurisdiction currently sells alcohol to consumers off-premise. Jeffrey Kelly explained how this may be an alcohol retailer who also sells tobacco. He highlighted that the CIAA tobacco retailers exception applies to on-premise consumption.
- Clarence Lam suggested the Maryland Department of Health define incidentals by adopting regulations.
 - Cliff Mitchell clarified that the legislature at the time deliberately chose to use the term incidental instead of a specific percentage.
 - Senator Clarence Lam asked if the authority should be deferred to the Department.
 - Kathi Hoke explained that it is traditional administrative law for an agency to set definitions where the statute calls for further specificity.
- Ronald Watson suggested setting a timeframe during which liquor sales will be allowed.

Next Steps - Workgroup Report

- The Workgroup members agreed to meet during the session to discuss specific details related to definitions.
- Ronald Watson asked whether the number of cigar bars should be limited. Carl Jackson and Jeffrey Kelly agreed that local jurisdictions are best suited to decide the specific number of cigar bars.
- Clarence Lam urges the Department to consider whether a regulatory approach would be the most appropriate.

Public Comment

- Nilesh Kalyanaraman opened the public comment period.
- Raj Singh shared how he and his wife own cigar bars in Charles County, employing over 36 employees. He explained how liquor has influenced their business model, generating 20% to 28% of their revenue, and losing these licenses would be detrimental to their business.
- Laura Hale, Director of Government Relations with the American Heart Association, highlighted a Surgeon General's report explaining the increased health risks of extending exposure to secondhand smoke with alcohol for consumers and employees.
- Lance Kilpatrick, Government Relations Director for the American Cancer Society Cancer Action Network, explained that it is estimated 4,080 Marylanders will be diagnosed with lung cancer. He urged the Workgroup to consider how the expansion of cigar bars will increase health maladies in the State.

- Kathi Hoke, executive director of the Legal Resource Center for Public Health Policy at the Maryland Carey School of Law, emphasized the importance of setting clear measures to determine which retailers qualify as tobacconists and which agency should be responsible for enforcement. She also highlighted the issue of shared wall space and smoke drift.
- Kathi Hoke also suggested licensure or certification for businesses who allow smoking to make sure the Department is aware. Currently, businesses are not required to notify MDH or their local health departments as long as they meet the definition in the CIAA tobacco retailers exception.

Closing Remarks

- Nilesh Kalyanaraman closed the public comment period and thanked the Workgroup for their participation.