

REPORT OF THE

**SPECIAL JOINT SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON GENERAL LAWS
AND THE SENATE COMMITTEE ON REHABILITATION AND
SOCIAL SERVICES STUDYING CERTAIN ALCOHOLIC BEVERAGE
CONTROL (ABC) LAWS**



REPORT DOCUMENT NO. 127

**COMMONWEALTH OF VIRGINIA
RICHMOND
MAY, 2017**

**Members
of the
Special Joint Subcommittee of the House
Committee On General Laws and the Senate
Committee on Rehabilitation and Social
Services Studying Certain Alcoholic Beverage
Control (ABC) Laws
(2016)**

Special Joint Subcommittee Membership

Delegate Barry Knight, Co-Chair	Senator John Cosgrove, Co-Chair
Delegate Todd Gilbert	Senator Bryce Reeves
Delegate Dave Albo	Senator Bill DeSteph
Delegate Luke Torian	Senator Rosalyn Dance

Staff

Maria J.K. Everett, Senior Attorney
David May, Staff Attorney
Eric Bingham, Senate Committee Operations

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Report of the Special Joint House Committee on General Laws and Senate Committee on Rehabilitation and Social Services Subcommittee Studying Certain Alcoholic Beverage Control (ABC) Laws.

Final Report, December 2016

Introduction

Year after year, there is a growing concern that legislation creating new alcoholic beverage control (ABC) license categories and expanding the privileges of existing licensees is being done in a piecemeal fashion. In addition, the General Assembly has seen many bills attempting to modify the minimum monthly food sale and the food-to-beverage ratio requirements for newly established mixed beverage licenses. Many felt that a holistic review of the current ABC retail licensing scheme was needed. Recognizing this need, the Chairs of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services, Delegate Todd Gilbert and Senator Bryce Reeves, respectively, elected to convene a special joint subcommittee during the 2016 interim to study certain recurring alcoholic beverage control (ABC) issues and concerns. Specifically, the Special Joint Subcommittee was tasked to study whether (i) the food-to-beverage ratio and the minimum monthly food sale requirement imposed on mixed beverage restaurant and other mixed beverage licensees is appropriate to meet both the regulatory goals of the Commonwealth and the licensees' concerns relating to the operation of their businesses; (ii) retail cigar shops should be eligible for a mixed beverage license; and (iii) certain nonretail "boutique" licenses found in § 4.1-206, including day spas, meal assembly kitchens, and art instruction studios, could be consolidated under a single license created for this purpose.

In addition, the 2016 Session of the General Assembly referred several bills to this study for examination by the Special Joint Subcommittee. The bills, which were generally related to the study issues of the Special Joint Subcommittee, included HB 171 (Albo), HB 219 (Taylor), HB 835 (Greason), HB 904 (Landes), SB 373 (Ebbin), SB 410 (Barker), SB 488 (DeSteph), and SB 489 (DeSteph).¹

¹ Summaries of these bills are included in Appendix A.

Work of the Special Joint Subcommittee

March 8, 2016

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the first meeting of the Special Joint Subcommittee, and the members introduced themselves.² Co-chairmen Cosgrove and Knight explained the reason for the creation of the Special Joint Subcommittee and identified the issues (discussed above) to be studied by the Special Joint Subcommittee. Co-chairmen Cosgrove and Knight commented that they felt that the creation of the Special Joint Subcommittee was an excellent vehicle to address these issues in a comprehensive way.

Study Plan

The Special Joint Subcommittee adopted unanimously the study plan suggested by staff. The study plan provided that the Special Joint Subcommittee would hold a total of four meetings during the 2016 Interim as follows:

Second Meeting:	May/June
Third Meeting:	August/September
Final Meeting	October/November

The first issue of study was the discussion of the current 45 percent food-to-beverage ratio for certain mixed beverage licensees³. Upon conclusion of the examination of the food-to-beverage ratio, the Special Joint Subcommittee would then consider "boutique" licenses (§ 4.1-206), including day spa licenses, meal assembly kitchen licenses, art instruction studio licenses, etc.). At the conclusion of the study, HB 904 (Landes) and SB 410 (Barker) would be considered. It was decided that the remaining bills referred to the study would be reviewed as the issue each raised was discussed. The Special Joint Subcommittee agreed that, if needed, the use of workgroups comprised of interested stakeholders could be created to discuss specific issues as directed by the Special Joint Subcommittee. In addition, a website for the Special Joint Subcommittee would be created for easy access to meetings dates, summaries, meeting materials, etc.

² The following Subcommittee members were present: Senator John Cosgrove (co-chairman), Delegate Barry Knight (co-chairman), Senator Rosalyn Dance, Senator Bill DeSteph, Senator Bryce Reeves, Delegate Dave Albo, Delegate Todd Gilbert, and Delegate Luke Torian.

³ The 45 percent food-to-beverage ratio is required for mixed beverage restaurant, caterer's, and limited caterer's licenses.

Presentation: Maria J.K. Everett, Senior Attorney, Division of Legislative Services

Ms. Everett provided a summary of the issues before the Special Joint Subcommittee and relevant background information. She explained the various mixed beverage licenses that may be granted by the ABC Board pursuant to § 4.1-210 and provided historical information regarding the progression of ABC law in the Commonwealth and recent efforts to modify ABC laws. Ms. Everett explained that it has been more than 40 years since liquor-by-the-drink was legalized in the Commonwealth. She explained that since then, Virginia has worked hard to earn a pro-business reputation. She suggested that in making changes to ABC laws, the Special Joint Subcommittee consider maintaining the balance between Virginia's pro-business environment and protecting public health, safety, and welfare.

Regarding the food-to-beverage ratio, current law requires that mixed beverage restaurant and certain other mixed beverage licensees' gross receipts from the sale of food, cooked or prepared, and consumed on the premises, and nonalcoholic beverages served on the premises to amount to at least 45 percent of the gross receipts from the sale of mixed beverages, food cooked or prepared and consumed on the premises, and nonalcoholic beverages combined. ABC law also requires that a minimum monthly food sale requirement, set by ABC Board regulation, be met in an effort to limit the intoxication of patrons. The original theory behind this requirement was that by requiring licensed establishments to sell a certain volume of food, a patron would be more likely to have a meal in his stomach and thus less likely to become intoxicated. The minimum monthly food sale requirement was also intended to limit the proliferation of bars and saloons, which were viewed as a contributing factor to several social problems. Ms. Everett noted that a study similar to the work of this Special Joint Subcommittee was conducted in 2008 on the food-to-beverage ratio.⁴

Ms. Everett explained that many current mixed beverage restaurant licensees do not have a problem meeting the food-to-beverage ratio; however, a number of licensees barely meet the ratio and others fall short despite efforts to comply. She explained that a food sale requirement is not unique to the Commonwealth. A majority of states have some form of food requirement for establishments serving mixed beverages. Most of these states simply require that food be available for purchase whenever mixed beverages are served. However, a small number of states only permit "restaurants" to serve mixed beverages. Other states use high licensing fees and seat, table, kitchen, proximity, population, and square footage requirements to limit the number of mixed beverage licenses granted. At least one state requires that establishments post a bond in order to obtain a mixed beverage license and holds that a violation of any ABC law or regulation by the licensee results in forfeiture of the bond.

⁴ Information and materials related to the 2008 study can be found here:
http://dls.virginia.gov/interim_studies_ABC.html.

Public Comment

A common theme in the testimony of many members of the public was the suggestion that the food-to-beverage ratio be lowered to allow restaurants to sell a higher percentage of alcohol. Several stakeholders explained that the market has seen a steady rise in the retail price of spirits and a trending interest in top-shelf liquors. These developments mean that establishments serving high-priced drinks and spirits may have increasing difficulty meeting the food-to-beverage ratio because, as the popularity of high-priced liquors rises, the quantity of food that must be sold also rises. Some stakeholders suggested that meeting the food-to-beverage ratio has gradually become so challenging that it should be eliminated.

Stakeholders also expressed concern over alleged unfairness between the rules for different licensees. Members of the public noted that current ABC laws and regulations treat establishments differently depending on whether they sell liquor or solely beer and wine. Other stakeholders expressed concern over exceptions that exempt certain establishments from food sale requirements. As a result, many licensees must lower their food prices in an effort to sell a higher volume of food in order to meet the food-to-beverage ratio, while other establishments are not subject to such constraints. Regarding boutique licenses, and the creation of a new license for retail cigar shops in particular, one member of the public commented that these licenses were intended to be very limited exceptions. Testimony was also presented that the food-to-beverage ratio causes confusion among many licensees as to what they can and cannot do.

Other members of the public, however, voiced strong opposition to lowering the food-to-beverage ratio. Many of these stakeholders were concerned that modification of the food-to-beverage ratio would lead to a proliferation of bars throughout the Commonwealth. Another stakeholder noted that many restaurants have invested substantial funds to comply with current ABC laws, including the acquisition of sufficient space, staff, and kitchen equipment necessary to meet the food-to-beverage ratio. This stakeholder commented that lowering the food-to-beverage ratio after he and many other restaurant owners have already invested such funds substantially lowers startup costs and, consequently, provides an unfair advantage to new establishments. The stakeholder noted that while certain establishments that sell high-end liquors may have difficulty meeting the food-to-beverage ratio, they only account for a small portion of the industry. Another stakeholder suggested that, instead of modifying the food-to-beverage ratio, efforts should be taken to heighten enforcement of its provisions.

In light of these competing views as to whether the food-to-beverage ratio should be lowered, eliminated, better enforced, or remain the same, Travis Hill, Chief Operating Officer for the Department of Alcoholic Beverage Control (the Department), testified that

the food-to-beverage ratio has led to many complaints among licensees. Mr. Hill explained that many licensees believe that the Commonwealth's ABC laws and the resulting activities of the Department are too invasive. For example, licensees complain that regulatory mandates such as the requirement for and reviewing of detailed records are very time consuming and make it difficult to run a business efficiently. Mr. Hill testified that, conversely, other stakeholders complain that ABC does not make enough effort to enforce the current ABC laws. Mr. Hill stated that regardless of the conclusion ultimately reached by the Special Joint Subcommittee, the Department seeks guidance on the food-to-beverage ratio issue from the General Assembly.

Discussion

Many Special Joint Subcommittee members stated that in light of the ongoing issues regarding the food-to-beverage ratio and the concerns raised during the public comment portion of the meeting, it appears the food-to-beverage ratio should be modified to some extent. Special Joint Subcommittee members emphasized, however, that in making such modification, caution must be taken to avoid legislative changes that could result in a proliferation of "bars" throughout the Commonwealth.

Regarding the above-mentioned exceptions that have been created in the Code of Virginia, Delegate Gilbert suggested that efforts should be taken to ensure that licensees are operating on a level playing field. Delegate Albo suggested that in the course of analyzing the food-to-beverage ratio for certain mixed beverage licensees, the Special Joint Subcommittee should also assess the privileges allowed by law under a brewery, winery, or distillery license. Other members of the Special Joint Subcommittee concurred with Delegate Albo's suggestion.

Senator Reeves recommended that the Special Joint Subcommittee also examine the difference between the effect of consumption of "a meal" and the effect of consumption of "food" on a person's blood alcohol content. Similarly, Senator DeSteph recommended that the Special Joint Subcommittee explore the difference between the proof of spirits and the alcohol-by-volume of certain craft beers. Senator DeSteph stated that with a rise in the retail prices of spirits and the increase in establishments being created to serve high-end drinks, our ABC laws related to the food-to-beverage ratio have fallen behind the private sector marketplace and the nature of the industry in 2016.

The Special Joint Subcommittee members agreed that in formulating any potential changes to the food-to-beverage ratio, effort should be taken to gather input from and collaborate with members of the private sector and representatives of the Department.

There being no further business, the meeting was adjourned.

May 16, 2016

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the second meeting of the Special Joint Subcommittee).⁵

Presentation: David May, Attorney, Division of Legislative Services

Mr. May provided an overview of the history and progression of liquor-by-the-drink in the Commonwealth. He explained that in the early 1900s, the Department had not yet been created; however, various licenses were available for a fee that allowed certain types of establishments to serve alcohol. In 1916, three years before national prohibition, Virginia went dry (did not permit the consumption of liquor by the drink) and remained so through prohibition. Congress lifted the national prohibition in 1933 via the enactment of the Twenty-First Amendment to the United States Constitution and repeal of the Eighteenth Amendment. The General Assembly immediately called a special session to legalize 3.2 percent beer. Within the next year, Virginia ratified the Twenty-First Amendment and created the Department.

In 1968, the General Assembly passed the "Whiskey Bill," which allowed the sale of liquor by the drink in restaurants licensed by the Department. However, this legislation required that the voters of each locality approve the issuance of such licenses through local option referendums before liquor-by-the-drink would be available. By the end of fiscal year 1968, 345 licenses had been granted. Such licensed restaurants were required to sell more food (full meals) than alcohol (beer, wine, or liquor) and have a table-seating capacity of 50 or more.

In 1980, the requirement that 51 percent of a licensed restaurant's gross sales be from the sale of food was lowered to 45 percent, creating the 45-55 food-to-beverage ratio. Additionally, the definition of "food" was expanded to include snacks, sandwiches, appetizers, desserts, and more. The intent of this ratio modification was to bring restaurants in line with "cocktail lounges" managed by hotels.

In 1990, the current food-to-beverage ratio was created with passage of legislation that excluded beer and wine from the definition of "alcohol" for purposes of the food-to-beverage ratio. Accordingly, the new ratio would consider only food and spirits. Subsequently, the Department established by regulation a \$4,000 minimum monthly food sale requirement, \$2,000 of which must come from the sale of "meals." Thereafter, during a regulatory review in 2016, the Department updated its definition of the term "meal" to be more inclusive and reflective of current dining habits.⁶ The new definition includes items such as pizza, meal salads, substantial pasta dishes, and more.

⁵ The following Subcommittee members were present: Senator John Cosgrove (co-chairman), Delegate Barry Knight (co-chairman), Senator Rosalyn Dance (called in), Senator Bill DeSteph, Senator Bryce Reeves, Delegate Dave Albo, and Delegate Luke Torian. Delegate Todd Gilbert was absent.

⁶ 3VAC5-50-110 (A)(5).

Presentation: Travis Hill, Chief Operating Officer, Department of Alcoholic Beverage Control

Mr. Hill gave a PowerPoint presentation on certain issues, as requested by the Special Joint Subcommittee members, which included information regarding dry counties, approaches used in other states to control the balance of food and spirits sales, the Mixed Beverage Annual Review (MBAR) process, and the effects of food on alcohol absorption.⁷ Mr. Hill displayed maps showing a pictorial history of dry counties in Virginia from 1968 to present in 20-year increments. The maps indicated that dry counties gradually diminished after the Whiskey Bill passed in 1968 and further diminished with the creation of exceptions to the liquor-by-the-drink referendum requirement of § 4.1-124 of the Code of Virginia for certain establishments in various jurisdictions.

Next, Mr. Hill explained that, based on National Alcoholic Beverage Control Association (NABCA) research, nine of 18 jurisdictions that directly control the distribution and sale of alcohol, including Virginia, use some form of ratio to regulate the amount of spirits sales in proportion to food sales. Additionally, 12 of 20 open, or non-control, states that reported information to NABCA use a ratio. However, implementation varies across states that utilize a ratio. For example, Utah requires that food sales amount to at least 70 percent of an establishment's total combined sales, while North Carolina requires that food sales account for 30 percent of total sales. New Hampshire requires that food sales account for at least 50 percent of gross sales unless the licensee's food sales meet or exceed \$75,000, in which case the licensee is exempt from compliance with the ratio. Pennsylvania, on the other hand, has no food sale requirement but defines a "restaurant" as a reputable place that is principally used for the purpose of providing food to the public.

Mr. Hill then provided clarification on Virginia's MBAR process. The MBAR process helps to ensure that licensees are in compliance with the food-to-beverage ratio through an annual self-reporting requirement of mixed beverage and food sales by mixed beverage licensees. The Department devotes approximately 12,480 man hours to MBAR-related issues per year. Of the approximate 4,500 to 4,900 mixed beverage licensees in Virginia, approximately one percent fell below the requirements of the food-to-beverage ratio during each of the last four years. At the request of Delegate Albo, Mr. Hill explained that 90 percent of mixed beverage licensees sell \$10,000 or more of food per month, 92 percent sell more than \$8,000, 94 percent sell more than \$6,000, and 96 percent sell more than \$4,000.

Finally, Mr. Hill provided information on the effects of food on alcohol absorption. Substantial research has been conducted on the metabolism, absorption, and distribution of alcohol in the human body, along with factors that impact these processes. Research shows that gender, age, race, food, biological rhythms, exercise, body type, expectations, fatigue, drugs, and medications all impact the body's processing of alcohol. Regarding food consumption, meals that are high in fat, protein, and carbohydrates impact blood alcohol concentration (BAC). Research indicates that the body's process for eliminating alcohol from the blood is shortened by one to two hours when food is consumed. Moreover, the

⁷ The full version of Mr. Hill's PowerPoint presentation can be viewed here: http://dls.virginia.gov/GROUPS/SENrss/ABC_051616%20mtg.pdf.

highest absorption rate occurs when the alcohol content of drinks consumed is between 10 and 30 percent.

Presentation: Maria J.K. Everett, Senior Attorney, Division of Legislative Services

Ms. Everett provided an explanation of the bills related to the food-to-beverage ratio that are included in this study, a summary of ratio bills introduced during recent sessions of the General Assembly, and an overview of the provisions of § 4.1-126⁸. Ms. Everett explained that five ratio bills from the 2016 Session were included in the study: HB 171 (Albo), HB 219 (Taylor), SB 373 (Ebbin), SB 488 (DeSteph), and SB 489 (DeSteph).⁹ Ms. Everett explained that subsequent to the 2008 study of the food-to-beverage ratio, no bills related to the food-to-beverage ratio were introduced during the next five sessions (2009–2013), but four such bills were introduced during the 2014 and 2015 Sessions.

In 2014, SB 502 (Favola and Ebbin), Chapter 633 of the 2014 Acts of Assembly, modified limited mixed beverage restaurant licenses to prohibit such licensees from having sales of wine or liqueur-based drinks, together with the sale of any other alcoholic beverages, exceeding 10 percent of their total annual gross sales of all food and alcoholic beverages. Prior law did not factor into the equation the sale of "other alcoholic beverages" and referred simply to "gross sales" rather than gross sales of all food and alcoholic beverages. Senator McEachin also introduced SB 642 during the 2014 Session to modify the sanctions for violations of the food-to-beverage ratio, but it did not pass.

During the 2015 Session, then-Delegate Bill DeSteph introduced two bills related to the food-to-beverage ratio. HB 1814 modified the food-to-beverage ratio to require that sales from food and nonalcoholic beverages meet or exceed 75 percent of mixed beverage sales, and HB 1815 added as an alternative to the current ratio a minimum monthly food sale requirement of \$4,000. Both bills failed.

Lastly, Ms. Everett summarized the provisions of § 4.1-126. In 1972, four years after the Whiskey Bill passed, the General Assembly enacted § 4.1-126, creating the first exception to the requirement in § 4.1-124 that liquor-by-the-drink be permitted only in localities that approved of such practice through a referendum. There are currently 26 exceptions allowing the sale of liquor-by-the-drink at certain establishments within localities in the Commonwealth that have not passed such a referendum.

Presentation: David May, Attorney, Division of Legislative Services

Mr. May gave a presentation on possible alternatives to the current food-to-beverage ratio, which requires certain mixed beverage licensee's¹⁰ gross receipts from the sale of food and nonalcoholic beverages to amount to at least 45 percent of its gross receipts from the sale of

⁸ Allows mixed beverage restaurant licenses to be granted by the ABC Board regardless of the requirement for a local referendum.

⁹ Summaries of these bills are included in Appendix A.

¹⁰ Those licenses include annual mixed beverage restaurant, caterer's, and limited caterer's licenses.

mixed beverages, food, and nonalcoholic beverages combined. At the Special Joint Subcommittee's first meeting, members expressed concern that compliance with and enforcement of the current food-to-beverage ratio was onerous, confusing, and outdated. Members indicated that it may be time to modify the ratio to some extent but emphasized that in making such modification, caution must be taken to avoid legislative changes that could result in a proliferation of "bars" throughout the Commonwealth.

In light of these concerns, Mr. May presented three potential alternatives to the current food-to-beverage ratio, all of which would require licensees to serve food whenever mixed beverages are sold. The first option imposed a minimum monthly food sale requirement. Per regulations of the Board, certain mixed-beverage licensees are currently required to sell at least \$4,000 of food per month. Current Department statistics reveal that 90 percent of such licensees sell \$10,000 or more in food per month. With those considerations in mind, it was recommended that the minimum monthly food sale requirement be set at \$10,000 or an amount between \$4,000 and \$10,000. Under this approach, the remaining 10 percent of licensees who would be unable to meet the minimum food sale requirement would have the option of complying with the current food-to-beverage ratio.

Similarly, the second and third options also include a minimum monthly food sale requirement but deviate with regard to the options available to the 10 percent of current licensees that would be unable to meet the minimum food sale requirement. The second option would allow these licensees to comply with a food-to-beverage ratio as an alternative to the minimum food sale requirement but would lower the ratio to some degree. Alternatively, the third option would impose a tiered minimum food sale requirement, lowering the amount of required sales from \$10,000 to lesser amounts based on the restaurant's capacity as determined by their certificate of occupancy.

After presenting the above alternatives to the current food-to-beverage ratio, Mr. May explained how these options meet the concerns raised previously by the Special Joint Subcommittee members. First, imposing a minimum food sale requirement would simplify compliance for licensees by ridding 90 percent of them from the requirements of extensive recordkeeping and detailed calculations. Rather than computing all sales from mixed beverages, food, and nonalcoholic beverages, these licensees would simply tally and report their food sales.

Second, the minimum food sale requirement would simplify and lower the cost of enforcement efforts for the Department by removing 90 percent of licensees from the MBAR's food-to-beverage ratio audit system, which has proven costly and resource intensive at an estimated 12,480 hours per annum for the Department.

Third, the minimum food sale requirement would better match the Commonwealth's rules of compliance with the current marketplace, consumer trends, and higher drink prices. For example, licensees who sell expensive, top-shelf spirits would no longer be tasked with the difficult job of attempting to match their food sales, in price or quantity, with those high-end spirits. Instead, such licensees would be permitted to sell such liquors bound only by the requirement that they sell at least \$10,000 of food per month or \$120,000 per year.

Finally, imposition of a minimum food sale requirement would not result in a proliferation of bars throughout the Commonwealth. Notably, as mentioned above, 90 percent of

licensees already sell \$10,000 or more of food per month. Accordingly, the Commonwealth's existing landscape with regard to the number of establishments serving mixed beverages would remain relatively the same. A minimum food sale requirement would simply ease the process of compliance for licensed establishments that have consistently exceeded the statutory food sale requirements.

Public Comment

One member of the public proposed the following question: "If a mere one percent of licensees are having difficulty meeting the current [food-to-beverage] ratio, why are we here?" The gentleman stated that most licensees are in compliance, and the ratio should not be modified to account for the minority who are not. He further commented that the level of math required to complete an MBAR form is relatively simple.

Another citizen suggested that the General Assembly create a "tavern" license that would allow such licensee to sell spirits unbound by any food sale requirement. He stated that this would allow certain existing establishments that currently operate under the guise of a restaurant to "come out of the dark." He opined that these establishments are effectively specializing in liquor, not food, and are therefore bars, rather than restaurants.

A representative of the Commonwealth's restaurant and lodging industries stated that at some point an establishment should qualify as a "restaurant" based on the amount of its food sales without regard to the quantity of spirits it is also selling. The representative stated that a minimum food sale requirement would serve this purpose and would not give a restaurant any incentive to stop selling food upon meeting such requirement as long as ABC law requires that food be served whenever alcohol is sold.

Other topics raised by members of the public included (i) a concern that public safety was not a large part of the Special Joint Subcommittee's discussion of the food-to-beverage ratio and (ii) a suggestion that regardless of the Special Joint Subcommittee's ultimate decision, all alcohol—spirits, wine, and beer—should be regulated equally.

Bill Dillon, Owner and Operator of Abbey Road Pub & Restaurant, was not able to attend the meeting but submitted public comment via email. Mr. Dillon raised concern over certain bills passed during the 2016 Session that effectively exempted from the food-to-beverage ratio two private performing arts facilities. Mr. Dillon suggested that these bills indirectly created a "night club license" for these establishments. Mr. Dillon inquired as to the reason why this legislation did not include all performing arts facilities. He recommended that, as a matter of fairness, these new laws be amended to include all of Virginia's performing arts facilities. Mr. Dillon also raised concern over the rules governing micro-breweries, stating that such breweries are "exploding" throughout the Commonwealth and are not bound by a food sale requirement. Finally, Mr. Dillon recommended that all ABC licenses be treated equally through imposition of a flat monthly food sale requirement, coupled with a requirement that food be served whenever alcohol is sold. Mr. Dillon stated that this rule would not only promote equal treatment of the Commonwealth's various licensees, but also reduce the Department's work load and allow agents to more effectively enforce the provisions of the Code.

Discussion

Co-chairman Knight and Senator DeSteph expressed interest in the idea of replacing or supplementing the current food-to-beverage ratio with a minimum food sale requirement, provided that a provision is included that requires establishments to serve food whenever alcohol is sold. Co-chairman Knight also stated that while statistics were presented that a mere one percent of licensees fall short of the food-to-beverage ratio requirement, in practice, many more licensees are experiencing problems with the ratio.

Delegate Albo suggested, on the other hand, that it appears that most licensees are satisfied and in compliance with the current ratio requirements. Following discussion with Delegate Torian, Delegate Albo suggested that the Special Joint Subcommittee investigate the possibility of giving the Department discretion to craft solutions for the one percent of licensees who fall short of the ratio's requirements. Specifically, Delegate Albo suggested that, upon petition by the licensee, the Department could conduct a hearing and accept testimony on reasons the licensee was unable to comply with food-to-beverage ratio despite sincere effort. Delegate Albo further suggested that the list of alternatives suggested by staff should be expanded to include any recommendation presented to the Special Joint Subcommittee. Staff was directed to post the expanded list of alternatives to the food-to-beverage ratio on the Special Joint Subcommittee's website for public comment and feedback.

There being no further business, the meeting was adjourned.

September 14, 2016

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the third meeting of the Special Joint Subcommittee.¹¹

Continuation of Study Plan: 45 Percent Food-to-Beverage Ratio for Mixed Beverage Licensees

Maria J.K. Everett, Senior Attorney, Division of Legislative Services, provided an explanation of the five food-to-beverage ratio bills from the 2016 Session that were included in the study: HB 171 (Albo), HB 219 (Taylor), SB 373 (Ebbin), SB 488 (DeSteph), and SB 489 (DeSteph).¹² Ms. Everett also provided an overview of expanded list of alternatives to the current food-to-beverage ratio for certain mixed beverage licensees.

Travis Hill, Chief Operating Officer of the Department, provided comment to the Special Joint Subcommittee on each of the alternatives to the food-to-beverage ratio.

¹¹ The following Subcommittee members were present: Senator John Cosgrove (co-chairman), Delegate Barry Knight (co-chairman), Senator Rosalyn Dance, Senator Bill DeSteph, Senator Bryce Reeves, Delegate Dave Albo, and Delegate Luke Torian. Delegate Todd Gilbert was absent.

¹² Summaries of these bills are included in Appendix A.

Option 1 – Food must be sold whenever alcohol is served:

Mr. Hill agreed with the Special Joint Subcommittee's opinion that Option 1 should be implemented regardless of whether any other changes are made to the food-to-beverage ratio.

Option 2 – Maintain the status quo:

Mr. Hill stated that many licensees have expressed concern over the current ratio structure, and he noted that these concerns would obviously continue to exist should the Special Joint Subcommittee chose to continue with the current ratio.

Option 3 – Maintain current ratio, but give the Department discretion, upon petition by licensee, to craft alternatives for those who cannot meet the ratio:

Mr. Hill opined that this practice could be considered arbitrary because some licensees would be required to comply with the ratio, while others would not. Mr. Hill further noted that this option would likely lead to an overflow of petitions and may result in the exception (exception by petition) swallowing the rule (food-to-beverage ratio).

Option 4 – Current ratio, but based on "purchase" versus "sale" price:

Mr. Hill stated that one challenge associated with this option is that it is difficult to determine what is consumed on a licensee's premises when calculations are based on the price that the licensee paid for items rather than the price for which they were ultimately sold. Mr. Hill noted that this option could affect licensees' inventory practices and might require the Department to collect more information from licensees than what is currently required, noting that many licensees already complain about such record-producing requirements.

Option 5 – Lower current ratio:

Mr. Hill stated that this option would entail the same recordkeeping burdens and costs on licensees that are associated with the current food-to-beverage ratio, as well as the same enforcement burdens on the Department. The only difference would be the number of licensees that would meet the required ratio.

Option 6 – Replace current ratio with minimum food sale requirement (\$4,000-\$10,000):

Mr. Hill opined that this option would be the most efficient of all, would be less burdensome on licensees and the Department, and would result in less confusion regarding compliance. Mr. Hill noted that this option rids all concern over liquor sales and focuses the attention on licensees' food sales, which should be the central question in determining whether an establishment is a "restaurant" or a "bar." Mr. Hill noted, however, that approximately seven percent of current licensees would not be able to meet a minimum food sale requirement of \$10,000 per month based on existing statistics.

Option 6A – Set minimum food sale requirement (\$4,000-\$10,000) with alternative option of complying with current ratio:

Mr. Hill stated that this option would lower the number of licensees that would have to comply with the food-to-beverage ratio structure, but would entail the same burdens currently complained of by all licensees that could not meet the minimum food sale requirement of \$10,000 per month. Mr. Hill also questioned whether this option would alleviate any enforcement burdens currently experienced by the Department.

Option 6B – Set minimum food sale requirement (\$4,000-\$10,000) with alternative option of complying with a lower ratio:

Mr. Hill's comments mirrored those under Option 6A, with the only difference being a lower number of licensees that would fail to meet the food-to-beverage ratio.

Option 7 – Establish a tiered minimum food sale requirement based on the Certificate of Occupancy (CO) for the licensed establishment:

Mr. Hill stated that this option would require the Department to make systematic changes, but may alleviate some burdens on smaller establishments.

Option 8 – Create a new mixed beverage "tavern" or "entertainment" license (separate and distinct from mixed-beverage restaurants and caterers currently subject to the ratio):

Mr. Hill opined that this option may help clarify the difference between establishments that operate as a "restaurant" and those that operate as a "bar," but it is ultimately a policy decision to be made by the General Assembly.

Option 9 – Establish tiered annual license tax based on food sales:

Mr. Hill clarified that this option would simply entail a system in which licensees pay more money in exchange for less stringent food sale requirements and, accordingly, may favor the wealthy.

Option 10 – Set ratio based on proof-gallon:

Mr. Hill noted that this option was the subject of a 2008 study and ultimately did not work well for any of the parties involved.

Option 11 – Enter into MOU with Department of Taxation to verify sales:

Mr. Hill stated that this practice could be beneficial to the Department regarding the accuracy of information submitted by licensees, but might require the Department of Taxation to modify its current practices.

Option 12 – Maintain status quo but authorize funding to ABC for additional auditing agents to ensure MBAR compliance:

Mr. Hill noted that one of the concerns expressed regarding the current food-to-beverage ratio is a lack of enforcement. Additionally, opinions have been expressed that many licensees are not truthful regarding their current food and liquor sales reports to the Department. Accordingly, the low percentage of licensees who are not in compliance with the food-to-beverage ratio may be higher than it appears. Mr. Hill explained that under this option, the Department would be able to more adequately

enforce the current requirements of the food-to-beverage ratio and formulate a more accurate number regarding the percentage of licensees who fail to meet these requirements.

Discussion

Co-chairman Knight stated that, in his opinion, Option 6B is the best alternative to the current food-to-beverage ratio. Co-Chairman Knight explained that under this option, a minimum food sale requirement of \$10,000 per month would be imposed, but provide licensees who are unable to meet this requirement with the alternative of complying with a lower food-to-beverage ratio of 35 percent. Mr. Hill noted that this option would simplify the current ratio structure for 92 percent of licensees, would make the process easier for the remaining eight percent, and would lessen enforcement burdens on the Department.

Delegate Albo expressed concern that licensees may be able to cheat the system under this approach. Delegate Albo stated that under Option 6B, a requirement of \$10,000 in food sales per month equates to approximately \$333 per day. Delegate Albo stated that if we assume the average cost of a meal is around \$15, restaurants could simply sell 22 meals per day to their employees and would thereby meet Option 6B's requirements.

Co-chairman Cosgrove suggested that, in light of the debate between the competing alternatives to the current food-to-beverage ratio, the Special Joint Subcommittee members should avoid making a decision at the current time. Instead, Co-chairman Cosgrove suggested that before the Special Joint Subcommittee's next meeting, all members should weight the various options and decide which option(s) they believe would serve as the best alternative to the current food-to-beverage ratio. After feedback is gathered from all members, a decision will be made at the next and final meeting. Delegate Albo noted that in weighing the options, the final selection could include a combination of two or more options.

Public Comment

Bill Dillon, Owner and Operator of Abbey Road Pub & Restaurant, who had previously addressed the Special Joint Subcommittee, again raised concern over certain bills passed during the 2016 Session that effectively exempted from the food-to-beverage ratio two private performing arts facilities. Mr. Dillon suggested that these bills indirectly created a "night club license" for these establishments and he inquired as to the reason why this legislation did not include all performing arts facilities. Mr. Dillon recommended that, as a matter of fairness, these new laws should be amended to include all of Virginia's performing arts facilities. Another member of the public, William Stewart, Catalyst Media, mimicked this concern.

In addition, Mr. Dillon again raised concern over the rules governing micro-breweries, stating that such breweries are "exploding" throughout the Commonwealth and are not bound by a food sale requirement. Finally, Mr. Dillon recommended that all ABC licenses be treated equally through imposition of a flat monthly food sale requirement, coupled with a requirement that food be served whenever alcohol is sold. Mr. Dillon stated that this rule

would not only promote equal treatment of the Commonwealth's various licensees, but would also reduce the Department's work load and allow agents to more effectively enforce the provisions of the Code.

Curtis Coleburn, Virginia Distillers Association, stated that the food-to-beverage ratio was originally created to promote the sale of beer and wine over liquor. Now, however, the industry operates under a structure that places less emphasis on the difference between beer, wine, and liquor. In light of this shift, Mr. Coleburn suggested that it would be better to have a single license for the sale of wine, beer, and liquor rather than having a mixed beverage license that allows for the sale of mixed beverages and wine and beer and other licenses that are limited to sale of only wine and beer.

Tom Lisk, Esq., Virginia Restaurant, Lodging, and Travel Association, stated that the purpose of the food-to-beverage ratio and similar rules is to identify whether an establishment is a bona fide restaurant instead of a bar. Mr. Lisk opined that the most efficient method of making this determination is Option 6; however, recognizing that some licensees would be unable to meet a \$10,000 minimum monthly food sale requirement, Mr. Lisk stated that Option 6B would be a great compromise. This would relieve current burdens on many businesses, including those that consistently comply with the current food-to-beverage ratio requirements.

Eric Terry, President, Virginia Restaurant, Lodging, and Travel Association, concurred with Mr. Lisk's comments. Mr. Terry further noted that Virginia's restaurant industry is currently in a state of decline. Mr. Terry opined that Options 6A and 6B could serve as a means of reversing this trend and simplify a process for restaurant owners that is currently overcomplicated.

William McCormack, owner, McCormack's Big Whisky Grill, stated that his establishment specializes in the sale of high-end spirits, many of which sell for \$55 and some over \$100. Mr. McCormack explained that because these drinks sell at such high prices, it is nearly impossible to match those sales with food sales in an effort to meet the requirements of the current food-to-beverage ratio. Mr. McCormack noted that some customers do not wish to order food, and even if they do, the price of food is not enough to counteract his high-end spirit sales. Mr. McCormack stated that the food-to-beverage ratio needs to be changed to account for his business and others that sell high-end drinks, which will allow these small businesses to thrive by creating additional employment opportunities and contribute to the local economy.

Myles Louria, Downtown Business Group, proposed the following question: If a mere one percent of licensees are having difficulty meeting the current food-to-beverage ratio, why are we here? Mr. Louria opined that the current food-to-beverage ratio does not need a major overhaul and suggested that if any changes are made, they should be small. Mr. Louria further opined that, regarding the proposition of imposing a minimum monthly food sale requirement, \$10,000 is not a tremendous amount of food. Mr. Louria also noted that current restaurant licensees have invested a lot of money to secure kitchen equipment and other resources in an effort to comply with current law, and it would be unfair to change the rules in light of that. Similarly, Mike Burns stated that liquor is currently treated differently than beer and wine, and for good reason. Mr. Burns stated that a person's intent is different when drinking wine or beer as opposed to liquor. And in response to the argument that the

food-to-beverage ratio should be modified to account for high-end liquor sales due to the difficulty of matching those sales with food sales, Mr. Burns stated that this practice only accounts for approximately 1.3 percent of liquor sales in Virginia.

There being no further business, the meeting was adjourned.

September 25, 2016

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the fourth meeting of the Special Joint Subcommittee.¹³

Continuation of Study Plan: 45 Percent Food-to-Beverage Ratio for Mixed Beverage Licensees

Maria J.K. Everett, Senior Attorney, Division of Legislative Services, provided an explanation of the five food-to-beverage ratio bills from the 2016 Session that were included in the study: HB 171 (Albo), HB 219 (Taylor), SB 373 (Ebbin), SB 488 (DeSteph), and SB 489 (DeSteph).¹⁴

Senator Adam Ebbin spoke briefly to his SB 373, noting that one of the primary goals of the bill was to provide that a business may be considered a restaurant for purposes of mixed beverage licenses if it regularly sells foods, rather than meals, prepared on the premises. Senator Ebbin stated that, prior to the Special Joint Subcommittee's meeting, he spoke with representatives from the Department and learned that the Department has recently amended its regulatory definition of the term "meal," seemingly curing the issue that prompted Senator Ebbin to introduce SB 373.

Travis Hill, Chief Operating Officer, Department of Alcoholic Beverage Control, explained that the Department continues to require that mixed beverage licensees serve "meals" (versus "foods") at their establishments, but has expanded the definition of meals to include many dishes that individuals seek and enjoy at restaurants that formerly did not meet the definition of a meal.

Ms. Everett then provided an overview of possible alternatives to the current food-to-beverage ratio,¹⁵ which requires certain mixed beverage licensees' gross receipts from the sale of food and nonalcoholic beverages to amount to at least 45 percent of its gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages combined. At its first three meetings, the Special Joint Subcommittee expressed concern that the current 45 percent food-to-beverage ratio was difficult to understand and apply. Consequently, the Special Joint Subcommittee chose to explore alternative approaches to the current food-to-

¹³ The following Subcommittee members were present: Senator John Cosgrove (co-chairman), Delegate Barry Knight (co-chairman), Senator Rosalyn Dance, Senator Bill DeSteph, Senator Bryce Reeves, Delegate Dave Albo, Delegate Todd Gilbert, and Delegate Luke Torian.

¹⁴ Summaries of these bills are included in Appendix A.

¹⁵ These alternatives, which were posted online for public comment at <http://dls.virginia.gov/groups/SenRSS/Alternatives.pdf>, are included in Appendix B.

beverage ratio with the goals of simplifying the process for mixed beverage licensees and the Department by bringing rules of compliance up to date with the marketplace, avoiding a proliferation of establishments that sell mixed beverages, and addressing public safety concerns.

Continuation of Study Plan: "Boutique" Licenses

The Special Joint Subcommittee then addressed the feasibility of consolidating certain nonretail "boutique" licenses issued under § 4.1-206, including day spas, meal assembly kitchens, and art instruction studios, and the possibility of adding similar privileges for retail cigar shops. Ms. Everett provided an overview of the 2016 boutique bills that were referred to the study:¹⁶ HB 835 (Greason), HB 904 (Landes), and SB 410 (Barker).

Bud Oakey, representing the Cigar Association of Virginia, speaking to HB 904 stated that many states allow cigar shops to serve some form of alcohol. Mr. Oakey stated that much of this has become necessary due to the requirements of the Virginia Indoor Clean Air Act and the effects that it has had on restaurants. After most restaurants elected to prohibit smoking in their establishments due to the constraints of the Virginia Indoor Clean Air Act, Mr. Oakey and the Cigar Association of Virginia have been attempting to recapture a lost market of individuals who prefer to enjoy an alcoholic beverage while smoking a cigar.

Delegate Dave Albo opined that he did not believe it feasible to consolidate all nonretail boutique licenses into a single license category because doing so would create an overbroad allowance for a wide variety of business to serve alcohol to their customers, many of which present public safety concerns. In light of this, Delegate Albo stated that while he is not necessarily opposed to the idea of allowing cigar shops to serve alcoholic beverages, rather than sell, to customers, this privilege would require the creation of a new license, separate and apart from other existing boutique licenses. Delegate Albo suggested that if such license is created, limitations regarding the quantity of alcohol that such licensees may serve should comport with the existing quantity limitations currently imposed on other licensees. Co-chairman Cosgrove and Senator DeSteph concurred with Delegate Albo's comments regarding uniformity of quantity limitations amongst licensees.

Senator George Barker spoke to his SB 410, which would allow brewery tour guides to consume up to three four-ounce samples of beer while conducting tours of the premises for the purpose of featuring and educating the public about the beer being tasted. Senator Barker explained that such allowance would better enable tour guides to highlight certain characteristics of the beer being consumed to the touring public. Senator Reeves noted that it may be difficult to enforce the quantity limitations included in the bill because, without an agent of the Department on site and monitoring the tour guide's consumption, it would be difficult to know whether a tour guide exceeded the limitations.

The Special Joint Subcommittee took no action on HB 904 (Landes) or SB 410 (Barker). Additionally, the Special Joint Subcommittee took no action on HB 171 (Albo), HB 219 (Taylor), HB 835 (Greason), SB 373 (Ebbin), SB 488 (DeSteph), or SB 489 (DeSteph).

¹⁶ Summaries of the following bills may be found in Appendix B.

Discussion and Vote

Co-chairman Knight stated that, in his opinion, Option 6B is the best alternative to the current food-to-beverage ratio. Co-Chairman Knight further stated that, under this option, a minimum food sale requirement of \$10,000 per month would be imposed but that for licensees who are unable to meet this requirement there would be an alternative option to comply with a 35 percent food-to-beverage ratio, rather than the current 45-percent requirement. Co-chairman Knight noted that 90 percent of current mixed-beverage licensees are capable of meeting a minimum food sale requirement of \$10,000 per month. Co-chairman Knight then moved that the Special Joint Subcommittee adopt Option 6B, with the aforementioned stipulations, as its legislative recommendation to the 2017 Session. Senator Bill DeSteph seconded the motion.

Delegate Albo expressed concern that Option 6B would merely require licensees to sell 22 meals per day at a price of \$15. Delegate Albo opined that this would effectively result in the creation of bars in the Commonwealth.

Responding to Delegate Albo's concern, Tom Lisk, Esq., Virginia Restaurant, Lodging, and Travel Association, noted that persons licensed to sell beer and wine are only required to sell \$2,000 of food per month, and that persons licensed to sell beer only must merely sell \$1,000 of food per month. Mr. Lisk stated that these food sale requirements for beer and wine are clearly much lower than Option 6B's \$10,000 minimum monthly food sale requirement and that, consequently, the Special Joint Subcommittee would not be "breaking new ground" with this proposal.

Following this discussion, the Special Joint Subcommittee voted (4-2-2) to adopt Option 6B as its legislative recommendation to the 2017 Session. Included in this recommendation was a requirement that all retail, on-premises ABC licensees sell food whenever alcoholic beverages are made available.¹⁷ The Special Joint Subcommittee directed staff to prepare a draft that include the following provisions:

For monthly food sales of at least \$4,000 but less than \$10,000, the food-to-beverage ratio would be 35 percent;

For monthly food sales of \$10,000 or more, there would be no food-to-beverage ratio requirement imposed; and

Food must be available at all times when alcoholic beverages are served, in accordance with ABC Board regulations.

Other Business

Delegate Albo expressed concern over the lack of uniformity regarding mixed beverage licensure requirements for performing arts facilities, noting that current law effectively exempts certain facilities from the food-to-beverage ratio. Delegate Albo stated that, while

¹⁷ Senator John Cosgrove (co-chairman), Delegate Barry Knight (co-chairman), Senator Bill DeSteph, and Senator Bryce Reeves voted in favor of this measure, while Delegate Dave Albo and Delegate Luke Torian voted against. Senator Rosalyn Dance and Delegate Todd Gilbert abstained.

this issue may be outside the purview of the Special Joint Subcommittee, he intends to introduce a bill that revises the mixed beverage performing arts facility license.

Delegate Albo's legislative proposal would allow licensees operating a performing arts facility to sell, on the dates of performances and one hour prior to any such performance and one hour after the conclusion of any performance, alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board. The proposal would stipulate that the performing arts facility (i) must be owned by the licensee or be occupied under a bona fide long-term lease or concession agreement, the original term of which was more than five years, and (ii) must have monthly gross receipts from the sale of food cooked or prepared and consumed on the premises and nonalcoholic beverages served on the premises of at least \$6,000. The proposal would also define a performing arts facility as an establishment devoted exclusively to the bona fide performance of live music, which establishment is open to the public no more than four days in any calendar week and where at least 90 percent of the ticket sales for any performance at such facility are purchased in advance of the performance. The Special Joint Subcommittee took no action on Delegate Albo's proposal.

Recommendations

The Special Joint Subcommittee voted (4-2-2) to recommend a bill (identified as Option 6B in the List of Alternatives to the Current Food-to-Beverage Ratio) to the 2017 Session that would modify the current 45 percent food-to-beverage ratio for mixed beverage restaurant, caterer's and limited caterer's licensees under § 4.1-210 as follows:

1. For monthly food sales of at least \$4,000 but less than \$10,000, the food-to-beverage ratio would be 35 percent;
2. For monthly food sales of \$10,000 or more, there would be no food-to-beverage ratio requirement imposed; and
3. Add the requirement for licensees under § 4.1-210 that food must be available at all times when alcoholic beverages are served, in accordance with ABC Board regulations.

Conclusion

The members of the Special Joint Subcommittee received materials and heard comment from a great number of groups and individuals and the process educated all. The Special Joint Subcommittee would like to express its gratitude to the interested parties for their participation, deliberations, and dedication.

Respectfully submitted,

Delegate Barry Knight, Co-Chair

Senator John Cosgrove, Co-Chair

Delegate Todd Gilbert

Delegate Dave Albo

Delegate Luke Torian
Senator Bryce Reeves
Senator Bill DeSteph
Senator Rosalyn Dance

APPENDIX A

2016 BILLS SUMMARIES

HB 171

Albo

Alcoholic beverage control; food-to-beverage ratio for certain mixed beverage licensees. Provides that for persons holding a mixed beverage restaurant, caterer's, or limited caterer's license, in calculating the minimum 45 percent ratio of food to mixed beverage and food, such licensees shall include the gross receipts from the sale of nonalcoholic beverages served on the premises in calculating the gross receipts from the sale of food. The bill provides that it declarative of existing law.

HB 219

Taylor

Alcoholic beverage control; food-to-beverage ratio. Reduces from 45 to 25 percent the requirement for mixed beverage restaurant licensees for the ratio of combined gross receipts from the sale of food consumed on the premises and nonalcoholic beverages served on the premises and the combined gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages. The bill provides that gross receipts be calculated on the basis of the price that the licensee paid for the food, nonalcoholic beverages, or mixed beverages sold, rather than the price at which the licensee sells such items to consumers.

SB 373

Ebbin

Alcoholic beverage control; food sale requirements. Provides that a business may be considered a restaurant for purposes of mixed beverage licenses if it regularly sells foods, rather than meals, prepared on the premises. The bill also provides that in calculating the gross receipts from the sale of food for purposes of the food-to-beverage ratio, mixed beverage restaurant licensees, mixed beverage caterer's licensees, mixed beverage limited caterer's licensees, and limited mixed beverage restaurant licensees shall include the gross receipts from the sale of nonalcoholic beverages.

SB 488

DeSteph

Pilot project for mixed beverage licensees of the Alcoholic Beverage Control Board; alternative calculation for the 45 percent food-to-beverage ratio based on price paid by the licensee. Creates a two-year pilot project that directs participating mixed beverage restaurant licensees to calculate the required food-to-beverage ratio (i) on the basis of the price such licensee paid for the food, nonalcoholic beverages, and mixed beverages sold and (ii) on the basis of the price such licensee sold such food, nonalcoholic beverages, and mixed beverages to patrons. The bill provides that participating licensees shall be deemed to be in

compliance with law if they meet the required food-to-beverage ratio based on either of the above calculations. The bill also requires participating licensees to serve food during any period of time mixed beverages are served and allows the Alcoholic Beverage Control Board to summarily suspend the license of participants for 24 hours for violation of this requirement.

SB 489
DeSteph

Alcoholic beverage control; food-to-beverage ratio. Provides that a mixed beverage restaurant licensee meets the required food-to-beverage ratio if its gross receipts from the sale of food and nonalcoholic beverages amount to at least (i) \$5,000 per month or (ii) 25 percent of the gross receipts from the sale of mixed beverages and food. The bill also provides that mixed beverage caterer and limited mixed beverage caterer licensees meet the required food-to-beverage ratio if their gross receipts from the sale of food and nonalcoholic beverages amount to at least 25 percent of their gross receipts from the sale of mixed beverages and food. Under current law, mixed beverage restaurant, mixed beverage caterer, and limited mixed beverage caterer licensees' gross receipts from the sale of food and nonalcoholic beverages must amount to at least 45 percent of their gross receipts from the sale of mixed beverages and food. The bill also requires such licensees to serve food during any period of time mixed beverages are served and allows the Alcoholic Beverage Control Board to summarily suspend a license for a maximum of 24 hours for failure to comply with this provision.

APPENDIX B

CHART ARRAYING ALTERNATIVES TO CURRENT FOOD-TO-BEVERAGE RATIO CONSIDERED BY THE SPECIAL JOINT SUBCOMMITTEE

Option No.	Option:	Pros:	Cons:	Other Notes:
1.	Food required to be sold at any time when alcohol is sold* *included in every option below			Dance
2.	Maintain status quo	1% of MB licensee not meeting current ratio	- Doesn't simplify the math; -False reporting of MBAR; - Does not relieve burden on anyone	Dance Albo
3.	Maintain current ratio, but give ABC discretion, upon petition by licensee, to craft alternatives for those who can't/don't meet ratio	-Flexibility; -May be addressed by ABC regulation	-Creating special class for the 1%; -Discretion by ABC subject to challenge	Dance Albo
4.	Current ratio, but based on "purchase" vs. "sale" price	Easier for MB licensee to qualify depending on drink mark-up	- Doesn't simplify the math; -Comparing "apples to oranges" (bulk/volume purchases); -Does not relieve burden on anyone	Albo
5.	Lower current ratio	Easier for MB licensee to qualify depending on drink mark-up	-Doesn't simplify the math; -Doesn't really address problem	

Option No.	Option	Pros:	Cons:	Other Notes:
6.	Set minimum food sale requirement (\$4,000-\$10,000) WITHOUT ANY RATIO	-Emphasis on food sale; -Easier to calculate -Easier to enforce -Fits within existing structure	Emphasis not on MB sales; still have establishments selling lots of MB	DeSteph
6a.	Set minimum food sale requirement (\$4,000-\$10,000) WITH CURRENT RATIO	-Focuses enforcement on that band width; -Clear standards to determine compliance (i.e., not fatal if Lic'ee is marginal in one category; BUT if marginal in both categories= enforcement by ABC	-MBAR reporting still required; -Doesn't simplify the math	Knight
6b.	Set minimum food sale requirement (\$4,000-\$10,000) WITH LOWER RATIO	Same as 5a	Same as 5a	Knight
7.	Establish a tiered minimum food sale requirement based on Certificate of Occupancy (CO) for establishment	Consistent application with what Fire Marshal sets for CO	COs vary based on activity/use of room	DeSteph Albo
8.	Create a new MB "tavern" or "entertainment" license	Acknowledges specific business model for these type of	-Bars in VA; -Tried in the 1990's and was unsuccessful	Albo

	(separate and distinct from MB restaurants and caterers subject to ratio)	establishments		
9.	Establish tiered annual license tax based on food sales	Provides licensing choice to MB licensee	Favors those MB licensees with ample capital	
10.	Set ratio based on proof-gallon		-Tried as pilot in 2008; not successful; - Doesn't simplify the math	Albo
11.	Enter into MOU with Department of Taxation to verify sales	Assists in verifying MBAR	Meals tax and other applicable taxes not broken out by mixed beverage or food as separate categories by Taxation	Albo

APPENDIX C

Final Legislative Recommendation

BILL SUMMARY:

Alcoholic beverage control (ABC); food-to-beverage ratio for certain mixed beverage licensees. Reduces the current 45 percent food-to-beverage ratio for mixed beverage licensees to 35 percent under certain conditions met by a mixed beverage licensee in accordance with ABC Board regulations. The bill requires the ABC Board to adopt fast-track regulations that prescribe the terms and conditions under which persons holding a mixed beverage restaurant, caterer's, or limited caterer's license meet or exceed the following: (i) For such licensees with monthly food sales of at least \$4,000 but less than \$10,000, the food-to-beverage ratio shall be 35 percent; and (ii) for such licensees with monthly food sales of at least \$10,000, there shall be no food-to-beverage ratio requirement imposed. The bill provides in addition that such regulations shall provide that food cooked or prepared on the premises and consumed on the premises shall be available at all times when alcoholic beverages are served by such licensees. The bill is a recommendation of the Special Joint Subcommittee of the House Committee on General Laws and the Senate Committee of Rehabilitation and Social Services Studying ABC Issues.

BILL TEXT:

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 4.1-111 and 4.1-210 of the Code of Virginia, relating to alcoholic beverage control; food-to-beverage ratio for certain mixed beverage licensees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111 and 4.1-210 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations.

Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20 liters.

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the

prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title.

14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board are maintained by the parties.

15. Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour.

16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any 24-hour period and subject to any Board limitations on the frequency of such gifts.

17. Permit the sale of beer and cider for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other

resealable containers approved by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.

18. Permit the sale of wine for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine growlers may be used only by persons licensed to sell wine for both on-premises and off-premises consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces, and (iv) the name and address of the retailer.

19. Permit the sale of wine and beer by retailers licensed to sell beer and wine for both on-premises and off-premises consumption, or by gourmet shop licensees for off-premises consumption in sealed containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is placed in the container following an order from the consumer.

20. Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the Board.

21. Prescribe the terms and conditions under which persons holding a mixed beverage restaurant, caterer's, or limited caterer's license meet or exceed the following food-to-beverage ratio:

a. For such licensees with monthly food sales of at least \$4,000 but less than \$10,000, the food-to-beverage ratio shall be 35 percent; and

b. For such licensees with monthly food sales of at least \$10,000, there shall be no food-to-beverage ratio requirement imposed.

In addition, such regulation shall provide that food cooked or prepared on the premises and consumed on the premises shall be available at all times when alcoholic beverages are served by such licensees.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

3. Provide incentives to licensees with a proven history of compliance with state and federal laws and regulations to encourage licensees to conduct their business and related activities in a manner that is beneficial to the Commonwealth.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii)

whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least ~~45 percent of the gross receipts from the sale of mixed beverages and food~~ the percentage, if any, set by Board regulation in accordance with § 4.1-111. For the purposes of this subdivision, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

If the restaurant is located on the premises of a hotel or motel with not less than four permanent bedrooms where food and beverage service is customarily provided by the restaurant in designated areas, bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell spirits packaged in original closed containers purchased from the Board for on-premises consumption to registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own lawfully acquired spirits in bedrooms or private rooms.

If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on

another portion of the premises of the same hotel or motel building, this fact shall not prohibit the granting of a license by the Board to such club qualifying in all other respects. The club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises shall amount to at least ~~45 percent of its gross receipts from the sale of mixed beverages and food~~ the percentage, if any, set by Board regulation in accordance with § 4.1-111. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least ~~45 percent of the gross receipts from the sale of mixed beverages and food~~ the percentage, if any, set by Board regulation in accordance with § 4.1-111.

3. Mixed beverage limited caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, not to exceed 12 gatherings or events per year, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least ~~45 percent of the gross receipts from the sale of mixed beverages and food~~ the percentage, if any, set by Board regulation in accordance with § 4.1-111.

4. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in charge of a special event, which shall authorize the licensee to sell and

serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. A separate license shall be required for each day of each special event.

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating either a performing arts facility or an art education and exhibition facility, (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture, or (iii) persons operating an agricultural event and entertainment park or similar facility that has a minimum of 50,000 square feet of indoor exhibit space and equine and other livestock show areas, which includes barns, pavilions, or other structures equipped with roofs, exterior walls, and open or closed-door access. The operation in all cases shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the licensee to sell alcoholic beverages during scheduled events and performances for on-premises consumption in areas upon the licensed premises approved by the Board.

6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth. For purposes of supplying its airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load distilled spirits onto the same airplanes and to transport and store distilled spirits at or in close proximity to the airport where the distilled spirits will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of distilled spirits may be stored and from which the distilled spirits will be delivered onto

airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all distilled spirits to be transported, stored, and delivered by its authorized representative.

7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer club license to sell and serve mixed beverages for on-premises consumption by club members and their guests in areas approved by the Board on the club premises. A separate license shall be required for each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar year.

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

10. Annual mixed beverage motor sports facility license to persons operating food concessions at any outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1, 200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways,

concession areas or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

11. Annual mixed beverage banquet licenses to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year.

12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve dessert wines as defined by Board regulation and no more than six varieties of liqueurs, which liqueurs shall be combined with coffee or other nonalcoholic beverages, for consumption in dining areas of the restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall the sale of such wine or liqueur-based drinks, together with the sale of any other alcoholic beverages, exceed 10 percent of the total annual gross sales of all food and alcoholic beverages.

13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises consumption.

14. Annual mixed beverage performing arts facility license to corporations or associations operating a performing arts facility, provided the performing arts facility (i) is owned by a governmental entity; (ii) is occupied by a for-profit entity under a bona fide lease, the original term of which was for more than one year's duration; and (iii) has been

rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board.

15. Annual mixed beverage performing arts facility license to persons operating food concessions at any performing arts facility located in the City of Norfolk or the City of Richmond, provided that the performing arts facility (i) is occupied under a bona fide long-term lease or concession agreement, the original term of which was more than five years; (ii) has a capacity in excess of 1,400 patrons; (iii) has been rehabilitated in accordance with historic preservation standards; and (iv) has monthly gross receipts from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic beverages served on the premises that meet or exceed the monthly minimum established by Board regulations for mixed beverage restaurants. Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board.

16. Annual mixed beverage performing arts facility license to persons operating food concessions at any performing arts facility located in the City of Waynesboro, provided that the performing arts facility (i) is occupied under a bona fide long-term lease or concession agreement, the original term of which was more than five years; (ii) has a total capacity in excess of 550 patrons; and (iii) has been rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on the dates of performances or private or special events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board.

17. A combined mixed beverage restaurant and caterer's license, which may be granted to any restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location, and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed beverage caterer at the same business

premises designated in the license, with a common alcoholic beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

2. That the Alcoholic Beverage Control Board shall promulgate regulations to implement the provisions of this act in accordance with § 2.2-4012.1.

#

Current MBAR Schedule of Penalties

- For a ratio of 44% or higher (up to 45%): Written Warning
- For a ratio of greater than 30%, but less than 44%
 - 1st offense: 30 day suspension lifted at the end of 15 days upon payment of \$1,000
 - 2nd offense: 60 day suspension lifted at the end of 30 days upon payment of \$2,000
 - 3rd offense: Revocation of license
- For a ratio of 30% or less: Revocation of license
- Fraudulent MBAR reports: Revocation of license



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Operational Stats

- Of the roughly 4,500 – 4,900 mixed beverage licensees, approximately 1% have fallen below the required ratio each of the last four fiscal years.

Fiscal Year	Food Ratio < 45%
FY 2012	61
FY 2013	66
FY 2014	61
FY 2015	52
Total	235



Operational Stats

- At least 90% of mixed beverage licensees average monthly food sales above \$10,000.

Licenses Subject to Ratio	# of Active Licenses	% of Total Licenses
Mixed Beverage Restaurant (Seating Capacity: 1-100 seats)	1,797	9%
Mixed Beverage Restaurant (Seating Capacity: 101-150 seats)	952	5%
Mixed Beverage Restaurant (Seating Capacity: 151+ seats)	2,109	10%
Mixed Beverage Caterer	176	1%
Mixed Beverage Caterer Limited	81	0%
Total	5,115	25%

**Licensee count as of 3/4/2016*



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Operational Stats

- 46 licenses have been revoked over the past 4 fiscal years as a result of MBAR infractions
- A little over one-third of cases heard are related to MBARs
- Late MBARs are the #2 most filed annual charge
 - The only charge filed more often is underage buyer (UAB)
- Annual time spent on MBAR issues in the Hearings and Enforcement divisions is equivalent to 12,480 man hours



APPENDIX E

IMPACT OF FOOD CONSUMPTION ON ABSORPTION OF ALCOHOLIC BEVERAGES

Source: Virginia Department of Alcoholic Beverage Control

Food Research

Much research has been done on the metabolism, absorption and distribution of alcohol in the body and what factors impact these processes. Gender, age, race, food, biological rhythms, exercise, body type, expectations, fatigue and drugs/medication all impact the body's processing of alcohol. The research below explain the impact of food consumption on Blood Alcohol Concentration (BAC).

- Meals high in fat, protein and carbohydrates impact BAC and elimination of alcohol from the blood was shortened by 1 to 2 hours when food was consumed.

- Strength of Drink
 - Highest absorption rate occurs when alcohol content is between 10% and 30%
 - Alcohol content less than 10% and the slower the body processes the alcohol and the slower absorption rate



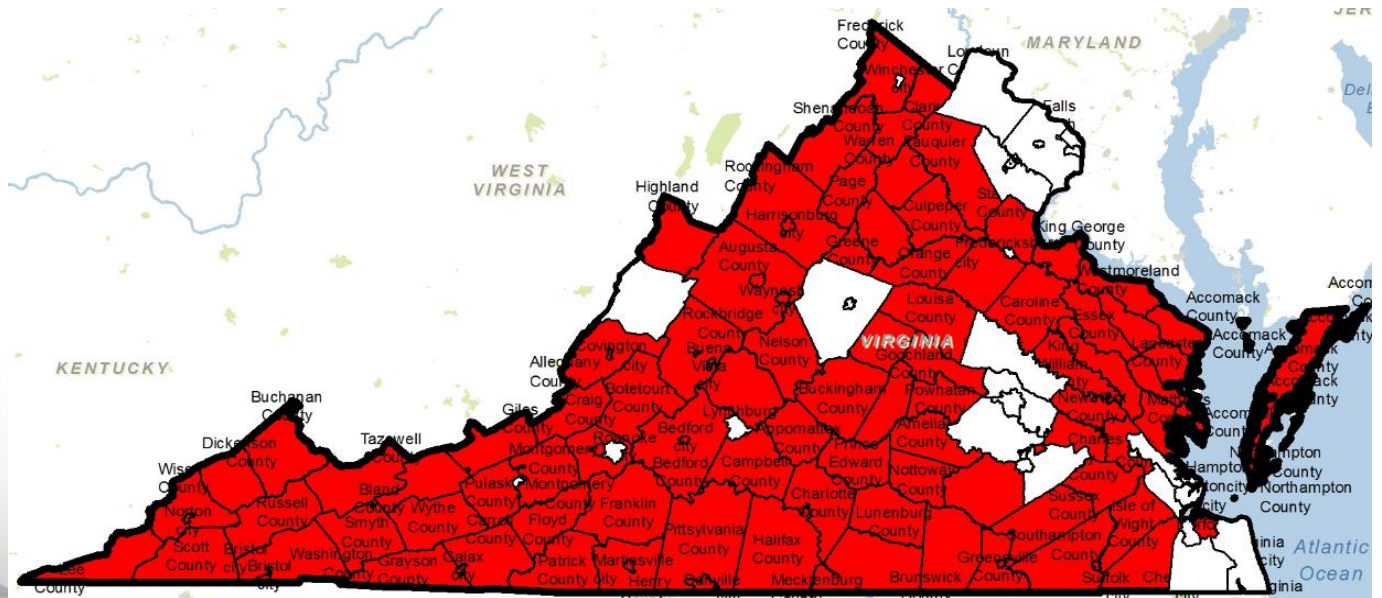
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APPENDIX F

IDENTIFICATION OF "DRY" LOCALITIES SINCE THE ENACTMENT OF LIQUOR-BY-THE-DRINK IN 1968 (In 20-Year Increments)

Source: Virginia Department of Alcoholic Beverage Control

"Dry" Map – After Nov. 5, 1968



- "Dry" means the counties that do not permit the consumption of liquor by the drink.
- Exceptions may exist for towns or supervisor's election districts within certain county borders



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