

**HOUSE COMMITTEE ON GENERAL LAWS AND
SENATE COMMITTEE ON REHABILITATION AND SOCIAL SERVICES**

*Special Joint Subcommittee Studying
Certain Alcoholic Beverage Control (ABC) Laws*

Tuesday, March 8, 2016, at 8:00 a.m.

General Assembly Building

Richmond, Virginia

MEETING SUMMARY

I. Introduction and Opening Remarks

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the first meeting of the special joint subcommittee (the subcommittee) of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services, and the members introduced themselves.¹ Co-chairmen Cosgrove and Knight explained that during the 2016 Session of the General Assembly, the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services elected to convene a special joint subcommittee during the 2016 interim to study certain recurring alcoholic beverage control (ABC) issues. The subcommittee intends to study (i) the food-beverage ratio (minimum food sale requirement) for mixed beverage restaurant licensees and (ii) the feasibility of consolidating certain nonretail "boutique" licenses under § 4.1-206, including licenses for day spas, meal assembly kitchens, and art studios, and the possibility of adding similar privileges for retail cigar shops. The following bills were placed in the study: 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).²

Co-chairman Knight explained that, year after year, there is legislation creating new ABC license categories in piecemeal fashion. As a result, the retail licensing scheme may need consolidation and other adjustments. Co-chairman Cosgrove explained that the General Assembly has also seen many bills attempting to modify the minimum food sale requirements for mixed beverage restaurant licensees. Co-chairmen Cosgrove and Knight noted that the subcommittee serves as a great opportunity to address these issues.

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

¹ 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.

² Summaries of these bills are included in Appendix A.

Ms. Everett provided a summary of the issues before the 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 in the Commonwealth and recent efforts to modify the system. Ms. Everett explained that it has been more than 40 years since liquor-by-the-drink was legalized in the Commonwealth. Since then, Virginia has worked hard to earn a pro-business reputation. She suggested that in making changes to ABC laws, the subcommittee consider maintaining the balance between Virginia's pro-business environment and protecting public health, safety, and welfare.

Regarding the food-beverage ratio, current law requires mixed beverage restaurant licensees' gross receipts from the sale of food and nonalcoholic beverages to amount to at least 45 percent of their gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages combined. The Commonwealth uses the food sale requirement 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 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 subcommittee was conducted in 2008 on the food-beverage ratio.³

Ms. Everett explained that many current mixed beverage restaurant licensees do not have a problem meeting the food-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.

III. Public Comment

A common theme in the testimony of many members of the public was the suggestion that the food-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-beverage ratio because, as the popularity of high-priced liquors rises, the quantity of food that must be sold rises disproportionately. Some stakeholders suggested that meeting the food-beverage ratio has gradually become so challenging that the food-beverage ratio should be eliminated.

³ Information and materials related to the 2008 study can be found here: http://dls.virginia.gov/interim_studies_ABC.html.

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 needed to meet the food-beverage ratio, while other establishments are not subject to such constraints. Regarding boutique licenses, and particularly the creation of a new license for retail cigar shops, one member of the public commented that this license was intended to be a very limited exception. Testimony was also presented that the food-beverage ratio causes confusion among many licensees as to what they can and cannot do.

Other members of the public, however, voiced concerns over lowering the food-beverage ratio. Many of these stakeholders were concerned that modification of the food-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-beverage ratio. This stakeholder commented that lowering the food-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 ratio, they only account for a small portion of the industry. Another stakeholder suggested that, instead of modifying the food-beverage ratio, efforts should be taken to heighten enforcement of its provisions.

In light of these competing views as to whether the food-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-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 testified that regardless of the conclusion ultimately reached by the subcommittee, the Department simply wants guidance on the food-beverage ratio issue from the General Assembly.

IV. Discussion

Many subcommittee members stated that in light of the ongoing issues regarding the food-beverage ratio and the concerns raised during the public comment portion of the meeting, it appears the food-beverage ratio should be modified to some extent. 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, Senator Todd Gilbert suggested that efforts should be taken to ensure that licensees are operating on a level playing field. Delegate David Albo suggested that in the course of analyzing the food-beverage ratio for mixed beverage restaurant licensees, the subcommittee should also

assess the privileges of brewery, winery, and distillery licensees. Other members of the subcommittee concurred with Delegate Albo's suggestion.

Senator Bryce Reeves recommended that the 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 Bill DeSteph recommended that the subcommittee explore the difference between the proof of spirits and the alcohol-by-volume of certain craft beers. Senator DeSteph further commented that with a rise in the retail prices of spirits and the trending creation of establishments that serve high-end drinks, our ABC laws related to the food-beverage ratio have fallen behind the private sector marketplace.

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

V. Adjournment and Next Meeting

Upon deciding that the subcommittee will host a total of four meetings, the next to be held May 16, 2016, the meeting was adjourned by Co-chairmen Cosgrove and Knight.

APPENDIX A: 2016 BILL SUMMARIES

HB 171 (Albo)

Alcoholic beverage control; food-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 is declarative of existing law.

HB 219 (Taylor)

Alcoholic beverage control; food-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.

HB 835 (Greason)

Alcoholic beverage control; privileges of licensed art instruction studios. Expands the privileges of an art instruction studio licensee to allow the consumption of lawfully acquired alcoholic beverages on its premises by any bona fide customer and provides that the licensee may allow any bona fide customer to host a private gathering or special event where such customer has obtained a banquet license or a mixed beverage special events license issued by the Alcoholic Beverage Control Board.

HB 904 (Landes)

Alcoholic beverage control; limited mixed beverage license for retail cigar shops. Creates a new limited mixed beverage license for retail cigar shops. The bill sets out the privileges of this new license, including that the licensee may serve wine, beer, or mixed beverages on the premises to any such bona fide customer; however, the licensee shall not give more than (i) two five-ounce glasses of wine, (ii) two 12-ounce glasses of beer, or (iii) two glasses mixed beverages provided that each glass of mixed beverages contains no more than two ounces of spirits, to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine, beer, or mixed beverages served or consumed. The privileges of this license shall be limited to the premises of the cigar shop regularly occupied and utilized as such. Such license shall be deemed a retail license for the purposes of this title. The bill also defines cigar shop and sets out the state and local license taxes for this license.

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 410 (Barker)

Alcoholic beverage control; consumption of samples by brewery tour guides. Requires the Alcoholic Beverage Control Board to adopt regulations that prescribe the terms and conditions under which tour guides employed by certain licensed breweries may 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.

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-beverage ratio. Provides that a mixed beverage restaurant licensee meets the required food-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-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.