

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

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

Tuesday, October 25, 2016, at 10:00 a.m.  
General Assembly Building, Senate Room B  
Richmond, Virginia

**MEETING SUMMARY**

**I. Introduction and Opening Remarks**

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the fourth meeting of the special joint subcommittee (the subcommittee) of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services.<sup>1</sup>

**II. Continuation of Study Plan: 45 Percent Food-Beverage Ratio for Mixed Beverage Licensees**

Maria J.K. Everett, Senior Attorney, Division of Legislative Services, provided an explanation of the five food-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).<sup>2</sup>

Senator Adam Ebbin spoke briefly to 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 subcommittee's meeting, he spoke with representatives from the Department of Alcoholic Beverage Control (the Department) and learned that the Department has recently amended its regulatory definition of the term "meal," seemingly resolving 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 "meals."

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<sup>1</sup> 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.

<sup>2</sup> Summaries of these bills are included in Appendix A.

Ms. Everett then provided an overview of possible alternatives to the current food-beverage ratio,<sup>3</sup> which requires a mixed beverage restaurant licensee's 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 subcommittee expressed concern that the current 45 percent food-beverage ratio was difficult to understand and apply. Consequently, the subcommittee chose to explore alternative approaches to the current food-beverage ratio with the goals of simplifying the process for mixed beverage licensees and the Department, bringing rules of compliance up to date with the marketplace, avoiding a proliferation of establishments that sell mixed beverages, and addressing public safety concerns.

### **III. Continuation of Study Plan: "Boutique" Licenses**

The subcommittee then addressed the feasibility of consolidating certain nonretail "boutique" licenses under § 4.1-206, including licenses for 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:<sup>4</sup> HB 835 (Greason), HB 904 (Landes), and SB 410 (Barker).

Bud Oakey, representing the Cigar Association of Virginia, stated that many states allow cigar shops to serve some form of alcohol due to the requirements of the Clean Air Act and the effects that it has had on restaurants. With most restaurants having decided to prohibit smoking in their establishments due to the Clean Air Act, Mr. Oakey and the Cigar Association of Virginia are attempting to recapture a lost market of individuals who prefer to enjoy an alcoholic beverage while smoking a cigar.

Delegate Dave Albo opined that it is not 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 businesses to serve alcohol to their customers, inviting possible 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, rather than sell, alcoholic beverages 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 a 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 among licensees.

Senator George Barker spoke to 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

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<sup>3</sup> These alternatives, which were posted online for public comment at <http://dls.virginia.gov/groups/SenRSS/Alternatives.pdf>, are included in Appendix B.

<sup>4</sup> Summaries of the following bills may be found in Appendix B.

on site and monitoring the tour guide's consumption, it would be difficult to know whether a tour guide exceeded such limitations.

#### **IV. Discussion and Vote**

Co-chairman Knight stated that, in his opinion, Option 6B is the best alternative to the current food-beverage ratio. Co-Chairman Knight further stated that, under this option, he would recommend a minimum food sale requirement of \$10,000 per month and provide licensees who are unable to meet this requirement with the alternate option of complying with a lower food-beverage ratio that requires a licensee's food sales to account for 35 percent of its gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages combined, 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 subcommittee adopt Option 6B, with the aforementioned stipulations, as its legislative recommendation for 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, Virginia Restaurant, Lodging, and Travel Association, noted that persons licensed to sell beer and wine are required to sell only \$2,000 of food per month and that persons licensed to sell beer only must sell merely \$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 subcommittee would not be "breaking new ground" with this proposal.

Following this discussion, the subcommittee voted to adopt Option 6B as its legislative recommendation for the 2017 Session, along with a requirement that licensees sell food whenever alcoholic beverages are available.<sup>5</sup>

#### **V. 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-beverage ratio. Delegate Albo stated that, while this issue may be outside the purview of the subcommittee, he intends to introduce a bill that revises the mixed beverage performing arts facility license.

The bill 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 Alcoholic Beverage Control Board. The bill 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

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<sup>5</sup> 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.

premises and nonalcoholic beverages served on the premises of at least \$6,000. The bill 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.

## **VI. Adjournment**

There being no further business before the subcommittee, 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 on 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 of 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 gross receipts from 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 the 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.

## APPENDIX B

### ALTERNATIVES TO CURRENT FOOD-BEVERAGE RATIO

Option No.	Option:	Interested Members:
1.	<b>Food required to be sold at any time alcohol is sold (included in every option below)</b>	Dance
2.	Maintain status quo	Dance Albo
3.	Maintain current ratio but give ABC discretion, upon petition by licensee, to craft alternatives for those who cannot/do not meet ratio	Dance Albo Torian
4.	Current ratio but based on "purchase" vs. "sale" price	Albo Torian
5.	Lower current ratio	
6.	Set minimum food sale requirement (\$4,000–\$10,000)	DeSteph
6a.	Set minimum food sale requirement (\$4,000–\$10,000) with alternative option of complying with current ratio	Knight Torian
6b.	Set minimum food sale requirement (\$4,000–\$10,000) with alternative option of complying with a lower ratio	Knight Torian
7.	Establish a tiered minimum food sale requirement based on Certificate of Occupancy (CO) for establishment	DeSteph Albo
8.	Create a new MB "tavern" or "entertainment" license (separate and distinct from MB restaurants and caterers subject to ratio)	Albo

<b>9.</b>	Establish tiered annual license tax based on food sales	
<b>10.</b>	Set ratio based on proof-gallon	Albo
<b>11.</b>	Enter into MOU with Department of Taxation to verify sales	Albo
<b>12.</b>	Maintain status quo but authorize funding to ABC for additional auditing agents to ensure MBAR compliance	