

Joint Meeting of the Special Subcommittees of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services Studying Certain ABC Issues

May 21, 2008

Meeting Summary

The Special Subcommittees of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services Studying Certain ABC Issues held their second meeting on May 21, 2008.¹ Delegate Suit, Chair of House Subcommittee opened the meeting by reiterating that the two subcommittees will be meeting together on a monthly basis over the course of this interim to look at certain issues related to retail licensees of the ABC Board, including mandatory food sale requirements for ABC retail licensees, whether the variety of the types of existing retail licenses can be better organized and/or categorized given the considerable overlap in the privileges of each license; and the dichotomy of bar versus restaurant in Virginia. As noted in the first meeting, Delegate Suit repeated that the subcommittees need to adhere to the overriding public policy that the sale and service of alcoholic beverages is regulated as part of the valid exercise of state's police power to protect the public health, safety, and welfare. The subcommittees want to ensure that they give the ABC Board the appropriate authority to protect the public health, safety, and welfare; and that any changes that may be suggested will not/should not increase the possibility of over serving alcoholic beverages or serving underaged persons. Delegate Suit noted that the topic for the meeting was the various types of ABC retail licenses; looking to see if they can be better organized and/or categorized given the consider overlap in the privileges of each license.

Staff provided a general primer on ABC law and presented a matrix of retail licenses, showing each type of retail license and indicating for each such license the privileges granted, the food and dollar sales requirements, and any limitation of the license. The matrix is available on the subcommittee's website.

The information shown on the matrix was the source of many questions by subcommittee members. One such question was the public policy behind requiring a license for brown-bagging.² The representative of the ABC Board responded that requiring a license for brown-bagging is an attempt to prevent drinking in public. It was noted, however, that no license is required if the event allowing brown-bagging is not open to the public. It was explained that when tailgate parties occur prior to sporting events at public institutions of higher education, for example, brown-bagging is a permitted as the parking lot is leased to the university foundation and the foundation gets a special events license from the ABC Board. Likewise, individuals are prohibited from bringing their own lawfully acquired alcoholic beverages to a restaurant unless it is a private function held in a private room at the restaurant. Other such examples of the provision of alcoholic beverages, including parties by condominium and homeowners' associations and wine festivals, were explored. Generally, it was felt that confusion by the licensees of what they can and cannot do under existing ABC law was problematic. As a result of these discussions, the

¹ Delegates Suit, Gear, Albo, Wright, Cosgrove, Abbitt, Bowling, Carrico, E. Scott, and Dance were present and Delegates J. Miller and Bulova were absent. Senators Puller, Y.B. Miller, and Herring were present and Senators Wagner and Hurt were absent.

² "Brown-bagging" denotes adults 21 years of age and older bringing their lawfully acquired alcoholic beverages to the licensed premises.

subcommittees asked the ABC Board for the next meeting to identify problems it has encountered in the administration or enforcement of ABC laws and for which clarification in the law may be needed.

The subcommittees next asked for public comment. A Richmond restaurateur advised that he is licensed as a caterer's and a restaurant, although he uses his restaurant license only to do special events. He stated that he was not in favor of bars on every corner, but noted that many "fly-by-night" businesses have obtained restaurant licenses, when in fact they are not really restaurants, and meet their dollar sale requirement by setting very high prices on the limited food that is sold. He argued that holders of a restaurant license should be anchored in the community, with long term plans to stay in the community. He stated that he favored the food sale ratio for restaurant licensees as a means to ensure that a business is truly a restaurant. A representative of the Virginia Travel and Hospitality Association advised the subcommittees that simplification of the licensing requirements is in order as there are differing food sale requirements for retail wine or beer licensees as opposed to mixed beverage licensees. He suggested that the focus should be ensuring a bona fide restaurant. He noted that there has been a proliferation of legislation allowing the sale of alcoholic beverages by on-premises licensees without any food requirement. A Virginia Beach restaurateur advised that he is a third generation restaurant owner and as such is vested in the community. He compared this long standing relationship against the bars down the street that only have a microwave to heat up prepackaged food. He, too, urged the subcommittees to simplify and/or unify the laws governing retail licensees to make it easier for licensees to understand and comply with the law and ensure fairness.

The subcommittees requested industry representatives to work with staff to identify specific problems which could be fixed legislatively. Staff then suggested a more detailed work plan for the subcommittees. The suggested work plan is outlined below.

1. Generally:

- Try for monthly meetings, if feasible. Completion of work before Thanksgiving.
- Address each issue separately and on a per meeting basis.
- Look at other states' law--issues not unique to Virginia.
- Perhaps hold some meetings in places other than Richmond.
- Public comment as issues are first discussed, and after proposed resolution/recommendation of an issue is made.
- No final action to be taken until the meeting following the proposed action.

2. Order of study:

- First Issue: Types of retail licenses. Creation of matrix for retail licenses--opportunity to see commonalities and distinctions--might make reorganization needs more apparent.
- Second issue: food and dollar sale requirements--natural outgrowth of first issue.
- Third issue: bar v. restaurant

3. Website already established to make work of subcommittees easily available---website address: "dls.state.va.us/ABC.htm". All materials, including agendas, etc will be posted there.

The subcommittees by consensus agreed to the work plan suggested by staff. The next meeting of the subcommittees has been tentatively scheduled for July.

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