

**SENATE COMMITTEE ON  
REHABILITATION AND SOCIAL SERVICES**

**ABC SUBCOMMITTEE - 2018 INTERIM**

JUNE 5, 2018 – 10:00 A.M.  
900 EAST MAIN STREET, RICHMOND, VIRGINIA  
SENATE COMMITTEE ROOM A

BRYCE REEVES, COMMITTEE CHAIR

BILL DESTEPH, SUBCOMMITTEE CHAIR

**MEETING SUMMARY**

**I. Call to Order and Opening Remarks**

Senator McDougle called to order the first meeting of the special subcommittee (the subcommittee) of the Senate Committee on Rehabilitation and Social Services studying certain Alcoholic Beverage Control (ABC) laws.<sup>1</sup>

**II. Study Overview – David May, Attorney, Division of Legislative Services**

Mr. May provided an overview of the study and relevant background information. He explained that the subcommittee intends to study (i) the food-beverage ratio (minimum food sale requirement) for mixed beverage restaurant licensees, which was the subject of Senator DeSteph's SB 773 during the 2018 Session of the General Assembly; (ii) the addition of a new limited mixed beverage license for retail cigar shops, which was the subject of Delegate Landes's HB 1541 during the 2018 Session of the General Assembly; (iii) the feasibility of consolidating and simplifying the retail license categories contained in Chapter 2 (§ 4.1-100 et seq.) of Title 4.1 of the Code of Virginia; (iv) the inconsistencies in quantity limits on wine, beer, and spirit samples imposed upon various licensees that possess the privilege to sell or give such samples; and (v) the issues surrounding the perennial exceptions to the requirement for a referendum on the sale of mixed beverages under § 4.1-124 of the Code of Virginia.

Mr. May provided, as background, an overview of two previous studies that studied in-depth the food-beverage ratio for mixed beverage restaurant licensees—a 2008 study conducted by the House Committee on General Laws and a 2016 study conducted by a Special Joint Subcommittee of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services. He explained that while bills resulted from both studies, neither was ultimately passed by the General Assembly. Mr. May further explained that this issue has consistently been the subject of legislation in recent years but all attempts to resolve it have been unsuccessful.

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<sup>1</sup> The following subcommittee members were present: Senator Bill DeSteph (chairman), Senator Monty Mason, Senator Ryan McDougle, Senator Jeremy McPike, and Senator Lionel Spruill. Senator Bryce Reeves was absent.

Mr. May explained that the subcommittee intended to look at four issues during its first meeting: (i) the food-beverage ratio; (ii) the feasibility of consolidating the retail licenses; (iii) the inconsistencies in quantity limits on wine, beer, and spirits samples; and (iv) the issues surrounding the exceptions to the mixed beverage referendum requirement.

### **III. Presentation: Retail License Categories and Food-Beverage Ratio – Travis Hill, Chief Executive Officer, Virginia Alcoholic Beverage Control Authority**

Mr. Hill gave a PowerPoint presentation providing background information on several issues.<sup>2</sup> He gave a general overview of federal and Virginia tied-house laws and a brief history of the development of ABC law in Virginia and the creation of the Virginia Department of Alcoholic Beverage Control (now the Virginia Alcoholic Beverage Control Authority).

Next, Mr. Hill discussed alcohol licenses. He stated that alcohol licenses have existed since the Alcoholic Beverage Control Act was first enacted in 1934 and that there were originally 10 types of licenses. Today, there are over 100 different licenses in three primary subject areas—retail licenses, manufacturer and wholesaler licenses, and permits. He explained that there is frequently a substantial amount of both overlap and variation in the privileges of many of the licenses and that different business entities of the same business type hold varying types of licenses. For example, a grocery store seeking the privilege to sell wine and beer for off-premises consumption could hold either a convenience grocery store license, a gourmet shop license, or a restaurant license, each with differing privileges. Both this overlap and lack of uniformity often create confusion among licensees. Mr. Hill noted that the most popular license type is the wine and beer off-premises license, followed by the wine and beer on-premises license. He stated that at the other end of the spectrum, there are a number of "one-off" boutique licenses that were created for a specific business model and are currently held by no or only a handful of licensees. He emphasized that there are multiple bills introduced and passed by the General Assembly each year that create new license types and expand the privileges of existing licenses.

Mr. Hill next discussed the requirement in § 4.1-124 of the Code of Virginia that localities hold a referendum on the issue of whether to allow the sale of mixed beverages in such localities. He displayed maps showing a pictorial history of dry counties in Virginia from 1968 to the present in 20-year increments. The maps showed that dry counties gradually diminished after the "Whisky Bill" passed in 1968 and that they have continued to diminish as exceptions to the referendum requirement have been granted by the General Assembly in § 4.1-126 of the Code of Virginia to certain properties located in dry counties, allowing businesses located on such properties to sell mixed beverages notwithstanding the referendum requirement. Mr. Hill emphasized that the exceptions contained in § 4.1-126 often create confusion in that the property to which each exception applies is often difficult to discern. He stressed that these exceptions have proliferated over the years and asked the subcommittee to consider whether it would be preferable to instead make the entire state wet and subsequently allow localities to remain dry by opting out through the referendum process.

Mr. Hill then reviewed the history of Virginia's food-beverage ratio and provided an overview of the Mixed Beverage Annual Review (MBAR) process. He explained that a food-

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<sup>2</sup> The full version of Mr. Hill's PowerPoint presentation can be viewed here: [http://dls.virginia.gov/interim\\_studies\\_abcrs.html](http://dls.virginia.gov/interim_studies_abcrs.html).

beverage ratio has existed in some form in Virginia since the local option was passed in 1968 and that it has been modified over the years. He stated that in 1968, the ratio was 51% food to 49% alcohol. In 1980, the ratio was amended to 45% food to 55% alcohol, and in 1990 beer and wine were excluded from the ratio (making the new ratio 45% food to 55% mixed beverages). Mr. Hill then clarified that the MBAR process helps to ensure that licensees are in compliance with the food-beverage ratio through an annual self-reporting requirement of mixed beverage and food sales by mixed beverage licensees. He stated that of the approximately 4,500 to 4,900 mixed beverage licensees in Virginia, approximately 1% have fallen below the required ratio each of the last five fiscal years. He also stated that at least 90% of mixed beverage licensees average monthly food sales above \$10,000. Mr. Hill emphasized, though, that the MBAR process is a self-reporting process and that the true number of licensees that have difficulty in meeting the food-beverage ratio may, in actuality, be much higher. He stated that the food-beverage ratio is difficult for ABC to enforce, as investigating whether a licensee has accurately reported food and mixed beverage sales under the MBAR process requires ABC to undertake an audit, which is both time and resource intensive. He stated that a little over one-third of the cases heard by ABC's Hearings and Enforcement divisions are related to MBARs and that the annual time spent by the Hearing and Enforcement divisions on MBAR issues is equivalent to 10,400 hours.

Finally, Mr. Hill briefly provided some information on the effects of food consumption on alcohol absorption. Mr. Hill stated that each person is different but research shows that generally the consumption of food helps to slow the level of absorption of alcohol by the body. He also stated that the highest absorption rate occurs when the alcohol content of drinks consumed is between 10 and 30 percent.

#### **IV. Presentation: Quantity Limits on Wine, Beer, and Spirit Samples – David May, Attorney, Division of Legislative Services**

Mr. May gave a comprehensive presentation describing the various quantity limits on samples that are contained throughout Title 4.1 of the Code of Virginia.<sup>3</sup> His presentation broke down the sample quantity limits into seven categories on the basis of the type of licensee to which they apply: (i) manufacturers of spirits (§ 4.1-215); (ii) distiller-agents (§ 4.1-119); (iii) certain wine and beer licensees under § 4.1-209; (iv) on-premises beer, on-premises wine and beer, and mixed beverage licensees (§ 4.1-201); (v) certain alcoholic beverage licensees under § 4.1-206; (vi) manufacturers and wine and beer wholesalers (§ 4.1-201.1); and (vii) residential wine and beer manufacturers and gourmet brewing shops (§ 4.1-200). For each category, Mr. May described the types of alcoholic beverages for which each licensee may provide samples, whether there is a quantity limit as to how much of each alcoholic beverage a licensee may provide in a single sample, and whether there is a quantity limit as to the total amount of each type of alcoholic beverage a licensee may provide to a person in one day.

Mr. May highlighted several discrepancies that exist in the sampling privileges of some licensees and noted that while some of the discrepancies may have been intentional (e.g., distinctions as to who may give versus who may sell samples and which type of alcoholic beverages a particular licensee may give or sell), others may have been unintentional. He noted

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<sup>3</sup> The handouts related to this presentation may be viewed here: [http://dls.virginia.gov/interim\\_studies\\_abcrs.html](http://dls.virginia.gov/interim_studies_abcrs.html).

that distiller-agents are the only licensees that are required to track the consumption of samples by each consumer. He also noted that manufacturers and wine and beer wholesalers are the only licensees that are limited to giving samples of no more than three different types of spirits products to each patron.

## **V. Discussion**

Senator McDougle commented that he would like to hear ABC's suggestions for how to restructure the retail licensing system from the ground up. He also stated that he would like to hear ABC's recommendations as to how to reconfigure the food-beverage ratio and the MBAR process, with particular emphasis on what would work best for ABC from an enforcement standpoint, such as moving away from self-reporting and towards a different, more accurate mechanism for enforcement.

On the issue of the food-beverage ratio, Senator McPike requested additional information from Mr. Hill concerning the net effect of excluding wine and beer from the ratio in 1990 on the relative ease or difficulty of licensees in meeting the ratio, especially in comparison to the ratios required by other control states.

Senator DeSteph commented that the food-beverage ratio is currently a significant issue for licensees because, as the price of spirits continually rises and the public's interest in premium, high-priced spirits increases, it becomes increasingly difficult for licensees to meet the ratio. He emphasized that he would like to foster an environment for creative business models to succeed in Virginia and that he would like to explore other options for enforcing the food-beverage ratio that involve more than simply requiring self-reporting by licensees but that would not be so resource-intensive as to require ABC to utilize forensic accountants.

## **VI. Public Comment**

Mr. Hill stated that ABC will take on these tasks. On the food-beverage ratio issue in particular, he stated that while ABC understands this issue from an enforcement perspective, it plans to meet with industry stakeholders to obtain a better understanding of how the issue impacts business owners. Mr. Hill emphasized that the key to addressing the issue of the food-beverage ratio is determining the amount of food sales that a business must average in order to be considered a legitimate restaurant, rather than a bar.

Tom Lisk, representing the Virginia Restaurant, Lodging & Travel Association (the Association), echoed Mr. Hill's assertion that the key analysis in addressing the issues with the food-beverage ratio requires a determination as to when a restaurant is a bona fide restaurant. He stated that the Association supports a consolidation of the retail licensing scheme. On the issue of sample quantity limits, he stated that the law on sample quantity limits has evolved in such a way that "samples" have morphed into full-size drinks. For example, the day spa, annual arts venue events, art instruction studio, and meal assembly kitchen licenses under § 4.1-206 permit licensees to serve full glasses of wine. He stressed that many licensees are permitted to serve large "samples" without any corresponding requirement to serve food and that this has essentially created bars in Virginia.

Speaking to the mixed beverage referendum requirement, Mr. Lisk expressed concern that the 30 exceptions to the requirement that have been granted in the Code of Virginia have created inequity among business owners in the dry counties where exceptions have been granted.

He explained that an exception provides one particular business owner in the affected location a competitive advantage over all other business owners because that business owner is permitted to sell and serve mixed beverages. He stated that it should not be the role of the state to create competitive advantages for particular businesses.

Robert Brown, the owner of 12 restaurants in Hampton Roads and North Carolina, stated that the biggest challenge that restaurant owners face in meeting the food-beverage ratio is that the price of spirits has gone up dramatically over the last 20 years and that customers are buying high-priced mixed drinks more frequently. He also stated that with sports and entertainment bars such as his, customers frequently come to watch sports games, participate in karaoke, and so forth, and that he cannot control how much food those customers buy.

Mr. Brown requested that the subcommittee consider requiring that all licensees simply serve food anytime that alcoholic beverages are served. He stressed that the public policy reasons behind requiring that food be served anytime that mixed beverages are served applies across all licensees, not just those who serve mixed beverages. His other key suggestions to the subcommittee were to (i) impose a stiff penalty for failure of a licensee to keep the kitchen open at all times that alcohol is served and (ii) lower the food-beverage ratio to require 25% food sales, rather than 45%.

## **VII. Adjournment**

There being no further business before the subcommittee, the meeting was adjourned by Senator DeSteph with the intention of reconvening on July 16, 2018.