

**SENATE COMMITTEE ON
REHABILITATION AND SOCIAL SERVICES**

ABC SUBCOMMITTEE - 2018 INTERIM

JULY 16, 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 DeSteph called to order the second meeting of the special subcommittee (the subcommittee) of the Senate Committee on Rehabilitation and Social Services studying certain Alcoholic Beverage Control (ABC) laws.¹

II. Proposals Related to Quantity Limits on Wine, Beer, and Spirit Samples – Jessica Budd, Attorney, Division of Legislative Services

Continuing from the presentation given by David May at the previous meeting on quantity limits on wine, beer, and spirits samples contained throughout Title 4.1 of the Code of Virginia, Ms. Budd outlined several proposals for addressing some of the inconsistencies in sampling privileges among licensees.² The first proposal focused on the privileges of wine and beer licensees governed by § 4.1-209 of the Code of Virginia. Ms. Budd drew the subcommittee's attention to the fact that there are no daily quantity limits enumerated in § 4.1-209 on the total amount of wine or beer samples that may be given or sold by the licensees governed by § 4.1-209 to a person in one visit. She explained that subsection D of § 4.1-209 allows (i) persons granted retail on-premises wine and beer licenses, (ii) persons granted retail on-and-off premises wine and beer licenses, and (iii) person granted wine and beer licenses pursuant to subsection B of § 4.1-210 (mixed beverage licensees) to give or sell samples of wine or beer to customers for on-premises consumption. Subsection D imposes a quantity limit on the total amount of wine or beer that may be given in a single sample—a single sample of wine may contain only two ounces and a single sample of beer may contain only four ounces. Section 4.1-206 also allows (a) gourmet shop licensees, (b) gift shop licensees, and (c) gourmet oyster house licensees to give or sell samples of wine or beer to customers to whom wine or beer may be lawfully sold. Similar to the aforementioned licensees, § 4.1-209 imposes single-sample quantity

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

² The handouts related to this presentation may be viewed here:
http://dls.virginia.gov/interim_studies_abcrs.html.

limits on these wine and beer samples—a single sample of wine may contain only two ounces and a single sample of beer may contain only four ounces. Ms. Budd explained that for all of these licensees, however, § 4.1-209 imposes no explicit limit on the total number of wine or beer samples that may be given or sold to a person in one visit.

Ms. Budd further explained that subdivision A 11 of § 4.1-201 may be read to impose a limit on the total number of samples that may be given or sold to a person in one visit. That subdivision reads, "No more than two product samples shall be given to any person per visit." However, this provision applies only to retail on-premises wine and beer licensees and mixed beverage licensees. It does not apply to the remainder of the licensees at issue in § 4.1-209, including gourmet shop licensees, gift shop licensees, and gourmet oyster house licensees. Consequently, under a strict reading of the Code, there is no limit on the total amount of samples that these licensees may give or sell to a person in one visit.

To address this issue, Ms. Budd suggested imposing an eight-ounce total limit on beer samples and a four-ounce total limit on wine samples on all of the licensees with sampling privileges in § 4.1-209. She explained that these are the same total limits that are imposed by subdivision A 11 of § 4.1-201 on some of these licensees, but not all, and stressed that this amendment would clarify § 4.1-209 by reconciling it with the limits contained in § 4.1-201. This suggestion would create uniformity by imposing the same daily sample limits upon all of the licensees in § 4.1-209. Mr. May added that even though the Code does not *explicitly* impose a total limit on all of the licensees in § 4.1-209, the Virginia Alcoholic Beverage Control Authority has stated that, *in practice*, it applies the total limits contained in subdivision A 11 of § 4.1-201 (eight ounces of beer and four ounces of wine) to all of the licensees in § 4.1-209. He stated that all licensees, except residential wine and beer manufacturers, are subject to a total limit on the amount of samples that they may serve a person and that it looks like such a limit was intended in this circumstance but that the Code is unclear and confusing on the issue. He emphasized that staff's suggestion to impose an eight-ounce total limit on beer samples and a four-ounce total limit on wine samples on all of the licensees with sampling privileges in § 4.1-209 is intended to simply be clarifying and would not substantively change the current sampling privileges of any licensees since ABC is already applying these limits.

Staff's second topic focused on a subset of licenses contained in § 4.1-206. Those licenses allow the licensee to give customers glasses of wine or beer. Three out of the four licenses—day spa, annual arts venue event, and art instruction studio licenses—permit the licensee to give customers one glass of beer or two glasses of wine. Meal-assembly kitchen licensees, however, are permitted to give customer *two* glasses of beer or two glasses of wine—which amounts to 12 more ounces of beer than the other three licensees are permitted to serve. To address this inconsistency, Ms. Budd suggested increasing the amount of beer that day spa licensees, annual arts venue event licensees, and art instruction studio licensees may give to customers from one 12-ounce glass of beer to two 12-ounces glasses of beer, which would bring the privileges of those licensees up to par with the privileges of meal-assembly kitchen licensees.

III. Alternatives to the Current Food-Beverage Ratio and a Comparison of Past and Current Food, Drink, and Spirit Prices – David May, Attorney, Division of Legislative Services

To provide the subcommittee with some background information to assist in its consideration of possible changes to the food-beverage ratio, Mr. May gave a presentation highlighting the changes in the price of food, mixed beverages, and spirits over time.

Senator DeSteph provided some anecdotal evidence as to changes in the cost of food and mixed beverages over time. He stated that he had looked at menus for several establishments that had been in business over a number of decades and that he had found that a hamburger cost approximately \$5 30 years ago and approximately \$6 today. He also observed from the menus that a "Jack and Coke" cost approximately \$3 30 years ago and costs approximately \$7 or \$8 today.

Mr. May then presented statistics showing changes in the cost of spirits between 1988 and 2018. He highlighted the specific cost changes for 10 major spirits brands and then presented aggregate data showing that the average cost of a bottle of spirits had increased by \$17.41 (or 81%) over the last 30 years. Mr. May noted that the industry has seen a trend over the last several years in which consumers have shown a preference for more high-end, expensive spirits and that this trend may be contributing to restaurants' difficulty in meeting the food-beverage ratio.

Mr. May then presented several alternatives to the current food-beverage ratio.³ He highlighted approximately 10 different approaches and discussed the pros and cons of each one. He reiterated that the overarching goal of the subcommittee in this area is to define what is a bona fide restaurant. With that goal in mind, he highlighted options 5A (replace ratio with a minimum food sale requirement), 5B (keep the current ratio but exempt licensees who meet a minimum food sale requirement), and 5C (lower the current ratio and exempt licensees who meet a minimum food sale requirement). He explained that if the subcommittee could find a minimum food sale amount at which the subcommittee would be comfortable that the establishment is a bona fide restaurant, doing so would save ABC a tremendous amount of money and resources that are currently being spent on enforcement and would allow ABC to concentrate those resources on licensees that are not meeting the minimum food sale requirement. Moreover, a minimum food sale option would also save licensees a significant amount of time and resources that are currently spent on recordkeeping and complying with the current food-beverage ratio.

IV. Public Comment

Tom Lisk, representing the Virginia Restaurant, Lodging & Travel Association (the Association), stated that the Association supports efforts to try to standardize quantity limits on wine, beer, and spirits samples. He emphasized that consistency serves the public interest by making the rules uniform across the board. He stressed the importance of limiting samples in establishments that are not restaurants and do not serve food. He also drew the subcommittee's attention to the fact that several of the licensees in § 4.1-206 are permitted to serve full glasses of

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wine or beer, not merely samples, and asked the subcommittee to pay special attention to this distinction.

Mike Byrne, a citizen with experience operating several restaurants in Virginia, stated that he applauds the idea of getting samples under control. He expressed great concern with the fact that several of the licensees in § 4.1-206 are permitted to serve full glasses of wine or beer, and he stressed that this practice goes far beyond sampling. He stated that restaurants lose business due to the fact that patrons can get free glasses of wine and beer from these licensees.

Speaking to the issue of changes in food, mixed beverage, and spirits costs over time, Mr. Byrne stated that he disagreed that the costs of mixed beverages are increasing relative to food costs. He stated that, in his opinion, food costs have increased significantly over time as consumers have become more attuned to the quality of food that they are eating and that, in his experience, most customers have continued to order rail drinks that have remained relatively inexpensive instead of cocktails with premium spirits.

Mr. Lisk disagreed, stating that in his experience as a consumer, the cost of cocktails has risen dramatically. He reminded the subcommittee that the food-beverage ratio was imposed upon restaurants in an effort to control the quantity of spirits that is sold. He also reminded the subcommittee that sales of wine and beer do not affect a restaurant's food-beverage ratio. He suggested that measuring the sales of food and spirits by restaurants does not have to be the only way to control the quantity of spirits that are sold. He proposed instead that the food-beverage ratio be calculated on the basis of food sales by a restaurant relative to the liters of spirits (regardless of proof) sold. Mr. Byrne stated that he favors this suggestion.

Mr. May described a two-year pilot program that began in 2009 that took a somewhat similar approach to calculating the food-beverage ratio. Under the pilot program, certain mixed beverage licensees were required to generate at least \$350 in food sales per proof gallon of spirits purchased from the Board. Mr. May stated that at the end of the two-year pilot program, the results for most licensees stayed the same and that there were questions about the integrity of the results for some of the licensees who had shown improvement.

In response to proposed alternatives 5A, 5B, and 5C, which each involve setting a minimum food sale requirement and exempting licensees who meet the requirement from the current food-beverage ratio, Mr. Byrne expressed concerns that the subcommittee would pick a number that is too low. He stated, for example, that a minimum food sale requirement of \$10,000 per month would be far too low, as certain food carts likely sell that much food in one month and they are not what he considers to be a bona fide restaurant. He stated a strong preference for keeping the food sale requirement relative to the amount of alcohol that is being sold.

Mr. Lisk commented that there is some logic to the approaches in 5A, 5B, and 5C. He stated that, in some respects, they are similar to what is done currently and that they would reduce enforcement costs. He agreed that, logically, at some dollar amount everyone should be able to agree that a restaurant is a bona fide restaurant. However, he stated that the restaurant industry is currently divided on this issue.

Speaking to proposed alternative 7, which would involve creating a "tavern" or "entertainment" license separate from mixed beverage licenses that are subject to the food-beverage ratio, Mr. Lisk stated that while the industry strongly believes that food should always be tied to the sale of alcohol, the industry is concerned about continued carve-outs and

exceptions to the requirement to sell food along with alcohol, and the industry is ready to work on building a framework to address this issue and to avoid the further creation of additional carve-outs and exceptions.

V. Discussion

On the issue of quantity limits on wine, beer, and spirits samples, Senator DeSteph expressed the subcommittee's desire to limit the scope of the subcommittee's consideration of sample quantity limits to determining what is reasonable for beer and wine samples. Several subcommittee members emphasized that they wish to promote consistency among the Code provisions governing sample quantity limits and that their primary focus is public safety. At the same time, they expressed a desire to create a pro-business regulatory environment for licensees and to avoid contracting any existing sampling privileges. Senator Reeves commented, and Senator DeSteph agreed, that he sees beer samples, wine samples, and spirits samples as separate silos within the law, and that he sees the goal of the subcommittee as not changing those silos, but as creating equality among similar licensees within each of those silos.

Senator Reeves asked Travis Hill, Chief Executive Officer of the Virginia ABC, how cleaning up the Code provisions related to quantity limits on samples would affect ABC's enforcement operations. Mr. Hill responded that anything that helps the agency to explain the rules to licensees would be very beneficial.

On the issue of the food-beverage ratio, the subcommittee favored Mr. Lisk's proposal to alter the food-beverage ratio by calculating it on the basis of food sales by a restaurant relative to the liters of spirits (regardless of proof) sold. Senator DeSteph asked staff to work with Mr. Hill on further exploring the proposal.

VI. Adjournment

There being no further business before the subcommittee, the meeting was adjourned by Senator DeSteph with the intention of reconvening on August 21, 2018.