

**SENATE COMMITTEE ON
REHABILITATION AND SOCIAL SERVICES**

ABC SUBCOMMITTEE - 2018 INTERIM

AUGUST 21, 2018 – 10:00 A.M.
900 EAST MAIN STREET, RICHMOND, VIRGINIA
SENATE COMMITTEE ROOM A

BRYCE REEVES, COMMITTEE CHAIR

BILL DESTEPH, SUBCOMMITTEE CHAIR

I. Call to Order and Opening Remarks

Senator DeSteph called to order the third 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. Presentation: Licensure Consolidation and Food-Beverage Ratio - Travis Hill, Chief Executive Officer, Virginia Alcoholic Beverage Control Authority

At the subcommittee's request, Mr. Hill presented three potential modifications to the current food-to-beverage ratio imposed on mixed beverage restaurant licensees pursuant to § 4.1-210.² Under current law, such 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. Mr. Hill explained that the Virginia ABC Authority (the Authority) has worked with stakeholders to craft potential modifications to the food-to-beverage ratio that would account for licensees selling high-priced spirits, while also reducing burdens on licensees, promoting efficient enforcement, and maintaining public safety.

Mr. Hill first presented a volume-based proposal that would maintain the use of a food-to-beverage ratio but would calculate such ratio based on the amount or liters of spirits sold by a licensee instead of the price charged for such spirits. The rationale supporting this proposal, which has been discussed by the subcommittee previously, was that a volume-based ratio would maintain the requirement imposed by current law that licensees sell food in proportionate amounts to their spirit sales, while also offering a standard that would accommodate licensees specializing in high-end spirits. However, Mr. Hill pointed out that this system might complicate the mixed beverage audit and review (MBAR) process for licensees and the Authority due to the extra calculations necessary to identify the liters of spirits sold.

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 Mr. Hill's PowerPoint presentation may be viewed here:
http://dls.virginia.gov/interim_studies_abcrs.html.

Mr. Hill's next proposal was to provide, as an alternative to the current food-to-beverage ratio, a flat minimum monthly or annual food sale requirement. For example, instead of requiring licensees to maintain and report 45 percent food sales, licensees could instead show that they met or exceeded a minimum monthly food sale requirement of \$50,000. Mr. Hill explained that if this proposal were to move forward, it would be up to the subcommittee to determine the specific amount of food sales that would be required. He further stated that, provided that a sufficient amount of food sales were required, this proposal would offer a clear and simplified standard to licensees, promote efficient enforcement, and maintain public safety.

The third proposal offered by Mr. Hill was very similar to the proposal detailed immediately above, except that the minimum monthly food sales required for licensees would be tiered based on the seating capacity of the licensee's restaurant. Currently, the Authority provides mixed beverage restaurant licenses in three separate tiers: 100 seats or less, more than 100 seats but less than 151, and 151 seats or more. Mr. Hill stated that the benefits of this proposal would be very similar to the benefits of a flat minimum monthly food sales requirement but would also accommodate for the varying establishment sizes of mixed beverage restaurant licensees.

Finally, Mr. Hill responded to the subcommittee's prior request that the Authority present a proposal to consolidate the large number of retail licenses currently available in the Commonwealth. Mr. Hill agreed with the subcommittee that many of the current retail licenses could be consolidated, but he noted that this would be a particularly large project and would not likely be feasible for the 2019 Session. Moreover, Mr. Hill commented that in analyzing the options for the consolidation of retail licenses, it may be more efficient to take a look at all ABC licenses and coordinate a statewide license consolidation and fee restructure in one comprehensive effort.

III. Discussion

Commenting on the current food-to-beverage ratio, Senator Spruill noted that many restaurant patrons wish to buy alcohol without food. As such, it can be difficult for licensees to meet the requirements of the food-to-beverage ratio on some occasions. Chairman DeSteph agreed, noting that many patrons eat dinner at one establishment and subsequently travel to another venue for drinks. Following these comments, the subcommittee members noted that the laws of the Commonwealth do not require patrons to purchase food with their alcohol and that imposing such a requirement would not be desirable. Chairman DeSteph further stated that in addition to the problems legitimate restaurants face in meeting the current food-to-beverage ratio, the MBAR system is onerous on both licensees and the Authority. He stated that the public policy justifications of the current food-to-beverage ratio could be maintained with a system that imposed simplified reporting requirements and allowed for concentrated enforcement.

Responding to Mr. Hill's proposal for a comprehensive licensure consolidation and fee restructure, Senator Reeves agreed that it would be more efficient to analyze all ABC licenses at one time instead of using a piecemeal approach. Senator Reeves stated that although a separate consolidation of retail licenses may be attainable in short order, it would likely result in the need to make further changes down the road and may present challenges to accomplishing a statewide fee restructure. The other subcommittee members agreed that a comprehensive approach would likely yield better results and informally requested that the Authority prepare a proposal to accomplish the license consolidation and free restructure through a work group during the 2019 interim.

IV. Public Comment

Eric Terry, President of the Virginia Restaurant, Lodging, and Travel Association, stated that it has been difficult for all stakeholders in the restaurant industry to come to an agreement regarding a reform to the food-to-beverage ratio. He stated that this disagreement stems in part from the fact that the dynamics of restaurants in the Commonwealth vary largely based on their location and business plan. He explained that the industry collectively agrees that Virginia needs a system that avoids the proliferation of "bars" while also ensuring that the restaurant industry maintains opportunities to thrive and remain competitive. Mr. Terry noted that while many licensees like the idea of a flat minimum food sale requirement due to its simplicity and effectiveness, other licensees prefer the status quo.

Mike Byrnes, a restaurant operator and former brewery owner, expressed content with the current food-to-beverage ratio. He stated that the MBAR process consists of relatively simple math and reporting requirements. Moreover, he stated that Virginia's restaurant industry was "on fire" and, consequently, maintaining high food sales was not a problem. Jerry Cable, restaurant owner and member of the Downtown Business Group, agreed that the current food-to-beverage ratio should not be altered and suggested that it helps maintain public safety by ensuring adequate food sales.

William McCormack, a restaurant owner and operator, explained that the cheapest drink in his establishment is \$8; however, he also sells spirits that cost \$325 per shot. He highlighted the fact that, based on these numbers, if one patron buys two of his cheapest drinks and only one hamburger, he would not meet the food-to-beverage ratio for that patron. Moreover, the sale of one \$325 shot makes it nearly impossible to meet his ratio for an entire day or more. He explained that because his establishment specializes in high-end spirits, he faces problems with the food-to-beverage ratio that many licensees do not encounter. Mr. McCormack suggested that an alternative to the current ratio be crafted that would allow ABC to monitor the proportionality of his food-to-spirit sales via alternative calculations, recognizing that his difficulties in meeting the current ratio stem from the fact that he specializes in high-end drinks rather than from a failure to sell a sufficient amount of food.

Tom Lisk, Virginia Hospitality and Travel Association, stated that increases in the average price of spirit bottles, coupled with a market trend for high-end drinks, highlights the reasons why the current food-to-beverage ratio causes trouble for some licensees. Mr. Lisk also called the subcommittee's attention to the fact that wine and beer are not included in the food-to-beverage ratio, which allows wine and beer licensees to sell an unlimited amount of wine and beer upon reaching a monthly threshold of \$2,000 in food sales. Mr. Lisk commended the Authority for its willingness to work with the restaurant industry in attempting to craft an alternative to the current food-to-beverage ratio.

V. Adjournment

There being no further business before the subcommittee, the meeting was adjourned by Chairman DeSteph with the intention of holding another meeting on September 18, 2018.