

Senate Rehabilitation & Social Services MBAR Committee

Virginia ABC Overview

June 5, 2018

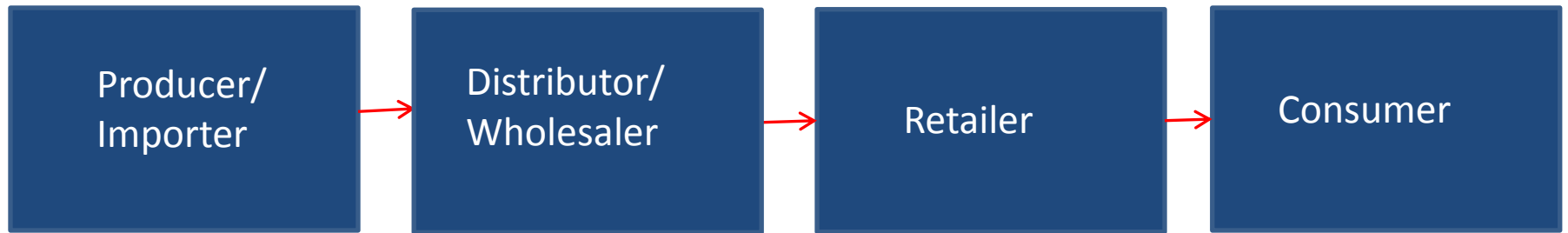


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Agenda

- ABC Background
- Alcohol License Overview
- Food Ratio Overview
- Food Research
- Next Steps

USA Market Overview



Wineries,
Breweries,
Distilleries,
Private Label
Brands, Importers

Distributors need
to be assigned by
states and can
only sell to the
retailers in their
state

Off-premise
On-premise

Federal Tied-House Laws

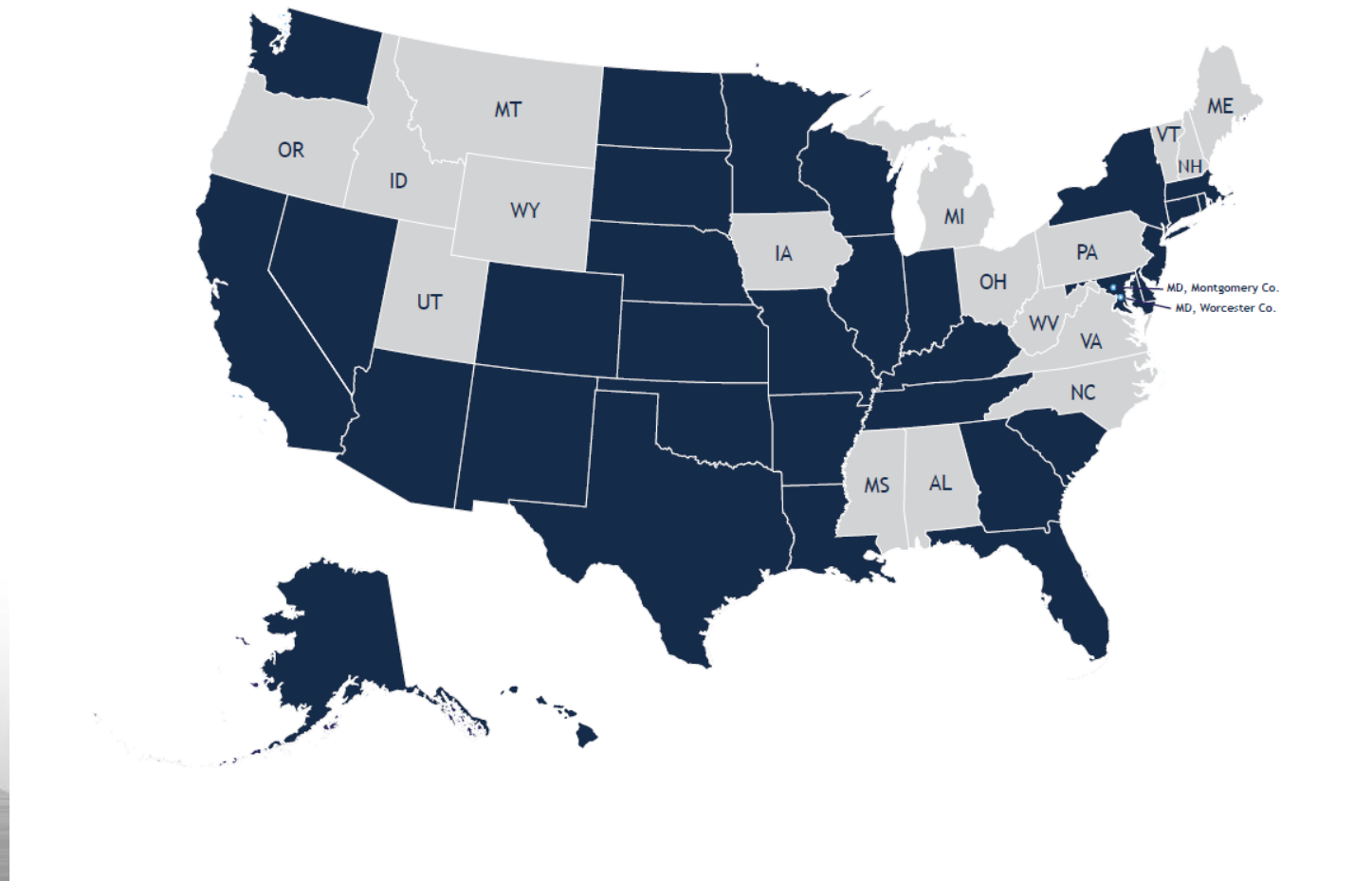
Federal Law

- Prohibits unlawful inducements including:
 - Interest in a retail license or retail property
 - Furnishing things of value
 - e.g. Free warehousing
 - Cooperative advertising
 - Renting display space
 - e.g. Slotting fees

Virginia Law

- §4.1-215
- §4.1-216
- VAC 5-30-30

Control States 2018



Virginia ABC was born

In 1934, Virginia adopted a combination monopoly and license system, thus becoming a control state, and the Virginia Department of Alcoholic Beverage Control was born.



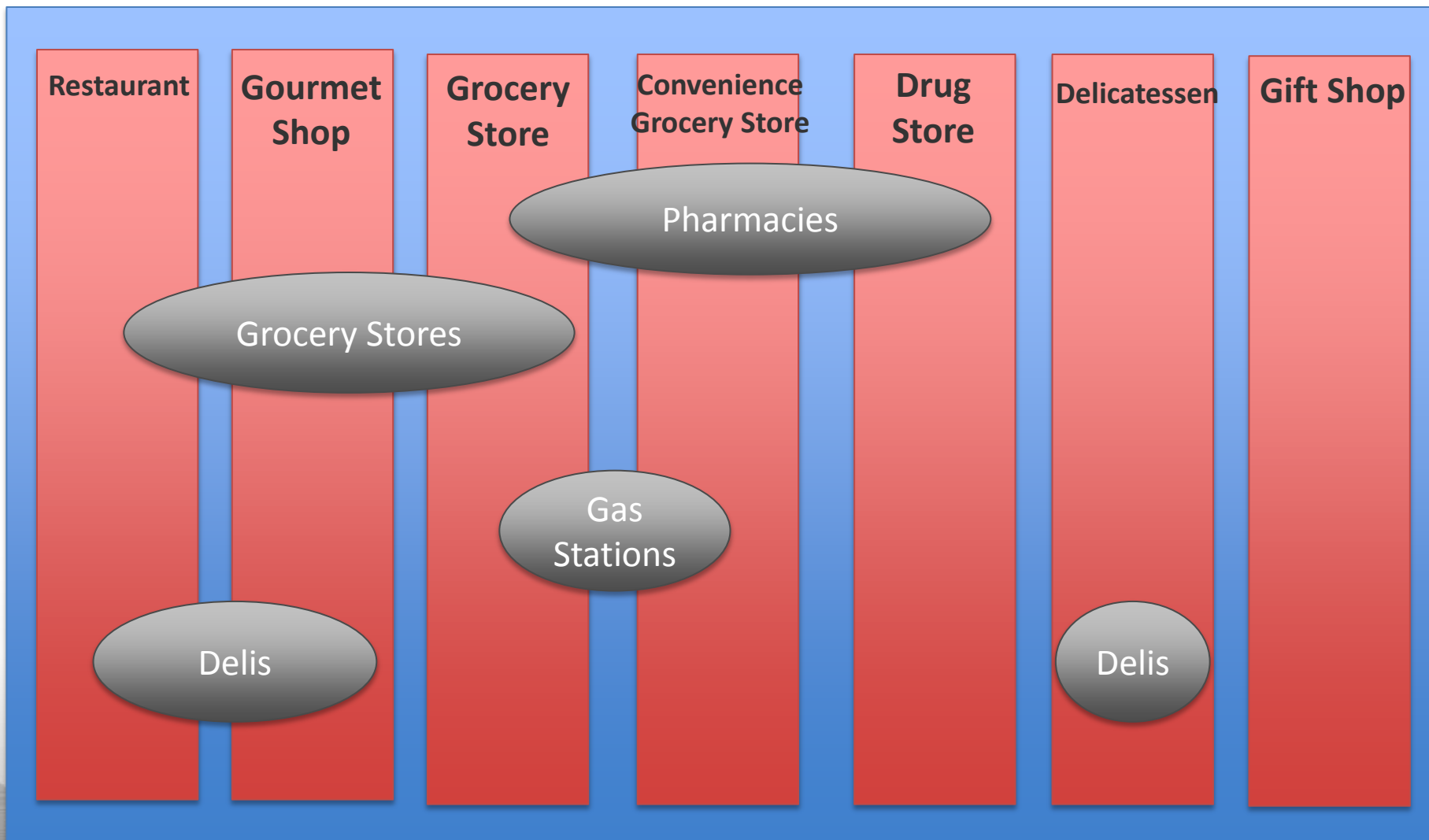
Alcohol Licenses

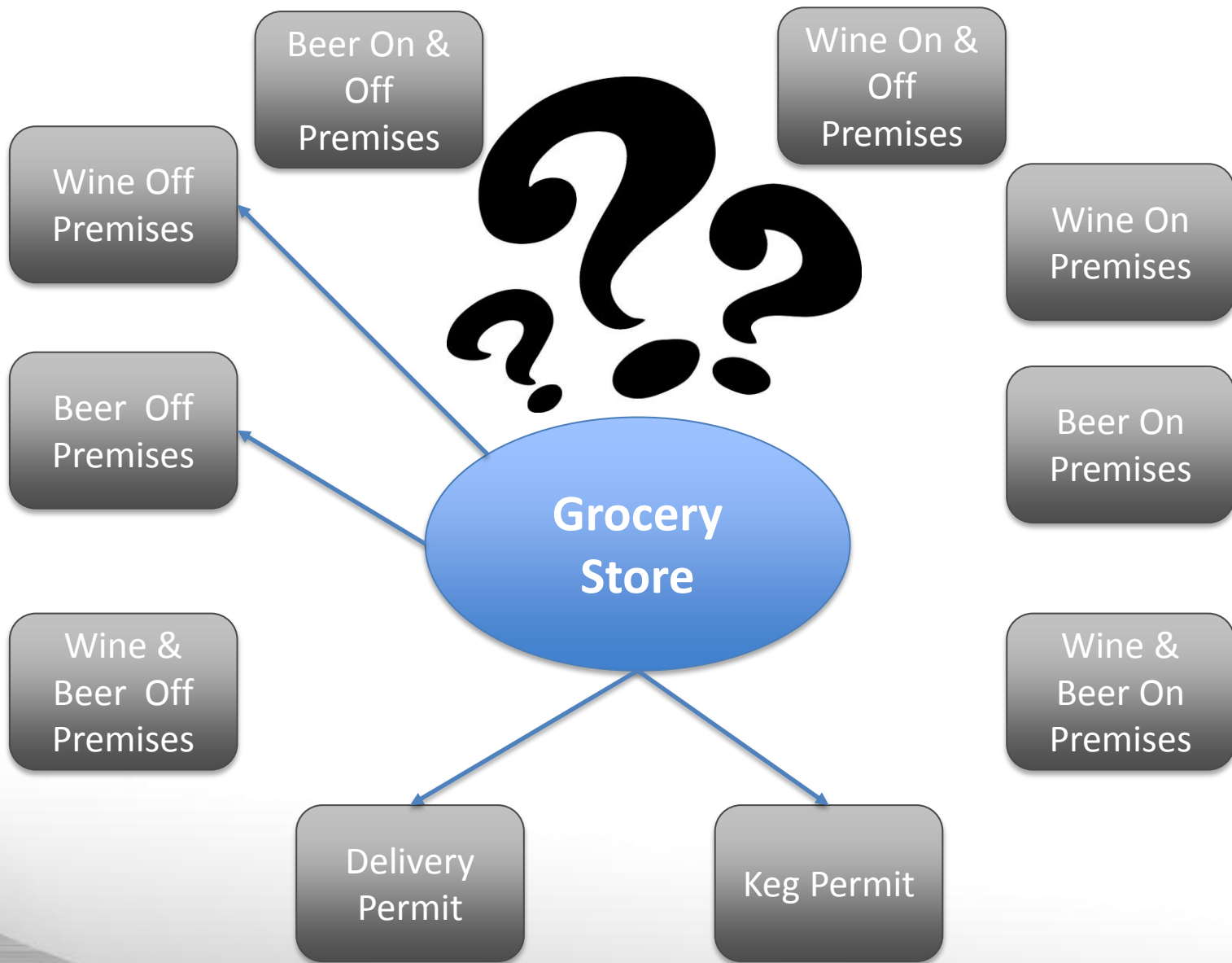
- Licenses have existed since the origination of the Alcoholic Beverage Control Act and the creation of Virginia ABC in 1934.
- The 10 original licenses have grown to over 100 different license types
- Title 4.1 of the Code of Virginia establishes license and fees

Alcohol Licenses

- There are three primary license type subject areas:
 - Retail licenses
 - Currently 68 privilege combinations
 - Producer/Wholesaler licenses
 - Currently 75 privilege combinations
 - Permits
 - §4.1-212 lists 18 permits
 - Only 6 provide for fees to be assessed

Wine & Beer Off Premise







Alcohol Licenses

- The highest volume retail licenses:

License Privilege	Active Licensees	License Fee
Wine & Beer Off Premises	5,731	\$230
Wine & Beer On Premise	5,538	\$300
Mixed Beverage Restaurant (Seating – over 150 seats)	2,163	\$1,430
Mixed Beverage Restaurant (Seating – 1 to 100 seats)	1,855	\$560
Wine & Beer On and Off Premises	1,617	\$600

**Licensee count as of April 2018*

Alcohol Licenses

- At the other end of the spectrum there are a number of “boutique” licenses with only 1 or 2 licensees

License Type	Active Licensees
Historic Cinema House	0
Canal Boat Operator	0
Annual MB Banquet License	0
Commercial Lifestyle Center	1
Meal Assembly Kitchen	1
Gourmet Oyster House	1
Equine Sporting Event	1
Annual MB Motor Sports Racing Track	1
Annual MB Motor Sports Facility (NASCAR)	2
Hospital	2

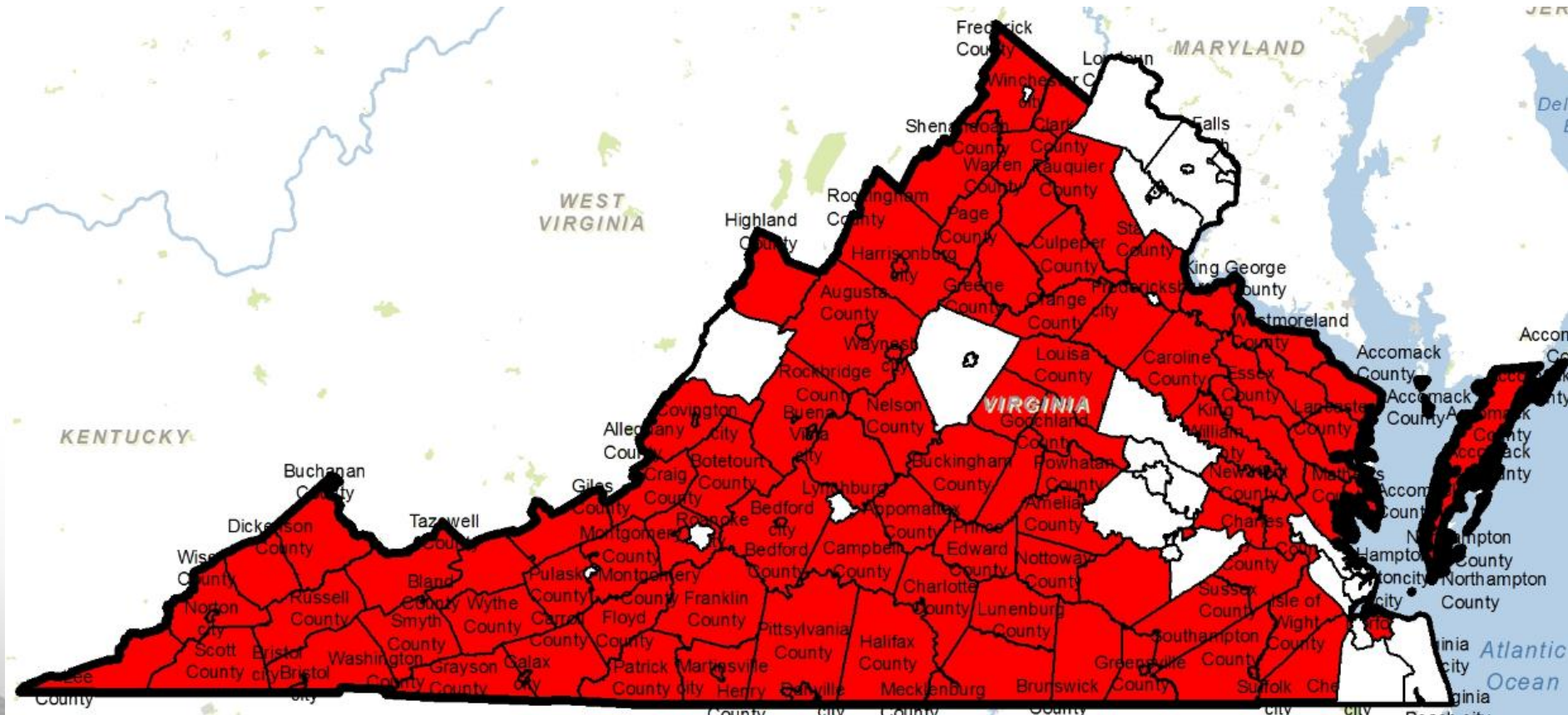
**Licensee count as of April 2018*

New Alcohol Licenses

- The General Assembly and Virginia ABC see multiple bills each year relating to new license types and expansion of existing privileges

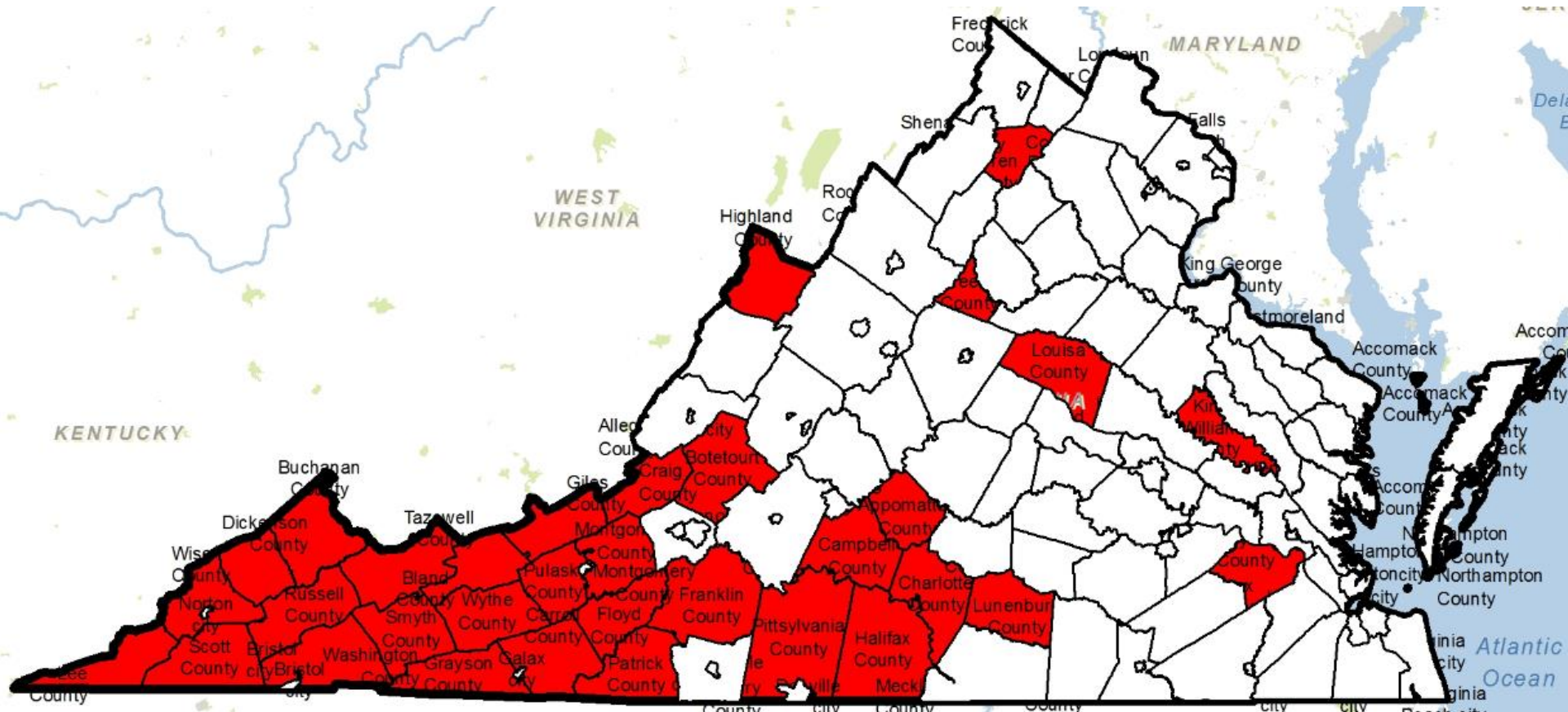
Year	# Bills Introduced	# Bills Approved	Total # New Licenses Added
2018	15	5	2 new; 2 expansion of existing licenses
2017	13	7	2 new; 3 expansion of existing licenses
2016	9	3	1 new; 2 expansion of existing licenses
2015	8	3	2 new; 1 expansion of existing license
2014	6	3	2 new; 1 expansion of existing license

“Dry” Map – After Nov. 5, 1968



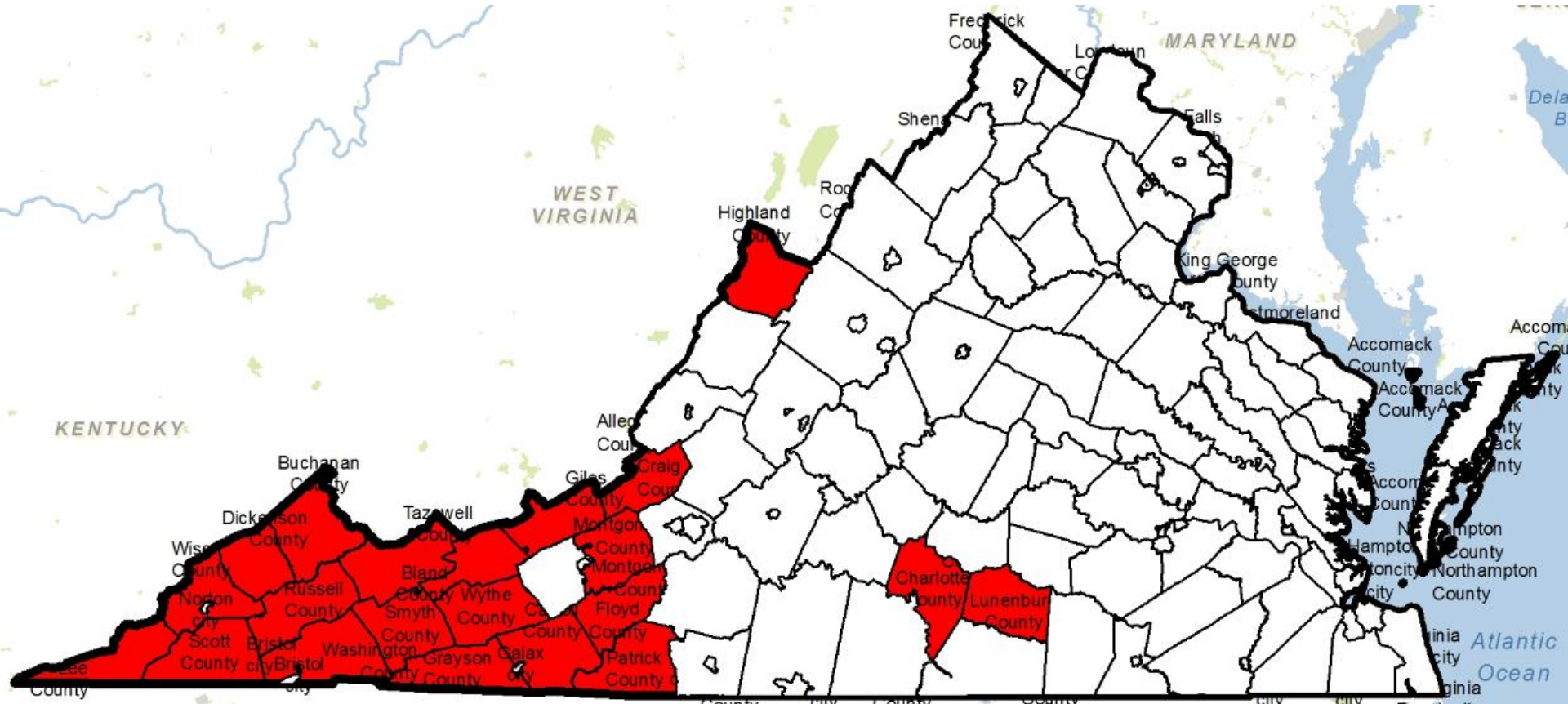
- *“Dry” means the counties that do not permit the consumption of liquor by the drink.*
- *Exceptions may exist for towns or supervisor’s election districts within certain county borders*

“Dry” Map – June 30, 1990



- *“Dry” means the counties that do not permit the consumption of liquor by the drink.*
- *Exceptions may exist for towns or supervisor’s election districts within certain county borders*

“Dry” Map – Current Day



- “Dry” means the counties that do not permit the consumption of liquor by the drink.
- Exceptions may exist for towns or supervisor’s election districts within certain county borders

Exceptions to Mixed Beverage Referendum

- § 4.1-126 of the Code of Virginia carves out exceptions to the previous maps by bypassing the referendum requirement
 - There are currently 30 exceptions defined in §4.1-126
 - Examples:
 - (viii) at an altitude of 2,645 feet or more above sea level on land containing at least 750 acres used for recreational purposes and located within two and one-half miles of the Blue Ridge Parkway
 - (xi) property consisting of at least 10,000 acres and operated as a resort located in any county with a population between 19,200 and 19,500
 - (xviii) on property within the boundary of any town incorporated in 1875 located adjacent to the intersection of Interstate 81 and Route 91
 - (xxiv) on property located within 1,500 feet of Exit 26 on Interstate 81
 - (xxvi) on property within the boundary of any town incorporated in 1894 consisting of 1.9 square miles and, prior to the town's incorporation, known as Guest Station
 - (xxx) on property located on State Route 685 approximately 1,600 feet east of the intersection of State Routes 652 and 685;

Exceptions to Mixed Beverage Referendum

- The General Assembly and Virginia ABC see multiple bills each year relating to these exceptions

Year	# Bills Introduced	# Bills Approved	Total # Exceptions Added
2018	1	1	Expanded existing exception
2017	3	3	3 new; 1 expansion of existing exception
2016	1	1	1 new
2015	1	1	4 new
2014	1	1	3 new

Mixed Beverage Ratio

- Based on National Alcoholic Beverage Control Association (NABCA) research, 9 of 18 control jurisdictions (including VA) have a ratio and 12 of 20 open states who reported information have a ratio of some sort.
- Ratio implementation varies greatly
 - UT: Must have food sales equal to 70% of total combined sales
 - NH: Required to do 50% in food sales, unless they sell \$75,000 in food during the licensing year
 - PA: No provision specific to food vs. alcohol sale ratio, however, the Liquor Code defines a "restaurant" as a reputable place which is principally used for the purpose of providing food for the public
 - NC: Food sales must be 30% of total sales

- Since the local option was passed in 1968, a food ratio has existed but has been modified over the years

Mixed Beverage: Food Ratio

- **1968** - “Whiskey Bill” passes; Permits localities to vote on whether they wish to offer liquor-by-the drink; 51% food to 49% alcohol
- **1980** – The 45% food to 55% alcohol ratio was created
- **1990** – Beer and wine were excluded from the ratio. New ratio is 45% food to 55% mixed beverages
- **2016** – ABC updated definition of “meals”
- **2017** – HB 1216 clarified food requirement

Current State

- The Mixed Beverage Annual Review (MBAR) is the annual reporting of mixed beverage and food sales by mixed beverage licensees
- The report is due within 30 days after the end of the mixed beverage license year
- In FY2017, 4,866 MBARs were reviewed

VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC)					
MIXED BEVERAGE ANNUAL REVIEW					
SALES					
1 Month & Year for Sales	2 Food & Nonalcoholic Beverage Sales	3 Mixed Beverage Sales	4 Wine & Beer Sales	5 Miscellaneous Sales	6 MONTHLY SALES
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
	.00	.00	.00	.00	.00
7 TOTAL SALES	.00	.00	.00	.00	8 GROSS SALES
	.00	.00	.00	.00	.00
PURCHASES					
9 TOTAL PURCHASES	Food & Nonalcoholic Beverage Purchases	Mixed Beverage Purchases	Wine & Beer Purchases	Miscellaneous Purchases	10 GRAND TOTAL PURCHASES
	.00	.00	.00	.00	.00

"I certify that this report and the accompanying inventories have been examined by me and to the best of my knowledge and belief are complete, true and accurate."

Signature _____ Date _____

Print Name _____

MBAR Schedule of Penalties Established by SB 1349 Study (2013)

- For a ratio of 44% or higher (up to 45%): Written Warning
- For a ratio of greater than 30%, but less than 44%
 - 1st offense: 30 day suspension lifted at the end of 15 days upon payment of \$1,000
 - 2nd offense: 60 day suspension lifted at the end of 30 days upon payment of \$2,000
 - 3rd offense: Revocation of license
- For a ratio of 30% or less: Revocation of license
- Fraudulent MBAR reports: Revocation of license

Operational Stats

- Of the roughly 4,500 – 4,900 mixed beverage licensees, approximately 1% have fallen below the required ratio each of the last five fiscal years.

Fiscal Year	Food Ratio < 45%
FY 2013	66
FY 2014	61
FY 2015	52
FY 2016	34
FY 2017	44
Total	318

Operational Stats

- At least 90% of mixed beverage licensees average monthly food sales above \$10,000.

Licenses Subject to Ratio	# of Active Licenses	% of Total Licenses
Mixed Beverage Restaurant (Seating Capacity: 1-100 seats)	1,855	9%
Mixed Beverage Restaurant (Seating Capacity: 101-150 seats)	960	5%
Mixed Beverage Restaurant (Seating Capacity: 151+ seats)	2,163	10%
Mixed Beverage Caterer	185	1%
Mixed Beverage Caterer Limited	75	0%
Total	5,238	25%

**Licensee count as of April 2018*



Operational Stats

- 38 licenses have been revoked over the past 5 fiscal years as a result of MBAR infractions
- A little over one-third of cases heard are related to MBARs
- Late MBARs are the #2 most filed annual charge
 - The only charge filed more often is underage buyer (UAB)
- Annual time spent on MBAR issues in the Hearings and Enforcement divisions is equivalent to 10,400 man hours

Past Ratio Bill Efforts

- **12 “ratio” bills have been introduced in the past 5 General Assembly sessions**
 - **2009 – 2013:** No “ratio” bills
 - **2014:** 2 “ratio” bills
 - SB 502 (Favola & Ebbin) and SB 642 (McEachin)
 - **2015:** 2 “ratio” bills
 - HB 1814 (DeSteph) and HB 1815 (DeSteph)
 - **2016:** 5 “ratio” bills and MBAR Study by joint subcommittee
 - HB 171 (Albo), HB 219 (Taylor), SB 373 (Ebbin), SB 488 (DeSteph), SB 486 (DeSteph)
 - **2017:** 2 “ratio” bills
 - SB 970 (DeSteph) and SB 1161 (Reeves)
 - **2018:** 1 “ratio” bill
 - SB 773 (DeSteph)

2016 Joint Subcommittee MBAR Study

- A joint subcommittee studying the MBAR issue in Summer 2016 were presented with 11 options:
 1. *Food required to be sold any time alcohol is sold ***included in all options***
 2. Maintain status quo
 3. Maintain current ratio, but give ABC discretion, upon petition by licensee to craft alternatives for those who can't/don't meet ratio
 4. Current ratio, but based on “purchase” vs. “sale” price
 5. Lower current ratio
 6. Set minimum food sale requirement (\$4,000 - \$10,000)
WITHOUT ANY RATIO

2016 Joint Subcommittee MBAR Study

6a. Set minimum food sale requirement (\$4,000 - \$10,000)
WITH CURRENT RATIO

**6b. Set minimum food sale requirement (\$4,000 - \$10,000)
WITH LOWER RATIO**

7. Establish a tiered minimum food sale requirement based on Certificate of Occupancy (CO) for establishment
8. Create a new MB “tavern” or “entertainment” license (separate and distinct from MB restaurants and caterers subject to ratio)
9. Establish tiered annual license tax based on food sales
10. Set ratio based on proof-gallon
11. Enter into MOU with Dept of Taxation to verify sales

2016 Joint Subcommittee MBAR Study

- A 2016 study of the MBAR issue did not reach a final decision (split vote) however the final option discussed by the committee:
 - Licensees with monthly food sales less than \$10,000 (\$120,000 annually) must meet or exceed a 35% ratio
 - No ratio will be required for licensees with monthly food sales of at least \$10,000 or \$120,000 annually.
 - Food that is cooked and prepared on the premises and consumed on the premises must be available at all times when alcoholic beverages are served by such licensees.

Food Research

Much research has been done on the metabolism, absorption and distribution of alcohol in the body and what factors impact these processes. Gender, age, race, food, biological rhythms, exercise, body type, expectations, fatigue and drugs/medication all impact the body's processing of alcohol. The research below explain the impact of food consumption on Blood Alcohol Concentration (BAC).

- Meals high in fat, protein and carbohydrates impact BAC and elimination of alcohol from the blood was shortened by 1 to 2 hours when food was consumed.
- Strength of Drink
 - Highest absorption rates occur when alcohol content is between 10% and 30%
 - Alcohol content less than 10% and the slower the body processes the alcohol, then the slower absorption rate

Recap of Major Issues

- Disparity in licenses
- Wet/Dry
- MBAR