

Senate Rehabilitation & Social Services ABC Committee

A Review of Opportunities for MBAR and License Reforms

August 21, 2018



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Agenda

- MBAR overview
- Volume-based Concept Analysis
- Department of Taxation Reporting
- ABC Sales to Licensees
- MBAR Reform Options
- Possible License Reforms

Mixed Beverage Annual Review - MBAR

- Based on National Alcoholic Beverage Control Association (NABCA) research, 9 of 18 control jurisdictions (including VA) have some form of ratio, and 12 of 20 open (non-control) states who reported information also have a ratio of some form
- Ratio implementation varies greatly and differs on whether or not beer and wine are included in the ratio (for Virginia, the ratio was changed in 1990 to remove wine and beer sales from the calculation)
- In states with ratios, some have a license type that does not require a ratio of food to alcohol sales

Licensee Compliance in Other States

		Control Jurisdictions				License Jurisdictions			
		Virginia	Maryland-Montgomery Co	North Carolina	Utah	Maine	Kentucky	Tennessee	South Carolina
State Ratio		45/55	40/60	30/70	70/30	10/90	35/65*	No Ratio	No Ratio
Licensee	Sales Ratio								
Licensee 1	70/30	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Licensee 2	60/40	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Licensee 3	55/45	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Licensee 4	50/50	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Licensee 5	45/55	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Licensee 6	40/60	No	Yes	Yes	No	Yes	Yes	Yes	Yes
Licensee 7	35/65	No	No	Yes	No	Yes	Yes	Yes	Yes
Licensee 8	30/70	No	No	Yes	No	Yes	No	Yes	Yes
Licensee 9	25/75	No	No	No	No	Yes	No	Yes	Yes
Licensee 10	20/80	No	No	No	No	Yes	No	Yes	Yes
Licensee 11	10/90	No	No	No	No	Yes	No	Yes	Yes

* KY has a set of categories depending on the availability of alcohol: 35/65 is for wet territories; 70/30 is for moist territories

More details are in the handout



Primary Considerations

- Where possible, reduce the workload on licensees complying with MBAR/food-to-sales ratio
- Where appropriate, reduce the current 10,400 labor hours spent by ABC sworn and civilian staff to review/enforce MBAR
- Maintain public safety with respect to ABC's ideas for reform
- Work with stakeholders to gather feedback and, in the event of reform, work towards seamless implementation

Volume-based Concept Analysis

- **Concept:** Use volume of spirits *purchased* by MB licensees as opposed to spirits *sold* in the calculation of food to alcohol ratio and determine the impact it would have on MBAR results (e.g. violations)
- **Research and Findings:** ABC analyzed 5 years of MBAR data for 4 licensees across Virginia. For each of the establishments that were studied, the volume of liters purchased over the 5 year period remained relatively constant, while the number of MBAR violations varied. The biggest driver of the MBAR violations across all 4 licensees was a drop in food sales without having a corresponding drop in alcohol sales.
- **Conclusion:** The sample data in this study suggests that there is no correlation between the number of liters purchased and the likelihood of an MBAR violation. Using volume of spirits purchased as opposed to spirits sold does not make a difference in the outcome of an MBAR review.

Volume-based Concept Analysis (cont'd)

- **Concept:** In 2009, HB 2293 created a pilot project for certain mixed beverage licensees of the Alcoholic Beverage Control Board. The bill allows a participating mixed beverage restaurant licensee to use an alternative calculation for the food-to-beverage ratio based on volume by *proof gallon*.
- **Research:** The 2 year pilot kicked off in 2009 with 11 mixed beverage restaurants to test the alternative method which essentially required food sales in relation to the quantity of alcohol sold rather than the dollar sales of mixed drinks.
- **Calculation:** A restaurant had to generate at least \$350.00 in food sales for every proof gallon of spirits purchased (a proof gallon is defined as one gallon of 100 proof spirits or its equivalent). To calculate the number of proof gallons represented by a particular container of spirits, one had to multiply the volume of the container in gallons by the proof of the contents, divided by 100
- **Conclusion:** Both methods of ratio calculation showed roughly equivalent results
 - In 17 of the 23 MBAR's submitted by participants during the pilot, the restaurant was either qualified under both methods or not qualified under either
 - There was no evidence to support the claim that higher-priced spirits drinks were contributing to the difficulties in meeting the food ratio. Instead, the failure seemed to be directly related to a decline in food sales

Volume-based Concept Analysis (cont'd)

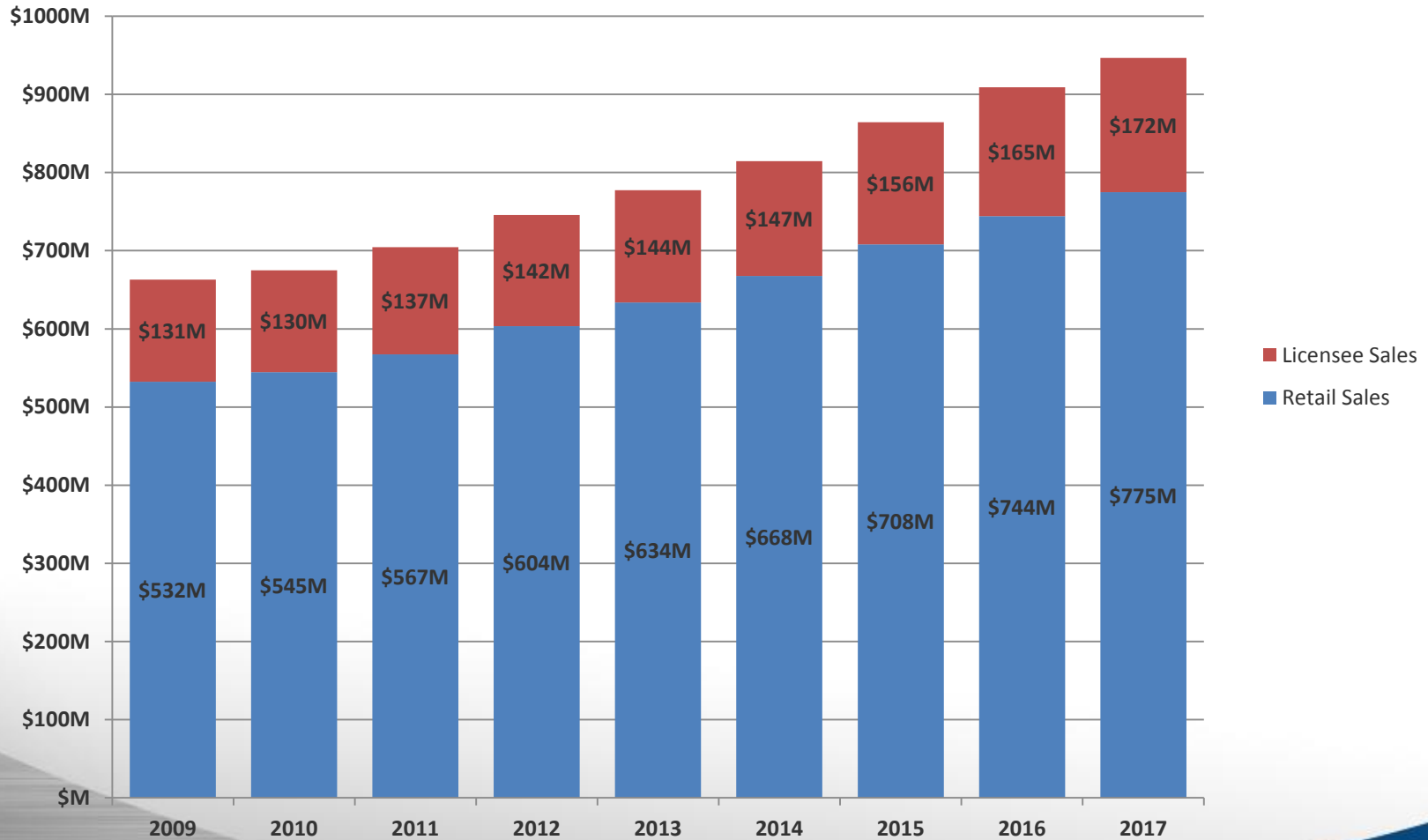
- A volume-based approach reduces work on the licensee since ABC has access to MB licensee purchase data
- Options for consideration within this concept include ratio compliance based on *purchases* versus *sales* of both food and alcohol
- Volume-based concepts don't completely remove the requirement for licensees to provide sales data nor ABC receiving and processing 4,000+ MBARs
- The outcome of a ratio requirement using a volume-based approach is still heavily dependent on food sales
- Subsequent options presented herein would alleviate reporting for some mixed beverage restaurants

Department of Taxation Reporting

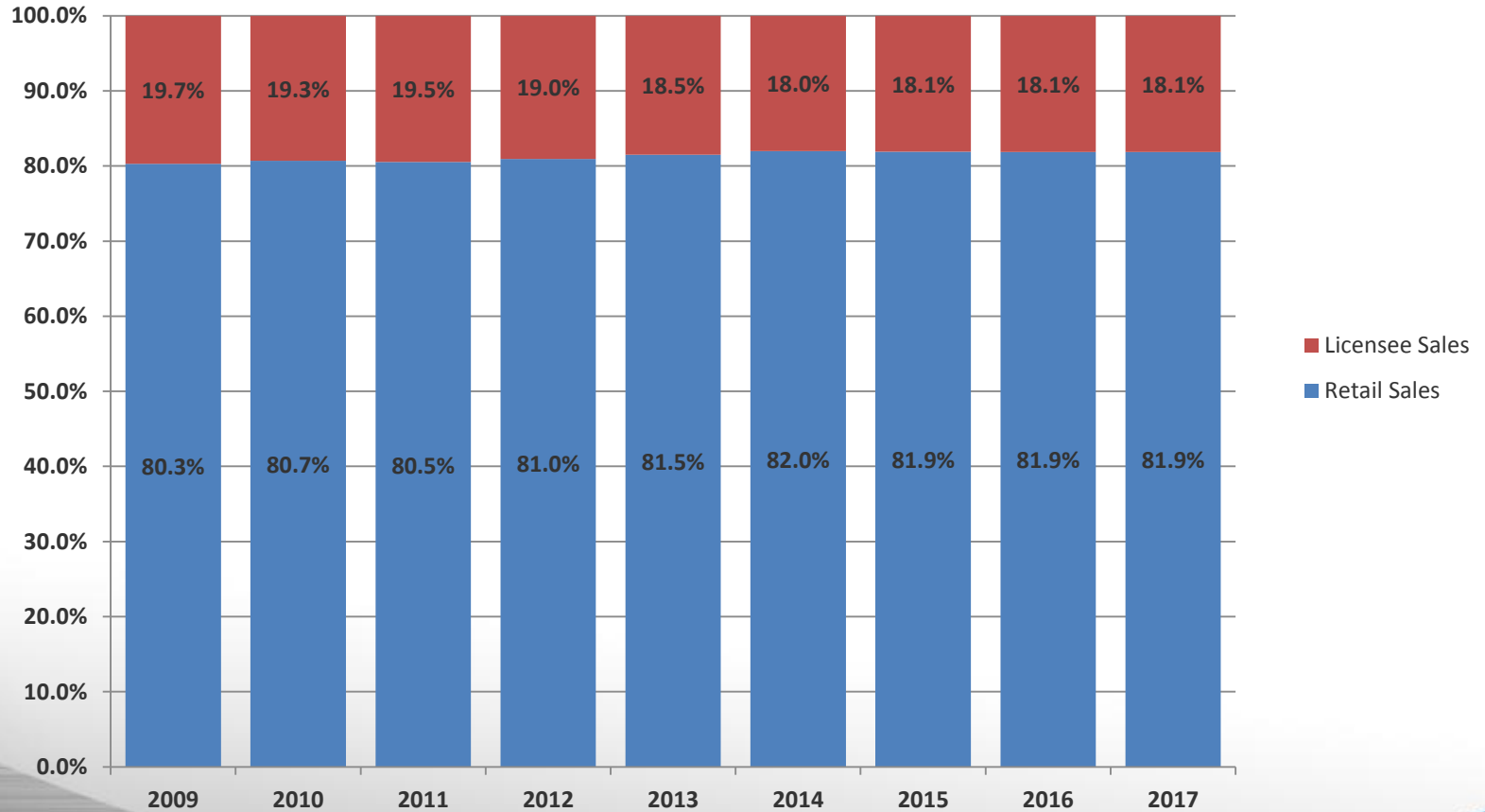
ABC contacted the Department of Taxation (Tax) to determine if ABC could leverage ABC Mixed Beverage (MB) licensee sales data already collected by Tax.

- ABC's use of pre-existing Tax data could ease MBAR requirements on MB licensees as well as reduce administrative workload for ABC
- Unfortunately, sales data reported to Tax by MB licensees does not delineate between food and beverage sales. Therefore, the reporting of total sales by MB licensees does not contain the details necessary to determine whether or not the ratio has been met

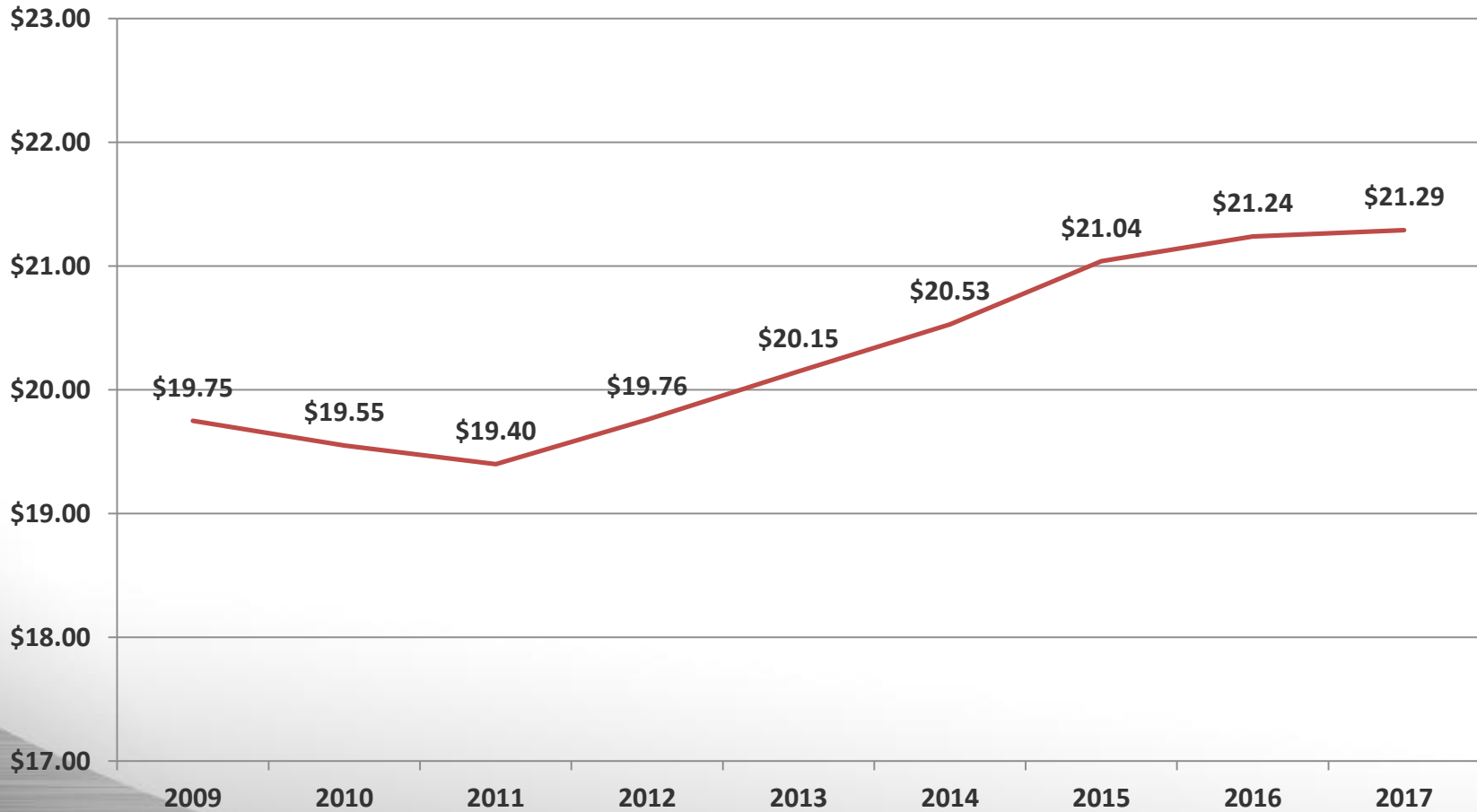
ABC Retail and Licensee Sales 2009 - 2017



ABC Retail v Licensee Sales Percentages 2009 - 2017

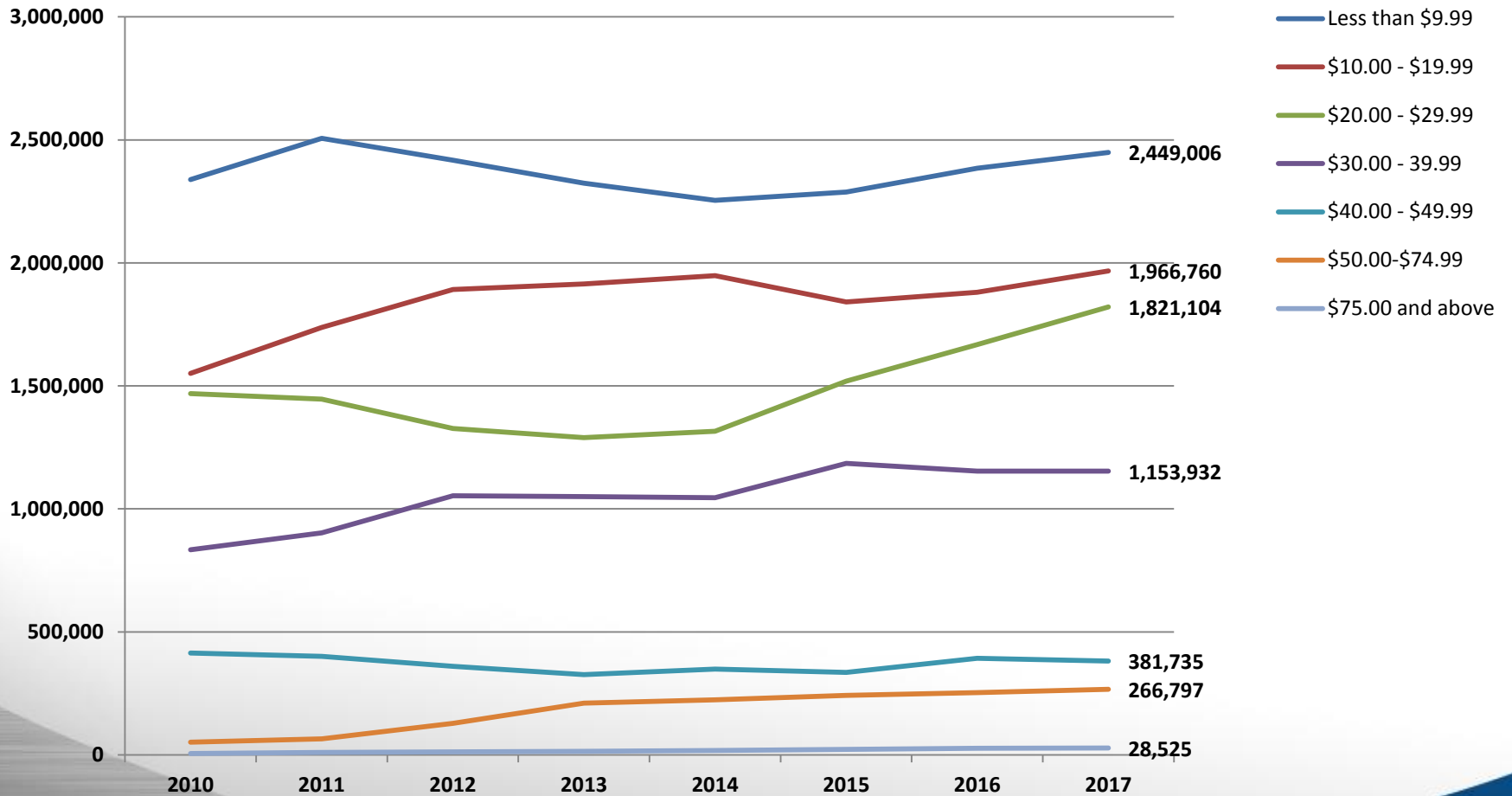


MB Licensee Average Bottle Price 2010 - 2017

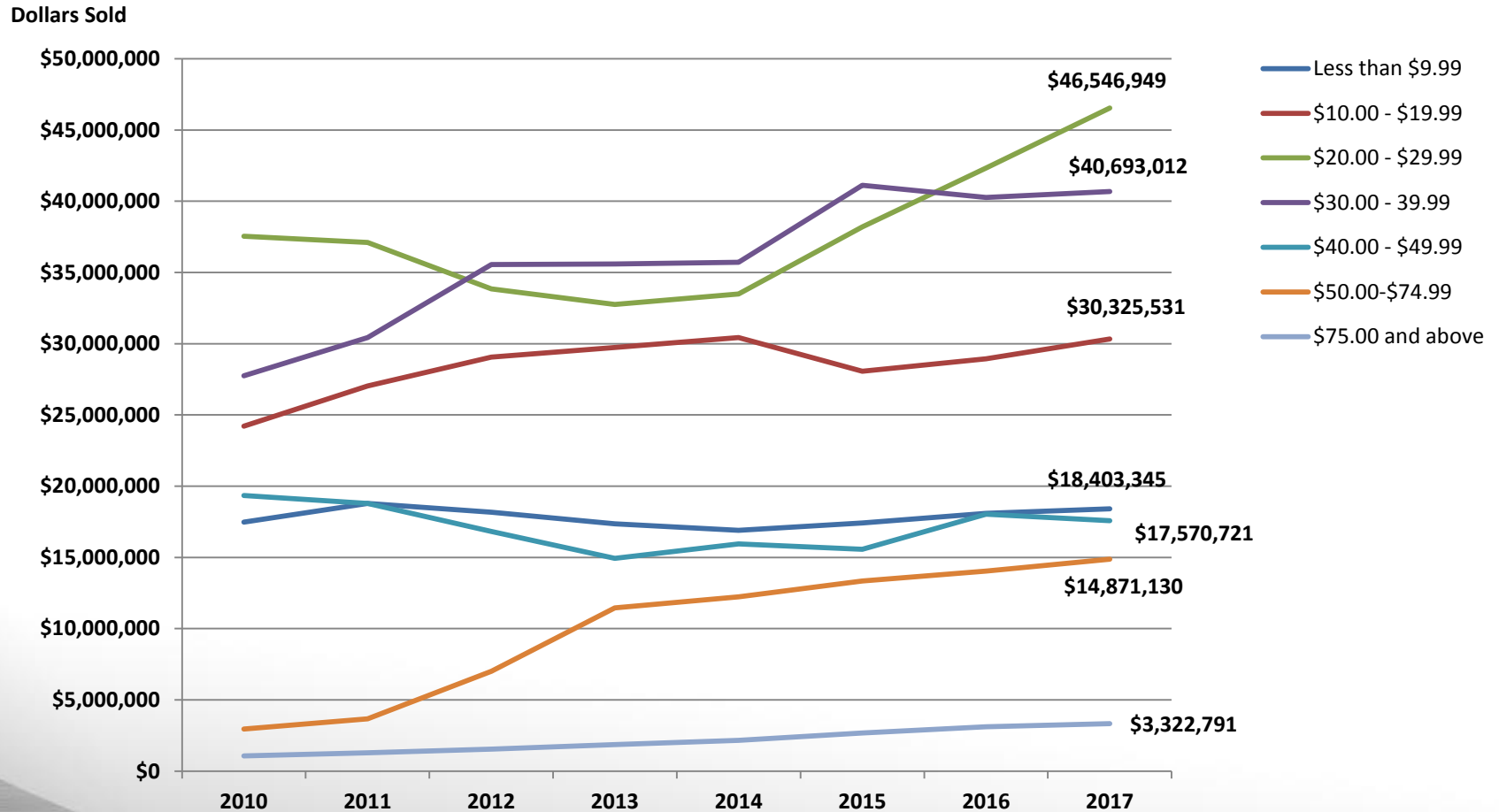


Licensee Bottle Purchases by Price Range 2010 - 2017

Total Bottles Sold



Licensee Sales by Price Range 2010 - 2017



MBAR Reform Options

- Based on an internal review and evaluation of the MBAR process, there are two possible approaches that could reduce the amount of burden put on the Authority as well as licensees in fulfilling the current MBAR process while maintaining public safety.
- Both approaches support the idea that establishing thresholds for food sales minimums would eliminate the need for portions of MB licensees to meet a ratio, yet maintain the current 45/55 ratio for those licensees that don't meet the minimum threshold.
- These approaches assume the minimum \$4,000 food sales requirement for all mixed beverage restaurants, yet allow for the option to change the ratio if deemed appropriate for those MB licensees required to submit an MBAR.

MBAR Reform Option 1

Establish a minimum amount of food sales required for a licensee to meet in order to be excluded from the MBAR requirement:

- If a licensee has food sales that reach a specific dollar amount for each month, it would be excluded from the MBAR requirement (see gray highlighted column in table below)
- Those who fall into that exclusion category would still need to certify by affidavit their total food sales for the year

Minimum Monthly Average Food Sales	Annual Food Sales Equivalent	# of Licensees Currently Meeting Requirement	# of Licensees Currently Not Meeting Requirement	% of Licensees Meeting Requirement
\$10,000	\$120,000	4,465	399	92%
\$20,000	\$240,000	3,948	916	81%
\$25,000	\$300,000	3,684	1,180	76%

MBAR Reform Option 1 (cont'd)

- Those who do not meet the minimum food sales threshold would need to complete an MBAR and a ratio would still apply
- This reform still allows the option to change the food to alcohol sales ratio if deemed appropriate for those MB licensees required to submit an MBAR

MBAR Reform Option 1 (cont'd)

Advantages:

- Maintains the requirement for food sales where mixed beverages are sold
- Sets a clear standard for determining compliance
- Continues to support public safety
- Reduces the work for all licensees that are currently responsible for maintaining and providing data for the MBAR requirement
- Reduces MBAR-related workload for VA sworn enforcement and civilian staff for VABC
 - Law enforcement: Allows the agents to focus more on other inspections/investigations work
 - Civilian staff: Allows more time to focus on customer service and other licensing-related activities
 - Relieves all staff from monitoring MBARs, to include the work required to monitor non-compliant licensees who did not submit an MBAR or who submitted a late MBAR

MBAR Reform Option 1 (cont'd)

Other Impacts:

- Smaller licensees could be negatively impacted due to their inability to meet the minimum food sales threshold that would release them from the requirement to submit an MBAR
- Changes would be required to ABC's licensing and case management systems resulting from:
 - Changes in the current requirement for all licensees to submit MBARs
 - Any changes in the current food to alcohol sales ratio

MBAR Reform Option 2

Set a minimum amount of food sales based on the already-established mixed beverage restaurant seating criteria found in § 4.1-231

- This approach would be tiered based on seating capacity and would still require portions of MB licensees to meet a ratio
- If the minimum food sales requirement is met, the licensee would be exempted from MBAR requirements, but would still need to certify by affidavit their annual food sales

MBAR Reform Option 2 (cont'd)

Number of Seats	Number of Licensees	Possible Food Sales Minimum Met?	MBAR Required?	Avg. Monthly Food Sales (FY 2017)
1-100	1,421	< \$TBD food requirement	Y	~\$43,000
		> \$TBD food requirement	N	
101-150	789	< \$TBD food requirement	Y	~\$67,000
		> \$TBD food requirement	N	
151+	1,869	< \$TBD food requirement	Y	~\$158,000
		> \$TBD food requirement	N	

MBAR Reform Option 2 (cont'd)

- MB licensees not meeting the minimum food sales threshold would need to complete an MBAR and a ratio would still apply
- This reform still allows the option to change the ratio if deemed appropriate for those MB licensees required to submit an MBAR
- Percentage of licensees meeting requirements by various annual food sales levels shown in the chart below:

Number of Seats	Number of Licensees	Possible Annual Food Sales Minimum	% of Licensees Meeting Requirement (FY 17 figures)
1-100	1,421	\$120K (\$10,000/month)	88%
		\$240K (\$20,000/month)	70%
101-150	789	\$240K (\$20,000/month)	84%
		\$500K (\$41,667/month)	62%
151+	1,869	\$500K (\$41,667/month)	81%
		\$600K (\$50,000/month)	77%

MBAR Reform Option 2 (cont'd)

Advantages:

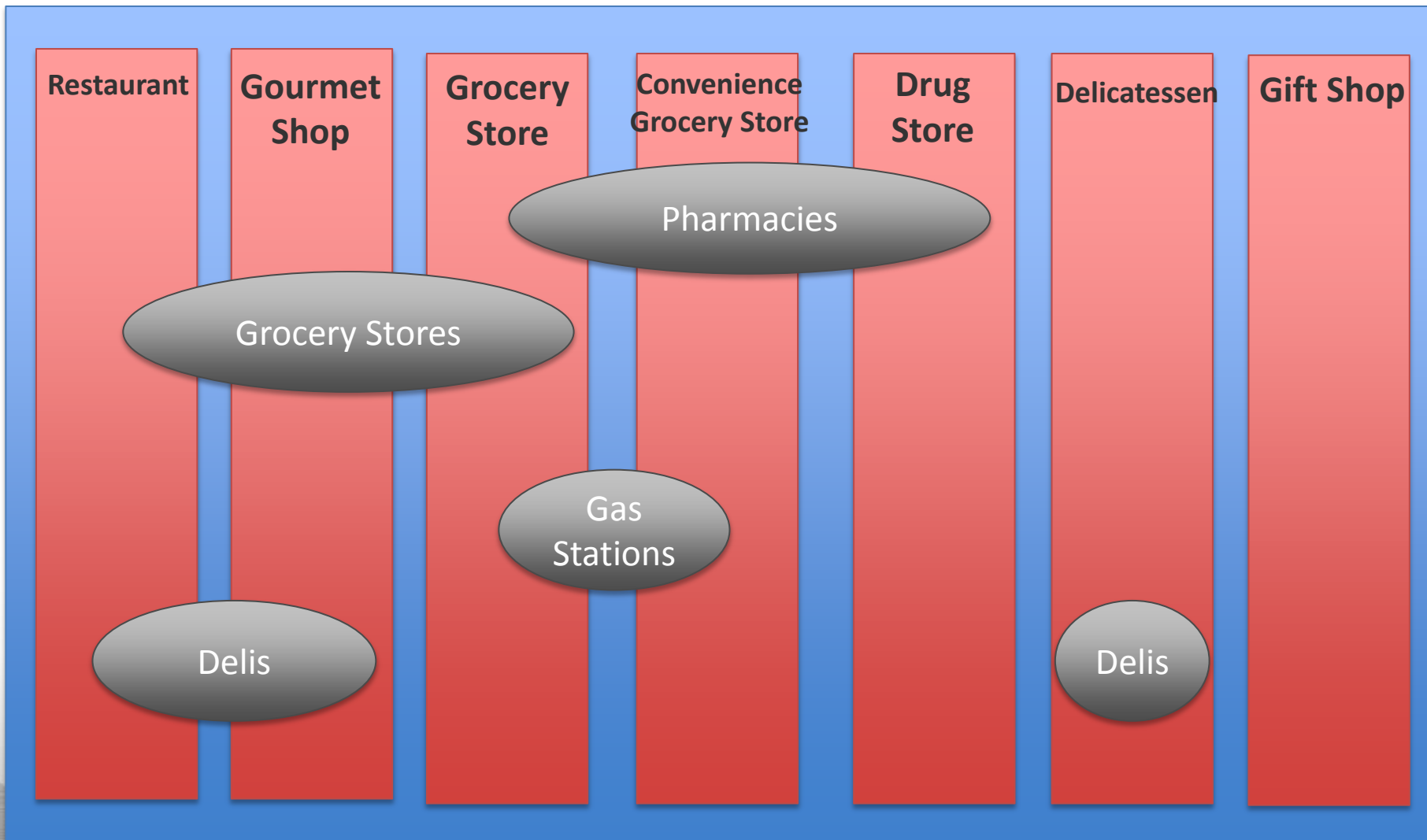
- Smaller licensees would be positively impacted by tiered licensing fees
- Recognizes the different income that could be generated by different sized establishments
- Leverages already established tiers (§ 4.1-231)
- Maintains the requirement for food sales where mixed beverages are sold
- Continues to support public safety
- Reduces the work for all licensees that are currently responsible for maintaining and providing data for the MBAR requirement
- Reduces MBAR-related workload for VA sworn enforcement and civilian staff for VABC
 - Law enforcement: Allows the agents to focus more on other inspections/investigations work
 - Civilian staff: Allows more time to focus on customer service and other licensing related activities
 - Relieves all staff from monitoring MBARs, to include the work required to monitor non-compliant licensees who did not submit an MBAR or who submitted a late MBAR

MBAR Reform Option 2 (cont'd)

Other Impacts:

- Changes would be required to ABC's licensing and case management systems resulting from:
 - Changes in the current requirement for all licensees to submit MBARs
 - Any changes in the current food to alcohol sales ratio

Wine & Beer Off Premise Establishments



Possible License Reforms

- After examining the current list of license types and privileges, there are areas of the code where ABC may be able to consolidate licensees
- The goal would be to consolidate license types and privileges making it more simple and easy to understand for all stakeholders
- There are 2 approaches to short-term license consolidation
 - Selective consolidation of licenses with similar privileges
 - The provision of more encompassing licenses
- There is also an opportunity for a more widespread overhaul of all of ABC's licenses (i.e. not just retail). An extensive code review (§ 4.1) could lead to even more significant license consolidation.

Possible License Reforms (cont'd)

- **Selective Consolidation of Licenses with Similar Privileges:**
 - Combine existing types and privileges
 - For example: For off-premises licenses, add keg registration and delivery privileges to those with an appropriate license fee to include the additional privileges
 - For example: Offer an off-premise license overall to include all – 2k in grocery items or 1k in gourmet food products (also includes keg and delivery permit)
 - Create consistency among existing licenses that allow alcohol to be provided in concert with other services
 - For example: Combine the beer and wine licenses into a classification of licenses that would allow you to provide 2 glasses of wine or 2 glasses of beer to patrons without receiving compensation (e.g. day spa, meal assembly kitchen, etc.)

Possible License Reforms (cont'd)

- **The provision of more encompassing licenses:**
 - Create a new “Marketplace” license that allows a licensee to offer patrons alcohol without compensation as described on the previous slide (e.g. day spa, meal assembly kitchen, etc.)
 - Create a new license type that allows licensees to provide alcohol to patrons without compensation and without restriction on the amount
 - Consider for non-restaurants, offering an “Entertainment” license or a “Tavern” license with a higher license fee

Possible License Reforms (cont'd)

- **Extensive licensing and fee reform:**
 - Given the scope of this review, to include license consolidation and associated fees, this comprehensive reform should be the focus of continuing efforts of this subcommittee
 - Over the next 18 months:
 - Conduct workshops with stakeholders and interested parties
 - Develop conceptual proposals
 - Draft legislative proposals in response to workshops
 - Hold public hearings on legislative drafts