

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

3 VAC 5-10 Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations
Department of Alcoholic Beverage Control
Town Hall Action/Stage: 4987 / 8188
February 9, 2018

Summary of the Proposed Amendments to Regulation

The Alcoholic Beverage Control Board (Board) proposes to amend the regulation to indicate that an appeal panel will make evidentiary decisions at appeal hearings rather than a board.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Section 290 of the regulation concerns evidence for hearings. Under current language in Section 290, the Board determines at appeal hearings whether it is necessary or desirable that additional evidence be taken. If it decides that such additional evidence should be taken, it may: 1) direct that a hearing officer fix a time and place for the taking of such evidence, and 2) upon unanimous agreement of the Board members permit the introduction of after-discovered or new evidence at the appeal hearing.

Chapters 38¹ and 730² of the 2015 Virginia Acts of Assembly eliminated, with a delayed effective date of July 1, 2018, the Board and the Department of Alcoholic Beverage Control

¹ See <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0038>

(ABC) and replaced them with the newly created Virginia Alcoholic Beverage Control Authority. The legislation also, with the delayed effective date, created a Board of Directors of the Authority (Authority Board).

Members of the current Board work full time. Positions on the Authority Board will be considered part time, and the full Authority Board will often not be present for hearings.³ Instead, there will be an appeal panel. The appeal panel will usually include a portion of the Authority Board members, but may include non-Authority Board members as well.⁴ Consequently, the Board proposes to amend the regulation to indicate that the appeal panel will make the evidentiary decisions at the appeal hearings.

Requiring the full Authority Board to make the evidentiary decisions would likely delay the occurrence of hearings and potentially delay results. The proposal to allow the appeal panel to make these decisions is thus beneficial in that it prevents these potential delays.

Businesses and Entities Affected

All 13,000+ licensees could potentially be subject to disciplinary proceedings, and thus could be affected by the proposed amendments.⁵ ABC issues: licenses for manufacturers, wholesalers and shippers of alcoholic beverages; retail licenses for the sale of alcohol at restaurants, hotels, convenience stores, grocery stores, etc.; and banquet licenses to allow persons or groups to host events such as wedding receptions, tastings or fundraisers, where alcohol is served in an unlicensed location or club premise.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

² See <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0730>

³ Source: Department of Alcoholic Beverage Control

⁴ Ibid

⁵ Data source: Department of Alcoholic Beverage Control

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Requiring the full Authority Board to make the evidentiary decisions would likely delay the occurrence of hearings and potentially delay results. The proposed amendments eliminate these potentially delays, and consequently eliminate potential costs that the delays may create for small businesses licensed by ABC.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant

adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.