

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

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**3 VAC 5-20 – Advertising**  
**Virginia Department of Alcoholic Beverage Control**  
**Town Hall Action/Stage: 4479/7393**  
March 8, 2016

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### **Summary of the Proposed Amendments to Regulation**

As the result of a court ruling,<sup>1</sup> The Board of Alcoholic Beverage Control (Board) proposes to remove language from this regulation that prohibits the advertising of alcoholic beverages in college newspapers.

### **Result of Analysis**

Benefits likely outweigh costs for this proposed regulatory change.

### **Estimated Economic Impact**

Current regulatory language prohibits advertising of alcoholic beverages in college student publications except in reference to a dining establishment. Presumably, the Board promulgated this rule because they felt that allowing alcoholic beverage advertisements in publications meant to be read by a population that is largely under the age of 21 might encourage underage drinking. Because this was ruled a violation of the free speech rights of college newspapers, the Board now proposes to eliminate the prohibition from this regulation.

This change will benefit alcohol manufacturers and distributors as they will have more choices as to where they can legally advertise their products, so as to maximize both current and

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<sup>1</sup> Educational Media Co. v. Insley which can be found here:  
<http://www.ca4.uscourts.gov/Opinions/Published/122183.P.pdf>

future profits, and will benefit college publications as they will be able to widen the array of companies they can sell ads to. The state will also benefit from this change as it will bring regulation into compliance with the U.S. Constitution and thus avoid future lawsuits that might be costly to defend against. No individuals will likely be harmed by this change because individuals under the age of 21 likely already see alcoholic beverage ads on billboards and in magazines and newspapers of general circulation. The state also has other means of preventing underage drinking as businesses that sell alcoholic beverages are required by law to check the identification of individuals purchasing those beverages to make sure they are not underage.

### **Businesses and Entities Affected**

This proposed regulatory change will affect all manufacturers, wholesalers and retailers as well as any college newspapers who would like to accept ads from those entities. Board staff reports that there are more than 10,000 entities that will be affected and that the majority of those entities are small businesses.

### **Localities Particularly Affected**

No locality will be particularly affected by this proposed regulatory change.

### **Projected Impact on Employment**

This proposed regulatory change is unlikely to have any effect on employment in the Commonwealth.

### **Effects on the Use and Value of Private Property**

This proposed regulatory change may increase the value of the non-profit corporations that own college newspapers if ad revenues increase on account of alcoholic beverage ads being allowed in their publications. The present and/or future value of alcoholic beverage manufacturers, wholesalers and retailers businesses may increase also if ads in college publications increase present sales or increase brand loyalty so that future sales increase.

### **Real Estate Development Costs**

This proposed regulatory change is unlikely to affect real estate development costs in the Commonwealth.

**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**

Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

**Alternative Method that Minimizes Adverse Impact**

Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

**Adverse Impacts:****Businesses:**

Businesses are unlikely to incur any costs on account of this proposed regulatory change.

**Localities:**

Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

**Other Entities:**

No other entities are likely to be adversely affected by this proposed change.

**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.

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