



Virginia Department of Planning and Budget **Economic Impact Analysis**

3 VAC 5-20 Advertising
Virginia Alcoholic Beverage Control Authority
Town Hall Action/Stage: 6204/10229
February 23, 2024

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As part of a periodic review, the Virginia Alcoholic Beverage Control Board (Board) proposes to update the rules pertaining to outdoor advertising of alcoholic beverages, remove language that it reports is redundant to the Code of Virginia, and align the regulation with current industry practices.

Background

Code of Virginia § 4.1-111 B.13 directs the Board to “establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages,” and Virginia Code § 4.1-112.2 provides specific distance and zoning requirements for outdoor advertising, indicates when the Board may grant variances, and lists acceptable exceptions to the distance and zoning requirements.² In addition, Virginia Code § 4.1-113 limits the type of indoor advertising that the

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

² See <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-111/> and <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-112.2/>, respectively.

Board may regulate.³ Accordingly, 3 VAC 5-20 *Advertising* addresses various details pertaining to interior and exterior advertising of alcoholic beverages, print and electronic media, coupons, and other advertising channels.

In order to meet the regulatory reduction requirements of Executive Order 19, the Board met six times between June and October 2022 to review all of the Virginia Alcoholic Beverage Control Authority's (ABC) regulations, and convened roughly sixty stakeholders, representing all categories of license holders.⁴ Thus, the Board seeks to make a number of changes that would update the regulation to reflect current practice, align the language with statute, and remove redundant or obsolete language. The most substantive changes are summarized below.

Section 10: Advertising; generally; cooperative advertising, federal laws; cider; restrictions

- Eliminate the requirement that advertising of cider conform to the requirements for advertising beer because the laws governing advertising (the sections of Virginia statute cited above and this regulation) apply to all types of alcohol and alcoholic beverages, except as specifically indicated. Thus, the current requirement is moot as there are no separate requirements for beer that cider advertising could conform to.⁵
- Specify that advertising should not tend to induce “persons younger than 21 years of age” to drink or consume to excess. The current language refers to “minors,” which was not defined, but implied individuals younger than 18 years of age. This change would newly prohibit advertising targeted at persons over the age of 18 and under the age of 21.
- Remove the current language restricting the use of present or former athletes and athletic teams and suggesting that the product enhances athletic prowess. The replacement language would prohibit advertising that “implies that the product enhances athletic prowess; depicts any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; or depicts an athlete consuming alcohol while operating or about to operate a motor vehicle or other machinery.” ABC states that this change

³ See <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-113/>.

⁴ See <https://townhall.virginia.gov/L/Meetings.cfm?BoardID=2&time=Past>. ABC provided a list of external stakeholders; although all stakeholders may not have attended every meeting, the meetings were spent conducting a line-by-line review of the regulations, and the proposed changes reflect the Board's decisions after considering stakeholder input.

⁵ ABC explained that the law currently treats cider the same way as beer for all purposes except taxes, where cider is treated the same as wine.

acknowledges the growing collaborations between sports teams and manufacturers, while ensuring that the use of these images does not imply any of the prohibitions listed in the regulation.

- The current language prohibiting any advertising for a contest or sweepstakes “where a purchase is required for participation” would be amended to specify that the prohibition only applies to the “purchase of alcoholic beverages.” Under the current language, advertising is restricted for contests that require any purchases, including products unrelated to alcohol, which falls outside the Board’s authority to regulate.
- Add language that would allow a combination of food and alcoholic beverages to be offered at a discounted price by an on-premises licensee during the permitted time for a happy hour. ABC reports that this change reflects current practice and that such discounts may already be offered in some places.
- Add language to Section 10 that prohibits indoor advertising materials from being illuminated, except for back bar pedestals which are allowed to contain advertising regarding spirits. Currently, this language appears in similar form in 3 VAC 5-20-20 B.

Section 20: Advertising; interior; retail licenses.

- This section would be entirely repealed because it is redundant to Virginia Code § 4.1-216.1.⁶ Currently, this section contains a definition of “advertising materials” that is also found in Virginia Code § 4.1-216.1 (A). It also specifies the advertising materials used by retail licensees, which is also in Virginia Code § 4.1-216.1 (C). A stipulation regarding illuminated indoor advertising materials would be moved to Section 10, as stated above.

Section 30: Advertising; exterior

- Eliminate language in the exterior advertising section of the regulation that ABC states is redundant to Virginia Code § 4.1-112.2 (see footnote 2).
- Delete language that prohibits alcoholic beverage manufacturers, importers, or wholesale licensees from selling, renting, loaning, or giving any billboard placements for outdoor alcoholic beverage advertising, or “in any other way confer on any retail licensee

⁶ See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-216.1/>.

anything of value that constitutes outdoor alcoholic beverage advertising.” The “billboard placement” and “any other way/anything of value” language would be moved to the *Tied-House* regulation (3 VAC 5-30-80) and replaced by a reference to “materials except for items permitted by 3 VAC 5-30-60 and 3 VAC 5-30-80.”⁷

- Repeal language that prohibits alcoholic beverage manufacturers, importers, or wholesale licensees from engaging in cooperative advertising on behalf of retail licensees. Such activity is already prohibited by 3 VAC 5-30-80.

Section 60: Advertising; novelties and specialties

- This section would be repealed entirely. These requirements would be added as a new section 100 in 3 VAC 5-30 because the Board believes they more properly belong in the regulation governing tied-house requirements (see footnote 7).

Section 90: Advertising; coupons

- Specify that consumer submitted refund coupons may not be honored for “on-premises consumption” at retail outlets or state government stores. The current regulation does not contain the phrase “on-premises consumption” and ABC indicates that it is necessary in order to prevent individuals who have over-consumed from driving.

Section 100: Advertising; sponsorship of public events; restrictions and conditions

- Update the cross-references to the definition of advertising materials in 3 VAC 5-30.
- Separate the provisions for manufacturers and wholesalers to clarify that manufacturers may sponsor public events and that wholesalers may only cosponsor charitable events with manufacturers.

Estimated Benefits and Costs

The proposed amendments largely serve to update the regulation to reflect current practice and remove redundant or obsolete language. The proposed amendments would benefit the public to the extent that restrictions on advertising to young adults and the use of refund coupons lowers the risk of under-age drinking and/or excessive drinking. The loosening of

⁷ The Board is concurrently amending 3 VAC 5-30 *Tied-House* to incorporate this language in section 80. See <https://townhall.virginia.gov/l/viewstage.cfm?stageid=10230> for the proposed changes to that regulation.

restrictions with respect to athletes and athletic teams could benefit manufacturers that wish to use more representations of athletes in their advertising in Virginia. The proposed amendments may generate some losses to entities that engage in advertising if they had already invested in advertising materials that specifically targeted 18–21-year-olds. Given that these changes were broadly supported by a number of stakeholders, it is unlikely that any manufacturer, importer, wholesaler, or retailer engaging in advertising would face significant costs or adverse economic impact as a result of these changes.

Businesses and Other Entities Affected

The proposed amendments potentially affect ABC’s approximate 20,892 licensees⁸ who manufacture, distribute, or sell and serve alcoholic beverages in the Commonwealth, and other interested parties. Only licensees and other entities that engage in advertising would be affected by the changes to this chapter.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.¹⁰ The proposed amendments do not appear to increase net costs or reduce benefit. Thus, no adverse impact is indicated.

Small Businesses¹¹ Affected:¹²

The proposed amendments do not appear to adversely affect small businesses.

⁸ Data Source: ABC

⁹ Pursuant to Code § 2.2-4007.04(D): 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.

¹⁰ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

¹¹ 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.”

¹² 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

Localities¹³ Affected¹⁴

The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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.

¹³ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.