



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Alcoholic Beverage Control Board
VAC Chapter Number:	3 VAC 5-20
Regulation Title:	Advertising
Action Title:	Use of Athletes and Novelty and Specialty Items
Date:	3/2/01

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Alcoholic Beverage Control Board intends to amend 3 VAC 5-20-10, which generally sets forth the restrictions on alcoholic beverage advertising in the Commonwealth. The contemplated amendment would modify current restrictions on the use of athletes or athletic teams in such advertising, allowing wine and beer licensees to display point-of-sale advertising materials incorporating the use of professional athlete and athletic teams. This action is necessary to resolve a conflict between the current regulation and Chapter 361 of the 2001 Acts of Assembly. The Board also intends to amend 3 VAC 5-20-60 to increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing alcoholic beverage advertising, which may be given away by alcoholic beverage manufacturers, importers, bottlers, brokers, wholesalers, or their representatives. The allowable value has not increased since 1991.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to

which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Virginia Code Section 4.1-111 gives the Board general authority to promulgate regulations it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. Virginia Code Section 4.1-320 provides that it shall be a class 1 misdemeanor for anyone to advertise alcoholic beverages in Virginia, except in accordance with Board regulations.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The Board contemplates adding an exception to the current blanket prohibition to the use of athletes and athletic teams in alcoholic beverage advertising contained in 3 VAC 5-20-10 E. 3., tracking the language referring to such advertising contained in Chapter 361 of the 2001 Acts of Assembly. This action has been determined to be essential to protect the health, safety or welfare of citizens by allowing the advertising to the extent the General Assembly has mandated, while continuing to prohibit the use of college or other amateur athletes or athletic teams, to avoid undue influence on persons under the legal drinking age. The Board contemplates amending 3 VAC 5-20-60 to increase the maximum wholesale value of novelty and specialty items which may be given away by manufacturers or wholesalers of alcoholic beverages from \$5.00 to \$10.00. The amendment will protect the health, safety or welfare of citizens by allowing alcoholic beverage manufacturers or wholesalers a reasonable ability to promote their products, while not permitting undue influence on retailers from excessive gifts.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Total repeal of the prohibition on use of athletes or athletic teams in alcoholic beverage advertising has been considered, but is felt not to be in the interest of public health, safety or welfare. Alternatives to increasing the maximum value of novelty and specialty items considered include removing restrictions altogether and the taking of no action.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory will have no impact on families.