

**A SUMMARY OF ABC LAWS  
AND REGULATIONS**

# ***Retail Licensee Guide***



# **RETAIL LICENSEE GUIDE**

## **A SUMMARY OF ABC LAWS AND REGULATIONS**

### **TABLE OF CONTENTS**

<i>Preface</i> .....	5
<b>Introduction</b>	
Alcoholic Beverage Control Act & References .....	6
Enforcement of ABC Laws & Regulations .....	7
Types of Retail Licenses .....	8
<b>Illegal Sales</b>	
Underage Persons .....	10
Intoxicated Customers .....	13
<b>Prohibited Conduct</b>	
Drugs, Violence, Gambling, Sexual Activity and Nudity .....	15
<b>Operating a Licensed Business</b>	
Restricted Hours .....	18
Containers and Removal .....	20
Employment Practices .....	22
Advertising and Promotions .....	24
Record Keeping .....	26
License Issues .....	27
Purchases, Taxes and Financial Responsibility .....	28
General Guidelines .....	29
<b>Evaluation Questionnaire</b> .....	31



## Preface

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**W**henever a Virginia business person applies for an Alcoholic Beverage Control license, he or she is thrust into a role that carries great responsibility. The selling and serving of alcoholic beverages is a business that is subject to higher legal and social accountability than almost any other industry. As a result, a large body of state laws and administrative regulations exist that are designed to ensure that all ABC retail licensees exercise their privileges in a manner that is consistent with public safety and welfare. Although all licensees are made aware of their legal responsibility during the application process and through ABC education programs, the ABC Board realizes that it may still be difficult for some licensees to absorb all of the rules and regulations while trying to find time to run a successful business.

The Retail Licensee Guide was created with the intent of providing all ABC retail licensees and their employees with an easy-to-use reference for understanding Virginia alcoholic beverage laws. The guide focuses on the laws and regulations that have historically resulted in the

greatest number of licensee violations, and attempts to explain those regulations in a manner that is easier to understand than the legal language in which they are written. Hopefully, the Retail Licensee Guide will prove a useful educational tool for aiding the education process of ABC licensees and their employees.

***However, it is important for all readers to realize that this guide is an information tool only, not a legal document.***

***Nothing printed on these pages changes, replaces, or supercedes the Code of Virginia, Virginia Administrative Code, or any other statute.***

This guide should serve as a supplement to all of the other education materials that are already offered through the Department of Alcoholic Beverage Control.

General background information is presented at the beginning of the guide outlining the role of the ABC Department and the different types of licenses. The next section deals with what are considered the most serious of all ABC violations—sales to underage persons and sales to intoxicated customers. Other topics covered include prohibited conduct, restricted hours, employment practices, advertising, license issues, and record keeping. After reading through the material, please take the time to look at the *Evaluation Questionnaire* located at the end of this guide. Your input and suggestions will prove invaluable in helping us to revise future editions of the Retail Licensee Guide. In the meantime, if any other questions should arise feel free to contact the ABC Central Office or one of the Regional Offices at any of the numbers listed at this Web site (Refer to ABC's Regional Offices Web page [www.abc.state.va.us/enforce/enforce.htm](http://www.abc.state.va.us/enforce/enforce.htm) for telephone numbers).

**NOTE: This guide is on our Web site at [www.abc.state.va.us/enforce/abcguid.htm](http://www.abc.state.va.us/enforce/abcguid.htm).**



## Introduction

### Alcoholic Beverage Control Act & References

#### References Used in This Guide

As you read this guide, you will note that references are often inserted after certain text. The citations are:

#### COV >>>

Refers to the applicable law in the Code of Virginia.

#### VAC >>>

Refers to the applicable rule in the Virginia Administrative Code.

You may want to go to either of these references if you require a more detailed explanation of issues that are discussed in this guide. *Please note that the laws and regulations cited in this guide are not meant to be inclusive, and are merely provided as a helpful reference for those who might want further information on topics covered in these pages.*

#### Availability of References

Because this guide does not cover all laws and regulations regarding alcoholic beverages, and because it does not contain the exact legal language, you may wish to pur-

chase a copy of the [ABC Act and Regulations of the Virginia Alcoholic Beverage Control Board](#) by contacting The West Group at (800) 328-9352, extension 78262. Also, the ABC Code and Regulations are available for viewing on the ABC Web site at [www.abc.state.va.us](http://www.abc.state.va.us).

#### Definitions

The Alcoholic Beverage Control Act defines “alcoholic beverages” as any beverage containing “one-half of one percent or more of alcohol by volume.” This definition includes wine, beer and distilled spirits. Throughout this guide the term “liquor” is used in place of distilled spirits because this is the word commonly used to refer to any alcoholic beverage containing more than 21% alcohol by volume. This guide uses alcoholic beverages as a general term for any beverage intended for human consumption containing .05% or more of alcohol.

The Alcoholic Beverage Control Act has provided for the creation of the Virginia Department of Alcoholic Beverage Control to

administer and enforce all laws regulating the sale and use of alcohol in Virginia. The Alcoholic Beverage Control Board is the governing body that oversees the administration of these laws, and the Governor of Virginia appoints its members. Throughout this guide, the term “ABC” refers to the Department of Alcoholic Beverage Control and “the Board” refers to the Alcoholic Beverage Control Board.





## Enforcement of ABC Laws & Regulations

### Authority [COV §4.1-105]

In addition to Special Agents for the ABC Department, the following officials also have the authority to enforce Virginia ABC laws:

- **Virginia State Police**
- **City or County Sheriffs and Deputies**
- **City or County Police Officers**
- **Town Police Officers**

### Inspections, Observations and Investigations [3 VAC 5-50-70]

ABC Special Agents, State Police, and local law enforcement officers must be allowed free access to any licensed business that sells alcoholic beverages for the purpose of observing the activities on the premises to ensure compliance with ABC laws. ABC Special Agents may conduct inspections of the premises and all records during reasonable business hours, or at any time when the licensed premises are occupied. It is unlawful to impede or obstruct Special Agents or Police Officers in the performance of their duties while they are

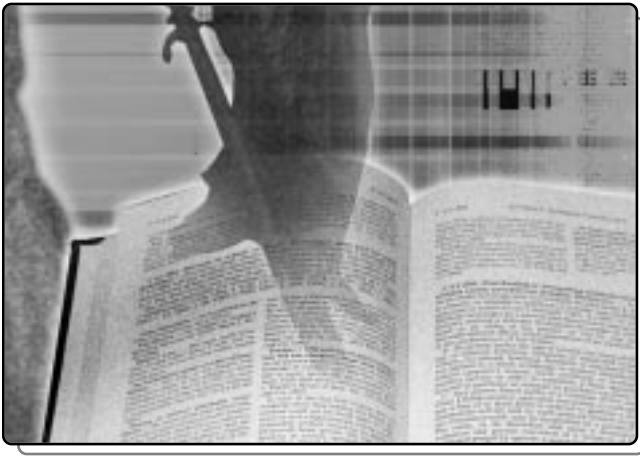
on the premises. You should always cooperate with the investigating officers or agents.

### Violations of ABC Laws and Penalties

Violations or suspected violations may be reported to the ABC Department by Special Agents, police officers, or any concerned citizen. If a violation is substantiated against a licensee, the Board has the authority to impose a range of penalties. It is important to remember that a licensee can be charged with multiple violations of ABC laws at one time and each violation may add to the penalty. If a licensee wishes to contest an alleged violation or charge, he or she may request a hearing before an ABC Hearing Officer. Further details of the hearing process are described in the [Regulations of the Virginia Alcoholic Beverage Control Board](#) booklet.

The penalties for ABC violations can range from probation to revocation of the license. Other possible penalties include restrictions or special conditions being placed on

the license, suspensions and fines. Probation has no impact on the privileges allowed by the license, but it does mean that any further violations will result in stiffer penalties. For most violations, the licensee is given the option of a suspension, or a shorter suspension plus a fine. License suspension means that no alcoholic beverages can be purchased or sold for a specific period of time. In some cases, a restriction may be placed on the license, such as a limitation on the hours that alcoholic beverages may be sold. Revocation occurs in cases where the violation seriously affects public safety, or where there is a history of violations and the licensee has been unable or unwilling to remedy the situation.



## *Introduction*

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### **Types of Retail Licenses**

#### **Off-premises Wine and Beer, Beer Only [3 VAC 5-50-100]**

These licenses are issued to businesses where wine and beer, or beer only, are sold to customers for carry-out. Consumption of alcoholic beverages on the premises is not allowed under this license.

Common holders of these licenses include delicatessens, drugstores, grocery stores, convenience grocery stores, or gourmet shops. Note: Gourmet shop licensees may offer samples. Contact your Special Agent for details. Each licensee is required to meet minimum monthly sales of certain non-alcoholic items, unless the Board approves an exemption.

#### **On-premises, On-and-Off premise Wine and Beer [3 VAC 5-50-110]**

These licenses are issued for businesses where wine and beer, or beer only, may be consumed on the premises of the business. On-and-off means that customers may both consume alcoholic beverages on premises and purchase closed containers to take off the

premises. Typical holders of these licenses are restaurants, hotels, private clubs, or resorts. All licensees falling into this category, except for private clubs, must have minimum monthly food sales of at least \$2,000, and food must be available at substantially the same hours that wine and beer are sold.

#### **Mixed Beverage Licensees [3 VAC 5-50-110]**

This license permits the holder to sell liquor and mixed spirit drinks for consumption on the premises of the business. A mixed beverage license also includes the right to sell and serve wine and beer on premises, although a separate wine and beer license will be issued in addition to the mixed beverage license. Brief descriptions of the most common classes of mixed beverage licenses follow:

##### **(1) *Restaurant***

Permits selling and serving of mixed beverages in dining and designated rooms, including rooms used for private meetings and parties. If a restaurant is located on

the premises of a hotel, the license also permits the selling and serving of mixed beverages, including original bottles, to guests in their bedrooms or to groups holding functions in private rooms. This license requires obeying the “45% rule,” which means that food and non-alcoholic beverage sales must account for at least 45% of the total gross sales of mixed beverages and food. Also, monthly sales of food prepared and consumed on the premises must be **at least \$4,000**, of which **no less than \$2,000** shall be in the form of meals with substantial entrees.

##### **(2) *Caterer***

Allows the license holder to sell and serve mixed beverages for on-premise consumption at private gatherings or special events. License holders must have an established place of business which averages at least \$4,000 in monthly sales, notify the Board in writing of any events to be catered during the following month at least two days in advance, and obey the “45% rule.”

**(3) Hotel**

Granted to hotels or motels with at least four permanent bedrooms and a restaurant on the premises. Allows for the sale and service of mixed beverages in dining rooms, private rooms, designated rooms, or bedrooms of guests. License permits sales of unopened bottles to guests in bedrooms using room service and to private groups holding scheduled functions. Also permits the sale of miniatures (bottles with less than 50 milliliters) for consumption in bedrooms or private rooms. Subject to the 45% rule and same monthly food sales requirements as a restaurant licensee.

**(4) Bed and Breakfast**

Granted to an establishment offering no more than 15 rooms for rent and at least one meal per day. Allows the holder to serve alcoholic beverages to registered guests provided that the owners charge no additional fees for the service.

**(5) Clubs**

This license is issued to private, nonprofit organizations that own, lease, or operate an establishment. Examples include civic, social,

political and athletic organizations. Alcoholic beverages may be served on club premises and hours are not restricted. Clubs should make themselves aware of restrictions regarding non-member use [3 VAC 5-50-130]. Any changes in a club's charter, Articles of Association, bylaws, or officers must be reported to ABC within 30 days. Clubs must also provide proof of tax-exempt status. Qualifications for this license are the same as a "Restaurant."

**(6) Common Carriers**

Licenses granted to common carriers of passengers authorizing the sale and service of mixed beverages in designated areas. Includes trains, boats and airplanes.

**(7) Special Events**

Granted to organized nonprofit organizations in charge of a special event. Examples would be fundraisers for museums, charities, or other civic causes. Allows the sale and consumption of mixed beverages in areas designated by the Board. A separate license is required to allow the sale of wine and beer at such events.

**(8) Banquet Facility**

For volunteer fire departments or rescue squads for use on the premises of the station or at another location that is controlled by the fire department or rescue squad. This license permits the consumption of lawfully acquired alcohol by users of the facility.





# Illegal Sales

## Underage Persons

- No sales are permitted to underage persons, who are defined under ABC law as persons less than **21 years of age**. [COV §4.1-304]
- Do not allow a person less than 21 years of age to possess or consume alcoholic beverages on the licensed premises. [COV §§4.1-225 and 4.1-305]
- Do not sell alcoholic beverages to anyone, even if they are of age, whom you know or believe is buying on behalf of an underage person. [COV §4.1-306]
- Selling or serving to an underage person may subject you to both criminal and administrative penalties, and is considered one of the most serious ABC violations. It will almost always result in a fine and/or suspension of your license and repeat violations can lead to permanent loss of license.

### Determining Legal Age

In determining whether a customer is underage, you should first examine the general appearance and

behavior of the person. If any doubts are present in your mind as to whether the purchaser is 21 or older, request identification (ID). Examples of acceptable forms of ID are a valid driver's license, armed forces ID card, passport or visa; a special ID card issued by the Virginia Department of Motor Vehicles; or any valid ID issued by a federal or state agency. A STUDENT ID is not valid in determining age. All valid forms of ID must contain a **photograph and signature** of the subject, along with height, weight and date of birth. An ID with an expired date is not acceptable. [3 VAC 5-50-20]

### Checking IDs

Be aware that the use of false IDs by underage persons is a widespread and serious problem for all licensees. The three types of false IDs are:

#### *Altered ID*

This type of ID has been physically changed after it was issued. Typically only the birth date and year are altered.

#### *Counterfeit ID*

This type of ID may appear valid, but it is totally fraudulent.



Common counterfeits include birth certificates, driver's licenses, and ID cards.

#### *Someone else's ID*

In this case the ID is authentic, but it does not belong to the person presenting it. In determining whether the ID is authentic, you should examine it closely and look for any erasures, smudges, or misaligned letters and numbers.

Carefully examine the picture to make sure it matches the person using it. Ask the person questions about the information on the ID such as address and birth date. It is also a good idea to request a second ID if you doubt the authenticity of the first one. If you have any doubts about a person's age after examining their ID, do not make the sale. It is much better to say no rather than risk a violation that would mean a fine, suspension, or even loss of your ABC license.

#### **Penalties for Underage Purchase**

Virginia law provides penalties for underage persons who use false IDs in attempting to purchase alcoholic beverages. This is a misdemeanor

offense and carries a \$500 fine or community service and suspension of the offender's driver's license for up to one year.

Licensees should be aware that they are **immune from being penalized by the ABC Board if they promptly notify the Board or other law enforcement officers whenever they suspect an underage person has used or attempted to use a false ID to purchase alcoholic beverages in their establishment.** It is in your best interest to make sure that your employees inform you whenever a possible violation has occurred and then take the proper action.

[COV §4.1-305]

#### **ABC Seller/Server Training**

ABC offers the Training for Intervention Procedures by Servers of Alcohol (TIPS) program. This is an excellent program that provides information on such topics as preventing underage drinking and deterring intoxication among customers.

**Many insurance companies offer substantial savings on liability coverage to companies with employees who are certified in alcohol awareness training.**

Contact ABC's Education Office at (804) 213-4688 if you are interested in obtaining more information about these programs or visit our website at [www.abc.state.va.us](http://www.abc.state.va.us).



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## QUESTIONS AND ANSWERS

- Q.** *Can you sell a beer to a person under 21 years of age if that person is accompanied by a parent or guardian?*
- A. No. It is never lawful for a licensee to sell or serve alcohol to an underage person.** [COV § 4.1-304 and §4.1-306]
- Q.** *A young-looking customer produces a Virginia driver's license and two other pieces of ID showing that he is 22 years old. Your employee remembers this customer and believes that his age is really only 19 years. Must your employee make the sale?*
- A. No. It is your responsibility to ensure that no sales are made to persons under 21 years of age. Do not make the sale if you have any doubts about the age, even if ID is shown.** [COV §4.1-304]
- Q.** *If you or one of your employees sells alcoholic beverages to a person who produced a Virginia driver's license and two other forms of ID showing that he was 21 years old, and a police officer later determines that the customer is only 19, can you be charged with a violation? If so, how will it be treated by the Board?*
- A. Yes. You may be charged with selling alcoholic beverages to an underage person. However, proof that a driver's license and other acceptable ID were diligently examined can be used as a defense. Depending on the appearance of the individual and the quality of the ID, these factors might be considered by the Board in assessing a penalty. You should also remember that if you take the initiative and notify the Board or the police that a violation may have occurred, you would not be punished by the Board for the offense.** [COV §4.1-30, § 4.1-305 and 3 VAC 5-50-20]
- Q.** *Your bartender sold two pitchers of beer and provided four glasses to a customer who was over 21 years of age. The customer took the beer and glasses to a table in a corner of the restaurant. Later, ABC agents saw four customers drinking at the table and discover that two of them were only 18 years old. Are you at fault?*
- A. Yes. The licensee is responsible for the control of the restaurant, including who is consuming alcoholic beverages at any point in time. In this case, you can be cited for allowing the consumption of alcoholic beverages by underage persons on the premises.** [COV §4.1-225 and 3 VAC 5-50-10]



## *Illegal Sales*

### **Intoxicated Customers**

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- Do not sell or serve alcoholic beverages to intoxicated persons, or allow someone else to purchase alcoholic beverages for intoxicated persons. [COV §4.1-304 and §4.1-306]
  - Do not allow an intoxicated person to consume or possess alcoholic beverages on the premises of your business. [COV §4.1-225]
  - Do not allow an intoxicated person to loiter on the premises of your business. [COV §4.1-225]
  - Violating any of the above laws will expose you to both criminal and administrative penalties.
- excessive alcohol consumption. Licensees and their employees should look for warning signs when identifying intoxicated persons including:
- Impaired vision or speech
  - Lack of concentration
  - Clumsy actions such as difficulty in walking or holding a drink
  - Difficulty in lighting a cigarette
  - Red or watery eyes
  - Disoriented appearance
  - Person is overly loud or friendly
  - Person is overly quiet and subdued

#### **Signs of Intoxication**

It is the responsibility of the licensees and their employees to make sure that no one is allowed to become intoxicated on the licensed premises, and that anyone who enters the establishment in an intoxicated condition not be allowed to purchase or consume alcoholic beverages. Intoxication is the gradual process of losing control of emotional, mental and physical capabilities caused by

Numerous training materials and programs are available that instruct licensees in methods of dealing with intoxicated customers. Contact your association, the local police, or your ABC agent. This topic is covered extensively in ABC training seminars.

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## QUESTIONS AND ANSWERS

**Q.** *Can you or an employee allow an intoxicated customer to consume a drink if it was bought for him by a friend who is not drunk?*

**A. No.** **A licensee or an employee may not allow an intoxicated person to consume alcoholic beverages, regardless of who buys them. [COV §4.1-225]**

**Q.** *While you are tending bar one of your best customers staggers into your place and orders a round of drinks for his friends. His speech is slurred and he appears clumsy and drowsy. Since he only lives a block away, is it okay for you to serve him just one drink with the understanding that he is to go home after he finishes it?*

**A. No.** **At no time are you allowed to serve alcoholic beverages to intoxicated persons. The customer in this case has exhibited classic signs of intoxication and should not be served under any circumstances. [COV §4.1-225 and §4.1-304]**



# Prohibited Conduct

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## Drugs, Violence, Gambling, Sexual Activity and Nudity

### Drugs, Controlled Substances

Do not allow the sale, consumption, or possession of illegal drugs or other controlled substances on the licensed premises.

[COV §4.1-225]

Do not allow any person to possess or exchange any drug devices or paraphernalia on the licensed premises. [COV §4.1-225]

### Disorderly Conduct

Do not allow noisy or disorderly conduct on the premises, including fighting or use of weapons.

[COV §4.1-225]

Do not allow the establishment to become a meeting place for drug users, drunks, prostitutes, gamblers, or habitual law violators.

[COV §4.1-225]

### Gambling

Do not allow any illegal gambling to occur on the premises, or possession of any illegal gambling apparatus, including certain video games or “sports pools” (i.e. football/basketball/baseball).

[COV §4.1-225]

If you are uncertain as to whether a video game or activity is illegal, contact your local ABC agent.

### Sexual Activity and Nudity

Do not allow any lewd, obscene, or indecent conduct, literature, pictures, films, slides, or videos on the premises. [COV §4.1-225]

The following acts are considered lewd and disorderly and not allowed on the premises. Be aware that standards are stricter for mixed beverage licensees than for wine and beer licensees.

[3 VAC 5-50-140 and COV §4.1-325]

- (1) Any real or simulated sex acts by customers or employees.
- (2) Fondling or caressing one’s own or another’s breast, genitals, or buttock.
- 3) No display of any portion of the genitals, pubic hair, anus, or breast below the top of the areola is permitted.

Furthermore:

- (a) Customers are not allowed to touch entertainers who are not fully clothed.
- (b) No disrobing or striptease acts are allowed in mixed beverage establishments.

- (c) As long as entertainers are sep-

arated from the customers by a stage or platform, they are granted more freedom in terms of how much of their bodies can be displayed.

- (d) Total nudity is not permitted.

### Observe, Evaluate and Act

It is the licensee’s responsibility to maintain control of the premises. Always be observant of customers’ actions and look for potential trouble. If you observe what may be an illegal act, take time to evaluate your options. Most often, you can probably deal with the situation by talking with the customer. However, always be alert for potentially dangerous situations that may require the use of force. If you demand that a customer leaves and he refuses, or if the situation appears dangerous, call the police. Be aware, however, that **excessive calls** to the police could bring sanctions by the Board against your establishment. Do not let your establishment develop the reputation of being a place where disorderly conduct is allowed to occur.

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## QUESTIONS AND ANSWERS

- Q.** *You go back to a stockroom to get some supplies and notice the smell of marijuana in the air. You know that one of your employees was just in the room a few minutes ago. Could you possibly be cited for a violation?*
- A. Yes.** **As a licensee, you are responsible for ensuring that illegal drugs are not used on the premises, and you are also liable for the actions of your employees. In this situation you should take immediate action to ensure that the employee no longer engages in behavior that could cause you to be penalized. [COV §4.1-225]**
- Q.** *You notice that a particularly obnoxious customer has insulted another customer who is known for his ability to fight. Since the obnoxious customer needs to be taught a lesson, your employees allow him to be beaten. Is their lack of action justified under ABC law?*
- A. No.** **Allowing fighting on the premises is illegal, no matter how much it is provoked. [COV §4.1-225]**
- Q.** *One of your waiters notices that the customers at a table are playing cards and money is being passed between the players. The customers are not being rowdy, and when asked about the game by the waiter, they reply that they are just playing a friendly game of cards. Is this a violation?*
- A. Yes.** **If you or your employees knowingly allow gambling to occur on the premises you are violating ABC law and may be subjected to penalties. [COV §4.1-225]**

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- Q. *One of your female entertainers has an act during which she starts out fully clothed and slowly removes each piece of clothing until she is wearing only a small bikini. Is this considered a lewd act?*
- A. **Possibly. Remember that striptease acts and disrobing are prohibited in mixed beverage establishments. The act, however, would be allowed in wine and beer or beer only establishments as long as it did not violate any of the standards described under 3 VAC 5-50-140.**
- Q. *A group of men has rented a private room in your restaurant to throw a “stag party” for a friend who is to be married. They wish to show pornographic movies during the party. Is this allowed?*
- A. **No. It is a violation to allow any indecent or lewd materials on the premises of the establishment. [COV §4.1-225]**
- Q. *The police receive a complaint about persons who are creating a disturbance in your parking lot and respond. Upon arrival, they discover that a group of people is consuming alcoholic beverages that were purchased in your convenience store. Can you be cited with a violation?*
- A. **Yes. As a licensee, you are responsible for actions that occur inside the store and on outside property. However, the Board may consider mitigating factors such as whether you were aware that persons were congregating outside and whether a pattern of such behavior has been recorded. [COV §4.1-225]**



# *Operating a Licensed Business*

## **Restricted Hours**

In localities where the sale of mixed beverages is allowed:  
[3 VAC 5-50-30.A]

On-premises sale and consumption are not permitted between 2 a.m. and 6 a.m.

Off-premises sales are not permitted between 12 midnight and 6 a.m.

In all other localities:  
[3 VAC 5-50-30.A]

On-premises sale and consumption and off-premises sales are not permitted between 12 midnight and 6 a.m., except that on New Year's Eve on-premises licensees are allowed an extra hour to sell and serve alcohol beverages.

Exceptions: [3 VAC 5-50-30.B]

Club licensees have no restrictions on hours.

Licensees who have had their hours restricted by the Board will obey those requirements.

Be aware that some localities may have stricter rules regarding allowable sales hours. Be sure to check local ordinances regarding Sunday sales and other restrictions.

**The Definition of a Sale:** "Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering other than gratuitously, by any means, alcoholic beverages.  
[COV §4.1 -100]





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## QUESTIONS AND ANSWERS

**Q.** *You sell a pitcher of beer to a table of customers at 1:45 a.m., and they are not finished drinking it at 2 a.m. Can you allow them to finish off the contents of the pitcher since they purchased it before 2 a.m.?*

**A. No. Neither sale nor consumption of alcoholic beverages is permitted after restricted hours.**  
*[3 VAC 5-50-30.A]*

**Q.** *A customer rushes into your convenience store at 11:58 p.m. and grabs a six-pack of beer for purchase. However, as you begin to ring up the sale, he says that he left his money in the car and asks you to wait while he runs outside and gets it. By the time he gets back inside the store with his money it is midnight. If you allow the sale, have you committed a violation?*

**A. Yes. Remember that a sale is complete at the point in time when money is handed over in exchange for the product. Even though the transaction was started at 11:58 p.m., it was after midnight before it was completed and money was exchanged. Thus, this would qualify as an illegal sale and count as a violation.**  
*[3 VAC 5-50-30.A]*

# Operating a Licensed Business

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## Containers and Removal

- Wine and beer may be sold for off-premise consumption only in original containers that have not been opened.  
[3 VAC 5-40-30]
- Wine and beer sold for off-premise consumption may not be opened in or anywhere on the premises of the establishment, with the exception of beer sold in approved growlers (a reusable container that is federally approved to hold beer, has a resealable closure and is properly labeled.)  
[3 VAC 5-40-30 and 3 VAC 5-40-40]
- Wine sold for on-premise consumption may be taken off-premises if it is still in the original container and closed.  
[3 VAC 5-40-30]
- On-premise licensees may serve and allow consumption of alcohol only in “designated areas” that are defined by the Board at the time the license is granted.  
[3 VAC 5-50-110]



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## QUESTIONS AND ANSWERS

- Q.** *A couple dining at your restaurant order a bottle of wine during dinner and do not finish drinking all of it. Are they allowed to take it home?*
- A. Yes.** **The couple may take the wine home as long as it is still in the original bottle and it has been resealed.** [3 VAC 5-40-30]
- Q.** *Your restaurant has a long entrance hallway that opens into a bar area. On a particularly busy night, a few of your customers decide to go into the hallway to drink so they can be away from the rest of the crowd. Should you allow them to do so?*
- A. No.** **Customers should only drink in “designated areas” approved by the Board, which generally consist of places where food service is available at substantially the same hours that alcohol is served.** [3 VAC 5-50-110]
- Q.** *After paying for a six-pack of beer, a customer opens one of the beers just after he steps outside of your convenience store. Should you be concerned?*
- A. Yes.** **As long as the customer is anywhere on the premises, inside or outside, it is a violation if he opens a container that was purchased for off-premise consumption.** [3 VAC 5-40-40]



# Operating a Licensed Business

## Employment Practices

- Do not, without prior approval of the Board, employ anyone who has been convicted of a felony, any crime involving moral turpitude (lying, cheating, or stealing), or a drug-related offense within the past five years. This does not apply to busboys, cooks, or other kitchen help. [COV §4.1-225]
- All licensees must always have at least one ABC manager on duty that can satisfactorily speak and read the English language. [COV 4.1-222]
- Employees must be at least 18 years or older to sell or serve alcoholic beverages for on-premise consumption. [3 VAC 5-50-50]
- No mixed beverage licensee or employee shall consume alcoholic beverages while on duty. Neither wine and beer licensees nor mixed beverage licensees may ever be intoxicated while on the premises. [COV §4.1-325 and §4.1-225]
- Bartenders must be at least 21 years or older. However, persons who are at least 18 years old may act as bartenders for establishments that only serve beer. [3 VAC 5-50-50]
- Each licensee must designate ABC managers who are responsible for overseeing all business conducted under the license while the establishment is open. At least one ABC manager must be on duty at all times, and his or her name must be clearly posted during their entire shift. ABC managers must be at least 21 years old. It is not necessary to have an ABC manager on duty if the licensee is on the premises. [3 VAC 5-50-40]
- No licensee or employee may entice or encourage any customer to purchase any alcoholic beverage. This does not mean that you cannot advertise or let customers buy drinks for each other. [3 VAC 5-50-80]
- Employees may not receive compensation based directly on how much alcohol they sell. This does not prohibit compensation plans based on total sales volume, including alcohol sales, for retail wine and beer or beer only licensees. [3 VAC 5-50-210]

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## QUESTIONS AND ANSWERS

- Q.** *During a busy night at your restaurant, one of your bartenders calls in sick. To help speed things up, one of your waiters who is 19 years old gets behind the bar to help out. Is this permitted?*
- A. No.** While waiters must only be 18, bartenders (defined as a person who sells or serves alcoholic beverages behind a counter) must be 21 or older. The waiter could help by restocking the bar, cleaning, or getting glasses, but he cannot mix drinks, ring up orders, or serve customers while behind the bar. [3 VAC 5-50-50]
- Q.** *While waiting on a table, one of your waitresses discovers that a customer is celebrating a birthday. Your waitress suggests that everyone at the table order a shot of whiskey so that they can really have some fun. Is this allowed?*
- A. No.** Employees are not allowed to encourage customers to drink. Servers are allowed to ask customers if they would like an alcoholic drink or answer customer questions, but they cannot actively entice customers to drink. [3 VAC 5-50-80]
- Q.** *A customer orders a round of drinks for the house and tells the bartender to make one for himself. The customer is very persistent and is spending a lot of money, so the bartender takes a sip of a drink to make everyone happy. Is this a violation?*
- A. Yes.** Mixed beverage licensees and employees are never allowed to consume alcohol beverages while on duty in any amounts or under any circumstances. [COV §4.1-325]
- Q.** *You run a family-owned grocery store and want to employ your sixteen-year-old son to work for you. Is your son allowed to ring up beer and wine sales for customers?*
- A. Yes.** There are no ABC restrictions as to how old an employee must be to sell alcoholic beverages for off-premises consumption. Be aware, however, that child welfare protection laws do exist that govern child employment, and it is your responsibility to know what they are. Also, keep in mind that your son is not allowed to make a sale unless there is a manager on duty with him who is at least 21 years old.

# Operating a Licensed Business

## Advertising and Promotions

**Advertising materials**—defined by ABC as tangible property of any kind which utilizes words or symbols in making reference to any brand or manufacturer of alcoholic beverages.

- No advertising shall encourage underage persons to drink, or induce anyone to drink to excess. [3 VAC 5-20-10.E]
  - No lewd or obscene advertising is permitted, and no mention of the intoxicating effects of alcohol is permitted. [3 VAC 5-20-10.E]
  - Advertising cannot be false or misleading, or imply that the product has a therapeutic effect. [3 VAC 5-20-10.E]
  - No advertising is allowed for any contest where the purchase of alcoholic beverages is required for participation. [3 VAC 5-20-10.E]
  - Retail licensees cannot advertise alcoholic beverages in exterior windows or anywhere in the store or restaurant interior that is visible from the outside, except on table menus or newspaper tear sheets. [3 VAC 5-20-30.2].
- No items in excess of \$5 in wholesale value may be given away as part of a promotion. [3 VAC 5-20-60]
  - The only type of manufacturer’s coupons allowed to be used are refund coupons, and these coupons cannot be honored at time of purchase, but instead must be mailed back to the manufacturer. No discount coupons allowed. Coupons are allowed for off-premises sales only. [3 VAC 5-20-90.B]
- (5) You cannot sell pitchers of mixed beverages.
  - (6) You cannot give away drinks.
  - (7) You cannot sell unlimited drinks for one price, such as “all you can drink for \$10.”

**If you have any questions about whether an advertisement or promotion is permitted, contact the local ABC Regional Office or ask your ABC Special Agent.**

### Happy Hour and Related Promotions: [3 VAC 5-50-160.B]

- (1) Happy Hour is not allowed between 9 p.m. and 2 a.m. of the following day.
- (2) You cannot advertise Happy Hour in the media or on the exterior of the premises.
- (3) You cannot increase the amount of alcoholic beverage in a drink without charging a higher price.
- (4) You cannot sell two or more drinks for one price (no 2-for-1 specials.)



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## QUESTIONS AND ANSWERS

- Q.** *You have just bought a neon “Budweiser” sign that would look good in the front window of your restaurant. Should you go ahead and put it up?*
- A. No.** You cannot advertise alcoholic beverages on any exterior window. Also, permanent mechanical signs cannot refer to a particular brand name if that brand, or any other brand from the same manufacturer, is sold in the establishment. [3 VAC 5-20-20.B and 3 VAC 5-20-30.2]
- Q.** *As part of a promotion, you want to give away shirts with beer advertisements printed on them. Is this permitted?*
- A. Possibly.** This is allowable only if, (1) the shirts are worth less than \$5 in wholesale value, (2) the shirts are only available in adult sizes, (3) the shirts were not obtained from a manufacturer or wholesaler, and (4) the shirts are not given away on the licensed premises by a wholesaler or wholesaler representative. [3 VAC 5-20-60]
- Q.** *You are considering running a radio advertisement that encourages customers to come to your club and “party until they drop.” Is this allowable advertising?*
- A. No.** This ad is not permitted since it is obviously encouraging excessive consumption of alcohol. If you are ever uncertain as to whether a particular ad violates ABC law, contact your ABC agent or the ABC Regional Office. [3 VAC 5-20-10.E]

# Operating a Licensed Business

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## Record Keeping

- Always keep complete and accurate records of all transactions at your place of business for at least two years. Records of alcoholic beverage transactions should be kept separately in an orderly arrangement and must be available for inspection at the request of ABC agents. [3 VAC 5-70-90.A]
- All wine, beer and liquor invoices shall be kept for two years. Invoices shall show date of purchase, the type and amount bought and the name and address of the persons from whom you purchased. Daily sales records shall also be kept and shall show the amount of food and alcoholic beverages sold and prices charged. [3 VAC 5-70-90.C]
- Keep a record of all checks used for purchase of alcoholic beverages, and do not throw away canceled checks and related bank statements. [3 VAC 5-70-90.A]
- Mixed beverage licensees must track sales and purchases of all mixed beverages, food and non-alcoholic beverages. Once a year each mixed beverage licensee is required to submit an annual review report to the Board showing all purchases and sales of alcoholic beverages during the year, as well as an accurate inventory. *Keep in mind that in determining “gross receipts from the sale of food” you should not include receipts for food for which there was no sale, which includes food given away as part of a promotion or provided for free at a private function. Also, food sales should be reported net of any discounts or coupons.* [3 VAC 5-70-90.D and 3 VAC 5-70-90.F]

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## QUESTIONS AND ANSWERS

- Q.** *You are in the process of submitting your annual review to the ABC Board for your restaurant. While calculating “gross receipts from the sale of food,” you are uncertain if you should include the cost of the free tacos that you give away during Happy Hour. Should this cost be included in the calculation?*
- A. No.** **Any food given away does not count as a sale. In this example, the cost of the tacos does not count in calculating whether the restaurant has met the “45% rule” (at least 45% of total sales must be non-alcohol items.)** [3 VAC 5-70-90.F]
- Q.** *Upon inspection of your restaurant, ABC agents discover that some liquor invoices are missing. You tell the agents that those invoices are at your house and you will get them as soon as possible. Have you done anything wrong under ABC law?*
- A. Yes.** **You are required to keep complete records at your *place of business* for at least two years. Do not remove original records off of the premises (make copies if you want to transfer records off of the premises.)** [3 VAC 5-70-90.A]



# Operating a Licensed Business

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## License Issues

- **Ownership Change:** Only the individual, partnership, association, or corporation whose name appears on the license may use the privileges of the license. Any change in the status of non-corporate ownership, such as the sale of the business or taking on a new partner, automatically **terminates** the current license and a new application must be filed. If a corporation holds a license and any changes in the officers, directors, or shareholders owning 10% or more of the stock occurs, the ABC Board must be notified within 30 days. However, publicly owned corporations whose stock is traded on an exchange do not have to report stock transfers. [3 VAC 5-70-90]
- Persons to whom a license has been issued should not allow other persons to receive a percentage of the income of the business or have an ownership interest in the business (no “shadow owners or silent partners.”) This does not prohibit the payment of franchise fees or the payment of rent based on gross receipts. [3 VAC 5-50-220]
- No license is transferable from one person to another, or from one place to another. [COV §4.1-203]
- Each license must be posted in a location on the premises where it is clearly visible. [COV §4.1-203]

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## QUESTIONS AND ANSWERS

- Q. *You are getting near retirement age and want to sell your restaurant to your son. Does he have to apply for a new license even though he has worked for you for 20 years?*
- A. **Yes. Anytime there is a change in non-corporate ownership, a new application for an ABC license must be filed, no matter who the new owner may be. [COV §4.1-203]**
- Q. *A friend approaches you and offers to set you up as owner of a new restaurant. He will provide the start-up money and you will handle all day-to-day operations. Your name will appear on the ABC license. In return, you will give him 50% of your net profits. Is this a permitted arrangement?*
- A. **No. This is the classic example of a “shadow owner” and is not permitted. If a person’s name does not appear on the license, he or she should not be receiving a percentage of the income or enjoying an interest in the business. [3 VAC 5-50-220]**

# Operating a Licensed Business

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## Purchases, Taxes and Financial Responsibility

### Purchases

- Licensees must purchase wine and beer for resale only from wholesalers licensed to do business in Virginia. [COV §4.1-326]
- Mixed beverage licensees must purchase all of their liquor from the Board at ABC State Stores on purchase order forms provided by the Board.
- Purchase of alcoholic beverages must be made with **cash** at or before the time of delivery. Cash is defined as currency, money orders, checks, or electronic funds transfers. The amount paid cannot be larger than the purchase price of the alcoholic

beverages. If non-alcoholic items are also purchased at the same time, the amount paid must be no larger than the combined purchase price, and a separate invoice must be used for non-alcoholic items. [3 VAC 5-30-30]

### Taxes

- All state and federal excise taxes on wine and beer are paid by the wholesalers and are built into the wholesale price. Retailers do **not** need to worry about paying these taxes. [COV §4.1-235]
- Retailers are responsible for collecting state and local sales taxes

and paying them to the proper government bodies.

- Retailers are also responsible for paying a Federal Special Occupational Tax that is administered by the Bureau of Alcohol, Tobacco and Firearms (BATF.) ABC has no responsibility for this tax, so contact your nearest BATF office for details.

### Financial Responsibility

- Licensees are required to maintain “financial responsibility” for their business. This includes timely payment of all taxes, creditor obligations and other bills, as well as keeping accurate records of all such transactions.

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## QUESTIONS AND ANSWERS

- Q.** *Your restaurant runs out of bourbon on a Saturday night. Is it okay for you to call up a friend who owns a restaurant and ask him if he will sell you enough bourbon to make it through the rest of the weekend?*
- A. No. Mixed beverage licensees may purchase liquor for resale only from the Board at designated licensee stores. You should manage your inventory to avoid running out of popular brands.**
- Q.** *One of your friends asks you to sell some of his homemade beer in your grocery store. Can you do him a favor and put it on your shelves for sale?*
- A. No. You are only allowed to sell wine and beer purchased from a licensed wholesaler. So unless your friend has had his beer approved by the Board and then obtained a wholesaler’s license, tell him no. [COV §4.1-326]**
- Q.** *You have just paid a large tax bill and your cash flow is low. One of your beer wholesalers makes a large delivery and you do not have enough money in the bank to cover the bill. The delivery person for the wholesaler tells you not to worry about it because he will just start a line of credit that will allow you to pay your bill over the next 90 days. Can you accept this offer?*
- A. No. As a retail licensee you must pay in cash at or before the time any alcoholic beverages are delivered by a wholesaler. You are not allowed to run a line of credit with any of your suppliers. [3 VAC 5-30-30]**

# Operating a Licensed Business

## General Guidelines

- Except for in frozen drink dispensers approved by the Board, mixed beverage licensees shall prepare drinks only after receiving a customer's order, and no one should ever tamper with or dilute the contents of original bottles. [3 VAC 5-50-60.A]
  - No customer shall possess more than two mixed beverage drinks at one time. [3 VAC 5-50-60.B]
  - Mixed beverage licensees shall not serve the entire contents of a bottle in its original container in filling an order. Exceptions include hotels, which may sell bottles to guest rooms, or to a group that is hosting a function in a private room. [3 VAC 5-50-60.C]
  - Do not keep on the premises any alcoholic beverages that you are not allowed to sell under your license, and do not allow customers to consume on the premises any such beverage. Exceptions may apply to persons operating restaurants who have culinary licenses, or who cater to certain types of private meetings and parties. [COV §4.1-315 and §4.1-325]
  - All containers of alcoholic beverages purchased from the Board for resale by mixed beverage licensees must be marked with a stamp showing the purchase order number and license number of the retailer. These stamps cannot be reused, and must be destroyed whenever the container is emptied. Always keep liquor in a separate and secure location on the premises. [3 VAC 5-50-60.B]
  - The arrangement and lighting of an establishment must be set up to allow law enforcement officers and ABC agents ready access and reasonable observation.
- Lighting should be sufficient so that the conduct and appearance of patrons can be easily observed. [3 VAC 5-50-70.A]
- Always maintain your premises in a sanitary condition. [COV §4.1-225]
  - Do not sell any alcoholic beverage for off-premises consumption unless the customer is inside the establishment (i.e. no drive-thru sales), and do not sell or deliver alcoholic beverages to anyone seated in a vehicle. [3 VAC 5-50-150]
  - Do not give away alcoholic beverages to customers or other persons in connection with the operation of your business. This does not apply to gifts to personal friends, wine and beer tastings, hospitality rooms, or some types of conventions. [3 VAC 5-70-100]



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## QUESTIONS AND ANSWERS

- Q. *Your restaurant has a wine and beer license. One of your regular customers is a bourbon drinker, and he asks you if it would be alright if he buys sodas and mixes them with bourbon that he brings in himself. This customer has given you a lot of business and you do not want to offend him. Should you grant his request?*
- A. **No. You cannot allow anyone to consume any alcoholic beverage on the premises that is not covered under your license. The customer must stick with wine, beer, or nonalcoholic drinks.**  
*[COV §4.1-315 and §4.1-324]*
- Q. *One of your regular customers comes into your restaurant with a group of his friends. As a friendly gesture, you tell your waitress to take a round of drinks over to their table and tell them that the drinks are “on the house.” Is this allowed under ABC law?*
- A. **No. You are not allowed to give away drinks for free to customers in connection with your business. This example clearly does not fall under the “personal friend” category, and therefore is a violation.**  
*[3 VAC 5-70-100]*
- Q. *You own a hotel and are considering installing “mini-bars” in some of your rooms that would offer alcoholic drinks to your guests. Can you include original bottles of liquor in these “mini-bars”?*
- A. **Yes. As long as you possess a mixed beverage license for a restaurant located on the premises of the hotel, you can sell bottles of liquor to guests in their rooms. This practice is also allowed for groups holding private functions in designated rooms.** *[3 VAC 5-50-60.C]*
- Q. *A customer rushes into your restaurant and orders three gin and tonics just before Happy Hour is about to end. He tells you that one of the drinks is for a friend. Later, you observe the customer, and all three drinks are in front of him. Should you be concerned?*
- A. **Yes. It is your responsibility to make sure that no customer possesses more than two mixed drinks at any one time. Since the sale has already been made, you should make the customer get rid of one of the drinks.** *[3 VAC 5-50-60.B]*



## Evaluation Questionnaire

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*Please take the time to look over the following questionnaire at your convenience. Your feedback in the form of suggestions and criticism is very important in helping the ABC Board fulfill its mission of providing excellent customer service to Virginians.*

*If you like, copy this page and send your responses to:*

✉ Department of Alcoholic Beverage Control, Public Affairs, P.O. Box 27491, Richmond, VA 23261  
☎ or fax to 804-213-4415 ✉ or e-mail [lcwine@abc.state.va.us](mailto:lcwine@abc.state.va.us).

For more information, visit our website at [www.abc.state.va.us](http://www.abc.state.va.us)

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**(1) What type of license do you hold, and what type of business do you run (e.g., restaurant, convenience grocery store, gourmet shop, etc.)?**

**(2) What sections or topics did you find helpful? Why?**

**(3) What sections or topics did you find to be irrelevant or confusing? Why?**

**(4) What topics would you like to see covered in future editions of this guidebook?**

**(5) Please list any additional comments.**



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