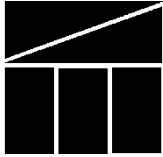


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

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 5-50 Retail Operations
Alcoholic Beverage Control Authority
Town Hall Action/Stage: 5086 / 8483
January 17, 2019

Summary of the Proposed Amendments to Regulation

The Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to repeal prescriptive restrictions on happy hour advertising.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Section 4.1-111(B)(15) of the Code of Virginia authorizes the Board to permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour. The statute, however, prohibits the advertising of any pricing related to such happy hour.¹

Under the current regulation, licensees are prohibited to advertise happy hour anywhere other than within the interior of the licensed premises unless they only use the terms “Happy Hour” or “Drink Specials” in outside advertisements and only provide a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices.

¹ According to the Department of Alcoholic Beverage Control, an advertisement that does not state the dollar price is allowed. For example, an advertisement stating “one-half of regular menu price during happy hour” is not prohibited.

The Board proposes to repeal this permissive, but prescriptive language allowing happy hour advertising only in certain ways, which would effectively afford licensees more discretion in how they advertise their happy hour event. However, the Board also proposes to add new language stating that a licensee may advertise its happy hour so long as the advertising does not tend to induce minors or other interdicted individuals to drink, or encourage persons to consume to excess; and that the new language is subject to and shall be adhered to in a manner consistent with all other regulations of the authority. As a result, licensees would be allowed to advertise as they wish so long as they do not induce minors, encourage excess consumption, and do comply with the other regulations of the Board. These changes would benefit the licensees in terms of the flexibility they would provide for happy hour advertising, but also establish performance criteria on what the advertisement shall not do.

The remaining changes repeal language duplicative of other regulations, which are not expected to create any economic impact.

Businesses and Entities Affected

There are 7,579 on-premises alcoholic beverage licensees. Most of the licensees are likely small businesses such as restaurants, bars, grocery stores, wineries, etc. According to the Virginia Alcoholic Beverage Control Authority, there were three advertising-related violations in the last three calendar years.

Localities Particularly Affected

The proposed changes would not disproportionately affect particular localities.

Projected Impact on Employment

The proposed changes are unlikely to affect employment.

Effects on the Use and Value of Private Property

The proposed changes are unlikely to significantly affect the use and value of private property.

Real Estate Development Costs

The proposed changes would 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

The proposed changes would not have costs on small businesses licensees, but allow more flexibility in how they advertise their happy hour events.

Alternative Method that Minimizes Adverse Impact

The proposed changes would not impose adverse impacts on small businesses.

Adverse Impacts:**Businesses:**

The proposed changes would not impose adverse impacts on non-small business licenses.

Localities:

The proposed changes would not adversely affect localities.

Other Entities:

The proposed changes would 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 14 (as amended, July 16, 2018). 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.