



Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5 -70
Regulation title	Other Provisions
Action title	Reduction in Penalty for Certified Alcohol Server Training
Date this document prepared	March 13, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The purpose of this action is to carry out the mandate of Chapter 513 of the 2008 Acts of Assembly, which amends § 4.1-227 of the Code of Virginia and requires the Alcoholic Beverage Control Board to promulgate a regulation providing for a reduction in penalty in certain disciplinary actions against licensees, where the licensee can demonstrate that it has provided certified alcohol server training to its employees. The amended regulation encourages alcoholic beverage seller-server training.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms used in the document.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-227, Code of Virginia, as amended by Chapter 513 of the 2008 Acts of Assembly, provides that the Alcoholic Beverage Control Board shall, by regulation, (1) designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation and (2) provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server training certified in advance by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The board has determined that this action promotes the public safety and welfare by insuring that licensees who do not comply with the regulations governing the sale of alcoholic beverages are appropriately punished, while saving the agency the cost of an administrative hearing.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The intended regulatory action would amend 3 VAC 5-70-210 to provide for a lesser suspension period and a lesser civil penalty in lieu of suspension for licensees charged with a first violation within three years of sale of alcoholic beverages to an underage or intoxicated person or allowing consumption of alcoholic beverages by an underage or intoxicated person, if the licensee can demonstrate that it has provided the employee responsible for the violation alcohol server training certified by the board within the 12 months immediately preceding the violation. A new provision added to the section will set out the process for certification of alcohol server training courses. Additional amendments will clarify that the ability to waive hearing and accept a penalty under this section does not apply to licensees charged with multiple violations, and deletes certain violations currently included in this section which the board feels are inappropriately listed.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*

- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of the proposed action to the public is that it provides mitigation of punishment for businesses who provide alcohol seller/server training to their employees. It also provides the advantage to agency of reducing costs by allowing certain violations to be handled without the expense of a hearing. The only disadvantage to the public is that five violations currently allowed to be handled without a hearing for first-time violators will now require a hearing. There are no disadvantages to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Jeffrey L. Painter, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, Virginia 23261**, fax number (804) 213-4411, e-mail jeffrey.painter@abc.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	None
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Businesses licensed for the sale of alcoholic beverages.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	There are approximately 15,000 businesses licensed to sell alcohol in the Commonwealth. It is estimated that more than 95% of these are small businesses.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	The changes to existing regulations do not require any additional costs to regulated businesses. Businesses may choose to provide employees alcohol seller/server training to mitigate potential penalties for violations of regulations. Seller/server courses are available without charge, although there are also commercial training services available.
Beneficial impact the regulation is designed to produce.	The regulation is designed to encourage seller/server training, by allowing licensees to mitigate punishment by providing training to employees.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since regulatory action is mandated by the General Assembly, there is no viable alternative. The agency will consider all suggestions received during the public comment period to assist it in developing a proposal that addresses the need in the most cost-effective manner.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulation contains no compliance or reporting requirements, design or operational standards. It will merely provide additional options for licensees to respond to violations of alcoholic beverage laws or regulations without the expense of a hearing..

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Gary Roberson, Government Relations Manager, TIPS	<ol style="list-style-type: none"> 1. Limit training to those companies with at least 10 years’ experience. 2. Do not require state certification of individual trainers. 3. Do not require advance scheduling of training sessions with the agency. 	<p>The Board does not believe such a requirement is necessary. The important thing is course content, not the longevity of the training company.</p> <p>The proposed regulation does not require certification of individual trainers.</p> <p>The proposed regulation does not require advance scheduling of training sessions.</p>
Michael J. O’Connor, President, Virginia Petroleum, Convenience and Grocery Association	Allow for mitigation for seller training as well as server training, to allow this to apply to off-premises licensees.	The proposed regulation allows reduced punishments based upon both seller and server training.
Thomas A. Lisk, for the Virginia	Both Associations support the action.	

Hospitality & Travel Association and Virginia Retail Merchants Association		
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Family impact

Please assess the 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.

It is not anticipated that this regulatory action will have any effect on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
3 VAC 5-70-210		Any licensee charged with a first violation of specified regulations or statutes within 3 years may waive hearing and accept either a prescribed license suspension or a set civil charge in lieu of suspension.	The proposed amendments will clarify that the ability to accept a prescribed penalty and waive hearing applies to single charges only. The licensee must have no other pending charges. The existence of multiple charges indicates a larger problem than a single first violation, and the Board feels such situations should be dealt with through the hearing process.

		<p>Keeping unauthorized, untaxed alcohol on the licensed premises, allowing gambling on the licensed premises, failure to keep records, and failure to maintain the mixed beverage food ratio will be removed from the schedule of violations for which hearings may be waived for first offenses. The Board feels that these violations are more serious violations which should be dealt with through the hearing process.</p> <p>If a licensee is charged with a first offense of sale of alcoholic beverages to a person at least 18, but under 21, sale to an intoxicated person, or allowing consumption of alcoholic beverages on the licensed premises by such persons, and the licensee can demonstrate that it has provided alcohol seller/server training to the employee responsible for the violation within the 12 months immediately preceding the violation, the licensee may waive hearing and accept a lesser period of license suspension or a lesser civil penalty in lieu of suspension. The Board believes this penalty mitigation will encourage licensees to conduct seller/server training.</p>
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For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here