



Economic Impact Analysis Virginia Department of Planning and Budget

**3 VAC 5-70 – Other Provisions
Alcoholic Beverage Control Board
May 1, 2009**

Summary of the Proposed Amendments to Regulation

The Alcoholic Beverage Control Board (ABC) proposes to amend its Other Provisions regulations to add alternate, reduced, penalties for certain violations of ABC regulations so long as the cited licensees have provided certified alcohol server training to their employees and so long as the licensee has no substantiated violations in the preceding three years or other pending citations. ABC proposes to remove several, more serious, violations from the list of violations for which licensees can choose to forego the disciplinary hearing process and accept immediate imposition of applicable fines or suspension periods. Additionally, ABC proposes to certify private alcohol server training courses that cover the same topics as ABC's own training course.

Result of Analysis

The benefits likely exceed the costs for these proposed changes.

Estimated Economic Impact

Current regulations allow licensees who have received citations for certain (first offense) violations from ABC, but who have not had any substantiated violations of rules in the preceding three years, to waive the normally required disciplinary hearing and either accept the prescribed suspension or pay a civil charge in lieu of suspension. Currently, amongst the violations for which licensees may choose this option are:

- 1) "Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age",
- 2) "Allowing consumption of beer, wine or mixed beverages by a person at least 18 but under 21 years of age",

- 3) “Sale to an intoxicated person”,
- 4) “Allow[ing]¹ consumption by an intoxicated person”,
- 5) “Keeping unauthorized alcoholic beverages on the premises, on which appropriate taxes have not been paid”,
- 6) “Allowing gambling on the premises, if licensee, agent or employee is [a] participant, but is not conducting the gambling event or operation”,
- 7) “Allowing gambling on the premises, if licensee, agent or employee is not [a] participant nor not conducting the gambling event or operation”,
- 8) “Failure to keep records” and
- 9) “Failure to maintain mixed beverage-food ratio required by statute (not applicable if ratio falls below 30%)”

Currently, ABC’s schedule of penalties allows licensees who meet the criteria for hearing waiver to accept a suspension of 25 days or pay a fine of \$2,000 for violations 1) through 4) in the list above. Violations 5) through 9) currently have suspension periods of either seven or ten days OR fines of either \$500 or \$1,000.

ABC proposes to amend the first offense qualification criteria by requiring that licensees not have any additional pending charges. This means that licensees with multiple pending charges will not be able to waive their disciplinary hearings and accept immediate suspensions or fines. ABC reports that licensees who have multiple pending violations (even if they have not had past substantiated violations) likely have larger issues that the Board needs to address. The Board believes these issues (and these licensees) will be more appropriately handled through the hearing process. Since licensees with pending violations can operate their businesses as they normally would pending the outcomes of their disciplinary hearings, they will likely not incur any extra costs on account of the time delay explicit in this proposed change. To the extent that having these licensees go before the ABC Board helps eliminate future violations, this change will provide a benefit for the public and possibly even the licensees.

¹ Bracketed language is added to make violation chart language more readable in this narrative.

For violations 1) through 4) on the list above, ABC proposes to offer a reduced penalty for licensees who have provided certified alcohol server training to their employees in the 12 months immediately preceding the violation. Licensees who have provided this training will only be subject to a five day suspension or a \$1,000 fine. ABC reports that they are proposing these reduced penalties to encourage licensees to offer training that may reduce or eliminate violations of relevant statutes and regulations.

Licensees can set up training through ABC, where they would not have to pay a fee, or purchase training through a private entity that has received ABC certification. Licensees who set up training for their employees through ABC will not incur a fee for that training; they or their employees, however, will likely incur other costs. Licensees may have to pay their employees some sort of hourly wage during the time they are completing training. If employees have to complete training on their own time without compensation, they will incur opportunity costs for their time. Licensees who choose to use certified private training services, because there is a waiting list for ABC training or because ABC training is in some other way inconvenient, will incur explicit costs for fees in addition to the other costs they would incur regardless of who provides the training. Since server training is voluntary, any licensee who chooses to provide it likely believes that the costs incurred will be outweighed by the benefits of being eligible for reduced penalties and a possible reduction in the occurrence of violations.

ABC proposes to eliminate violations 5) through 9) from the list of those for which licensees can waive disciplinary hearings and immediately serve a prescribed suspension (or choose to pay a fine, instead). ABC reports that these violations are serious enough... most of them are also criminal violations... that the disciplinary hearing process is a more appropriate way to handle them. Since licensees with pending violations can operate their businesses as they normally would pending the outcomes of their disciplinary hearings, they will likely not incur any extra costs on account of the time delay explicit in this proposed change. To the extent that having these licensees go before the ABC Board helps eliminate future violations, this change will provide a benefit for the public and possibly even the licensees.

Finally, ABC proposes to add criteria for approval of certified alcohol server/seller training courses. Applicants for approval of certification will have to complete a training data sheet, review ABC's training evaluation form (to make sure all topics are covered) and submit

the training data sheet and a copy of all proposed training materials to ABC. Under these proposed regulations certified trainers will be required to maintain complete records for all training classes conducted. ABC licensees will likely benefit from this certification process as it will allow them more choices for offering training to their employees. Individuals who wish to offer this training will likely only apply for certification if they expect the benefits of doing so to outweigh any costs. ABC could likely further minimize costs for trainers by placing some sort of time limit on how long training programs must maintain records.

Businesses and Entities Affected

ABC reports that approximately 15,000 businesses in the Commonwealth are currently licensed to sell alcohol. Approximately 95% of those qualify as small businesses.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have no significant effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.