

Virginia Alcoholic Beverage Control Authority

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The Virginia Alcoholic Beverage Control Authority (“VA ABC” or “Authority”) concurs with the majority of the Department of Planning and Budget’s (“DPB”) economic impact analysis (“EIA”); however, the agency does take exception to various statements regarding the amendments made to the schedule of penalties made by the analyst that are highly speculative and fail to take into consideration fact specific aspects that of the data provided to DPB regarding the penalties collected over the last fiscal year.

On Page 4 of the EIA, the analyst asserts that an increase in suspension periods or monetary penalties may lead to an increase in the number of contested cases and hearings the Authority would conduct. The analyst notes that nine (9) initial hearings were heard that included violations that are covered in the schedule of penalties; however, the analyst fails to mention that seven of those nine cases resulted in penalties exceeding the limits that the amendments to these regulations are proposing and would have resulted in the licensee seeing lower penalties had they settled according to the schedule of penalties. Additionally, there are various issues at play as to why matters may go to a hearing instead of settling pursuant to the schedule of penalties. The matter mentioned in the EIA that resulted in a penalty of \$10,750 civil penalty and a seventy-one (71) day suspension (reduced to thirty days after payment of penalty) was one matter that involved a licensee that had committed ten different violations to include multiple incidents of selling alcohol after hours, failing to submit the annual review; prohibited purchases of alcohol; submitting an inaccurate annual report for multiple years. The settlement process is not meant for licensees that so blatantly violate the law to such a significant extent. Other than this singular example, there were no other cases with penalties or suspensions that high. To determine an overall adverse impact across all 20,892 licensees based on the actions of one singular licensee that would not have been subject to the regulation currently being amended is faulty logic at best. Of the nine cases cited by the analyst, only one resulted in a civil penalty less than the proposed amendments in the current action and that was only by \$100. It is also worth noting that the schedule of penalties in their current state and as amended are suspensions and penalties that the licensee may *voluntarily* enter into, neither VA ABC nor the regulation mandate that the licensee must accept these penalties or suspensions. Furthermore, the licensee may also negotiate a different penalty and/or suspension period that may be considered based on the facts of the matter and through the offer and compromise process included in 3VAC5-10-160. If acceptance of the penalty or suspension period would adversely impact the licensee to such a degree that in the licensee’s summation it is not worth it, the licensee does not have to accept either.

On Page 9, the analyst asserts that all but three changes are expected to add to compliance costs. But for the requirement to report monthly as opposed to reporting quarterly, there are no additional compliance requirements imposed on licensees that do not already currently exist. Even if the requirement to report monthly as opposed to quarterly results in an additional “compliance cost”, said cost would be negligible because the licensee is reporting data that the licensee is already required to maintain. Also, in many cases VA ABC allows for this data to be submitted via email which would avoid any postal charges.



On Page 10, the analyst asserts that an increase to suspension periods may lead to a reduction in need for employees. As previously mentioned, the proposed suspension periods are voluntary. There is no mandate in these amendments that the licensee must accept a suspension. Additionally, the suspension is a suspension of the licensee's alcohol privileges. The licensee may continue to engage in the non-alcohol related activities of his or her business (*e.g.* a convenience store may be prohibited from selling alcohol while the license is suspended but may continue to sell other non-alcoholic items in its inventory). Furthermore, any reduction in the need for employees would be negligible across the licensee community considering that out of approximately 417 matters resolved through a consent settlement or negotiation in the last fiscal year, only 45 licensees chose to voluntarily accept a suspension.

For the statements indicated above, VA ABC only partially concurs with the analysis provided by DPB.

