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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-50
Regulation title	Retail Operations
Action title	Changes Resulting from Periodic Review
Document preparation date	August 13, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing qualifications and operating rules for retail licensees. The action is the result of a recent periodic review of this regulation.

The goals of this regulation are:

1. To prescribe reasonable minimum qualifications for holders of retail licenses; and
2. To promote the public health, safety, and welfare by reasonably regulating retail alcoholic beverage sales so as to prevent sales to those under the legal age or intoxicated, and to discourage over-consumption.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in

accordance with the Administrative Process Act. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

3 VAC 5-50-40 would be revised to provide a process for licensees to apply for approval for the employment of individuals whose records of criminal or alcoholic beverage violations might subject the licensee to disciplinary action pursuant to § 4.1-225 I of the Code of Virginia.

In 3 VAC 5-50-50, a provision would be added allowing persons 18 years of age or older to sell or serve wine for on-premises consumption at a counter in an establishment selling wine only.

3 VAC 5-50-80 would be amended to create an exception to the prohibition against placing alcoholic beverages in containers of ice available to consumers for off-premises consumption for farm winery licensees operating a remote retail location at a wine festival.

In 3 VAC 5-50-100, the provision in subsection A4 requiring grocery stores and convenience grocery stores to have at least five items from each of the basic food groups would be repealed.

In subsection C of 3 VAC 5-50-130, the rules for non-member use of club premises would be simplified to allow licensed clubs to admit non-members to the licensed club area for events at which alcohol is served up to 24 times each year. Limits on use of the unlicensed portion of club premises would be repealed.

3 VAC 5-50-140 would be revised to clarify that its provisions do not apply to legitimate theatrical or art exhibits or performances, would replace current provisions requiring partially nude performers to remain reasonably separate from patrons with a required separation of three feet, and would require that any platform or stage must be at least eighteen inches high.

In 3 VAC 5-50-160, subsection B8 would be repealed, allowing advertising of happy hour in the same manner as other alcoholic beverage advertising.

These amendments will protect the health, safety, or welfare of citizens by allowing alcoholic beverage retailers fewer restrictions on the operation of their businesses, while continuing to discourage over-consumption. The amendments to 3 VAC 5-50-140 will help to protect citizens from the negative secondary effects of sexually oriented businesses.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Alcoholic Beverage Control Board has considered alternatives including taking no action to amend the regulation and the additional changes suggested by public comment during the periodic review. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action. The suggested amendments were determined to be the best viable alternatives to achieve the goals of this regulation, while clarifying and slightly relaxing regulatory controls.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is not expected that this regulatory action will have any impact on the institution of the family.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Richmond Pub Alliance	3 VAC 5-50-70 should be amended to clarify that the Board may extend the license privileges for an on-premises licensee more than twice a year. Happy hour regulations should be amended to exclude a "mug club" from the definition of a happy hour. Prohibition against advertising happy hour in the media or on the exterior of the premises should be repealed. Reduced price offered to the public for a whole day or longer should not be considered happy hour. Time limitations on happy hour should be eliminated. Prohibition on giving away drinks should be eliminated. Allow two or more on-premises licensees to conduct a "pub crawl", where advance tickets are sold to the public entitling ticket-holders to consume a pre-determined number of alcoholic beverages at participating establishments. Allow happy hour advertising on an establishment's website.	Current regulation does not restrict extension of license privileges to twice a year. Board will deal with this issue through internal policy. "Mug club" as described does not appear to be a happy hour as defined in current regulation. Anticipated amendments to 3 VAC 5-50-160 will allow happy hour to be advertised in the same manner as other alcoholic beverage advertising allowed retailers in 3 VAC 5-20. Temporarily reduced price, whether for a day or longer, will continue to be considered a happy hour. The Board does not propose to change the hour limitations on the conduct of happy hours. The Board does not intend to remove the prohibition on giving away drinks. A "pub crawl" as described could be held under current regulations, as long as drinks are sold at customary prices or happy hour regulations are complied with. The anticipated amendments will allow website advertising of happy hours.
Virginia Hospitality & Travel Association	Repeal prohibition against preparing mixed beverages except pursuant to a patron's order and allow pre-mixing. Amend 3 VAC 5-50-110 to allow more than one exit	The prohibition against pre-mixing mixed beverages is statutory. The Board is without power to change it. The anticipated amendment to 3 VAC 5-50-110 will allow the minimum number of entrances required by

<p>Virginia Wineries Association</p>	<p>from outside terraces or patios. Exclude “mug club” from happy hour definition. Repeal happy hour advertising restrictions. Reduced price offered to the public for a whole day or longer should not be considered happy hour. Repeal the hours limitation on happy hours. Repeal the prohibition on giving away drinks. Repeal the prohibition against pitchers of mixed beverages. Allow happy hour advertising on an establishment’s website.</p> <p>Allow 18 year olds to sell and serve wine for on-premises consumption in an establishment that sells wine only. Repeal 3 VAC 5-50-80. Request clarification of the application of 3 VAC 5-50-90, dealing with storage permits, to winery operations.</p>	<p>building codes. “Mug club” as described does not appear to be a happy hour as defined in current regulation. Anticipated amendments to 3 VAC 5-50-160 will allow happy hour to be advertised in the same manner as other alcoholic beverage advertising allowed retailers in 3 VAC 5-20. Temporarily reduced price, whether for a day or longer, will continue to be considered a happy hour. The Board does not propose to change the hour limitations on the conduct of happy hours. The Board does not intend to remove the prohibition on giving away drinks, nor allow pitchers of mixed drinks to be served. The anticipated amendments will allow website advertising of happy hours.</p> <p>The anticipated amendment to 3 VAC 5-50-50 will allow 18 year olds to sell and serve wine for on-premises consumption in an establishment that sells wine only. The anticipated amendment to 3 VAC 5-50-80 will create an exception to the prohibition on placing alcoholic beverages in buckets of ice for off-premises sales for farm wineries operating remote retail activities at wine festivals. The storage permit requirements of 3 VAC 5-50-90 apply to storage of alcoholic beverages somewhere other than the licensed premises. A farm winery license only gives the winery the privilege of carrying on its business at the licensed premises and at up to 5 remote retail locations. If a farm winery desires to store alcoholic beverages somewhere else, it must have a permit from ABC, either pursuant to this section of the regulations or Section 4.1-212 of the Code of Virginia. If an off-site storage permit is issued, ABC tracks the additions and subtractions from storage, to ensure that proper taxes are paid and the product is not unlawfully diverted.</p>
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This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. This regulation governs the basic qualifications and operating procedures for retail licensees, and it is essential to the Board’s mission of controlling the sale of alcoholic beverages.