



Virginia Department of Planning and Budget **Economic Impact Analysis**

3 VAC 5-50 Retail Operations
Virginia Alcoholic Beverage Control Authority
Town Hall Action/Stage: 5442 / 8841
January 21, 2020

Summary of the Proposed Amendments to Regulation

The Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to require that mixed beverage restaurant licensees have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food would have to be available in all areas of the licensed premises in which spirits are sold or served.

Background

Mixed beverage restaurant licensees must already serve food that is prepared on the premises. The proposed amendment defines when the food must be available. The proposed text is essentially identical to Chapter 744 of the 2017 Acts of Assembly, which required the Board to promulgate this regulation.¹

Estimated Benefits and Costs

Of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license, it is not known how many already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. To the degree that costs or benefits result from this regulation, they are largely attributable to the 2017 legislative mandate.

Costs

Restaurants that have a mixed beverage restaurant license and do not already serve food cooked or prepared on the premises until at least 30 minutes prior to closing would have to either

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?171+sum+SB1216>

pay for food preparers and/or cooks to work longer, or close (and stop selling alcohol) earlier. Employing food preparers and/or cooks longer would increase costs for the restaurants, while closing earlier would reduce revenue.

Benefits

Food consumed in close proximity to drinking can lower the peak blood alcohol concentration.² To the extent that there are licensees that do not meet the current requirement and would meet it once the rule is in effect, and to the extent that patrons choose to take advantage of the availability of food when or near when they are drinking, the proposed amendment could lead to some patrons leaving the premises and driving with a lower blood alcohol concentration than they otherwise would have. Decreasing the degree of driver impairment would be beneficial.

Businesses and Other Entities Affected

The proposed amendment affects the share of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license and do not already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. These restaurants would have to either pay for food preparers and/or cooks to work longer, or close (and stop selling alcohol) earlier. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses³ Affected:

Types and Estimated Number of Small Businesses Affected

As stated above, the proposed amendment affects the share of the 5,347 restaurants in the Commonwealth that have a mixed beverage restaurant license and do not already regularly serve food cooked or prepared on the premises until at least 30 minutes prior to closing. Data are not available to determine how many meet the statutory definition of a small business.⁴

² See <https://www.bgsu.edu/recwell/wellness-connection/alcohol-education/factors-that-affect-intoxication.html>

³ 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.”

⁴ Ibid

Costs and Other Effects

The affected small restaurants would have to either pay for food preparers and/or cooks to work longer, or close (and stop selling alcohol) earlier.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁵ Affected⁶

The proposed amendment does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment

The proposed amendment may moderately increase work hours for food preparers and cooks at restaurants that have a mixed beverage restaurant license and do not already serve food cooked or prepared on the premises until at least 30 minutes prior to closing.

Effects on the Use and Value of Private Property

The proposal would require affected restaurants to either pay for food preparers and/or cooks to work longer, or close (and stop selling alcohol) earlier. Employing food preparers and/or cooks longer would increase costs for the restaurants, while closing earlier would reduce revenue. Consequently, the value of these businesses may be moderately reduced. The proposed amendment does not affect real estate development costs.

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(D): 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

⁵ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.