



## Virginia Department of Planning and Budget Economic Impact Analysis

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**3 VAC 5-70 Other Provisions**  
**Alcoholic Beverage Control Board**  
**Town Hall Action/Stage: 5443/8842**  
January 20, 2020

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### **Summary of the Proposed Amendments to Regulation**

The Virginia Alcoholic Beverage Control Board (ABC) seeks to create a new Internet beer retailer license to authorize sales and shipments of beer to consumers in Virginia. Hence, ABC proposes to amend 3 VAC 5-70-220 *Wine or Beer Shipper's Licenses and Internet Wine Retailer Licenses; Application Process; Common Carriers; Records and Reports* to insert Internet Beer Retail Licenses to the section title as well as the text of the section. As such, all provisions that currently apply to wine or beer shipper's licenses and Internet wine retail licenses would be extended to Internet beer retail licenses.

### **Background**

The 2018 Acts of Assembly (Chapter 337) created and defined an Internet beer retail license.<sup>1</sup> Accordingly, § 4.1-208(A)(10) of the Code of Virginia authorizes persons licensed as Internet beer retailers and located within or outside the Commonwealth to sell and ship beer in accordance with Virginia Code § 4.1-209.1 and board regulations.<sup>2</sup> The language of § 4.1-208(A)(10) mirrors that of § 4.1-207(6) regarding the Internet wine retail license.<sup>3</sup> In 2008, ABC amended 3 VAC 5-70-220 to incorporate Internet wine retail licenses, and now proposes to incorporate Internet beer retail licenses in an identical manner.<sup>4</sup>

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<sup>1</sup> See <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0337>

<sup>2</sup> See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-208/> (Beer License) and <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-209.1/> (Direct shipment of wine and beer; shipper's license.)

<sup>3</sup> See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-207/> (Wine License)

<sup>4</sup> See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2517>, which became effective May 1, 2008.

## **Estimated Benefits and Costs**

Allowing Internet beer retailers to sell, and ship, directly to individual consumers is likely to benefit businesses engaged in beer retail as well as beer consumers by providing the flexibility to conduct their transactions online. Internet beer retailers would likely be able to earn greater revenue, and likely greater profits, from selling directly to individuals that want their product. Consumers would benefit from the convenience of purchasing beer online. Expanding the market for beer in this way would likely increase competition among beer retailers, which would in turn benefit consumers to the extent that it leads to lower prices, better quality, greater variety, or any combination thereof. On the other hand, to the extent that individual consumers substitute Internet purchases for local retail purchases, brick-and-mortar stores that have been, until now, the only source of beer for off-site consumption would likely experience decreases in revenue.

Those applying for an Internet beer license would have to pay a (statutorily set) \$150 annual licensure fee (in addition to a non-refundable application fee of \$195) and would have to meet the same recordkeeping requirements that currently apply to beer and wine shippers and Internet wine retail licensees. As per current regulation, these licensees “shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged.”

Further, on or before the 15<sup>th</sup> of each month, licensees are also required to file a report with the Tax Management Section of ABC indicating whether any shipments were made during the month, and if so, provide all the information listed above for each shipment.

## **Businesses and Other Entities Affected**

ABC reported that since the statute came into effect in 2018, they have already granted two Internet beer licenses, although they could not clarify if these licensees had previously held a

shipper's license or a retail license. The proposed amendments would benefit current and future Internet beer retail licensees.

Grocery stores, convenience stores, and other brick-and-mortar locations selling beer would likely be adversely affected if their consumers opt to make purchases on the Internet instead of buying from the stores, unless they engage in online retail and choose to obtain an Internet beer retail license.

## **Small Businesses<sup>5</sup> Affected**

### Types and Estimated Number of Small Businesses Affected

Although ABC does not track its small businesses, they report that the majority of their licensees are likely to be small businesses. Virginia has 151 breweries, 71 beer and ale wholesalers, 1,308 supermarkets and grocery stores, 1,055 convenience stores, and 99 beer and wine stores that are considered small businesses.<sup>6</sup> However, the effect of the proposed amendments on any particular small business would depend on their own decision, as well as the decisions made by their competitors, about the extent to which they engage in Internet beer retail. Grocery stores and convenience stores that do not currently engage in any beer retail may not be affected at all.

### Costs and Other Effects

The proposed amendments would likely benefit small independent breweries and beer, wine and liquor stores by allowing them to advertise online and expand their sales in parts of the state where they do not currently ship their product. However, this benefit could be limited depending on the competitiveness of Internet beer retail. Conversely, small supermarkets, grocery stores and convenience stores that sell beer may see decreased revenues from beer sales in brick-and-mortar locations. However, brick-and-mortar locations provide consumers with the convenience of immediate access to a wide variety of domestic and imported beers without additional shipping costs, so any adverse impact is unlikely to be substantive in nature at least in the short run.

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<sup>5</sup> 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.”

<sup>6</sup> Data source: Virginia Employment Commission

### Alternative Method that Minimizes Adverse Impact

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

### **Localities<sup>7</sup> Affected<sup>8</sup>**

The proposed amendments do not disproportionately affect particular localities or introduce new costs for local governments.

### **Projected Impact on Employment**

The proposed amendments are unlikely to affect total employment in the industry.

### **Effects on the Use and Value of Private Property**

Real estate development costs do not appear to be affected.

### **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 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.

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<sup>7</sup> “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.

<sup>8</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.