



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Alcoholic Beverage Control Board
VAC Chapter Number:	3 VAC 5-20
Regulation Title:	Advertising
Action Title:	Use of Athletes and Novelty and Specialty Items
Date:	11/14/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Enter Statement Here

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-20-10, which generally sets forth the restrictions on alcoholic beverage advertising in the Commonwealth. The proposed amendment would modify current restrictions on the use of athletes or athletic teams in such advertising, allowing wine and beer licensees to display point-of-sale advertising materials incorporating the use of professional athlete and athletic teams. The Board also intends to amend 3 VAC 5-20-60 to increase the maximum wholesale value of novelty and specialty items bearing alcoholic beverage advertising, which may be given away by alcoholic beverage manufacturers, importers, bottlers, brokers, wholesalers, or their representatives.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Enter Statement Here

Virginia Code Section 4.1-111 gives the Board general authority to promulgate regulations it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. Virginia Code Section 4.1-320 provides that it shall be a class 1 misdemeanor for anyone to advertise alcoholic beverages in Virginia, except in accordance with Board regulations. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Enter Statement Here

Chapter 361 of the 2001 Acts of Assembly limits the restrictions which may be placed upon wine and beer retailers' use of professional athletes and athletic teams. The proposed amendment to 3 VAC 5-20-10 is designed to comply with that act. This action has been determined to be essential to protect the health, safety or welfare of citizens by allowing the advertising to the extent the General Assembly has mandated, while continuing to prohibit the use of college or other amateur athletes or athletic teams, to avoid undue influence on persons under the legal drinking age. The Board proposes amending 3 VAC 5-20-60 to increase the maximum wholesale value of novelty and specialty items which may be given away by manufacturers or wholesalers of alcoholic beverages, but retain a limit. The amendment will protect the health, safety or welfare of citizens by allowing alcoholic beverage manufacturers or wholesalers a reasonable ability to promote their products, while not permitting undue influence on retailers from excessive gifts.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Enter Statement Here

The Board proposes adding an exception to the current blanket prohibition to the use of athletes and athletic teams in alcoholic beverage advertising contained in 3 VAC 5-20-10 E. 3., tracking the language referring to such advertising contained in Chapter 361 of the Acts of the 2001 General Assembly. The proposed amendment to 3 VAC 5-20-60 will increase the maximum wholesale value of novelty and specialty items which may be given away by manufacturers or wholesalers of alcoholic beverages from \$5.00 to \$10.00.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Enter Statement Here

There are no disadvantages to the public or the Commonwealth. The primary advantage of implementing the amended provisions will be to allow alcoholic beverage manufacturers, wholesalers, and retailers greater latitude in promoting their products, while maintaining reasonable limits on such promotion.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Enter Statement Here

There is no projected fiscal impact to the state, localities, or affected businesses, which include alcoholic beverage manufacturers, wholesalers, and retailers. The amended regulation does not mandate any additional expenditures on the part of industry, and existing enforcement mechanisms are adequate to enforce the regulations as amended.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Enter Statement Here

In 3 VAC 5-20-10, the Board proposes to amend subsection E3 by the addition of language creating an exception to the current prohibition of the use of athletes or athletic teams in alcoholic beverage advertising, allowing wine and beer licensees to display within their licensed premises point-of-sale advertising materials using professional athletes or athletic teams, provided the materials are otherwise lawful, do not depict any athlete consuming or about to consume alcohol prior to or while engaged in athletic activity or while operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage enhances athletic prowess.

In 3 VAC 5-20-60, the Board proposes to amend subsections 1 and 2 to replace \$5.00 with \$10.00, and to add language at the end of the subsection 2 allowing novelty and specialty items bearing moderation and responsible drinking messages to be displayed on licensed premises and to be given to patrons on the premises, as long as any references to an alcoholic beverage manufacturer or its brands are subordinate to the moderation message.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Enter Statement Here

Alternatives considered but rejected include repeal of the regulation in its entirety or the passage of a regulation permitting all truthful advertising. A repeal of the regulation in its entirety would result in virtually all alcoholic beverage advertising being banned under the Code of Virginia, a result that would not be fair to the regulated industry or constitutional under several opinions of the U. S. Supreme Court. A totally permissive regulation would abandon the Board's responsibility to promote the public health, safety, and welfare by promoting moderation, as well as fail to maintain the reasonable separation of the manufacturing and retail interests, as required by the Code of Virginia. The Board feels that the least burdensome way of meeting the purpose

of the regulation is to strike a balance between the reasonable efforts of those in the alcoholic beverage industry to promote their products and the dangers to temperance from over-promotion.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Enter Statement Here

The Board received public comment from the Virginia Beer Wholesalers Association, Inc, and the Virginia Hospitality and Travel Association. Both indicate support for the concept of the proposed amendments.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Enter Statement Here

The Board has examined the regulation and relevant public comments, and has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Enter Statement Here

The Board will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated on May 1, 2004. The goals of this regulation are: To promote the public health, safety, and welfare by promoting moderation in alcoholic beverage advertising, while allowing manufacturers, distributors, and retailers a reasonable opportunity to promote their products in the marketplace.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory change will have no impact on families.