



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

3 VAC 5-50 Retail Operations
Virginia Alcoholic Beverage Control Authority
Town Hall Action/Stage: 6207 / 10232
February 29, 2024

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Virginia Alcoholic Beverage Control Authority Board of Directors (Board) proposes to 1) remove the exception for the City of Danville, where wine and beer can be sold for off-premises consumption as late as 1:00 am as opposed to 12:00 am everywhere else in Virginia; 2) expand the availability of an employee compensation plan based on total sales, including the sale of alcoholic beverages to other retailers than just beer and wine only establishments; 3) allow a mixed beverage restaurant licensee to serve the entire contents of a low alcohol beverage cooler; 4) allow sale of a flight of samples or a flight of up to five mixed beverages that do not contain more than one ounce of distilled spirits; 5) increase the required monthly sales of oysters and other seafood for gourmet oyster house licensed establishments from \$1,000 a month to \$2,000 a month; 6) revise the methodology to determine the membership level of a club; 7) remove “subject’s height” from identification requirements; and 8) make editorial changes aimed at

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

removing text that the Board indicates is redundant of the Code of Virginia or otherwise updating the language to comport with current practices within the industry and the agency.

Background

This regulation contains rules about alcoholic beverage retail operations, including but not limited to: designated manager requirements, licensee qualifications, gifts of alcohol, and license specific regulations for such licensees as restaurants, bed and breakfast establishments, marketplace licensees, clubs, and caterers.

After conducting a comprehensive review of this chapter, the Board proposes several changes. One such change would remove the exception for the City of Danville, where wine and beer can be sold for off-premises consumption as late as 1:00 am as opposed to 12:00 am everywhere else in the Commonwealth. The Board reports that this exception was provided a long time ago to accommodate workers who were working for a large employer in the locality that had a shift end at midnight, but that that facility is no longer in operation. Consequently, the Board proposes to repeal the exemption.

Another proposed change would expand the availability of a compensation plan that is based on total sales, including the sale of alcoholic beverages to employees of retailers other than beer and wine only establishments. The current regulation contains a blanket requirement that the compensation of a retail employee must be based, in whole or in part, only upon the volume of alcoholic beverage sales. However, the regulation also provides an exception that allows the compensation of employees of retail wine and beer only licensees to be based on the total volume of sales of the business, including the sales of alcoholic beverages. The proposal would expand the availability of such a compensation plan to retailers other than wine and beer retailers.

The Board also proposes to allow the entire contents of a container of spirits to be served in its original package for on or off-premises consumption, provided that the containers are small and have a low alcohol content. The current language states that serving the entire contents of a spirits bottle is prohibited. However, since the adoption of this prohibition, low alcoholic beverage coolers emerged in the market. In order to accommodate the consumption of cocktails that have low alcohol content and that are in smaller volume containers designed for a single serving, the Board proposes to allow a mixed beverage restaurant licensee to serve the entire

contents of a low alcohol beverage cooler for on and off- premises consumption if the container is 16 ounces or less and the alcohol by volume content is 15 percent or less.

Similarly, the Board proposes to expand the sale of samples. Currently, the regulation allows the sale of a flight of no more than five different spirits products, where each product contains no more than one-half ounce of distilled spirits. In addition, the Board would also allow the sale of a flight of no more than five mixed beverages that do not contain more than one ounce of distilled spirits. Such sales are currently not allowed explicitly. However, the Board believes that such samples are already being served to customers. The purpose of this change is to provide for a more comprehensive and specific regulation on such sales by introducing limits in terms of number of mixed beverages such flights can contain as well as limitation on the spirits content.

Moreover, the proposal would increase the required monthly sales of oysters and other seafood for gourmet oyster house licensed establishments from \$1,000 a month to \$2,000 a month. Currently, the required monthly sales of food for other types of licensed establishments such as boats, restaurants, and hotels are all \$2,000. Generally speaking, the intent of food sales thresholds is to discourage establishments from solely focusing on alcohol sales. This change would bring the required monthly food sales from gourmet oyster houses in line with other types of establishments.

The proposed changes would also revise the methodology by which the membership level of a club is determined, to use the current rather than the average membership, and remove “subject’s height” from identification requirements because height is not clearly associated with age and is not contained on some forms of identification.

The remaining proposed changes are editorial in nature and are intended to remove text that the Board states is redundant of the Code of Virginia, or otherwise update the language to comport with current practices within the industry and the agency.

Estimated Benefits and Costs

The impetus for the City of Danville’s exemption, which allows sales of beer and wine to occur until 1:00 am as opposed to 12:00 am, was to provide convenience for the workers of a large employer in the city who left the late shift after 12:00 am and wished to purchase alcohol for off-premises consumption. The exemption is locality-wide, and currently anyone in the city can purchase beer and wine until 1:00 am and any licensee can sell beer and wine until 1:00 am.

The proposed revised hours would apply to all consumers and licensed stores equally in the locality. Thus, this change is unlikely to provide any disproportionate advantage or disadvantage to specific consumers or stores within the City of Danville.

It would be rational to expect a reduction in the volume of beer and wine sales in the city as the number of hours in which beer and wine could be bought and sold legally decreases. However, some consumers would likely adjust the timing of their purchases and offset the potential reduction. However, there are no data available which could be used to determine the volume of sales or the number of transactions involving beer and wine that occurs after 12:00 am in the City of Danville. Nor does any discernible information exist with which to estimate the likely reduction in sales.

Also, compared to other localities in the Commonwealth, the consumers and stores in Danville currently enjoy an additional hour to buy and sell wine or beer. Under the proposed change, they would lose that convenience or advantage, but they would not be any worse off than other consumers statewide. Additionally, some non-Danville residents that live just outside the city limits, and stores that operate just inside the city limits selling to non-Danville residents, would also lose their advantage to buy or sell wine and beer for an additional hour.

The change involving employee compensation plans results from comments the Board received regarding the prohibition on the ability of licensees other than beer and wine only licensees to utilize an employee compensation plan based on alcohol sales. The comments reflected a perception that the exemption for the beer and wine only licensees is not fair to the other types of licensees. In response, the Board proposes to expand the availability of this exemption to all licensees. The Board believes that the proposal is more equitable since this exception would be accessible to others. The Board also concedes that such a change may appear to have the effect of encouraging consumption of alcohol as employees may increase alcohol sales; however, the Board counters this concern by stating that all alcohol consumption must adhere to the rules and regulations that place limits on consumption of alcohol and require the servers to monitor the signs of overconsumption, which are specifically designed to identify overconsumption patterns and prevent it from happening.

If retail establishments other than beer and wine only licensees choose to adopt a compensation plan based on sales including alcohol sales, the employees would clearly have an

incentive to promote sales, subject to the rules and regulations. Such an objective may lead to better customer service and product knowledge, thereby enhancing the overall customer experience as well as boosting employee morale and creating a more engaged workforce. However, such incentives may also unintentionally increase the risk of irresponsible sales and other violations, which may necessitate either additional training about the rules or additional monitoring to mitigate such risks. Assuming employees are fully knowledgeable about the rules, they may be able to find compliant and creative ways to promote total sales, rather than increasing sales to a customer who is at risk of overconsumption. However, no information exists to estimate the magnitude of such an impact.

The proposal to allow licensees to serve the entire contents of a low alcohol beverage cooler for on and off- premises consumption would allow consumers to purchase, and licensees to sell, such coolers. Thus, an increase in sales of such cocktails may be expected. Similarly, the proposed changes would explicitly allow sales of no more than five mixed beverages that do not contain more than one ounce of distilled spirits. This change may help clarify that such sales would not constitute a violation if the licensee is already engaged in such sales, and also inform other licensees that such cocktails can be sold. Thus, an increase in sales of such cocktails may be expected.

The proposal to increase the required monthly sales of food for oyster house establishments from \$1,000 to \$2,000 is not expected to create a significant economic impact. According to the Board, there are only two such licensees in Virginia. Although there is no information about the current monthly sales of the two establishments, it would be highly unlikely that their monthly sales would be less than \$2,000 for them to be a viable business operation. Thus, this proposed change is not expected to introduce a hardship on the two licenses if the proposed higher food sales threshold goes into effect.

The proposed revision to the methodology used to determine the membership of a club would likely help improve compliance and enforcement of this requirement. The existing language specifies that the average number of club members in the preceding 12 months is used to determine the membership level. The proposed amendment would revise the methodology to use the current number of members to determine a club's membership. According to the Board, the current membership level is easier to calculate, verify, and enforce than the average

membership in the preceding 12 months. And, in the case of a new club with less than 12 months in existence, the enforcement is particularly problematic.

Similarly, removing “subject’s height” from identification requirements would be beneficial as it is problematic to enforce. The Board states height is not a good indicator of age, and some forms of identification accepted by the Board do not contain height information.

Of the proposed editorial changes, some would remove text that the Board states is redundant of the Code of Virginia. This would reduce the length of the regulatory text but would also remove the convenience of identifying relevant law requirements from the regulation itself. Although the laws of the Commonwealth are presumed to be known by all citizens, a decrease in information about statutory requirements may reduce compliance for those persons who rely upon the regulation instead of consulting the Code of Virginia. Although the Board notes that the laws could change over time, and that outdated statutory requirements would remain in the regulation until the regulation is updated, to the degree that compliance is decreased the time and effort to update the regulation may be beneficial to the Board and to citizens and consumers.

The other editorial changes would remove language that is no longer applicable since the implementation of alcoholic beverage control license reform.

Businesses and Other Entities Affected

There are 20,892 licensees that are subject to this regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ As noted above, repealing the current exemption allowing licensees to sell wine and beer up to one hour past midnight in the City of Danville would remove the convenience of

² 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.

³ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

purchasing such drinks and may reduce store sales. Thus, an adverse impact on licensees and consumers in the City of Danville is indicated.

Small Businesses⁴ Affected:⁵

It is more than likely that some of the licensees who are poised to lose some wine and beer sales in the City of Danville are small businesses. Thus, that proposed amendment does appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected

The Board states that it does not have the capability to determine how many of its licensees meet the definition of a small business.

Costs and Other Effects

The costs and other effects on licensees in the City of Danville who are small businesses are the same as discussed above for all licensees.

Alternative Method that Minimizes Adverse Impact

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

Localities⁶ Affected⁷

The proposed change eliminating the extended hours in which beer and wine can be purchased for off-premises consumption in the City of Danville particularly applies to consumers and licensees in that locality. However, this change is not likely to introduce costs for the City of Danville. In fact, ending wine and beer sales early in that locality may provide some relief to the local law enforcement to the degree that ceasing sales earlier may also shorten the length of time

⁴ 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.”

⁵ 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.

⁶ “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.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

that law enforcement would need to monitor such purchases for compliance with laws and regulations. Thus, no adverse impact on the City of Danville is indicated.

The remaining proposed changes apply statewide, but they do not appear to introduce any costs for the localities.

Projected Impact on Employment

Some of the proposed amendments have the potential to reduce alcoholic beverage sales while some others could increase sales. A significant revenue impact on licensed establishments would affect their demand for labor in one way or the other. However, there is insufficient data to estimate the net impact on sales revenues, demand for labor, and consequently on employment.

Effects on the Use and Value of Private Property

Similarly, a significant revenue increase or decrease may affect revenues, profitability of licensed establishments, and their asset values. However, there is insufficient data to estimate the net impact on sales revenues, profitability, and consequently the impact on asset values of affected licensees. No impact is expected on the use of private property nor on real estate development costs.