

### 3 VAC 5 Chapter 50. RETAIL OPERATIONS.

#### REASON FOR THE PROPOSED REGULATION:

This regulation (1) establishes the days and hours alcoholic beverages may be sold by licensees; (2) sets the qualifications for each type of license; and (3) establishes certain rules for the operation of licensed establishments.

During town meetings held in May, 1995, representatives of the Military Retirees Club in Richmond expressed concern with the provisions of the regulation which restrict their ability to allow outside groups to use their premises for events at which alcoholic beverages are to be served or sold. The club problem addressed by the Military Retirees does identify a needed revision to the regulation. A previous Board set an arbitrary limit of 12 times each year that a licensed private club could allow the use of its premises by an outside organization which obtains a banquet license. The clubs argue that this severely limits their primary fund-raising activity, limiting the amounts available for their charitable activities. The hospitality and travel industry, on the other hand, argues that these clubs, not subject to hour restrictions or other requirements, unfairly compete with restaurants and hotels for such business. The club provisions are also unclear and not easily understandable.

The Board agrees that the 12 times per year restriction is arbitrary, and it contemplates revising this regulation to change it. The Board's contemplated change will allow clubs to allow unlimited use of the unlicensed portion of their premises by banquet licensees, but will restrict the use of the licensed portion to members and their guests. The Board has been made aware of public safety problems, notably driving under the influence and other violations associated with late-night drinking at private clubs. Therefore, it also contemplates repealing the exception to normal operating hours presently afforded to private clubs.

This regulation prescribes minimum qualifications for food sales for most retail licensees. The Board contemplates simplifying the language of these provisions, with no change in content. Additional amendments are contemplated provide a procedure for Board approval of the employment by licensees of individuals with criminal records, to clarify the section dealing with lewd conduct, and to allow for educational tastings of alcoholic beverages. Presently, the code provides that the Board may suspend or revoke a license if the licensee knowingly employs an individual with certain criminal convictions. While there is a procedure in the regulations for the approval of designated managers, there is not presently a comparable provision for other employees. Therefore, the only avenue for a licensee to determine whether the Board will allow a person with one of the disqualifying convictions to be employed is to put the employee on the payroll and take the chance that the Board might suspend or revoke the license. The need for clarification of the lewd conduct provisions has been demonstrated by several recent cases involving establishments featuring topless dancers. The contemplated amendment would require a minimum distance separating dancers from customers, and establish minimum height requirements for stages or platforms for entertainers. Tastings for the purpose of educating the consuming public about alcoholic beverages have run afoul of the regulations AHappy Hour≡ provisions prohibiting the sale of more than one drink for a single price. The contemplated amendment

would provide an exception to this rule for bona fide tasting events.

**SOURCE OF THE AGENCY LEGAL AUTHORITY TO PROMULGATE THE CONTEMPLATED REGULATION:**

The Board's authority to adopt this regulation is derived from §§ 4.1-103 and 4.1-111, Code of Virginia. The statutes cited do not contain any specific mandate.

**REASONING BY WHICH THE AGENCY HAS CONCLUDED THAT THE CONTEMPLATED REGULATION IS ESSENTIAL TO PROTECT THE HEALTH, SAFETY OR WELFARE OF CITIZENS OR FOR THE EFFICIENT AND ECONOMICAL PERFORMANCE OF AN IMPORTANT GOVERNMENTAL FUNCTION:**

Only two of the proposed changes to this regulation represent further regulation of the affected licensees. The elimination of the club exemption from the regulation prohibiting sale and consumption of alcoholic beverages after 2:00 a.m. is essential to protect the health, safety and welfare of Virginia's citizens, because of various public safety problems which have been found to have been associated with the after-hours operation of such clubs, including drunk driving, drunk in public, fights, and similar problems. The provision requiring a separation between exotic dancers and customers is also necessary to prevent problems which have arisen in several recent cases considered by the Board involving lewd behavior, including indecent exposure and public masturbation. These instances have occurred largely because of the proximity of the customer to the entertainer, which can prevent the management from observing the illegal activity and taking corrective action.

**CONSIDERATION OF LESS BURDENSOME AND LESS INTRUSIVE ALTERNATIVES:**

No less burdensome and less intrusive alternatives to the contemplated changes were identified.

**IMPACT ON FAMILIES:**

The proposed regulation is unlikely to have any impact on families.