



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5-50
<b>Regulation title</b>	Retail Operations
<b>Action title</b>	Clarifying and Simplifying Retailer Regulations
<b>Date this document prepared</b>	August 11, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Alcoholic Beverage Control Board is proposing amendments to its regulations governing operations by retail licensees. The new provisions will (1) provide a process for licensees to apply for permission to employ individuals with certain criminal convictions, (2) allow persons 18 and over to serve wine at a counter in establishments selling wine only, (3) allow wine to be placed in containers of ice by farm wineries at wine festivals, (4) simplify food requirements for grocery stores and convenience grocery stores, (5) simplify the limitations of non-member use of licensed club facilities, and (6) clarify the rules with respect to partially nude entertainers at licensed establishments to define the separation that must be maintained from customers, and clarify that this regulation does not restrict legitimate theatrical productions.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On August 1, 2006, the Alcoholic Beverage Control Board adopted amendments to 3 VAC 5-50, Retail Operations.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

---

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

---

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing qualifications and operating rules for retail licensees.

The goals of this regulation are:

1. To prescribe reasonable minimum qualifications for holders of retail licenses; and
2. To promote the public health, safety, and welfare by reasonably regulating retail alcoholic beverage sales so as to prevent sales to those under the legal age or intoxicated, and to discourage overconsumption.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

---

The proposals do not materially change existing rules. They clarify or simplify compliance with the current regulations. The proposal to provide an approval process for the employment of persons with criminal convictions will benefit licensees while still protecting public safety.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

3 VAC 5-50-40 would be revised to provide a process for licensees to apply for approval for the employment of individuals whose records of criminal or alcoholic beverage violations might subject the licensee to disciplinary action pursuant to § 4.1-225 I of the Code of Virginia.

In 3 VAC 5-50-50, a provision would be added allowing persons 18 years of age or older to sell or serve wine for on-premises consumption at a counter in an establishment selling wine only.

3 VAC 5-50-80 would be amended to create an exception to the prohibition against placing alcoholic beverages in containers of ice available to consumers for off-premises consumption for farm winery licensees operating a remote retail location at a wine festival.

In 3 VAC 5-50-100, the provision in subsection A4 requiring grocery stores and convenience grocery stores to have at least five items from each of the basic food groups would be repealed.

In subsection C of 3 VAC 5-50-130, the rules for non-member use of club premises would be simplified to allow licensed clubs to admit non-members to the licensed club area for events at which alcohol is served up to 24 times each year. Limits on use of the unlicensed portion of club premises would be repealed.

3 VAC 5-50-140 would be revised to clarify that its provisions do not apply to legitimate theatrical or art exhibits or performances, and current provisions requiring partially nude performers to remain reasonably separate from patrons would be replaced with a required separation of three feet. These amendments will protect the health, safety, or welfare of citizens by allowing alcoholic beverage retailers fewer restrictions on the operation of their businesses, while continuing to discourage overconsumption.

The amendments to 3 VAC 5-50-140 will help to protect citizens from the negative secondary effects of sexually oriented businesses.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 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 indicate.*

There are no disadvantages to the public or the Commonwealth. The primary advantages to regulated businesses are simplification or clarification of existing rules, to ease compliance. Businesses wishing to employ persons with convictions which could otherwise result in risking license suspension or revocation will now be able to apply for advance approval.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected by the proposed regulation.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposals clarify and simplify existing rules. There are no provisions creating adverse impacts on small business.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the</b>	Alcohol-licensed grocery stores, convenience stores, private clubs, restaurants

<b>regulation</b>	
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means 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.	About 12,500 licensed establishments would be affected. It is estimated that over 95% of these would meet the definition of small business.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None

### Alternatives

*Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Alcoholic Beverage Control Board has considered alternatives including taking no action to amend the regulation. The suggested amendments were determined to be the best viable alternatives to achieve the goals of this regulation, while clarifying and slightly relaxing regulatory controls.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

It is not expected that this regulatory action will have any impact on the institution of the family.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-50-40		Provides process for obtaining board approval of designated managers, but not of other employees	Add new subsection providing a process for licensees to request approval for the hiring of persons with criminal records. Currently the board may suspend or revoke the license of anyone employing persons with certain convictions, but there is no prescribed process to get permission to do so.
3 VAC 5-50-50		18-year-olds may serve beer at a counter in a beer-only establishment, but there is no parallel provision for places serving only wine	18-year-olds may serve beer at a counter in a beer-only establishment, and may serve wine at a counter in a wine-only establishment. This will allow 18-year-olds to man tasting rooms at farm wineries.
3 VAC 5-50-80		Alcoholic beverages may not be placed in containers of ice in public display	Exception created for farm wineries exercising their remote privileges at wine festivals. Much of this wine is sold for on-premises consumption at the festival, and ice containers provide the only available refrigeration.
3 VAC 5-50-100		Grocery and convenience stores must stock at least 5 items from each of 5 basic food groups.	Reference to specific food groups eliminated, Licensees will still have to maintain a minimum inventory of foods normally used in the preparation of meals. Simplifies enforcement.
3 VAC 5-50-130		Clubs may hold public events 12 times per year, may allow non-members with banquet licenses to hold events on the club premises 12 times per year, and may obtain banquet licenses on unlicensed premises 12 times per year	Licensed club premises may be opened to the public 24 times per year. Simplifies the rule for the licensees and enforcement.
3 VAC 5-50-140		Adult entertainers may be more scantily clad when "reasonably separated" from customers. "Reasonably separated" is not defined. No exception to the nudity prohibitions exists for legitimate theatrical productions.	"Reasonably separated" is defined as a distance of 3 feet. Legitimate theatrical productions are exempt from the regulation. Current provisions are not precise, and court decisions indicate they should not be applied to legitimate theatrical productions.

Enter any other statement here