



# COMMONWEALTH of VIRGINIA

## Department of Alcoholic Beverage Control

COMMISSIONERS  
JEFFREY L. PAINTER, CHAIRMAN  
JUDITH G. NAPIER  
HENRY L. MARSH, III

2901 HERMITAGE ROAD  
P. O. BOX 27491  
RICHMOND, VIRGINIA 23261  
(804) 213-4400  
FAX: (804) 213-4411  
[www.abc.virginia.gov](http://www.abc.virginia.gov)

### Circular Letter 17-02

Issue Date: May 3, 2017  
To: Delivery Permittees  
Purpose: Language

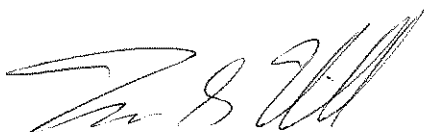
**Background:** The relationship between a licensee possessing a delivery permit and the service provider whom the licensee utilizes to carry out deliveries needs to be clearly established as an agency relationship so as to ensure adherence to the ABC Act as well as establishing liability for any conduct that is non-compliant. In order to provide the Bureau and the licensee community with interpretations and guidance that is consistent with legal definitions of an agency relationship, the following criteria shall be utilized as of the effective date of this letter.

**Held:** Section 4.1-212.1(C) of the Code of Virginia requires that all such deliveries of beer, wine, or farm wine shall be performed by the owner or any *agent*, officer, director, shareholder or employee of the permittee. It further states that the Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Virginia Administrative Code, specifically 3VAC5-70-225 (D), requires that all deliveries by holders of delivery permits shall be performed by the owner or any *agent*, officer, director, shareholder, or employee of the permittee.

Agency is defined as the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and the agreement by the other so to act. Restatement Agency §1 (The American Law Institute). During the course of an agency relationship, the principal party may be held liable for the misconduct of an agent. The Supreme Court of Virginia has held that "a principal is liable to third persons for the negligent or wrongful acts of his agent, within the scope of his employment." *Cerriglio v. Pettit*, 113 Va. 533, 75 S.E. 303 (1912). Additionally the Supreme Court of Virginia has stated "[a] principal is held liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligences, and other malfeasances, or misfeasances, and omissions of duty, of his agent, in the course of his employment, although the principal did not authorize, or justify, or participate in, or, indeed know of such misconduct, or even if he forbade the acts, or disapproved of them." *Jefferson Standard Live Ins. Co. v. Hedrick*, 181 Va. 823, 835 (1943) (citing *A Commentaries on the Law of Agency* by Joseph Story, LLD)

In order for liability to attach to the principal, the existence of an agency relationship must be unambiguous. The Supreme Court of Virginia has further held that, “[t]he law makes no presumption that an agency exists. On the contrary, one is legally presumed to be acting for himself and not as the agent of another.” *Montague Mfg. Co. v. Aycock-Holly Lumber Co.*, 139 Va. 742, 747 (1924). The burden of proving that an agency exists falls on the party alleging an agency relationship. The most reliable and assured evidence of an agency relationship is the existence of a written contract between the parties that expressly outlines the roles of each party as well as establishes each party’s liability to third parties for acts of misconduct.

Moving forward, licensees holding delivery permits who employ outside service providers to facilitate their deliveries shall, through written contract, establish an unquestionable agency relationship with those providers that clearly defines each entity’s role within the relationship (*i.e.* principal or agent). Furthermore, although the service providers shall remain criminally liable for any violations they commit, the contract shall convey vicarious liability upon the principal for any violations of the Alcoholic Beverage Control Act and Title 3 of the Virginia Administrative Code committed by the agent during the course of the agent’s employment and within the scope of the agency relationship.

A handwritten signature in black ink, appearing to read "Travis G. Hill". The signature is fluid and cursive, with a large initial "T" and "H".

Travis G. Hill  
Chief Operating Officer/Secretary to the Board