



Economic Impact Analysis Virginia Department of Planning and Budget

3 VAC 5-10 – Procedural Rules for the Conduct of Hearings before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations

Alcoholic Beverage Control Board

October 26, 2006

Summary of the Proposed Regulation

The Alcoholic Beverage Control Board (ABC) proposes to make several amendments to its procedural regulations. ABC proposes to eliminate references to divisions within the agency that no longer exist and eliminate a requirement that complaints made under the Beer and Wine Franchise Act be prescreened. ABC also proposes to repeal a provision which does not allow its chief hearing officer to preside over cases that involve consent settlement offers and to incorporate, by reference, the Supreme Court of Virginia's rules for discovery.

Result of Analysis

The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact

Current regulations assign responsibilities to divisions within ABC that have been replaced or renamed (since these regulations were last amended). ABC proposes to replace out-of-date references so that, for instance, individuals who want to lodge a complaint against a licensee will know to direct that complaint to Bureau of Law Enforcement Operations (rather than the, now non-existent, Division of Enforcement and Regulation). This change will benefit the public in that individuals will no longer have the potential to have their interactions with ABC misdirected on account of these regulations.

Current regulations require that complaints lodged against licensees under the Beer and Wine Franchise act only be scheduled for a hearing if the secretary to the board determines that reasonable cause exists to believe that the law has been violated. ABC proposes to drop this requirement because they believe complainants are entitled to have their cases heard without first

being filtered. This change will benefit the public in that they will now have more direct access to the hearing board but will also likely increase costs (for staff time and other hearing expenses) for ABC as all cases will now receive a full hearing. Licensees who are the subject of complaints will likely also incur extra costs for defending themselves as more complaints are given a full hearing.

Current regulations specifically preclude the chief hearing officer from presiding over cases in which an offer of a consent settlement has been extended. ABC believes that this provision is unnecessarily restrictive since now the scope of settlement offers is mandated by regulations; the chief hearing officer has no discretion to adjudicate these cases in a manner that is inconsistent with those regulations. This provision will benefit ABC by allowing the board to use staff time more efficiently.

Current regulations include rules for discovery that are 20 pages long and essentially identical to the Supreme Court of Virginia's rules for discovery. ABC proposes to eliminate the rules of discovery that are explicitly listed in current regulatory text and, instead, incorporate the Supreme Court's rules by reference. The public will likely incur a cost because rules will be split between these regulations and the document that will be incorporated but that cost will likely be very small.

Businesses and Entities Affected

These proposed regulatory changes will affect all of the approximately 14,000 establishments that are licensed by ABC as well as any citizen who might, at some point, want to lodge a complaint against a licensee.

Localities Particularly Affected

These proposed regulatory changes will affect all localities in the Commonwealth.

Projected Impact on Employment

These proposed regulatory changes will likely have no measurable effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property

Businesses licensed by ABC that must defend themselves against all lodged complaints will likely incur extra expenses on account of these proposed regulatory changes. To the extent

that those costs cannot be passed on to their customers, these businesses will likely earn slightly smaller profits.

Small Businesses: Costs and Other Effects

ABC estimates that at least 95% of their approximately 14,000 licensees are small businesses. These businesses will likely incur greater costs for defending themselves when all complaints lodged with ABC receive a hearing.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are likely no alternatives to allowing all complaints a full hearing that would not impinge on the ability of complaining citizens to have those complaints carefully considered.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.