



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5-20
<b>Regulation title</b>	Advertising
<b>Action title</b>	Alcoholic beverage advertising on outdoor signs and billboards
<b>Date this document prepared</b>	August 8, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly, which requires the Alcoholic Beverage Control Board to promulgate regulations to “establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages...” The legislation specifies provisions which must be included in such regulations restricting where outdoor advertising signs may be placed.

### 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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Chapter 728 of the 2011 Acts of Assembly amended § 4.1-111 of the Code of Virginia to require that the Alcoholic Beverage Control promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. While the promulgation of regulations is mandatory, most details are discretionary, although the statute contains more specific limitations on where billboard signs advertising alcoholic beverages may be placed.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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The Alcoholic Beverage Control Board has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens because regulation of alcoholic beverage advertising is necessary to ensure that such advertising does not encourage over-consumption of alcoholic beverages, nor does it encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The proposed action would amend 3 VAC 5-20-30 by deleting most of the existing language, which specifies certain numbers of signs, their placement, and content, for various categories of alcoholic beverage industry members. In their place would be four paragraphs which would (1) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (2) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residentially zoned property; (3) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural use or un-zoned; and (4) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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No viable alternatives to the proposed regulatory action have been identified. The action represents the minimum regulation necessary to meet the statutory mandate. Additional restrictions on outdoor alcoholic beverage advertising were considered, but this alternative was not deemed viable, due to potential conflict with constitutional protections of speech.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the*

*alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email, or fax to **W. Curtis Coleburn, Post Office Box 27491, Richmond, VA 23261, phone (804) 213-4409, fax (804) 213-4411, [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

**Participatory approach**

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

**Family impact**

*Assess the potential 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.*

This proposed regulatory action is not expected to have an impact on the institution of the family and family stability.