



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Alcoholic Beverage Control Board
<b>VAC Chapter Number:</b>	3 VAC 5-30
<b>Regulation Title:</b>	Tied-House
<b>Action Title:</b>	Customized Advertising Materials
<b>Date:</b>	11/19/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Enter Statement Here

The Alcoholic Beverage Control Board intends to amend 3 VAC 5-30-60, which generally sets forth the types of goods and services alcoholic beverage manufacturers, bottlers, or wholesalers may provide to retailers. The proposed amendment would allow alcoholic beverage manufacturers, bottlers, and wholesalers to provide advertising materials to retail licensees which have been customized for the individual retailer, with some restrictions.

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Enter Statement Here

§§ 4.1-103 and 4.1-111 of the Code of Virginia authorize the Board to promulgate regulations which it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. § 4.1-111 also specifically requires the Board to promulgate regulations which maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers. 3 VAC 5-30-60 is designed to carry out this requirement by limiting the types of inducements, in the nature of goods or services, that may be offered by manufacturers, bottlers, or wholesalers to retailers. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

**Purpose**

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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Enter Statement Here

The Board has determined that this action will enable alcoholic beverage manufacturers, bottlers, and wholesalers to promote their products in a manner similar to that used by other consumer products suppliers in the retail market, while the limitations will protect the health, safety or welfare of the public by preventing undue influence on retailers.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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Enter Statement Here

The Board proposes amending subsection G of 3 VAC 5-30-60 to remove the present prohibition against manufacturers, bottlers, or wholesalers providing point-of-sale advertising materials to a retailer which have been customized for that retailer. The Board expects to enact limitations to such customized advertising, requiring that any such materials comply with all other Board regulations, be for interior use only, only contain references to the products sold by the particular manufacturer, bottler, or wholesaler providing the materials, and that the service if offered must be made available to all retailers.

**Issues**

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.*

Enter Statement Here

There are no disadvantages to the public or the Commonwealth. The primary advantage of implementing the amended provisions will be to allow alcoholic beverage manufacturers, wholesalers, and retailers greater latitude in promoting their products, while maintaining reasonable separation of manufacturing, wholesale, and retail interests.

**Fiscal Impact**

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

Enter Statement Here

There is no projected fiscal impact to the state, localities, or affected businesses, which include alcoholic beverage manufacturers, wholesalers, and retailers. The amended regulation does not mandate any additional expenditures on the part of industry, and existing enforcement mechanisms are adequate to enforce the regulations as amended.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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Enter Statement Here

In 3 VAC 5-30-60, subsection G, the present language prohibiting manufacturers, bottlers and wholesalers from providing customized advertising materials to retailers will be modified to add language allowing the provision of such customized advertising materials provided such materials comply with all other regulations of the Board, are for interior use only, contain references to the providing party’s alcoholic beverage products only, and are made available to all retail licensees.

**Alternatives**

*Please describe the specific 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.*

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Enter Statement Here

Total repeal of the prohibition of customized advertising, without limiting provisions, has been considered, but is felt not to be in the interest of public health, safety or welfare. Other alternatives considered include taking no action or adopting additional limitations on customized advertising. Taking no action was deemed unfair to industry members, and additional limitations were determined to be unnecessary at this time.

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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Enter Statement Here

The Board received public comment from the Virginia Beer Wholesalers Association, Inc, and the Virginia Hospitality and Travel Association. Both indicate support for the concept of the proposed amendments.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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Enter Statement Here

The Board, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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Enter Statement Here

The Board will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated on May 1, 2002. The goals of this regulation are: To promote the public health, safety, and welfare by maintaining the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.*

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The proposed regulatory change will have no impact on families.