



Economic Impact Analysis Virginia Department of Planning and Budget

3 VAC 5-50 – Retail Operations
Alcoholic Beverage Control Board
October 27, 2006

Summary of the Proposed Regulation

The Alcoholic Beverage Control Board (ABC) proposes to make several amendments to its retail operations regulation. ABC proposes to:

- Specify a process by which board licensees may request approval for hiring individuals with criminal records.
- Allow individuals between the ages of 18 and 21 to sell or serve both wine and beer at establishments that only sell the beverage being served.
- Allow wineries to serve wine that has been placed in containers of ice at a location remote from the winery (specifically at wine festivals).
- Eliminate specific requirements on the types of foods that convenience and grocery stores must stock in order to be licensed by the board to sell beer and wine.
- Simplify and loosen restrictions on the number of times per year that clubs licensed by ABC may hold public events where alcohol will be served.
- Specify how far apart adult entertainers must be from their audience in order to comply with this regulation and add an exemption to this regulation's nudity provisions for legitimate theatrical productions.

Result of Analysis

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

Estimated Economic Impact

Currently the Code of Virginia allows ABC to suspend the license of any licensee who knowingly hires any individual convicted of a felony, a misdemeanor that involves moral turpitude or a misdemeanor violation of any alcohol control law. ABC does have internal guidelines for when such a suspension is appropriate but licensees have not had a means to determine whether any individual hire of someone with a criminal background had the potential to get their license suspended. This proposed regulation includes a provision that will allow licensees to apply for approval by the board before hiring an individual with a criminal conviction when that conviction might be grounds for license suspension. This regulatory change will give the same procedural rights to licensees and potential employees as are afforded licensees when they are charged with violations of the Beer and Wine Franchise Act. This means that licensees and potential employees will have the right to be represented by council and may call witnesses and present evidence.

This regulatory change will benefit licensee employers in that they will no longer have to choose between not hiring the employees they would prefer to hire and hiring those employees knowing that their license might be at risk. These employers may also see employment costs decrease by a small amount if this change widens the pool of individuals from which they may hire. Individuals who have criminal histories and want to work for businesses licensed by ABC will benefit because they likely stand a greater chance of being hired after promulgation of procedures that will protect licensee employers from possible repercussions of their hiring decisions. ABC will likely incur extra costs associated with the application and approval process being promulgated.

Current regulation allows individuals over 18 to serve and sell beer at licensed establishments that only sell beer but does not have a similar allowance for licensed establishments that only sell wine. Additionally, current regulation prohibits licensees from entreating or enticing any patron to purchase any alcoholic beverage. One example of such enticement that is specifically prohibited in the current regulation is placing alcohol in containers of ice that are accessible by patrons. ABC proposes to extend employment rules to include licensed establishments that only sell wine and to allow alcohol to be placed in containers of ice “at a remote location in connection with a wine festival”. Both of these proposed changes will

benefit wineries: the first change will likely decrease their employment costs as they will now be able to choose employees from a wider labor pool. The second change will allow wineries to sell chilled wines at wine festivals that may lack any refrigeration capabilities other than ice in a bucket.

Current regulation requires that convenience and grocery stores that sell wine and beer to stock at least five items from each food group that may be used to prepare meals. ABC proposes to simplify this requirement by eliminating regulatory reference to food groups and specific numbers of foods. So the proposed regulation will require these establishment generally stock food items that can be used to prepare meals but allows greater latitude for licensees to decide what items to stock. This change will likely benefit licensees in that they will be able to stock what their customers demand without having to also meet ABC requirements.

Current regulation limits the number of times that licensed clubs (Lions Club, Elks Club, etc.) may hold events: they may hold events (where alcohol will be served), on the licensed portion of their premises, not more than 12 times a year for members and not more than 12 times a year for non-members who have obtained banquet licenses. Additionally, the unlicensed portion of club premises may currently be open for events (where alcohol will be served) not more than 12 times a year. The proposed regulation lumps all usage of licensed premises together and allows events at such premises not more than 24 times a year. Who holds these events is left to the discretion of the club. The proposed regulation does not contain a limitation on the number of events (where alcohol will be served) that may be held on unlicensed portions of club premises. These changes allow clubs significantly more freedom to use their premises as they see fit. Clubs that rent out their premises, particularly the unlicensed portions of their premises, for weddings or other events will likely see their revenues increase as they will no longer be limited to 12 rentals a year.

Current regulation requires that scantily clad adult entertainers in licensed establishments remain “reasonably separated” from customers but does not provide a definition of what separation ABC would consider to be reasonable. Additionally, current regulation prohibits lewd and disorderly behavior and complete nudity in licensed establishments but does not specifically exempt legitimate theatrical productions as required by several court decisions. The proposed regulation will define “reasonably separated” as at least three feet from any customer and will

explicitly exempt theatrical productions held in licensed establishments from the requirements of the section of current regulation that governs lewd and disorderly behavior. These changes should increase voluntary regulant compliance with separation requirements and allow agency compliance with past judicial rulings.

Businesses and Entities Affected

These proposed regulatory changes will generally affect all of the approximately 14,000 establishments that are licensed by ABC and will particularly wineries in the Commonwealth.

Localities Particularly Affected

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

Projected Impact on Employment

These proposed regulatory changes may affect who is employed for various jobs at licensed establishments; for instance, more individuals between the ages of 18 and 21 may be hired to work in winery tasting rooms. There will likely be no measurable change in total employment in the Commonwealth, however, on account of this proposed regulation.

Effects on the Use and Value of Private Property

Licensed establishments may experience a small decrease in employment costs if these regulatory changes widen the pool of individuals from which they may hire. In addition wineries may be able to sell greater quantities of their product at wine festivals once they are allowed to chill wine at remote locations. Clubs will likely also earn extra revenues from renting out their premises for events. If costs decrease, or if revenues increase because of extra sales and there is not a cost increase of the same magnitude associated with those sales, licensees may earn increased profits.

Small Businesses: Costs and Other Effects

ABC estimates that at least 95% of their approximately 14,000 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact

ABC estimates that at least 95% of their approximately 14,000 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

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.