



Economic Impact Analysis Virginia Department of Planning and Budget

3 VAC 5-20 and 3 VAC 5-30 – Advertising Regulations and Tied House Regulations Alcoholic Beverage Control Board January 10, 2009

Summary of the Proposed Amendments to Regulation

The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations governing advertising of alcoholic beverages and its tied house regulations. Specifically, ABC proposes to repeal or loosen certain restrictions on advertising, move other restrictions on advertising to from one set of these regulations to a more appropriate section in the other and update the regulatory definition of advertising to account for types of advertising that were not widely used in 1994 when these regulations were last fully reviewed. ABC also proposes to consolidate rules for advertising of all alcoholic beverages into one regulatory section instead of having rules for advertising beer, wine and mixed alcoholic beverages separated from rules for advertising distilled spirits.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Current regulations prohibit advertising that implies the advertised product has medicinal properties and advertising that disparages a competitor's product. Current regulations also prohibit retailers of alcoholic beverages from displaying any permanent advertising on their premises and place a host of restrictions on the non-permanent advertising displayed. Any advertising on canvas, for instance, is currently restricted to banners. Any advertising, whatever the material, must currently be only two dimensional. Additionally, current regulations restrict certain words (Bar Room, Speakeasy, etc.) from being used in advertising unless they are part of the advertising entity's trade name. Other words (mixed drinks, Polynesian Drinks, etc) are

prescribed as the only words that may be used in advertising to describe mixed alcoholic beverages. In advertising advocating for responsible drinking, the name, address and logo of the advertising's sponsor currently may not take up more than 10% of the advertising space. Wholesalers may not currently affix order forms to their products nor may they affix coupons to beer packages.

All of these restrictions are being eliminated so that licensees may advertise in any manner they choose, with one exception, so long as it does not violate restrictions in statute or other regulations. The one exception is that advertising in retail establishments may not be illuminated (neon or other lighting). These regulatory changes will allow retail establishments, manufacturers, and wholesalers greater freedom to advertise in the manner that they believe will most benefit them. If additional or different types of advertising are more effective, sales for affected retailers, manufacturers and wholesalers may increase. If additional revenue exceeds additional costs for advertising, these licensees may earn additional profits.

Current regulations allow manufacturers, wholesalers, importers or bottlers, or their representatives, to give promotional items (like t-shirts) to retailers so long as these items' retail value does not exceed \$10, only one item per retailer and employee is given per visit, these items are not displayed in the retail premises and these items are not given to customers.

ABC proposes to ease these restrictions so that they conform to §4.1-201 of the Code of Virginia. Under these proposed regulations (and statutory language), manufacturers, wholesalers, importers or bottlers, or their representatives, may give away promotional items that do not exceed \$10 in value to each employee present at a retail establishment at the time the items are delivered. Additionally, manufacturers, wholesalers, importers or bottlers, or their representatives, may give away promotional items to customers at product tastings held pursuant to Code of Virginia §4.1-201.1 so long as only one items is given to each person also given a tasting sample. Since all entities affected by these rules are already subject to the underlying statutory restrictions, no licensee or member of the public is likely to incur costs on account of these proposed regulatory changes. These entities will benefit, however, from the regulations being brought into conformity with statutory provisions since any conflicts in the rules that might have been confusing will be eliminated.

Businesses and Entities Affected

These proposed regulations will affect all manufacturers, wholesalers and retailers of alcoholic beverages. ABC reports that there are approximately 14,000 such businesses in the Commonwealth; ABC further reports that more than 95% of these meet the definition of a small business.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no significant impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

To the extent that easing advertising restrictions increases profits for affected licensees, the value of their businesses will increase on account of this regulatory action.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action. This action will allow manufacturers, wholesalers and retailers of alcoholic beverages greater flexibility to choose different mediums of advertising for their wares.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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 36 (06). 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.