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### Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) citation(s)</b>	3 VAC 5-210
<b>Regulation title(s)</b>	Other Provisions
<b>Action title</b>	Schedule of Penalties for First-Offense Violations
<b>Date this document prepared</b>	10/22/2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The current schedule of penalties in 3VAC5-70-210 is based on previous maximums listed in §4.1-227(B); however, in July 2017 the maximum monetary penalties for these offenses increased. The proposed regulation amendment changes the penalty schedule by increasing the amounts to reflect higher civil penalties based off the new maximums in §4.1-227. The proposed increases are still lower than the maximum that the Code of Virginia permits the ABC Board to impose for civil penalties for first offense violations.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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N/A

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The proposed change is not the result of a legislative mandate.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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Section 4.1-101 of the Code of Virginia (Code) establishes the Department of Alcoholic Beverage Control (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board, which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act). Section

Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111. 4.1-103(26) states the Board may assess and collect civil penalties and civil charges for violations of this title and Board regulations.

Section 4.1-227(B) permits the Board to impose and collect civil penalties.

### Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of this regulation change is to amend civil penalties for first-offense violations so that the new schedule will continue to encourage settlement for first offense matters where there are no disputed facts and the licensee desires to resolve the matter without a hearing. The penalties remain lower than

the maximum penalties listed in the Code of Virginia; however, there is a reasonable increase in previous amounts to reflect the increases in maximum civil penalties listed in §4.1-227(B) that were enacted in 2017.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

Any licensee charged with one of the offenses listed in 3VAC5-70-210, provided that the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and accept a period of suspension or pay a civil charge in lieu of a suspension. The amounts of the civil charge are listed in 3VAC5-70-210 and are less than the maximum monetary penalties permitted by the Code of Virginia (§4.1-227[B]). The amendments to the regulation that includes the schedule of penalties for first offenses increases the civil charges listed in 3VAC5-70-210 by either \$250 or \$500. The current civil charges are based on out-of-date maximum penalties that existed prior to the amendments to §4.1-227(B) in 2017.

### Issues

*Please identify the issues associated with the regulatory change, including: 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, include a specific statement to that effect.*

- 1) The primary advantage is that the regulation continues to function as a means to allow licensees to resolve low-level first offenses expeditiously through a process that resolves the matter without licensees having to go through the hearing process, which can oftentimes be intimidating and stressful. The "disadvantage" is that these new penalties are higher than the previous penalties, but the General Assembly has increased the statutory maximums, so these penalties should increase as well to maintain a degree of consequence.
- 2) The primary advantage to the agency is that the regulation continues to encourage prompt resolution for undisputed, low-level violations. This is very beneficial to the agency as a whole because since becoming an Authority, the agency is operating with a part-time Board and the more cases that are resolved through settlement the less taxing it is on the Board. There are no disadvantages to the agency.
- 3) There are no other pertinent matters of interest to the regulated community, government, officials, and the public.

### Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected.

**Economic Impact**

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There are no projected costs, savings, or fees for the agency in implementing these amendments to the regulation.</p> <p>In 2017, the Agency received a total of \$532,225.00 in penalties for these offenses. The projected amount after the regulation changes is \$794,250.00 resulting in a \$262,025.00 increase.</p> <p>The money from these penalties goes toward the State's general fund.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues resulting from this change for other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit is solely for the benefit of VA ABC. The changes allow licensees to resolve low-level first offenses expeditiously through a process that resolves the matter without licensees having to go through the hearing process, which can oftentimes be intimidating and stressful.</p>

	Increasing the penalty makes it impactful while also providing a reasonable alternative to the licensee in comparison to the higher maximums that could result from the full hearings process.
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**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees or revenues to other localities resulting from this change.
Benefits the regulatory change is designed to produce.	There are no benefits to other localities resulting from this change.

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	This regulatory change only affects ABC licensees and specifically, those ABC licensees that have committed any one of the enumerated first offenses.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Overall, ABC has approximately 18,000 licensees. Although the majority of these licensees are small businesses, an exact number of small businesses with licenses cannot be provided because ABC does not collect that data. Furthermore, the exact number of small businesses does not reflect the number of entities that will be affected by this change as it is only applicable upon such time as the licensee is charged with one of the violations.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Licensees will experience a \$250 - \$500 increase in penalties for each offense. The exact projected cost cannot be provided because this change only applies if/when a licensee commits a violation and subsequently opts to pay the civil penalty in lieu of proceeding to a hearing. The overall projected increase in penalties based on numbers from the previous year is \$262,025.00.  a) The change should not affect the reporting, recordkeeping, and/or other administrative costs for small businesses, as it imposes no new requirements than those that currently exists and is only impactful at which time the licensee voluntarily decides to pay the civil penalty in lieu of going to a hearing. b) There are no costs related to the development of real estate that are a consequence of this regulation change. c) There are no fees associated with this regulation change; d) There are no purchases of equipment or services associated with this regulation change; e) There are no time requirements to comply

	with the changes.
Benefits the regulatory change is designed to produce.	The primary benefit that this change is to continue to provide licensees an efficient and less stressful means of resolving low-level first offenses, while still also reflecting a meaningful and impactful sanction for such violations.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

There are no other alternatives considered.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

The purpose of 3VAC5-70-210 is to encourage prompt resolution to low-level first offenses without having to expend time and resources by going through a full hearing process. It is not only beneficial to the agency, but to the licensing community who often do not wish to go through a long and intimidating hearings process that could result in a sanction or civil penalty far higher than those listed in the regulation. The process of electing to pay the reduced penalties listed in 3VAC5-70-210 is in fact a less stringent process than that provided in the statutes or APA. This proposed regulation does not have health, safety, or environmental impact; however, it is favorable to the economic welfare of small businesses because it provides the small business licensee an opportunity to pay a much lower civil penalty than being subjected to statutory maximums or any additional costs for hiring an attorney. Furthermore, the regulation encourages the licensee to participate in certified education opportunities that could prevent future violations, which is good for the public to have compliant licensees selling alcohol.

### Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please*

*indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

The proposed revisions are not the result of a periodic review.

**Public Comment**

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

The action did not receive any comments.

Commenter	Comment	Agency response

**Public Participation**

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

The Virginia Alcoholic Beverage Control Authority is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to LaTonya D. Hucks-Watkins, Legal Liaison 2901 Hermitage Road, Richmond, Virginia 23220; phone number (804) 213-4698; fax (804) 213-4574; [latonya.hucks-watkins@abc.virginia.gov](mailto:latonya.hucks-watkins@abc.virginia.gov) . In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

**Detail of Changes**

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

<b>Current section number</b>	<b>New section number, if applicable</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
3VAC5-70-210		Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age civil charge is \$2000 or \$1000 with certified training.	Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age civil charge is \$2500 or \$1500 with certified training.
3VAC5-70-210		Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age civil charge is \$2000 or \$1000 with certified training.	Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age civil charge is \$2500 or \$1500 with certified training.
3VAC5-70-210		Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age civil charge is \$1000.	Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age civil charge is \$1250.
3VAC5-70-210		Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid civil charge is \$500.	Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid civil charge is \$750.
3VAC5-70-210		Allow an intoxicated person to loiter on the premises civil charge is \$500.	Allow an intoxicated person to loiter on the premises civil charge is \$750
3VAC5-70-210		Sale to an intoxicated person civil charge is \$2000 or \$1000 with certified training.	Sale to an intoxicated person civil penalty is \$2500 or \$1500 with certified training.
3VAC5-70-210		Allow consumption by an intoxicated person civil charge \$2000 or \$1000 with certified training.	Allow consumption by an intoxicated person civil charge \$2500 or \$1500 with certified training.



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
3VAC5-70-210		After hours sales or consumption of alcoholic beverages civil charge \$1000.	After hours sales or consumption of alcoholic beverages civil charge \$1250.
3VAC5-70-210		No designated manager of premises civil charge \$500.	No designated manager of premises civil charge \$750.
3VAC5-70-210		Invalid check to wholesaler or Board civil charge \$250.	Invalid check to wholesaler or Board civil charge \$500.
3VAC5-70-210		Inadequate illumination civil charge \$500.	Inadequate illumination civil charge \$750.
3VAC5-70-210		ABC license not posted civil charge \$500.	ABC license not posted civil charge \$750.
3VAC5-70-210		Not timely submitting report required by statute or regulation civil charge \$500.	Not timely submitting report required by statute or regulation civil charge \$750.
3VAC5-70-210		Designated manager not posted civil charge \$500.	Designated manager not posted civil charge \$750.
3VAC5-70-210		Person less than 18 serving alcoholic beverages; less than 21 acting as bartender civil charge \$500.	Person less than 18 serving alcoholic beverages; less than 21 acting as bartender civil charge \$750.
3VAC5-70-210		Sale of alcoholic beverages in unauthorized place or manner civil charge \$1000.	Sale of alcoholic beverages in unauthorized place or manner civil charge \$1250.
3VAC5-70-210		Consumption of alcohol in an unauthorized area civil charge \$500.	Consumption of alcohol in an unauthorized area civil charge \$750.
3VAC5-70-210		Removal of alcoholic beverages from authorized area civil charge \$500.	Removal of alcoholic beverages from authorized area civil charge \$750.
3VAC5-70-210		Failure to obliterate mixed beverage stamps civil charge \$500.	Failure to obliterate mixed beverage stamps civil charge \$750.
3VAC5-70-210		Employee on duty consuming alcoholic beverages civil charge \$500.	Employee on duty consuming alcoholic beverages civil charge \$750.
3VAC5-70-210		Conducting illegal happy hour civil charge \$500.	Conducting illegal happy hour civil charge \$750.
3VAC5-70-210		Illegally advertising happy hour civil charge \$500.	Illegally advertising happy hour civil charge \$750.
3VAC5-70-210		Unauthorized advertising civil charge \$500.	Unauthorized advertising civil charge \$750.
3VAC5-70-210		Failure to remit state beer/wine tax (if deficiency has been corrected) civil charge \$1000.	Failure to remit state beer/wine tax (if deficiency has been corrected) civil charge \$1250.
3VAC5-70-210		Wholesaler sale of wine/beer in unauthorized manner civil charge \$1000.	Wholesaler sale of wine/beer in unauthorized manner civil charge \$1250.
3VAC5-70-210		Wholesaler sale of wine/beer to unauthorized person civil charge \$1000.	Wholesaler sale of wine/beer to unauthorized person civil charge \$1250.