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## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) citation(s)</b>	3-VAC5-70
<b>Regulation title(s)</b>	Other Provisions
<b>Action title</b>	Schedule of Penalties for First Offense Violations
<b>Date this document prepared</b>	06/20/2018

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.*

Any licensee charged with one of the offenses listed in 3VAC5-70-210, provided that the licensee has no other pending charges and had 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 significantly less than the maximum monetary penalties permitted by the Code of Virginia (§4.1-227).

The current schedule of penalties in 3VAC5-70-210 are based on previous maximums listed in §4.1-227; 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 ABC to impose for civil penalties.

### 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.*

NA

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On February 13, 2018, the Board of the Virginia Alcoholic Beverage Control took action to formally change the schedule of penalties. As of 5/6/2019, the proposed stage was completed that resulted in no comments from the public. The title of the regulation is 3-VAC5-70 – Other Provisions.

### Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

There are no changes to the previously-reported information.

### 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.*

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.*

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 list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

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

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.*

No agency, locality, or entity is particularly affected.

### 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.*

No comment received

Commenter	Comment	Agency response

### Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

No changes since previous stage.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

## Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.*

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

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
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.
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.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
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.