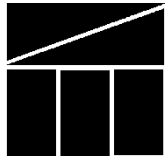


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

3 VAC 5-50 Retail Operations
Virginia Alcoholic Beverage Control Authority
Town Hall Action/Stage: 5054 / 8772
November 8, 2019

Summary of the Proposed Amendments to Regulation

Pursuant to 2018 legislation, the Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to establish a definition for "confectionery" and labeling requirements for such confectionery. This proposed permanent regulation replaces an emergency regulation that became effective on July 1, 2018 and expires on December 30, 2019.

Background

Chapters 173² and 334³ of the 2018 Acts of Assembly created a confectionery license, which authorizes the licensee to prepare and sell on the licensed premises (for off-premises consumption) confectionery that contains five percent or less alcohol by volume. The Acts also stated that any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold.

An enactment clause in the legislation specified that the Board promulgate regulations to implement the provisions of the act, to include a definition of the term "confectionery" and

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

² See <http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0173>

³ See <http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0334>

labeling requirements for such confectionery. The Board proposes to define "confectionery" as "baked goods and candies, having an alcohol content not more than 5.0% by volume." Further, the Board proposes to require that the confectionaries be labelled with: 1) notice that the product contains alcohol, 2) notice that the product can only be consumed off premises, and 3) warning that the product should not be consumed by anyone under the age of 21.

Estimated Benefits and Costs

Prior to the legislation and emergency regulation, it was illegal to sell confectioneries in the Commonwealth. Pursuant to Code of Virginia § 4.1-302⁴ and § 4.1-100,⁵ it would have been a Class 1 misdemeanor. Allowing the sale of confectionaries through licensure is beneficial in that consumers gain access to products that they may enjoy, and businesses gain the opportunity to sell potentially profitable additional products. The proposal to require that the labeling specify that the products contain alcohol is beneficial in that it greatly reduces the likelihood that people who would prefer to not consume alcohol-containing foods, or should not consume, would consume these products by mistake.

The legislation specified that the Board include labeling requirements. Given that labelling is required, the Board's proposed labelling requirements do not substantively add costs.

Businesses and Other Entities Affected

The proposal affects firms who may wish to produce and/or sell confectionaries, as well as consumers. Since the emergency regulation has been in effect (July 1, 2018), five firms have obtained confectionery licensure.

Localities⁶ Affected⁷

The legislation and proposed regulation allow confectioneries to be prepared and sold with a license throughout the Commonwealth. Thus far, through the emergency regulation, there are five licensees. They are located in the Cities of Martinsville and Richmond (2), and the Counties of Henrico and York. The proposal does not produce costs for local governments.

⁴ See <https://law.lis.virginia.gov/vacode/title4.1/chapter3/section4.1-302/>

⁵ Definition of "Alcoholic beverages" includes solids containing one-half of one percent or more of alcohol by volume. See <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-100/>

⁶ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Projected Impact on Employment

Allowing the sale of confectioneries through licensure may have a small positive impact on employment, as more workers may be needed for the production and sale of the newly legal products.

Effects on the Use and Value of Private Property

Allowing the sale of confectioneries through licensure enables firms to gain the opportunity to sell potentially profitable additional products. This would likely increase the value of some such firms. The proposal does not appear to directly affect real estate development costs.

Adverse Effect on Small Businesses⁸:

The proposed regulation does not appear to adversely affect small businesses.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”