



Economic Impact Analysis Virginia Department of Planning and Budget

**3 VAC 5-20 – Advertising
Alcoholic Beverage Control Board
October 28, 2012**

Summary of the Proposed Amendments to Regulation

Pursuant to a consent decree between the Office of the Attorney General and the Lamar Company, LLC signed in January, 2011, as well as Chapter 728 of the 2011 Acts of the Assembly and Chapter 760 of the 2012 Acts of the Assembly, the Alcoholic Beverage Control Board (ABC) proposes to amend its advertising regulations.

Result of Analysis

Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact

Prior to 2011, restrictions on advertising set on the Code of Virginia and in the Alcoholic Beverage Control (ABC) Board's regulations prohibited most forms of outdoor alcoholic beverage advertisement except for advertising within "stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events". A consent decree agreed to by both Lamar Company, LLC (a company that owns numerous outdoor advertising billboards in Virginia and other states) and the Office of the Attorney General suspended provisions of 3 VAC 5-20-30 and agreed that "no alcoholic beverage advertising shall depict persons consuming alcoholic beverages or use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors" and that "(n)o outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private or parochial school; college or university; or public or private playground or similar recreational facilities".

After this consent decree was entered in January, 2011, the General Assembly passed legislation that dealt with alcoholic beverage advertising in 2011 and 2012. Chapter 728 of the 2011 *Acts of Assembly* requires the board to promulgate regulations that establish reasonable time, place, and manner restrictions on alcoholic beverage outdoor advertising. Chapter 760 of the 2012 *Acts of Assembly* enacted Virginia Code § 4.1-112.2 which places specific limits on outdoor alcoholic beverage advertising (including specific measurement requirements for determining if advertising comported with the 500 foot restrictions in the consent decree), allows ABC to grant permits for variances, and requires outdoor advertising to comply with both ABC regulations and those adopted by the Commonwealth Transportation Board. This chapter also created Virginia Code § 33.1-377.1 which provides for penalties for violations of the outdoor advertising law. The 2012 changes were characterized as emergency legislation “in force from its passage,” thereby making them effective on April 18, 2012.

ABC now proposes to amend its advertising regulations so that they are consistent with the consent decree as well as new legislation. The proposed regulations will prohibit advertising that “depict persons consuming alcoholic beverages, use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors.”, will require that outdoor advertising comply with rules set out in Virginia Code §4.1-112.2 (as modified by Chapter 760 of the 2012 Acts of the Assembly) and will, also pursuant to Chapter 760, prohibit outdoor advertising on property zoned exclusively for agricultural or residential uses or on unzoned property. The proposed regulations will also prohibit any advertising that would not be allowed by the Tied House regulations (3 VAC 5-30) or the Franchise Acts (§4.1-400 et sec and §4.1-500 et sec).

Because of the consent decree mentioned above, and because of the resultant legislation, these proposed regulations are much less restrictive on alcoholic beverage advertising than were pre-2011 regulations. It does not appear that the proposed regulations add any more restrictions than are required by the Code of Virginia. ABC’s licensees are likely to benefit from both a less restrictive advertising environment and from ABC’s efforts to make these regulations consistent with the Code of Virginia so that inconsistencies do not cause confusion. No affected entity is likely to incur costs on account of these proposed regulations.

Businesses and Entities Affected

ABC reports that they license 16,000 alcoholic beverage manufacturers, wholesalers and retailers that will all be affected by these proposed regulations; 90% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected

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

Projected Impact on Employment

This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

No small business is likely 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 Board 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.