

2014 ABC Roadshow

hosted by VHTA and the Alexandria Convention and Visitors
Association

and presented by:

Thomas A. Lisk, Esq. &

J. Neal Insley, Esq.

Counsel, Virginia Hospitality & Travel Association

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ATTORNEYS AT LAW

June 10, 2014

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2014 Virginia General Assembly

- HB 216 – Del. Dave Albo: Creation of the Virginia Alcoholic Beverage Control Authority. Eliminates the ABC Board and replaces it with an Authority, with appointment of a board of directors and a chief executive officer. The bill has a delayed effective date of July 1, 2015. Carried Over to 2015 General Assembly.
- Interim study by the ABC Subcommittee of House General Laws Committee (chaired by Del. Barry Knight).

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2014 Virginia General Assembly

- Multiple other bills to address ABC Enforcement Powers:
- HB 922 – Del. David Toscano: Prohibits ABC agents from threatening to use deadly force in the detention of a person suspected of underage possession of alcohol, unless the agent has a reasonable fear of death or injury.
- HJR 67 – Del. David Toscano: Encourages the ABC Board to protect constitutional rights in interactions with the public.
- SB 307 – Sen. Creigh Deeds - Changes the duties and compensation of the three-member Alcoholic Beverage Control Board.

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2014 Virginia General Assembly

- HB 283 – Del. Dave Albo. Authorizes ABC Board to suspend ABC license if delinquent in payment of any local taxes. Effective July 1, 2014.
- SB 337 – Sen. Jeff McWaters: Clarifies that any winery, farm winery, or wine wholesaler licensee to provide to adult customers of licensed retail establishments information about wine being consumed on such premises (also see SB 224 – Sen. Chap Petersen and SB 300 – Sen. Adam Ebbin). Effective July 1, 2014.

2014 ABC Roadshow

2014 Virginia General Assembly

- HB 882 – Del. Betsy Carr: Allows cider w/ less than 7% alcohol to be sold in any containers that comply with federal regulations for wine or beer and cider w/ 7% or more of alcohol to be sold in any containers that comply with federal regulations for wine. Also changes definition of cider to include beverages made with either apples or pears.

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2014 Virginia General Assembly

- ❑ Multiple bills to amend or create new license categories: HB 217 (Virginia State Fair); HB 254 (art instruction studio); HB 423 (restricted common carriers); HB 507 (art education & exhibition); HB 1107 (gourmet brewing shop); HB 1141 (annual arts venue event); SB 104 (gift shop licenses); SB 178 (sight-seeing carriers); SB 502 (limited mixed beverage licenses); SB 605 (Virginia State Fair); SB 557 (distiller's special events).
- ❑ HB 602 – Del. Chris Head. Allows localities to adopt ordinances prohibiting sale of alcohol to underage persons.

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2014 Virginia General Assembly - MBAR ISSUES

HB 1152 – Del. Dave Albo: In cases of violations by mixed beverage licensees involving the food-to-mixed-beverage ratio, would allow the ABC Board to (a) impose a civil penalty equal to 50 percent of the average gross revenue derived from mixed beverage sales, based on the same licensee's most recent Mixed Beverage Annual Review report, for the length of time of any license suspension that may be waived by the Board, and (b) require the same licensee to provide monthly reporting of food and mixed beverage sales to the Board, together with an audited report of food and mixed beverage sales for the following 12-month period. Carried over to 2015.

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2014 Virginia General Assembly - MBAR ISSUES

SB 642 – Sen. Don McEachin: Require issuance of temporary license to applicants for a new mixed beverage restaurant license. The bill also requires the ABC to adopt regulations for the imposition of sanctions for violations of the mixed beverage ratio and for not meeting the monthly food sale requirements in ABC Board regulations. The bill requires the ABC Board to report to the Chairmen of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services on the implementation of the bill by July 1, 2016. Carried over to 2015 (also see Budget Amendment from Sen. McEachin).

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2014 Virginia ABC Regulatory Changes

VA ABC ADVERTISING REGULATIONS (3 VAC 5-20):

- Remove many restrictions on outdoor advertising by retailers (but see changes to Happy Hour advertising).
- Retailers may not advertise Happy Hour anywhere other than within the interior of the restaurant, EXCEPT: the Terms “Happy Hour” and “Drink Specials” together with the time periods of the same may be included in any other lawful advertisement including both print media and electronic communications (e.g., webpages, Facebook, Twitter, et al.)(see 3 VAC 5-50-160).

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2014 Virginia ABC Regulatory Changes

VA ABC TIED-HOUSE REGULATIONS (3 VAC 5-30):

- Allows wholesalers to merchandise product on Sundays (still no Sunday deliveries).
- Expands the ordinary and commercial reasons for return of a product to a wholesaler to include when a product has been discontinued – may be exchanged for another product on an identical and comparable wholesale price basis.
- Customized POS advertising materials provided by wholesalers may include the name, logo, address and website of the retailer.

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2014 Virginia ABC Regulatory Changes

VA ABC TIED-HOUSE REGULATIONS (3 VAC 5-30):

- Routine business entertainment provided by wholesalers or manufacturers may include local transportation to attend authorized events.

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2014 Virginia ABC Regulatory Changes

VA ABC PRODUCT APPROVAL REGULATIONS

(3 VAC 5-40):

- Defines “growlers” as a reusable glass, ceramic, or metal container having a capacity of not more than 64 fluid ounces (2 liters) that has a resealable closure.
- Allows growlers to be used by breweries, restaurants with on- & off-premises privileges and by gourmet shop licensees.
- Establishes additional labelling requirements for gourmet shop licensees (but not for restaurants and breweries).

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2014 Virginia ABC Regulatory Changes

VA ABC PRODUCT APPROVAL REGULATIONS

(3 VAC 5-40):

- Prohibits the sale of beer in pitchers larger than 80 fluid ounces.

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2014 Virginia ABC Regulatory Changes

VA ABC RETAIL OPERATIONS REGULATIONS

(3 VAC 5-50):

- Provides that “designated managers” must be able to understand and communicate in the English language in a reasonably satisfactory manner.
- Eliminates requirement to get ABC approval for frozen drink dispensers.
- Prohibits establishing a customary retail price for any drink at a mark-up over cost significantly less than that applied to other beverages of similar type, quality or volume.

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2014 Virginia ABC Regulatory Changes

VA ABC RETAIL OPERATIONS REGULATIONS

(3 VAC 5-50):

- Redefines: “Bona fide, full-service restaurant” to mean: “an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.” (eliminates requirement of “substantial entrees” and consideration of the “assortment of entrees and other food”).

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2014 Virginia ABC Regulatory Changes

VA ABC RETAIL OPERATIONS REGULATIONS

(3 VAC 5-50):

- Also redefines: “Meal” to mean: “a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.” (eliminates whether it would be considered a “principal meal of the day as distinguished from a snack”).

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2014 Virginia ABC Regulatory Changes

VA ABC RETAIL OPERATIONS REGULATIONS

(3 VAC 5-50):

- Defines: “Table” to mean: “an article of furniture supported by one or more vertical legs or similar supports and having a flat horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.”
- Requires restaurant to serve food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware; however, a buffet restaurant may qualify if both alcoholic & nonalcoholic beverage service provided at the table.

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2014 Virginia ABC Regulatory Changes

VA ABC MANUFACTURER & WHOLESALER OPERATIONS REGULATIONS (3 VAC 5-60):

- Wine wholesalers may “peddle” up to 2 cases (24 bottles) of wine to retailers during an invoiced delivery.

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2014 Virginia ABC Regulatory Changes

VA ABC OTHER REGULATIONS (3 VAC 5-70):

- Allows licensees to maintain ABC business records off-site, but must still be readily subject to retrieval and available for viewing on a screen or in hard copy at the licensed premises between 9 AM and 5 PM.
- Clarifies that for a licensee that operates more than one retail establishment, each establishment is considered a separate license for any ABC violation.
- Allows a licensee to receive a pro-rated refund of its annual license fee if the business is destroyed by an act of God.

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2014 Virginia ABC Regulatory Changes

- Senate Bill 628 (2010): The Virginia ABC Board shall promulgate regulations that “[p]rescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.” (Chapter 481, 2010 Acts of Assembly).
- Passed State Senate 40-0 and passed House of Delegates 100-0.
- Governor’s Office approves final text of regulation on January 2, 2014 and Regulation became effective on February 26, 2014.

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2014 Virginia ABC Regulatory Changes

- VA ABC finds that: *“[t]he primary advantage of this action is to allow mixed beverage restaurants the flexibility to produce their own flavor-infused distilled spirits for the production of cocktails. It poses no disadvantages to the public or the Commonwealth.”*
- VA ABC further finds that: *“[I]n order to determine compliance with statutes requiring purchases of all distilled beverages from state stores, prevent fraud by substitution of product, ensure compliance with the required ratio of food sales to mixed beverage”* record-keeping requirements were necessary for licensees that would be infusing spirits.

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2014 Virginia ABC Regulatory Changes

- 3 VAC 5-50-60.F. of the VA ABC Regulations provides that a mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:
 - If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.
 - If infused in a container other than the original spirits container, the substitute container, which shall not exceed two liters in volume, will be labeled with the following information: 1). date of infusion; 2). brand of spirits; and 3). amount of spirits used.

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2014 Virginia ABC Regulatory Changes

- Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.
- Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

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WHAT WILL HAPPEN IN 2015?

- VA ABC Restructuring?
- MBAR Changes?
- Happy Hour Changes?
- New ABC Licenses?

- WHAT SHOULD BE VHTA'S AGENDA FOR ABC CHANGES?

Questions?

Thomas A. Lisk, Esq.

(804) 788-7750 | tlisk@eckertseamans.com

J. Neal Insley, Esq.

(804) 788-7756 | jinsley@eckertseamans.com

or (757) 362-8718

**ECKERT
SEAMANS**
ATTORNEYS AT LAW