

Virginia Alcoholic Beverage Control Authority

Chief Executive Officer
Travis G. Hill



Chair
Maria J. K. Everett

Vice Chair
Beth G. Hungate-Noland

Board of Directors
William D. Euille
Gregory F. Holland
Mark E. Rubin

March 18, 2020

Pursuant to Executive Order Fifty One (51), Declaration of a State of Emergency due to Novel Coronavirus (COVID-19), and acting under the Authority, this document will contain the responses of the Virginia ABC Bureau of Law Enforcement regarding procedural and regulatory matters for Virginia ABC licensed businesses affected by the Novel Coronavirus (COVID-19) outbreak.

The information and decisions contained herein will remain in effect so long as Executive Order 51 remains applicable or by extension granted by the Authority for good cause shown.

All matters contained herein will be continuously updated and changes denoted within this document by date and revision as applicable.

Questions regarding this document or the information contained within should be addressed to the Bureau of Law Enforcement at 804-213-4565 or enforcement@abc.virginia.gov

A handwritten signature in black ink, appearing to read "Travis G. Hill".

Travis G. Hill

Chief Executive Officer



Topic 1: (03/13/20) ABC response to the return of product by wholesalers from retailers affected by COVID -19

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-30-10.

Background: Currently under Virginia Regulation a manufacturer, importer, bottler, broker, or wholesaler, or its representative, may not sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

- a. Products defective at the time of delivery may be replaced;
- b. Products erroneously delivered may be replaced or money refunded;
- c. Products of which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the board;
- d. Resalable draft beer may be returned and money refunded;
- e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;
- f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or
- g. Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which wholesalers may pick up wine and beer products from licensees in which their immediate operations have been affected by the Novel Coronavirus (COVID-19). Also, a refund of money associated with that specific pick-up may be given to that licensee by such



wholesaler. Any such pick up and refund shall be documented by the wholesaler on the proper invoice. (Ex: Wholesaler pickup of 100 cases of ABC Beer from retailer due to COVID-19 cancellation of XYZ concert, \$200 refunded CK#9999 to retailer.)



Topic 2: (03/13/20) ABC response to the requirement for signature by purchaser at the time of delivery on invoices covering such sale.

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-30-30.

Background: Currently under Virginia Regulation sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which wholesalers may make deliveries to retail licensees and forgo the requirement to get a retailer's signature when making a delivery.

However, in lieu of collecting the actual physical signature of the purchaser, the wholesaler making the delivery will denote on the invoice the legible full name of the individual that is receiving the delivery as well as their applicable title within the business.



Topic 3: (03/16/20) ABC response to the requirement for signature by recipient at the time of delivery when a licensee is making a delivery through the use of a delivery permit.

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-70-225.

Background: Currently under Virginia Regulation when attempting to deliver wine or beer pursuant to a delivery permit, an owner, agent, officer, director, shareholder, or employee of the permittee shall require:

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which an owner, agent, officer, director, shareholder, or employee of the permittee of a delivery permit may make deliveries to consumers in the Commonwealth and forgo the requirement to get the recipient's signature when making a delivery. Provided that whoever is making the delivery denotes on electronic or paper form the legible full name of the individual that is receiving the delivery as well as the method of verification for documenting that the recipient was at least 21 years of age as the delivery permittee has the sole responsibility of verifying that the recipient is at least 21 years of age pursuant to [3VAC5-50-20](#).

The owner, agent, officer, director, shareholder, or employee of the permittee shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications. All permittees delivering wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer delivered in the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the delivery permit number of the delivering permittee.



Topic 4: **(03/16/20) ABC response to the Virginia law regarding the delivery of wine & beer to a customer seated in a vehicle.**

Purpose: The Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to Code of Virginia §4.1-209.

Background: Currently under Virginia Law, persons granted a wine and beer license pursuant to 4.1-209 may deliver such wine or beer in closed containers for off-premises consumption to such person's vehicle if located in a designated parking area of the retailer's premises where such person has electronically ordered wine or beer in advance of the delivery or (ii) if the licensee holds a delivery permit issued pursuant to § 4.1-212.1, to such other locations as may be permitted by Board regulation.

Held: The Authority is offering the following interpretation regarding the above mentioned Code section. Licensees who have a wine and beer on or off premises license designation through 4.1-209 may deliver wine and beer pursuant to an electronic order by a customer to that customer seated in a vehicle that is parked in a designated parking area of the retailer's premise. Or if a licensee holds a delivery permit, they may deliver to other such locations.



Topic 5: (03/16/20) ABC response to the Virginia Regulation prohibiting drive through establishments and delivering to a customer in a vehicle. (MANUFACTURER LICENSEES)

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-50-150.

Background: Currently under 3VAC5-50-150, no person holding a license which authorizes the licensee to sell wine or beer at retail for consumption off the premises shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

This regulation prohibits a manufacturer licensed to sell at retail off premises (Brewery, winery with retail off premises, farm winery, etc.) from fulfilling an order to a customer in their parking lot who is seated in a vehicle.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which licensees who are manufacturers licensed to sell wine and beer at retail may make deliveries to customers on their licensed premises (immediately owned or leased parking lot) to customers seated in a vehicle. The licensee is reminded that all other laws and regulations in regard to sales are applicable.

Manufacturers of beer and wine who are licensed to sell at retail off premises may proceed with the above in regard to their immediate licensed premises. If the manufacturer does not have an immediate parking lot or designated area that is part of the licensed premises (street parking, shared parking, etc.), that manufacturer may apply for a delivery permit pursuant to 4.1-212.1 and make deliveries to customers at other locations. Provided the licensee follows all other laws and regulations in regard to sales that are applicable.



Topic 6: (03/16/20) ABC response to expedited process for issuance of delivery permits.

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following regarding the process for issuance of delivery permits.

Background: Currently those licensees authorized under 4.1-212.1 may apply to the Board to receive a permit to deliver wine and beer to consumers within the Commonwealth for personal consumption only and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by either (i) the owner or any agent, officer, director, shareholder or employee of the permittee or (ii) an independent contractor of the permittee, provided that (a) the permittee has entered into a written agreement with the independent contractor establishing that the permittee shall be vicariously liable for any administrative violations of this section or § 4.1-304 committed by the independent contractor relating to any deliveries of beer, wine, or farm wine made on behalf of the permittee and (b) only one individual takes possession of the beer, wine, or farm wine during the course of the delivery.

No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold, except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from current process that requires a requestor of a delivery permit in-state to fill out an 805-98 Delivery Permit Application.

ABC will accept requests for a permit via email from a licensee or their attorney if represented by counsel.

Those who are requesting a permit to deliver will make the request via email to their designated agent for their territory. The information regarding territory and the applicable agent may be found on the designated section for COVID-19 on the VA ABC Website. Once approved, the licensee will receive a Letter of Authority from the Bureau of Law Enforcement to carry out deliveries which will expire at the rescinding of Executive Order 51.



Topic 7: **(03/17/20) ABC response to designated ABC distillery stores delivering to customers seated in vehicle**

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion related to operational agreements with ABC designated distillery stores.

Background: Currently under the distillery store agreement that is in place with a licensed distillery and the Virginia ABC Authority all sales of distilled spirits shall take place within the designated store premises or upon issuance of a remote privilege issued by the Bureau of Law Enforcement. This agreement does not contemplate the ability to deliver to a customer seated in their vehicle at the location of the distillery store who has placed an electronic order of distilled spirits.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the agreement to allow deliveries to customers on the distiller's premises (immediately owned/leased parking lot) to customers seated in a vehicle pursuant to an electronic order. The distillery store is reminded that all other laws and regulations in regard to sales are applicable.



Topic 8: **(03/18/20) ABC response to Distilleries producing hand sanitizer**

Purpose: Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following interpretation on the producing of hand sanitizer product by licensed Distilleries.

Background: Currently under the Code of Virginia, a licensed Distiller may produce alcoholic beverages other than wine and beer on their premises and sell to those that can legally receive it out of state, to the VA ABC Board or at their designated ABC Distillery Store.

§ 4.1-200; Exemptions for licensure allows the manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

§ 4.1-100 defines alcohol as "Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

Held: The Authority acting under the abilities granted within Executive Order 51 has made the following interpretation in regard to Distilleries producing, selling or giving away hand sanitizer, producing grain alcohol, selling of industrial alcohol.

Hand Sanitizer:

Distilleries that want to produce hand sanitizer that contain ingredients (not just straight ethanol or grain alcohol) that make the product rendered unfit for consumption or completely denatured, may give away or sell hand sanitizer to communities, hospitals, patrons, etc. provided the product:

- 1) Meets appropriate federal guidelines regarding manufacturing of such products;
- 2) Meets appropriate VDACS and VDH guidelines where applicable;
- 3) If bottled, contain a statement that the product is not intended for consumption;

Grain Alcohol:

If the distillery wants to sell grain alcohol to customers then they must bottle, sell under appropriate guidelines for grain alcohol products (designated in MIPS, customer has a permit, etc.) Pursuant to § 4.1-119 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be



sold in government stores at a proof greater than 151 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

Industrial Alcohol:

***Virginia ABC Authority will waive the following industrial permit requirement for any hospital while Executive Order 51 remains applicable.**

If the distillery wants to produce industrial alcohol for hospitals*, manufacturing, etc. then the buyer must follow the applicable permitting process for industrial alcohol pursuant to 3VAC5-70-60 in which The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § [4.1-200](#) of the Code of Virginia; or
4. For use in a hospital or home for the aged (alcohol only).

Should you have any questions on the above processes or need to further discuss, please contact your assigned Compliance agent or call 804-213-4632 or compliance@abc.virginia.gov.

