



2021 Last Call Legislative Report



Virginia Craft Brewers Guild

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INTRODUCTION

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Dear Members:

This **VCBG 2021 Last Call Legislative Report** provides an overview of priority and defensive priority bills that the VCBG monitored and managed in the 2021 Virginia General Assembly regular and special sessions. These bills are available for review [here](#). 2021 also marks the 10th Anniversary of the Virginia Craft Brewers Guild and this report. We started the VCBG with 11 founding members and together changed the face of the industry. I am proud of the beneficial changes we have made over the years that have made Virginia the #1 independent craft beer state in the Southeast (measured by breweries per 100,000+ population 21+ years old).

The VCBG Leadership Council and Government Affairs Committee are the core of our government affairs program. They were prepared for legislation to delay the implementation of the new ABC licenses and fees adopted in the 2020 but advance the privileges of the combined licenses such as delivery permits and manufacturers licenses to July 1, 2021. The VCBG helped to draft and advocate for the passage of the new “designated outdoor refreshment area” licenses. The VCBG also petitioned for breweries to be allowed to use Rebuild Virginia grant funds to offset local tangible personal property taxes. The rest of the VCBG legislative agenda was focused on defensive priorities such as VDACS brewery inspection reforms, “criminal blight” and expanded local government involvement in the regulation of ABC licensees, the regulation of hemp-derived CBD for beer additives, protecting the VA ABC from becoming the regulatory authority for marijuana products, and enhancing local tourism.

The VCBG started the session with successful [Virtual Days on the Hill](#) with nearly a dozen members of the Virginia General Assembly. Educating Delegates and Senators about the fundamentals of the independent craft beer industry and building relationships with key members of the House General Laws Committee and Senate Rehabilitation Committee which regulate alcohol is essential to our legislative effectiveness. We also continued to build close working relationships with the leadership of the VA ABC, which is critical to our regulatory effectiveness throughout the year.

Despite the serious challenges presented by the COVID-19 pandemic, the 2021 Virginia General Assembly regular and special sessions were positive for the independent craft beer industry. Now that it is over, we will turn our attention to the House of Delegates election. We encourage all members to use this report in your [Brewer for a Day Program](#) and invite candidates and incumbents to participate.

Cheers!

Brett A. Vassey

President & CEO

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This section details bills the VCBG requested to be introduced or was part of a coalition or commission that requested the bill to be introduced. These were the top priorities of the VCBG during this General Assembly session.

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PRIORITY BILLS

Priority bills represent legislation that has been introduced on our behalf or a coalition to which we belong. These bills directly relate to VCBG legislative priorities and involve member committees and/or the Leadership Council.

The VCBG produced an 83% success rate with this year's 6 priority bills. 33% of the priority bills had Republican patrons and 70% had Democratic patrons. [Priority bills are labeled in green here.](#)

Priority bills represent legislation that was introduced on VCBG's behalf, or a coalition to which it belongs, and directly relates to VCBG legislative priorities developed by members, member committees, and the Leadership Council.

We must give credit for these successes to specific priority bill patrons and leaders: Delegates Hala Ayala, Jeff Bourne, Jay Jones, Danny Marshall, Will Wampler and Senator Siobhan Dunnavant.

DEFENSIVE PRIORITY BILLS

This section identifies bills that involved VCBG monitoring and/or action in order to support, amend, neutralize, or stop from negatively impacting the craft beer industry or the VCBG's legislative agenda.

The VCBG produced an 100% success rate with this year's 4 defensive priority bills. 25% of the select defensive priority bills had Republican patrons and 75% had Democratic patrons. [Defensive Priority bills are labeled in red here.](#)

This section provides details on only select defensive priority bills that required significant amendment, protection from amendment, or opposition to reduce or eliminate the negative impact on the Virginia independent craft beer industry.

ALL BILLS

In addition to Priority and Defensive Priority bills, the VCBG monitors all VA ABC, VDACS, tourism, economic development, farm brewery, tax, and workforce training legislation that is targeted to breweries and alcohol manufacturers.

The VCBG monitored and managed 21 bills this legislative session. See every bill the VCBG monitored during the 2021 Session in our full [VCBG Legislative Report.](#)

ABC REGULATIONS

The majority of VCBG government affairs activities involve VA ABC (and other agencies such as VDACS and VDOH) regulatory matters.

These matters are essential to maintaining the flexible environment in which craft beer currently operates. Building trusted relationships with regulators is essential to managing the complicated web of VA ABC regulations which frequently require interpretation, reinterpretation, and guidance. This has become a particular area of strength for the VCBG.

For example, in 2020 alone we were successful in getting ABC administrative decisions to:

- Support keeping all breweries and tasting rooms open during the pandemic
- Defer fees
- Include delivery permit privileges within a brewery manufacturers license (no new fee or application)
- Allow curbside delivery of beer
- Expand novel containers for use with off-premise sales
- Expand outdoor areas for on-premise sales, including parking areas and contiguous property
- Harmonize the temporary use of brewery retail space and outdoor space with a [Manufacturer's Beer/Wine Event license](#)

Just consider the importance of the VA ABC supporting our position that breweries could safely operate and serve the public during the pandemic. There were significant job and economic losses, but only six breweries closed their doors last year (and two were expansion brewery locations only). Now, consider the bastion of independent craft beer... Oregon. Last year, Oregon forced the closure of all breweries for an extended period and is only now allowing [25% capacity and 75 people outdoors](#) for on-premise sales. Oregon's COVID-19 policies have resulted in the loss of [9,090 brewery jobs](#) and over [21 breweries closed their doors forever](#).

In 2021, the VCBG has been appointed to the workgroup charged with harmonizing the VA ABC administrative code with the 2020/2021 VA ABC license and fee bills reforms that included the VA ABC's transition into a public authority. This working group or a spin-off task force will specifically tackle our issues: label reforms, delivery permit documentation/reporting reforms, electronic payments, electronic permit/license applications, keg collar reforms, and online tax/license/permit payments.

We are also seeking several additional VA ABC regulatory changes over the next 24 months: 1) The use of CBD additives to beer; 2) Temporary Distribution Agreement with a VA Beer Franchise Act waiver; 3) Expedited distribution agreement termination ABC process; and 4) The use of distributor performance metrics set by the Blue Mountain Brewery case as standardized tools in dispute resolution cases before the VA ABC.

Positive, professional, and trusting relationships with the VA ABC are vital to the VCBG government affairs program.

PUBLIC POLICY PRIORITIES

The VCBG has developed twelve foundational public policy priorities that help guide its legislative advocacy. These are developed and prioritized through the VCBG committees and Leadership Council. The priorities are as follows:

Defend Virginia’s “Hybrid Self-Distribution” Laws

- *Tasting room retail sales privileges – no retail sales limits (On or Off-Premise) and no regulated hours of operation*
- *Expansion breweries – no limits on the number of breweries with retail tasting rooms and retain revised ABC administrative code definition of beer manufacturing*
- *Brewery In-State and Out-of-State Delivery/Shipping Permits/Licenses*
- *“Brewpub” exemption from “3 Tier System” and “Tied House” laws*
- *Eight (8) Manufacturer’s Beer Event Licenses per year*
- *“Arms-length” independent craft beer distributors*
- *Alternating proprietorships*

Defend current unlimited brewery-to-brewery transfer privileges

Defend current unlimited contract brewing privileges

Improve the performance of the distribution tier

- *Regulate voluntary waivers of VA Beer Franchise Act terms in temporary distribution agreements*
- *Expedite distribution agreement termination process, including reforming ABC uniform prehearing scheduling orders involving VA Beer Franchise Act disputes*
- *Expand the number of small independent craft beer distributors*
- *Improve brewery-to-distributor communications and sales planning, and ensure that any beer sold by a brewery is delivered by its distributor*
- *Use comparable distributor performance metrics precedent set by Blue Mountain Brewery case in ABC dispute resolutions*

Maintain ABC Regulatory Balance

Oppose “Pay-to-Play” Trade Spending

No beer excise tax increases

Expand craft beer tourism and market growth, particularly through the VCBG marketing and tourism programs and Virginia Tourism Corporation programs

Expand authentic independent craft beer branding with consumers through the BA’s “Independent” label, and VCBG’s distributor, retailer, farm brewery, and craft beer programs

Increase retail tier recognition of independent Virginia craft breweries and promotion of the Virginia Craft Beer Cup and national award-winning beers

Improve the workforce development system to create a diverse and industry certified talent pool for breweries

Create regional quality networks for brewers to share best practices

Move Virginia into the “Top 10 U.S. States for Breweries Per Capita”

SUMMARY

1,033 bills were introduced in the 2021 special session of the Virginia General Assembly. This was a complicated year for statistical analysis because the regular session was limited to its Constitutional 30-days, as compared to the customary 45-day session in odd numbered years. So, a special session was called by the Governor to begin on day 31 of the session. As such, not all bills originally introduced were carried forward to the special session, and only a few new bills were introduced. This represents the 11th consecutive year the Virginia General Assembly has been in special session. Delegates were limited to seven (7) bills each and Senators were limited to twelve (12) bills each in the regular session. This curbed the proliferation of legislation that reached a record-high of 3,911 bills in the 2020 Regular Session and 488 in the 2020 Special Session.

The VCBG monitored and managed 21 bills this legislative session: 4 were defensive priority bills, 6 were priority bills, and the rest were generally monitored.

However, communicating our legislative priorities was exceedingly difficult due to the inaccessibility of legislators this session. The House of Delegates broke 402 years of tradition and convened via virtual hearings and meetings only. The Senate met in person, but under strict safety conditions at the Virginia Science Museum with no public access. The Virginia General Assembly's office building was also closed to the public. However, Senator Bill DeSteph (R-Virginia Beach) filed a lawsuit challenging the decision to close the General Assembly's office building and an agreement was reached that four conference rooms in an office building adjacent to the Virginia Science Museum would be made available for appointments with constituents. Regardless, House and Senate Committee and Subcommittee meetings were notably truncated (usually limiting testimony to 2 minutes) and in some cases allowed no public testimony. Our democratic values of transparency, accessibility, equity, and deliberation were diminished this legislative session.

We also want to highlight a few bills to give some context to the work involved in getting bills passed, defeated, or amended, including partnerships the VCBG formed in the process.

ABC License Fee Reform – Delay

HB1845 (Delegate VanValkenburg) delays the implementation of the VA ABC transition to a new license and fee structure negotiated in the 2020 legislative session until 2022. The VCBG served over a year on a VA ABC working group to develop that legislation. Due to COVID-19 challenges, the agency requested additional time to make the full transition. However, the compromise advances most of the new license and fee privileges to brewers effective July 1, 2021, such as combined brewery and delivery privileges. These statutory protections now ensure that the discretionary administrative decisions the VA ABC made last year to assist with COVID-19 compliance are permanent. The VCBG has already been appointed to the VA ABC working group to harmonize the new license and fee system with VA ABC administrative code. See the ABC section of this report for details.

Criminal Blight & Local Authority Over ABC License Applications

SB1345 (Senator Vogel) and HB2131 (Delegate Lopez) introduced similar legislation that would have given sweeping new powers to local governments and the VA ABC over permit issuance. The bill now only requires the VA ABC to notify the local Chief Administrative Officer as part of its normal ABC licensee applicant notice process. The bill also amends the existing "Criminal Blight" section of the Code of Virginia to incorporate discharge of a firearm as a

criminal act. However, as introduced, HB2131 would have allowed local governments to delay any ABC license application 45 days and require the VA ABC Board to “give reasonable consideration to any objection or recommendation submitted by the locality.” The VCBG, VA Wineries Association, and VRLTA collaborated on this bill to successfully amend it.

Designated Outdoor Refreshment Area (ORA) License

HB2266 (Delegate Ayala), HB2051 (Delegate Bourne), HB1738 (Delegate Wampler), and SB1471 (Senator Dunnavant) all addressed the designation of “Outdoor Refreshment Areas.” Delegate Wampler introduced the concept in November with a bipartisan group of legislators and involved the VCBG in the bill’s development. But this is an election year, and Delegate Wampler is not a member of the majority party. So, his bill was quickly usurped by Delegate Bourne and, eventually, his bill was incorporated into Delegate Ayala’s bill. Why was Delegate Ayala’s the primary bill making it out of the House? It may have something to do with her running for Lt. Governor...

Anyway, the VCBG ultimately worked with all parties, including Senator Dunnavant and the VA ABC leadership to form a compromise bill that would pass. The ORA became a new limited local government license with an option for 16 licenses per year for up to 3 days each to each locality with an option of extending those licenses if a locality adopts an ORA ordinance. This will not directly facilitate a permanent outdoor refreshment area, but more likely result in "seasonal" or “occasional” area designations. All the VCBG concerns were accommodated within this compromise bill.

This is an opportunity for members to begin to coordinate ORA license uses in their localities around craft beer-related special events and slow revenue times such as winter months. Members should also begin coordinating with their regional beer trails and associations to petition their local governments to create local working groups to craft ORA ordinances to submit to the ABC for approval by year-end. These ordinances will allow for more frequent and longer duration ORA approvals beyond the 16 licenses. The VCBG recommends that members consider petitioning for seasonal ORAs (e.g., weekends all summer, craft beer month, restaurant week, or winter celebration). With a year or more of success with these ORAs, it is the VCBG’s expectation that a permanent ORA statute will be more readily accepted in future sessions.

Hemp

HB2078 (Delegate Marshall) reformed the industrial hemp and hemp product statute definitions.

*"Hemp product" means ~~any finished a product that is otherwise lawful and~~, including any raw materials from industrial hemp that are used for or **added to a food or beverage product**, that contains industrial hemp, ~~including rope, building materials, automobile parts, animal bedding, animal feed, cosmetics, oil containing an industrial hemp extract, or food or food additives for human consumption~~ and has completed all stages of processing needed for the product.*

"Industrial hemp" means any part of the plant Cannabis sativa, including seeds thereof ~~and any derivative, extract, cannabinoid, isomer, acid, salt, or salt of an isomer~~, whether growing or not, with a concentration of tetrahydrocannabinol that is no greater than that allowed by federal law. "Industrial hemp" includes an industrial hemp extract that has not completed all stages of processing needed to convert the extract into a hemp product.

Finalizing CBD additive regulations for beer is a VCBG priority and this will help complete that work.

Rebuild Virginia Reform

HB1800 Amendment (Delegate Jones) would have allowed breweries to use Rebuild Virginia grant funds to pay for local tangible personal property taxes and machinery and tools taxes. The goal was to help members use grant sources to offset any fixed costs, since government has impaired the full use of brewery assets but not relieved breweries of paying annual taxes. Unfortunately, the budget amendment failed, and Rebuild Virginia was not funded.

VDACS Inspections

HB2275 (Delegate Gooditis) would have created a new VDACS permit for the operation of any food or beverage manufacturer. The permit would have been in place of the current inspection and authorization to manufacture. However, the introduced bill had numerous issues, such as a lack of clarity as to whether or not businesses regulated under this section may operate until receipt of the permit; no time limit on VDACS to process the permit; no appeal process if a brewery permit was suspended; and no requirement that VDACS develop regulations in accordance with the Virginia Administrative Process Act. Secretary of Agriculture Ring, VDACS and the House accepted all VCBG amendments and clarified that permits will be automatically distributed to all operating businesses upon passage of the bill. Unfortunately, the Senate did not accept the bill and it failed.

The lesson learned every session is that the VCBG depends upon legislators to understand the unique needs of the independent craft beer industry and support us. One of the best ways to gain that support is through education and relationship building. It is important that we specifically engage the [House General Laws Committee](#) and [Senate Rehabilitation and Social Service Committee](#) leadership and members. To help accomplish this task, the VCBG has developed the [VA Craft Brewer for a Day](#) program. We provide a complete guide how to approach legislators, host them at your brewery, promote the experience, and report your experience to the VCBG.

This year, the Virginia House of Delegates is up for election. We cannot assume that the newly elected will be supportive of the independent craft beer industry. So, it is highly recommended that all members engage with your Delegates to ensure that they support our industry. To discuss political action support (funding and fundraisers), including the pros and cons of supporting challengers to incumbent legislators, please contact Brett Vassey, VCBG President and CEO.

In closing, the VCBG will continue to face challenges in government affairs – legislative and regulatory. Our proven strategy is to expand our industry education of General Assembly members. We will also continue to develop our productive relationships with the other regulated alcohol tiers. The Guild has a strong government affairs program in place and is prepared to face the challenges ahead. The VCBG is proud to be the “shield and the sword” of the independent craft beer industry in the Commonwealth for 10 years and looks forward to the next decade.

To join the VCBG Government Affairs committee, Farm Brewery committee, Tourism and Marketing committee, or Quality and Operations committee, please contact [Kaitlyn Crow](#), VCBG Communications and Marketing Manager.