


Government of the District of Columbia  
Office of the Chief Financial Officer



**Fitzroy Lee**  
Acting Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Fitzroy Lee   
Acting Chief Financial Officer

**DATE:** February 8, 2022

**SUBJECT:** Revised Fiscal Impact Statement – Reopen Washington DC Alcoholic Beverage Regulation Amendment Act of 2022

**REFERENCE:** Bill 24-44, Committee Print as provided to the Office of Revenue Analysis on February 3, 2022

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**Conclusion**

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the bill.

**Background**

The Alcoholic Beverage Control Board (Board) and the Alcoholic Beverage Regulation Administration (ABRA) control alcoholic beverages and regulate, enforce, and adjudicate laws governing alcoholic beverages, and violations of those laws. The bill extends a handful of programs that have been implemented on an emergency basis, establishes new license categories, and amends several licensed establishment operational requirements and Board and ABRA administrative procedures.

The bill extends and amends two expansion programs the District implemented during the public health emergency.<sup>1</sup> The first authorizes the Board and ABRA to register an on-premises retailer to offer carry-out and delivery from up to two additional locations located in a commercial or mixed-use zone between the hours of 6:00 a.m. and 1:00 a.m. for up to 90 days unless 45-day notice of these activities is provided by the Board, allowing for longer operations. The bill imposes a \$100 registration fee to register for pop-up locations. The bill eliminates the ability of a retailer to offer

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<sup>1</sup> Coronavirus Support Temporary Amendment Act of 2021, effective June 24, 2021 (D.C. Law 24-9; D.C. Official Code § 25-113(a)).

indoor, on-premises alcohol consumption at the additional location. The bill authorizes the Board and ABRA to register these licensees for pop-up locations through December 31, 2023. The second program authorizes the Board and ABRA to register an on-premises retailer for expanded outdoor space, called streateries. The bill also extends this authorization through calendar year 2023 and imposes a \$100 registration fee for a streaterie. The bill repeals requirements that a licensed establishment offer at least three prepared food items, that a table purchase at least one prepared meal, and that tables and waiting patrons be spaced at least six feet apart. Beyond these changes, for both pop-up locations and streateries, the bill maintains most of the provisions included in the emergency legislation authorizing the Board and ABRA to register licensees for these programs.

The bill establishes a new category of licensure for commercial lifestyle centers (CLC) that can be issued to a commercial owner's association. A CLC license permits the sale and consumption of beer, wine, or spirits in the CLC's common areas as approved by the Board, including on the premises of tenants that are not Board licensed retailers. The bill authorizes the Board to approve outdoor seating areas where patrons can bring food and drink purchased for carry-out from the CLC's licensed on-premises retailers. The bill requires each restaurant, tavern, nightclub, hotel, or multipurpose facility that is a tenant of a CLC to serve beverages in a branded, reusable container that is distributed and recollected through a deposit and refund system. The bill authorizes the Department of Energy and Environment (DOEE) to enforce the use of appropriate reusable containers within a CLC. The bill permits the holder of a CLC license to operate between 7:00 a.m. and 11:00 p.m. Sunday through Thursday and between 7:00 a.m. and midnight Friday and Saturday. The bill establishes annual CLC license fees of \$1,000 and \$750 for class C and class D licenses, respectively.

The bill also creates a new license category for third-party delivery services that deliver alcoholic beverages in closed containers on behalf of an off-premises retailer, on-premises retailer, or manufacturer to a consumer and not for resale. A third-party delivery service license is valid for three years and requires the delivery service to file semi-annual reports with the Board that details the delivery service, the businesses it delivered on behalf of, the delivery recipients, and the dates beverages were delivered in the prior six months. The bill requires a licensee to pay an annual fee of \$200. The bill also requires a third-party delivery service to verify that its recipients are 21 years of age and prohibits the service from delivering to anyone who appears intoxicated or is located at any school in the District, including a university campus. The bill automatically suspends or revokes a third-party delivery service's authorization to deliver on behalf of a licensed establishment concurrent with the suspension or revocation of the licensed establishment's license. The bill authorizes an on-premises restaurant or tavern retailer and an off-premises internet retailer license holder to hold interest in a third-party delivery service, but prohibits the holder of an off-premises retailer's license, any other on-premises retailer's license, or manufacturer's license from holding an interest in a third-party delivery service. The bill also requires a Board-licensed off-premises retailer, on-premises retailer, and manufacturer that utilizes a third-party delivery service to register, at no cost, with the Board that it utilizes a third-party delivery service, which services they use, and affirm that all laws are followed related to the use of these services.

The bill expands grocery store opportunities in Wards<sup>2</sup> 7 and 8 by relaxing the restrictions on obtaining a 25 percent grocery store class A retailer's license for a location in Ward 7 or 8. A potential licensee must meet the bill's enumerated food offering, food physical space allocation, store location, and alcoholic beverage sales reporting requirements. The bill allows the holder of a class A or B off-premises retailer's license to also hold an interest in these grocery stores<sup>3</sup> and exempts class A licensed stores from the 400-foot location restrictions related to schools, Department of Parks and Recreation recreational areas,<sup>4</sup> and another class A off-premises retail location.<sup>5</sup> The bill also exempts a Ward 7 or 8 25 percent grocery store from the 250-license quota for off-premises retailer's licenses.<sup>6</sup> The bill authorizes a 25 percent grocery store class A retailer's licensee or a class B full-service grocery store licensee to sell individual containers of beer, malt liquor, or ale in Wards 7 and 8 where their sales are now prohibited at off-premises retailers.<sup>7</sup> The bill allows the holder of a 25 percent grocery store class A retailer's license in Ward 7 or 8 under this authorization that is newly constructed and occupied after January 1, 2021 to apply for one additional newly constructed 25 percent grocery store class A retailer's license for a location in Ward 1 through 6 after operating the store in Ward 7 or 8 for twelve months.

The bill expands the operating hours for several license and endorsement categories. The bill authorizes manufacturer's licensee hosting on-site sales and consumption that has an entertainment endorsement to provide entertainment between the hours of 6:00 a.m. and 1:00 a.m., where it is currently restricted to between 8:00 a.m. and midnight. For this same license category, the bill makes the same 6:00 a.m. to 1:00 a.m. change for the licensed manufacturer's use of its outdoor sidewalk café or summer garden.<sup>8</sup> The bill expands the hours that the holder of a tasting permit can offer tastings from 8:00 a.m. to midnight to 6:00 a.m. to 1:00 a.m. and imposes this requirement on a tasting permit holder that is a private collector.<sup>9</sup> The bill expands the hours the holder of a distillery pub endorsement can sell spirits for off-premises consumption from 7:00 a.m. to 12:00 a.m. to 6:00 a.m. to 1:00 a.m.<sup>10</sup> The bill standardizes the sales and delivery, including curbside pickup, operating hours for wholesalers to off-premises retailers and directly to customers as anytime between 5:00 a.m. and 1:00 a.m. each day of the week.<sup>11</sup> The bill authorizes an on-premises retailer or manufacturer with an on-site sales and consumption permit to deliver directly to customers or offer curbside pick-up between the hours of 6:00 a.m. and 1:00 a.m.

The bill amends or imposes operational requirements for Board license holders. The bill allows the holder of a restaurant or tavern license to also hold an interest in one off-premises retailer's license, class A, B, AI, or BI, and vice versa. The bill also allows an off-premises internet retailer's license

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<sup>2</sup> The bill establishes that the bill's ward-based provisions are applicable to the District's ward boundaries as they were set from January 1, 2012 through December 31, 2021.

<sup>3</sup> Title 25. Alcoholic Beverage Regulation, effective January 24, 1934 (48 Stat. 324; D.C. Official Code § 25-303).

<sup>4</sup> D.C. Official Code § 25-314.

<sup>5</sup> D.C. Official Code § 25-333.

<sup>6</sup> D.C. Official Code § 25-331.

<sup>7</sup> D.C. Official Code §§ 25-342 and 343.

<sup>8</sup> D.C. Official Code § 25-113.01.

<sup>9</sup> D.C. Official Code § 25-118.

<sup>10</sup> D.C. Official Code § 25-125.

<sup>11</sup> D.C. Official Code § 25-721.

holder to hold interest in up to five other off-premises internet retailers. The bill requires a new applicant for a manufacturer's, wholesaler's, or retailer's license to complete a no-cost ABRA offered licensee training course within 90 days of being issued the license and establishes proof of completion of the training course as the certificate received from the training provider. The bill requires a licensee to notify the Board within 30 days of the establishment or termination of a management agreement<sup>12</sup> for the management of the licensed premises. The bill repeals a wholesaler and manufacturer reporting requirement to other wholesalers and manufacturers.<sup>13</sup> The bill authorizes off-premises retailers to deliver alcoholic beverages through curbside delivery during authorized sales and delivery hours. The bill authorizes a licensed establishment with a brew pub endorsement to sell and deliver up to 15,500 gallons of malt beverages to other licensed retailers for resale as long as the brew pub licensee uses an employee or contractor and not a third-party delivery company. The bill redefines spirits as alcoholic beverages with an alcohol beverage by volume level of 21 percent where it is now 15 percent.<sup>14</sup> The bill implements a \$100 fee for license holders to receive a sports wagering endorsement. The bill prohibits the issuance or transfer of a nightclub license, class C or D, in the Georgetown Historic District and increases, from six to twelve, the cap on tavern licenses within the Georgetown Historic District.<sup>15</sup> The bill allows any group with standing to protest a Board-licensed establishment to request a public hearing no earlier than three years after the bill's effective date to evaluate the twelve-license cap on tavern licenses within the Georgetown Historic District. The bill established how and when an on-premises retailer's license holder within the Georgetown Historic District can apply for a conversion to a tavern license.

The bill eliminates a restriction that prohibits a caterer from purchasing alcoholic beverages from a licensed wholesaler for events over 100 patrons. The bill also prohibits a caterer from holding an event on a public street that has been closed by the District government.

The bill enhances provisions around security plans and cameras for, and located within, licensed establishments. If the Board requires a security plan as a condition of licensure, the bill gives the licensee 15 days to file a compliant security plan from the date the Board provides notice of its requirement or the Board can suspend the establishment's license. The bill gives a licensee ten days to file an amended security plan if it modifies the plan. The bill requires that security cameras meet prescribed standards and that footage is provide to ABRA or the Metropolitan Police Department (MPD) within 48 hours of a request, even if the cameras have been installed voluntarily.

The bill expands the ability of a restaurant or hotel licensee to permit a patron to take a partially consumed, resealed container of alcohol for off-premises consumption. Currently, patrons can carry-out one securely resealed, partially consumed bottle of wine. The bill expands this allowance to include a container or bottle of spirits and exempts a restaurant from any posting and notice requirements related to this allowance.

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<sup>12</sup> The bill defines a management agreement as an operational agreement between a licensee and a third-party governing the management functions of the establishment for a fee.

<sup>13</sup> D.C. Official Code § 25-733.

<sup>14</sup> D.C. Official Code § 25-101.

<sup>15</sup> D.C. Official Code § 25-339.

The bill amends allowances for some licensed retailers with a nude dancing endorsement. Generally, the bill exempts a nightclub licensee with a nude dancing endorsement from paying a license safekeeping fee while the establishment is closed if it has paid its licensing and license renewal fees.<sup>16</sup> More specifically, the bill prohibits a class CN retailer with a nude dancing endorsement located in the Buzzard Point section of Ward 6 whose lease has expired or otherwise become ineffective from transferring the license to another location unless it is to one of the bill's designated zones or in the Central Business District. The Board must approve a transfer request under these conditions within two years of the bill's effective date.

The bill updates or imposes new allowances and requirements around the Board's subpoena and other enforcement actions. The bill establishes who can request that the Board issue a subpoena, what information must be included in the request, and how the Board can quash or modified a subpoena. The bill updates how a subpoena can be delivered to include MPD, personal service, registered or certified mail to the recipient's last known address, or leaving it with the person in charge of the recipient's office if the recipient is a District Government employee. The bill maintains that the Board can appeal to the D.C. Superior Court to compel compliance with a subpoena. As it relates to enforcement matters, the bill requires all owners, managers, and employees of a licensed retailer, wholesaler, or manufacturer to carry identification while on duty and to make that identification available to any ABRA investigator or MPD officer upon request. The bill clarifies that false and misleading statements regarding material facts are prohibited in advertisements and other written notices or documents provided to the public. The bill authorizes the Board to summarily suspend an establishment's license if a licensee assaults an ABRA investigator or MPD officer during the commission of an ABRA investigation and requires the Board to revoke the license upon conviction for the assault. The bill also authorizes the Board to fine and suspend or revoke a license if the licensee interferes with an ABRA investigation by providing false or misleading statements, destroying or concealing evidence, or failing to produce a requested document. In cases of license suspensions for the sale of alcoholic beverages to prohibited persons, the bill allows the Board to reactivate stayed suspensions, if the licensee commits an additional violation within one year of adjudicating the violation that led to the original suspension.<sup>17</sup> The bill also provides an affirmative defense for selling and serving alcohol to a prohibited person if the individual provided identification that a reasonable person would believe is valid.<sup>18</sup>

The bill amends and makes technical changes to several Board and ABRA administrative activities. The bill clarifies that requests for Board data must go through the FOIA officer and that requests should be responded to within 15 business days. The bill allows that the FOIA officer can charge reasonable fees for processing these requests. The bill clarifies the Board's recordkeeping responsibilities. The bill makes permanent recent changes that allow a license applicant to sign a statement attesting to the application's accuracy with an original signature, rather than a notarized statement, and allows a licensee to self-certify that a renewal application is accurate, rather than by affidavit.<sup>19</sup> The bill requires the Board to provide notice to the Council and any relevant ANCs and citizen associations for any unilateral petition to amend or terminate a settlement agreement. The

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<sup>16</sup> D.C. Official Code § 25-791.

<sup>17</sup> D.C. Official Code § 25-781.

<sup>18</sup> D.C. Official Code § 25-783.

<sup>19</sup> D.C. Official Code § 25-403.

bill makes permanent that the Board must provide electronic notice to the relevant ANC and ANC Commissioners prior to the start of a 45-day public comment period for a new or renewal application, substantial change application, or transfer of a license. The bill also requires that Board notice is required when a manufacturer's license holder is requesting sales or service hours after 1:00 a.m., rather than the current 12:00 a.m.<sup>20</sup>

The bill extends the Council review period for rulemakings that amend the schedule of civil penalties from 60 to 90 days and allows them to be deemed approved if Council does not actively approve or disapprove them within 90 days. These rulemakings are currently deemed disapproved if Council does not act within the current 60-day window.<sup>21</sup>

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the bill. The bill extends several temporary programs that gave licensed retailers more flexibility during the public health emergency and gives licensed retailers more opportunities to sell regulated beverages through expanded sales and consumption operating hours, new licensing opportunities, and other operational changes. The Board and the Council have given establishments increased flexibility in recent years and the bill's changes are consistent with this increased flexibility. For this reason, tax revenues from sales of alcoholic beverages under these changes are included in the fiscal year 2022 through fiscal year 2025 revenue estimates for alcoholic beverage excise and sales taxes.

The permanent extensions for streateries and pop-ups impose a new \$100 license fee that was not charged under the temporary programs. Approximately 277 licensed establishments have registered for streateries and approximately 43 establishments have registered for a pop-up location.<sup>22</sup> If these establishments continue with streateries and pop-up operations in 2022 through 2023, ABRA would collect an additional \$32,000 annually through fiscal year 2023 in the Alcoholic Beverage Regulation Administration Fund<sup>23</sup> (Fund). The bill does not authorize streateries and pop-up operations beyond calendar year 2023. The bill establishes a new \$100 license endorsement for sports wagering. Currently, 43 Board-licensed establishments are approved for sports wagering. If these establishments maintain their endorsements, ABRA will generate at least \$4,300 annually for deposit into the Fund. The bill also establishes new licenses for third-party delivery services at \$200 and CLCs at \$750 or \$1,000. These licenses are not currently available, and the number of potential applicants is unknown. These revenues will also be deposited into the Fund. The Mayor will need to request budget authority to spend any new revenues deposited into the Fund.

The bill requires DOEE to ensure that licensed CLCs are providing consumers the appropriate reusable drinkware with the CLCs boundaries. DOEE will enforce this provision in a similar manner

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<sup>20</sup> D.C. Official Code § 25-421.

<sup>21</sup> D.C. Official Code § 25-830.

<sup>22</sup> As of February 1, 2022.

<sup>23</sup> D.C. Official Code § 25-210.

The Honorable Phil Mendelson

FIS: Bill 24-44, "Reopen Washington DC Alcoholic Beverage Regulation Amendment Act of 2022," Draft Committee Print as provided to the Office of Revenue Analysis on February 3, 2022

that it does for its food service ware responsibilities<sup>24</sup> and DOEE can do so within its existing budgeted resources.

The bill also imposes several new requirements on the Board and ABRA, including enhanced security plan reviews, new Board subpoena powers, Board FOIA and notice requirements, a no-cost ABRA approved training program for certain new license applicants, and enforcement of the bill's licensed establishment operational changes. The Board and ABRA can absorb any costs associated with these activities within its existing budgeted resources.

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<sup>24</sup> Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code § 8-1531 et seq.).