ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 25 of the District of Columbia Official Code to clarify that a licensed establishment can only be held liable for injury and damages if it knowingly serves, sells, or delivers an alcoholic beverage to a person under 21 years of age or to a person who is visibly exhibiting signs of intoxication and is the proximate cause of the individual's injury or damage, to limit civil action of third parties except for minors under 18 years of age, and to create a new type of manager's license endorsement; to amend Title 28 of the District of Columbia Official Code to exclude service charges from sales for the purposes of calculating rent pursuant to a commercial tenancy; to amend The Tipped Wage Workers Fairness Amendment Act of 2018 to require a public education campaign regarding the District of Columbia Tip Credit Elimination Act of 2022; to amend An Act To provide for the payment and collection of wages in the District of Columbia to permit online workplace training for managers; to amend the Fair Meals Delivery Act of 2022 to modify the requirements of third-party meal delivery platforms and to require the Mayor to study the working conditions of food delivery workers and submit a report on the study to the Council no later than July 1, 2025.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Restaurant Revitalization and Dram Shop Clarification Amendment Act of 2024".

TITLE I. TITLE 25 AND TITLE 28 AMENDMENTS.

Sec. 101. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Section 25-101 is amended by adding a new paragraph (26A) to read as follows:

"(26A) 'Intoxicated' means a condition in which a person has consumed enough alcoholic beverages to visibly affect their manner, disposition, speech, muscular movement, or general appearance of behavior.".

(b) Section 25-113.01 is amended by adding a new subsection (h) to read as follows:

"(h)(1) A licensee under a manufacturer's license, class A, B, or C, or a retailer's license, class A, B, C/R D/R, C/H, D/H, C/T, D/T, C/N, D/N, C/X, D/X, C/B and D/B, shall be permitted to obtain a manager's license endorsement from the Board to satisfy the requirements of § 25-701(a) and register up to 5 employees as Board-approved managers.

"(2)(A) The minimum annual cost for a manager's license endorsement, including the 5 employees authorized in paragraph (1) of this subsection, shall be $390.

"(B) The holder of a manager's license endorsement shall be permitted to add more than the 5 employees authorized in paragraph (1) of this subsection to the endorsement at an additional annual cost of $130 for each employee position added to the endorsement over the 5 employees authorized in paragraph (1) of this subsection.

"(3) The holder of a manager's license endorsement shall be permitted to add or replace managers on a form provided by ABCA.".

(c) Chapter 7 is amended as follows:

(1) The table of contents for Subchapter IX is amended by adding a new section designation 25-787 to read as follows:

"§ 25-787. Civil Liability for the Sale of Alcoholic Beverages to Minors and Intoxicated Persons.".

(2) Chapter 7 is amended by adding a new section 25-787 to read as follows:

"§ 25-787. Civil Liability for the Sale of Alcoholic Beverages to Minors and Intoxicated Persons.

"(a)(1) Except as provided in paragraph (2) of this subsection, no licensee shall be civilly liable to an injured person or the person's estate for any injury to the individual or damage to any property because of the intoxication of a person due to the sale, service, or delivery of an alcoholic beverage to the person.

"(2)(A) An injured person shall have a civil cause of action against a licensee when:

"(i) It is proven that the licensee knowingly sold, served or delivered an alcoholic beverage to a person under 21 years of age or to a person who was intoxicated; and

"(ii) The sale, service, or delivery of the alcoholic beverage was the proximate cause of the person's injury or damage; provided, that the cause of action is commenced within 2 years after such sale, service, or delivery.

"(B) For purposes of this subsection, the term "knowingly" means the licensee knew or should have known a relevant fact.

"(b) Upon the death of any party, the right of action shall survive pursuant to § 12-101.

"(c)The injured person, or the injured person's legal representative, may commence a civil action in the Superior Court of the District of Columbia against the licensee who sold, served, or delivered the alcoholic beverage to the intoxicated person.

"(d) Evidence sufficient to establish that a person was intoxicated as described in subsection (a) of this section shall be based upon the totality of the circumstances present at the time of the sale, service, or delivery of the alcoholic beverage to the person.

"(e) A licensee shall not be civilly liable for a person's subsequent off-premises consumption of alcoholic beverages unless the person was visibly intoxicated based upon the totality of the circumstances at the time the alcoholic beverage was sold, served, or delivered to the person by the licensee.

"(f) No civil action may be brought under this section by the person to whom the alcoholic beverage was sold, served, or delivered who caused the injury at issue in the claim, or by his or her estate, legal guardian, or dependent, unless the person to whom the alcoholic beverage was sold, served, or delivered was under 18 years of age.

"(g) This section clarifies the standard of liability for injury or damages of a licensed establishment for knowingly selling to, serving, or delivering an alcoholic beverage to a person under 21 years of age or who is visibly intoxicated as defined in § 25-101(26A) and supersedes the common law standard. To the extent that the common law standard of liability conflicts with this section, this section controls.

"(h) This section shall apply only to causes of action that accrue after the effective date of this section.".

Sec. 102. Part II of Article 2A of Subtitle I of Title 28 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Part II is amended by adding a new section designation to read as follows:

"§ 28:2A-222. Food or beverage service charge exclusion.".

(b) A new section is 2A-222 is added to read as follows:

§ 28:2A-222. Food or beverage service charge exclusion.

"(a) Absent any language to the contrary in a lease for a commercial tenancy, service charges shall not constitute sales for the purposes of calculating percentage or other rent for the property leased. If there is any ambiguity in the lease language concerning the inclusion of service charges in calculating rent payable for commercial property leased, there shall be a presumption that service fees are not to be included in the calculation.

"(b) For purposes of this section, the term "service charge" means any mandatory fee paid as a percentage of the total cost of the food or beverages if the food or beverages are served to fewer than 11 persons and the fee is used to pay base wages or tips of the employees of the vendor.".

Sec. 103(a). Section 47-2908 of the District of Columbia Code is amended as follows:

(1) Designate the existing text as subsection (a).

(2) A new subsection (b) is added to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, a business licensed under this section may impose, as a percentage of sales, a service fee of not more than 20%; provided, that:

"(A) The type and amount of the service fee that may be charged is prominently disclosed to consumers by the following means:

"(i) Clearly and prominently disclosing the fee on all menus and on the business' website, if there is a website; and

"(ii) Clearly and prominently disclosing the fee on signage in the establishment reasonably visible upon entry to the establishment;

"(B) The written disclosure accurately describes the purpose of the fee, including by explaining with specificity how the fee will be used or distributed, including disclosing the proportion of the fee used for base operating costs and the proportion distributed as compensation above the applicable minimum wage; and

"(C) The business uses any service fee collected from diners exclusively for the purposes disclosed.

"(2) A business licensed under this section may impose a service fee of not more than 25% when such fee is included as a term of a written contract negotiated between the business and a consumer for services, including banquet services.".

TITLE II. WAGE LAW AMENDMENTS.

Sec. 201. The Tipped Wage Workers Fairness Amendment Act of 2018, effective December 13, 2018 (D.C. Law 22-196; D.C. Official Code *passim*), is amended by adding a new section 4a to read as follows:

"Sec. 4a. Public awareness campaign regarding the elimination of the tipped minimum wage.

"(a) No later than 180 days after October 1, 2024, the Mayor shall launch a campaign to raise awareness and educate the public about changes to the tipped minimum wage brought about by the District of Columbia Tip Credit Elimination Act of 2022, effective February 23, 2023 (D.C. Law 24-281; D.C. Official Code § 32-1003).

"(b) The campaign shall:

"(1) Include the preparation of written and electronic materials that state in plain language the changes brought about by the District of Columbia Tip Credit Elimination Act of 72 2022, effective February 23, 2023 (D.C. Law 24-281; D.C. Official Code § 32-1003);

"(2) Ensure that workers, residents, businesses, tourists, and other interested parties are aware of the changes brought about by the District of Columbia Tip Credit Elimination Act of 2022, effective February 23, 2023 (D.C. Law 24-281; D.C. Official Code § 32-1003), and what consumers and businesses can expect in terms of implementation and any changes to existing practices and behaviors; and

"(3) Be conducted in English and any non-English language spoken by a limited or no-English proficient population that constitutes 3% or 500 individuals, whichever is less, of the population impacted, or expected to be impacted, of the changes brought about by the District of Columbia Tip Credit Elimination Act of 2022, effective February 23, 2023 (D.C. Law 82 24-281; D.C. Official Code § 32-1003).".

Sec. 202. Section 6a(b) of An Act To provide for the payment and collection of wages, effective December 13, 2018 (D.C. Law 22-196; D.C. Official Code § 32-1306.01(b)), is amended by striking the phrase "attend in-person" and inserting the phrase "attend either in-person or online" in its place.

Sec. 203. Section 10a of the Minimum Wage Act of 1992, effective March 11, 2014 (D.C. Law 20-91; D.C. Official Code § 32-1009.01) is repealed.

TITLE III. FAIR MEALS DELIVERY AMENDMENT.

Sec. 301. The Fair Meals Delivery Act of 2022, effective March 10, 2023 (D.C. Law 24-292; D.C. Official Code § 48-651 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 48-651) is amended by adding a new paragraph (2A) to read as follows:

"(2A) "Food delivery worker" means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, who is hired, retained, or engaged as an independent contractor by a third-party meal delivery platform.".

(b) Section 3 (D.C. Official Code § 48-652) is amended by adding new subsections (e), (f), (g), and (h) to read as follows:

"(e) Any agreement that a third-party meal delivery platform enters into with a restaurant must contain a provision allowing a food delivery worker to use the restroom facilities of the restaurant when performing a delivery or pickup service at the restaurant.

"(f) A third-party meal delivery platform shall not exclude any restaurant with whom the third-party meal delivery platform has an agreement from the relevant search results of a customer within 4 miles of a restaurant.

"(g) A third-party meal delivery platform shall not reduce the delivery radius of any restaurant below 4 miles based on the level or percentage of commissions paid. Nothing in this section shall prohibit a third-party meal delivery platform from offering a larger delivery radius for a fee.

"(h) A third-party meal delivery platform shall not reduce the number of food delivery workers available to deliver online orders from a restaurant with whom the third-party meal delivery platform has an agreement based solely on the level or percentage of commission paid. Nothing in this section shall prohibit a third-party meal delivery platform from offering priority delivery services for a fee.".

(c) A new section 4a is added to read as follows:

"Sec. 4a. Restaurant disclosure requirement.

"A third-party meal delivery platform shall disclose to a restaurant, in plain language, the fees, commissions, and charges associated with the contracted services in the agreement.".

(d) A new section 6a is added to read as follows:

"Sec. 6a. Report by Mayor.

"(a) "The Mayor shall study the working conditions of food delivery workers and issue a report to the Council no later than July 1, 2025.

"(b) In conducting the study, the Mayor may coordinate with any agency, organization, or office that can assist in the study and shall consult with all relevant stakeholders, including consumers of varying socioeconomic backgrounds, restaurants, other merchants of varying types and sizes, and third-party meal delivery platforms.

"(c) The Mayor may retain a third-party organization to assist in the study; provided, that the organization has experience in developing and administering studies, analyzing large data sets, and conducting focus groups or other qualitative research.

"(d) The study shall include, at a minimum:

"(1) Consideration of the pay food delivery workers receive and the methods by which such pay is determined;

"(2) The total income food delivery workers earn, the expenses incurred by food delivery workers, the equipment required to perform their work, the hours of work of food delivery workers, including the variability in their hours;

"(3) The extent to which the food delivery workers are engaged in performing work for more than one platform or other parties, the average mileage of a trip, the extent to which food delivery workers decline offers or assignments of a trip, the mode of travel used by the workers, the safety conditions of food delivery workers, including the frequency with which they have coverage for injuries, the availability of bathrooms during working hours, the transparency of trip routes and pay;

"(4) The benefits food delivery workers are able to access through this type of work or from other sources;

"(5) The desirability to food delivery workers of the creation of a system of benefits that would be portable across third-party meal delivery platforms or other freelance work platforms (commonly known as "gig economy" platforms);

"(6) The reasons food delivery workers choose food delivery work over other types of work; and

"(7) Other topics the Mayor considers necessary or appropriate.

"(e) The study shall sample a sufficient number of food delivery workers to ensure the results are statistically reliable, and samples shall be representative of the food delivery workers who deliver in the District, with a particular focus on food delivery workers who live in the District.

"(f) The Mayor may request or issue subpoenas for the production of data, documents, and other information from a third-party meal delivery platform or other party relating to food delivery workers, including:

"(1) Worker identification;

"(2) Information about the times that food delivery workers are available to work for a third-party meal delivery platform;

"(3) The predominant mode of transportation;

"(4) How trips are offered or assigned to food delivery workers;

"(5) The data the third-party meal delivery platforms generally maintain relating to the trips of the food delivery workers;

"(6) The compensation the food delivery workers receive from a third-party meal delivery platform, including any gratuities the workers may receive;

"(7) Information relating to both completed and cancelled trips;

"(8) Agreements with or policies covering the food delivery workers;

"(9) The contact information of the food delivery workers;

"(10) Information relating to the setting of fees paid by food service establishments and consumers; and

"(11) Any other information considered relevant by the Mayor.".

TITLE IV. GENERAL PROVISIONS

Sec. 401. Applicability.

(a) Section 201 and section 301(d) shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 402. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 403. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and a 30-day period of congressional review as provided in 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

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Chairman

Council of the District of Columbia

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Mayor

District of Columbia