



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 29, 2022

TO: Wendy Hudson, Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner

FROM: Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: Proposed DSHS Alcoholic Beverage Control Commissioner, Rule 705,
25 Del. Register of Regulations 940 (April 1, 2022)

The State Council for Persons with Disabilities (SCPD) has reviewed the proposed rules concerning the expansion of outdoor seating for serving food and drinks, curbside service provided by package stores, containers used for alcohol to-go from restaurants, taprooms, and taverns, and the age of employed persons who can sell and serve alcohol to customers. The proposed regulation was published as 25 DE 940 in the April 1, 2022 issue of the Register of Regulations. SCPD endorses the proposed regulation in the context of proposed language to attempt to ensure establishments are compliant with the Americans with Disabilities Act (ADA). Council has the following observations.

As background and as a result of COVID-19, Governor Carney declared a State of Emergency on March 12, 2020. In subsequent modifications to the original declaration, accommodations were made to lessen the devastating effects of the closure of all restaurants, bars, and taverns. Restaurants, brewpubs, and taverns with a license were permitted to sell alcoholic beverages as part of take out or drive

through orders for food.¹ Food and drink establishments were permitted to expand their outdoor seating for serving food and drinks with certain limitations.² The provisions of the Second and Nineteenth Modification of the State of Emergency allowing food and drink places to sell alcohol for off-premise consumption and allowing establishments to expand their outdoor seating were codified in House Bill 349, which Governor Carney signed on July 16, 2020.³ Before House Bill 349 expired, the General Assembly enacted and the Governor signed House Bill 1 as amended by Senate Amendment 1 on March 23, 2021. This law amended 4 Del. C. §§ 512, 524, 543, 561, and 562, and provided, among other things, that establishments with a valid on-premises license could sell alcoholic beverages in transactions for take-out, curbside, or drive through service (with limitations) and establishments could expand their outdoor seating (with limitations).⁴

In an effort to make these changes permanent (so they did not expire or sunset), the General Assembly passed House Bill 289 which the Governor signed on February 7, 2022 and House Bill 290, which the Governor signed on February 16, 2022. The laws became effective immediately and permit curbside service for package stores, takeout alcohol sales by restaurants, taprooms, and taverns with a valid license, and an expansion by restaurants of outdoor seating for serving food and drinks.

Rule 705 addresses the expansion of outdoor seating. The establishment must first have a license to sell alcohol for consumption and then submit a request to expand the outdoor seating to serve food and alcoholic beverages for review and approval by the Commissioner. The request must be accompanied by the following documentation, including: a letter from the political subdivision where the establishment is located approving the expansion request and addressing compliance with traffic patterns and the Americans with Disabilities Act (ADA) and adherence to noise ordinances; a detailed floor or construction plan showing the expansion of the outdoor seating; and the starting and completion times for any intended construction (4.1). Once the expansion passes final inspection and approval, the Commissioner then authorizes the establishment to use the area as an expansion of outdoor seating. (4.5). The expansion of outdoor seating is for serving food and drinks and there is to be no live entertainment; speakers, sound systems, or amplifiers; “audible paging system;” and wet bar. (6.0).

¹ Second Modification dated March 18, 2020.

² Nineteenth Modification modified 4 *Del. C.* §§ 524, 541, but expired July 30, 2020.

³ House Bill 349 was scheduled to sunset on March 31, 2021.

⁴ House Bill 1 as amended by Senate Amendment 1 would expire March 31, 2022.

Since those interim measures were successful in helping the affected businesses financially, they were made permanent. However, SCPD is aware of people with disabilities who have complained about businesses who failed to comply with ADA standards (e.g. when encroaching on sidewalks).

SCPD supports the inclusion of ADA compliance in these regulations which encourages businesses be put on notice that they can only expand into outside areas when they comply with accessibility guidelines. Council also requests clarification on whether the language in the regulations regarding ADA compliance is intended to accommodate patrons and employees, and not just the general public (i.e. passersby) trying to navigate, for example, outdoor seating on sidewalks.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or comments on the proposed regulation.

cc: DSHS Cabinet Secretary, Nathaniel McQueen, Jr.
DSHS Deputy Secretary, Kimberly Chandler
Ms. Laura Waterland, Esq., DLP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

25 DE Reg 940 DSHS Outdoor Seating 4-29-22