

[Second Reprint]
ASSEMBLY, No. 4525

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

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SYNOPSIS

Expands opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining and permits certain farms to adjust operations in response to COVID-19 public health emergency.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on November 12, 2020, with amendments.

(Sponsorship Updated As Of: 11/16/2020)

1 AN ACT ²[concerning certain ¹[temporary structures on
 2 commercial farms] economic activity and supplementing chapter
 3 1 of Title 33 of the Revised Statutes¹] creating opportunities for
 4 restaurants, bars, distilleries, and breweries to adjust operations
 5 in response to the COVID-19 public health emergency through
 6 expanded outdoor dining; and for farms and other types of
 7 alcohol-related businesses to adjust operations².

8
 9 **BE IT ENACTED** by the Senate and General Assembly of the State
 10 of New Jersey:

11
 12 ²[1. a. Notwithstanding any law, rule, regulation, ordinance, or
 13 best management practice to the contrary that sets forth a time
 14 limitation for the erection of certain temporary structures on
 15 commercial farms, an open or enclosed canopy or tent lawfully
 16 erected during the coronavirus disease 2019 (COVID-19)
 17 emergency on a commercial farm in accordance with the standards
 18 for on-farm direct marketing facilities, activities, and events adopted
 19 by the committee pursuant to P.L.1983, c.31 (C.4:1C-1 et seq.) may
 20 remain in place until the resumption, pursuant to an Executive
 21 Order issued by the Governor, of indoor dining without capacity
 22 limitations or December 31, 2020, whichever is later.

23 A canopy or tent remaining in place pursuant to this section
 24 shall:

25 (1) comply with all other standards for on-farm direct marketing
 26 facilities, activities, and events adopted by the committee pursuant to
 27 P.L.1983, c.31 (C.4:1C-1 et seq.); and

28 (2) be immediately removed on the date indoor dining resumes
 29 without capacity restrictions pursuant to an Executive Order issued by
 30 the Governor, or December 31, 2020, whichever is later.

31 b. As used in this section:

32 “Commercial farm” means the same as that term is defined in
 33 section 3 of P.L.1983, c.31 (C.4:1C-3).

34 “Committee” means the State Agriculture Development
 35 Committee established pursuant to section 4 of P.L.1983, c.31
 36 (C.4:1C-4).]²

37
 38 ²[¹2. a. As used in this section:

39 “Business or commercial entity” shall mean any retail business,
 40 or a bar, restaurant, brewery, winery, or any other business entity
 41 where food or alcoholic beverages, or both, are offered for sale and
 42 consumption on the premises.

43 “Temporary space” shall mean any space on a sidewalk, on a
 44 street or road, or in a parking lot, on which a business or
 45 commercial entity has lawfully operated during the COVID-19

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted September 17, 2020.

²Senate SBA committee amendments adopted November 12, 2020.

1 public health emergency or state of emergency in order to expand
2 their business or commercial premises.

3 “Temporary structure” shall mean and include an open or
4 enclosed canopy or tent, lawfully erected by a business or
5 commercial entity during the COVID-19 public health emergency
6 or state of emergency in order to expand that entity’s business or
7 commercial premises.

8 b. Notwithstanding the provisions of any law, rule, regulation,
9 or ordinance to the contrary that sets forth a time limitation for the
10 erection and use of a temporary structure, or the use of a temporary
11 space, by a business or commercial entity, a temporary structure or
12 temporary space may remain in place until the resumption, pursuant
13 to an Executive Order issued by the Governor, of indoor occupancy
14 or dining without capacity limitations, subject to the provisions of
15 subsection c. of this section.

16 A temporary structure or temporary space subject to the
17 provisions of this section shall be subject to any ordinance of the
18 municipality in which the temporary structure or temporary space is
19 located that imposes safety requirements on the use of such
20 structures or spaces, including but not limited to exit signs, fire
21 extinguishers, and other such public safety requirements, but not
22 related to the duration of the erection of the temporary structure or
23 temporary space.

24 c. Notwithstanding the provisions of subsection b. of this
25 section, beginning on December 1, 2020, and until the resumption
26 of indoor occupancy or dining without capacity limitations pursuant
27 to an executive order issued by the Governor, the governing body of
28 a municipality, once every 90 days, may review the location of each
29 temporary structure or temporary space located in the municipality,
30 and may order the removal of a temporary structure or temporary
31 space if it is deemed to be a nuisance, interferes with a planned use
32 of the location by the municipality, or if a construction project
33 planned for the area in which the temporary structure or temporary
34 space is located has received approval to begin construction. If the
35 governing body orders the removal of a temporary structure or
36 temporary space pursuant to this subsection, it shall provide
37 reasonable notice of the decision to remove the temporary structure
38 or temporary space to the business or commercial entity, and shall
39 also provide assistance to the business or commercial entity in
40 relocating the temporary structure or temporary space.¹²

41
42 ²[¹3. Notwithstanding the provisions of Special Ruling 2020-10,
43 issued by the Director of the Division of Alcoholic Beverage
44 Control in the Department of Law and Public Safety on June 3,
45 2020, the term of a COVID-19 Expansion Permit issued pursuant to
46 that special ruling shall remain in effect until the date of expiration,
47 termination, or rescission of any executive or administrative order

1 issued by the Governor establishing coronavirus-related occupancy
2 or customer seating restrictions applicable to licensed premises.¹²

3
4 ²[¹4. a. The Director of the Division of Alcoholic Beverage
5 Control in the Department of Law and Public Safety may, subject to
6 rules and regulations, issue to the holder of a limited brewery
7 license, restricted brewery license, craft distillery license, plenary
8 winery license, farm winery license, or cidery and meadery license,
9 as established pursuant to R.S.33:1-10, a daily or annual permit to
10 sell any of the licensee's products at a seasonal farm market for
11 consumption off the premises of the seasonal farm market. The
12 director shall issue a separate permit for each seasonal farm market
13 at which the licensee's products are intended to be sold. The
14 director shall not issue a permit pursuant to this section for use in
15 connection with a roadside farm stand.

16 b. Subject to rules and regulations, a licensee issued a permit
17 pursuant to this section may:

18 (1) transport the licensee's products for the purpose of selling
19 them at a seasonal farm market; and

20 (2) offer samples for sampling purposes to persons of the legal
21 age to consume alcoholic beverages in the amounts authorized
22 pursuant to R.S.33:1-10 during each day the seasonal farm market is
23 operating.

24 c. A daily permit shall be valid for the hours a seasonal farm
25 market is open during the 24-hour period for which the daily permit
26 is issued. An annual permit shall be valid for one year from the
27 date of issuance. The director may renew a permit provided the
28 permit holder continues to hold a limited brewery license, restricted
29 brewery license, craft distillery license, plenary winery license,
30 farm winery license, or cidery and meadery license, as applicable.

31 d. The director may establish a fee not to exceed \$25 for a daily
32 permit and not to exceed \$75 for an annual permit for the issuance
33 and renewal of a permit under this section.

34 e. As used in this section, "roadside farm stand" means a
35 location owned by a single farmer or producer at which the farmer
36 or producer sells agricultural products only from the farmer's or
37 producer's farm directly to consumers.¹²

38
39 ²[¹2. This] ⁵. Sections 1, 2, and 3 of this¹ act shall take effect
40 immediately¹, and section 4 of this act shall take effect on the first
41 day of the second month next following enactment¹².

42
43 ²1. As used in this act, and only for the purposes of this act:
44 "Brewery" means a brewery operating under a brewery license
45 pursuant to R.S.33:1-10.

46 "Distillery" means a distillery that has been issued, and is in
47 compliance with, a distillery license pursuant to R.S.33:1-10.

1 “Food” means food that is cooked, prepared, sold, served, and
2 consumed on the business premises.

3 “Outdoor space” means a patio or deck, either covered or
4 uncovered, a yard, a walkway, or a parking lot, or a portion of any
5 such space.

6 “Public sidewalk” means a sidewalk on the locally or county
7 owned public right-of-way which is adjacent to the business
8 premises, or a portion thereof.²

9
10 ². a. Notwithstanding the provisions of any law to the
11 contrary, during the period that this act is in effect, the owner or
12 operator of a restaurant, bar, distillery, or brewery may use outdoor
13 spaces which they own or lease and which are located either on, or
14 adjacent to, their business premises, as an extension of their
15 business premises for the purpose of conducting sales of food and
16 beverages, including alcoholic beverages if so licensed.

17 b. The owner or operator of a restaurant, bar, distillery, or
18 brewery desiring to utilize outdoor spaces as an extension of their
19 businesses shall file an application with the municipal zoning
20 officer that includes: (1) a plan, sketch, picture, or drawing that
21 depicts the design, dimensional boundaries, and placement of tents,
22 canopies, umbrellas, tables, chairs, and other fixtures of the outdoor
23 spaces; and (2) a plan for the control of litter, the removal and
24 storage of garbage, and the cleaning of fixtures and grounds. If a
25 business premises’ parking lot is used for the service and sale of
26 either food or beverages, or both, including, but not limited to,
27 alcoholic beverages if so licensed, the restaurant, bar, distillery, or
28 brewery shall not encumber more than 75 percent of the lot’s total
29 parking spaces for such service and sale, unless the parking lot
30 contains less than eight parking spaces, and shall maintain at least
31 one handicapped parking space in the parking lot.

32 c. A municipality may require that an applicant provide one or
33 more of the following: (1) written consent of the owner of the
34 premises, if other than the applicant, (2) an insurance certificate
35 naming the municipality as an additional insured, with general
36 liability on an occurrence with a limit of liability of at least
37 \$1,000,000, with respect to losses arising solely from the operation
38 of the outdoor dining facility, or (3) an indemnification agreement
39 with the municipality with respect to losses arising solely from the
40 operation of the outdoor dining facility.

41 d. An application that is compliant with the provisions of this
42 section shall be approved by the zoning officer within 15 business
43 days of the application being submitted and deemed complete, and
44 the municipality shall not charge a fee for either accepting the
45 application or issuing the approval.

46 e. A municipality shall require that any restaurant, bar,
47 distillery, or brewery operating pursuant to this section shall follow,
48 maintain, and enforce protocols promulgated by the Commissioner

1 of Health or Executive Order of the Governor in response to the
2 COVID-19 public health emergency, concerning social distancing
3 and use of personal protective equipment during the period those
4 protocols are in effect.

5 f. Notwithstanding the provisions of this section, a
6 municipality may by resolution opt to waive any or all provisions or
7 requirements of this section, except that a municipality shall not be
8 permitted to waive the protocols provided in subsection e. of this
9 section.²

10

11 ²3. a. Notwithstanding the provisions of any law to the
12 contrary, during the period that this act is in effect, the owners and
13 operators of restaurants, bars, distilleries, and breweries may use
14 public sidewalks as an extension of their business premises for the
15 purpose of conducting sales of food and beverages, including
16 alcoholic beverages if so licensed.

17 b. The owner or operator of a restaurant, bar, distillery, or
18 brewery desiring to utilize public sidewalks as an extension of their
19 businesses shall file an application with the municipal zoning
20 officer that includes: (1) a plan, sketch, picture, or drawing that
21 depicts the design, dimensional boundaries, and placement of tents,
22 canopies, umbrellas, tables, chairs, and other fixtures of the public
23 sidewalks; and (2) a plan for the control of litter, the removal and
24 storage of garbage, and the cleaning of fixtures and public
25 sidewalks.

26 c. A municipality may require that an applicant provide one or
27 more of the following: (1) written consent of the owner of the
28 premises, if other than the applicant, (2) an insurance certificate
29 naming the municipality as an additional insured, with general
30 liability on an occurrence with a limit of liability of at least
31 \$1,000,000, with respect to losses arising solely from the operation
32 of the outdoor dining facility located on public sidewalks, or (3) an
33 indemnification agreement with the municipality with respect to
34 losses arising solely from the operation of the outdoor dining
35 facility on public sidewalks.

36 d. An application that is compliant with the provisions of this
37 section shall be approved by the zoning officer within 15 business
38 days of the application being submitted and deemed complete, and
39 the municipality shall not charge a fee for either accepting the
40 application or issuing the approval.

41 e. Owners and operators of restaurants, bars, distilleries, or
42 breweries desiring to utilize outdoor spaces are subject to the
43 following conditions: (1) a walking path not less than four feet
44 wide must be maintained on the public sidewalk at all times so as to
45 not obstruct pedestrian traffic; (2) all fixtures must be removed
46 from public sidewalks at the conclusion of each day; and (3) the
47 municipality reserves the right to order the temporary suspension of
48 outdoor dining and the removal of all fixtures from public

1 sidewalks due to road or utility construction, predicted high winds
2 or severe weather, predicted snow or ice storms, the need to remove
3 snow or ice from the sidewalks, or any other public emergency that
4 may arise.

5 f. Municipalities shall require that any restaurants, bars,
6 distilleries, or breweries operating pursuant to this section shall
7 follow, maintain, and enforce protocols promulgated by the
8 Commissioner of Health or Executive Order of the Governor in
9 response to the COVID-19 public health emergency, concerning
10 social distancing and use of personal protective equipment during
11 the period those protocols are in effect.

12 g. Notwithstanding the provisions of this section, a
13 municipality may by resolution opt to waive any or all provisions or
14 requirements of this section, except that a municipality shall not be
15 permitted to waive the protocols provided in subsection f. of this
16 section.²

17

18 ^{24.} The Director of the Division of Alcoholic Beverage Control
19 in the Department of Law and Public Safety shall issue a special
20 ruling within ten calendar days of the effective date of this act
21 pursuant to R.S.33:1-39 to entitle the holders of plenary retail
22 consumption licenses and limited brewery licenses to extend their
23 licensed premises to allow for the sale and consumption of
24 alcoholic beverages in outdoor spaces and on public sidewalks,
25 provided those licensees also serve food.

26 The special ruling shall require that any restaurant, bar,
27 distillery, or brewery operating pursuant to this section shall follow,
28 maintain, and enforce protocols promulgated by the Commissioner
29 of Health or Executive Order of the Governor in response to the
30 COVID-19 public health emergency, concerning social distancing
31 and use of personal protective equipment during the period those
32 protocols are in effect.

33 The special ruling shall not require licensees to submit an
34 application to, receive approval from, or pay a fee to either the
35 municipality or the Division of Alcoholic Beverage Control to
36 extend their licensed premises, other than that which is required by
37 sections 2 and 3 of this act, but shall require that the licensee notify
38 the chief of police and municipal clerk not less than five days prior
39 to engaging in the business activity authorized in this act. This
40 special ruling shall be in effect only during the time period
41 established in section 8 of this act.²

42

43 ^{25.} In accordance with section 5 of P.L.1999, c.90 (C.2C:33-27),
44 the owners and operators of restaurants shall be permitted to
45 conduct “bring-your-own-bottle” privileges in outdoor spaces and
46 on public sidewalks, in accordance with the provisions of this act,
47 and the applicable outdoor spaces and public sidewalks shall be

1 considered a portion of the restaurant's premises for the purposes of
2 section 5 of P.L.1999, c.90 (C.2C:33-27).²
3

4 ²6. a. Notwithstanding any provision of this act to the contrary,
5 all other municipal ordinances pertaining to sanitation, property
6 maintenance, noise, business days and hours of operation, and days
7 and hours of service of alcoholic beverages shall apply, unless
8 specifically suspended or modified by the municipality or
9 specifically prohibited by the provisions of this section.

10 b. With respect to restaurants, bars, distilleries, and breweries
11 operating in outdoor spaces pursuant to section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this
13 bill), municipalities shall not prohibit or limit the days and hours of
14 the outdoor service of food and beverages, including alcoholic
15 beverages if so licensed, except for the hours after 11:00 p.m. and
16 between 12:00 a.m. and 11:00 a.m. on Sundays through
17 Wednesdays, and between 12:00 a.m. and 11:00 a.m. on Thursdays
18 through Saturdays, with the exception that a municipal ordinance
19 prohibiting or limiting the days and hours of indoor service of food
20 and beverages, including alcoholic beverages, which was in effect
21 prior to March 1, 2020 may be applied to the outdoor service of
22 food and beverages, including alcoholic beverages, as a condition of
23 the zoning approval pursuant to section 2 of this act.

24 c. A municipality may either prohibit or limit the days and
25 hours of any live performances, including musical performances,
26 and the playing or projection of any content from a recording,
27 streaming service or television, cable or internet broadcasting
28 service in outdoor spaces or on public sidewalks as a condition of
29 the zoning approval pursuant to sections 2 and 3 of this act.

30 d. A municipality may deny, revoke, or temporarily suspend,
31 the outdoor dining activity of any establishment that violates, or is
32 not in compliance with, any provision of this act or any provision of
33 a law, ordinance, or regulation related to the consumption or control
34 of alcoholic beverages.

35 Notwithstanding the provisions of this section, a municipality
36 may by resolution opt to waive any or all provisions or
37 requirements of this section.²
38

39 ²7. Nothing in this act shall be interpreted or construed as
40 permitting or mandating the opening, expansion, or resumption of
41 unlimited operations of a restaurant, bar, or brewery that is closed,
42 whether permanently or temporarily, or operating subject to
43 limitations on its operations, service, or hours, as a result of
44 disciplinary or legal sanctions imposed by, or entering into a
45 settlement agreement with, a court of the State of New Jersey, a
46 municipal court, the New Jersey Department of Law and Public
47 Safety, the New Jersey Division of Alcoholic Beverage Control, or

1 a municipal governing body acting as a local alcoholic beverage
2 control board, as applicable.²

3
4 ²8. Nothing in this act permits the use of State-owned right of way
5 for the purposes of outdoor dining. Permits for the use of the State
6 right of way will be issued upon application and approval of the New
7 Jersey Department of Transportation. For the purposes of locally-
8 owned roads that intersect the State highway system, setbacks from the
9 State right of way line will be 50 feet from April 1 to October 31, and
10 100 feet from November 1 to March 31.²

11
12 ²9. a. Notwithstanding any law, rule, regulation, ordinance, or
13 best management practice to the contrary that sets forth a time
14 limitation for the erection of certain temporary structures on
15 commercial farms, an open or enclosed canopy or tent lawfully
16 erected during the coronavirus disease 2019 (COVID-19)
17 emergency on a commercial farm in accordance with the standards
18 for on-farm direct marketing facilities, activities, and events adopted
19 by the committee pursuant to P.L.1983, c.31 (C.4:1C-1 et seq.) may
20 remain in place until the resumption, pursuant to an Executive
21 Order issued by the Governor, of indoor dining without capacity
22 limitations or December 31, 2020, whichever is later.

23 A canopy or tent remaining in place pursuant to this section
24 shall:

25 (1) comply with all other standards for on-farm direct marketing
26 facilities, activities, and events adopted by the committee pursuant to
27 P.L.1983, c.31 (C.4:1C-1 et seq.); and

28 (2) be immediately removed on the date indoor dining resumes
29 without capacity restrictions pursuant to an Executive Order issued by
30 the Governor, or December 31, 2020, whichever is later.

31 b. As used in this section:

32 “Commercial farm” means the same as that term is defined in
33 section 3 of P.L.1983, c.31 (C.4:1C-3).

34 “Committee” means the State Agriculture Development
35 Committee established pursuant to section 4 of P.L.1983, c.31
36 (C.4:1C-4).²

37
38 ²10. a. The Director of the Division of Alcoholic Beverage
39 Control in the Department of Law and Public Safety may, subject to
40 rules and regulations, issue to the holder of a limited brewery
41 license, restricted brewery license, craft distillery license, plenary
42 winery license, farm winery license, or cidery, and meadery license,
43 as established pursuant to R.S.33:1-10, a daily or annual permit to
44 sell any of the licensee’s products at a seasonal farm market for
45 consumption off the premises of the seasonal farm market. The
46 director shall issue a separate permit for each seasonal farm market
47 at which the licensee’s products are intended to be sold. The

1 director shall not issue a permit pursuant to this section for use in
2 connection with a roadside farm stand.

3 b. Subject to rules and regulations, a licensee issued a permit
4 pursuant to this section may:

5 (1) transport the licensee's products for the purpose of selling
6 them at a seasonal farm market; and

7 (2) offer samples for sampling purposes to persons of the legal
8 age to consume alcoholic beverages in the amounts authorized
9 pursuant to R.S.33:1-10 during each day the seasonal farm market is
10 operating.

11 c. A daily permit shall be valid for the hours a seasonal farm
12 market is open during the 24-hour period for which the daily permit
13 is issued. An annual permit shall be valid for one year from the
14 date of issuance. The director may renew a permit provided the
15 permit holder continues to hold a limited brewery license, restricted
16 brewery license, craft distillery license, plenary winery license,
17 farm winery license, or cidery and meadery license, as applicable.

18 d. The director may establish a fee not to exceed \$25 for a daily
19 permit and not to exceed \$75 for an annual permit for the issuance
20 and renewal of a permit under this section.

21 e. As used in this section, "roadside farm stand" means a
22 location owned by a single farmer or producer at which the farmer
23 or producer sells agricultural products only from the farmer's or
24 producer's farm directly to consumers.²

25
26 ²11. This act shall take effect immediately and shall expire on
27 January 2, 2023.²