

ASSEMBLY, No. 5246

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 7, 2021

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

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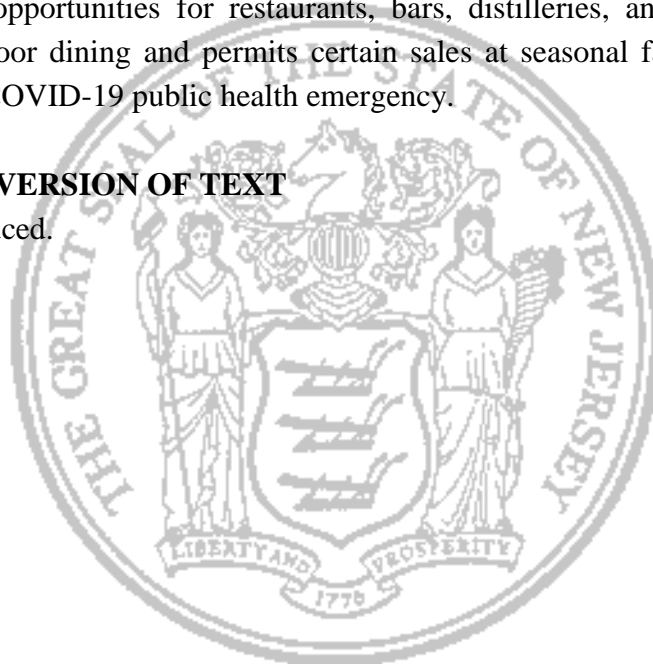
Assemblyman Tully, Assemblywoman Swain, Assemblymen Wirths, Space, Assemblywomen DiMaso, Vainieri Huttles, Chaparro, Lopez and Downey

SYNOPSIS

Expands opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining and permits certain sales at seasonal farm markets in response to COVID-19 public health emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/11/2021)

1 AN ACT creating opportunities for restaurants, bars, distilleries, and
2 breweries to adjust operations in response to the COVID-19
3 public health emergency through expanded outdoor dining; and
4 by permitting certain sales at seasonal farm markets
5

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

9 1. As used in this act, P.L. , c. (pending before the
10 Legislature as this bill), and only for the purposes of this act:

11 “Brewery” means a brewery operating under a brewery license
12 pursuant to R.S.33:1-10.

13 “Distillery” means a distillery that has been issued, and is in
14 compliance with, a distillery license pursuant to R.S.33:1-10.

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

17 “Outdoor space” means a patio or deck, whether covered or
18 uncovered, a yard, a walkway, or a parking lot, or a portion of any
19 such space, that is located on or adjacent to the business premises,
20 which space is owned, leased, or otherwise in the lawful control of
21 the owner or operator of the business premises.

22 “Public sidewalk” means a sidewalk on the locally or county
23 owned public right-of-way which is adjacent to the business
24 premises, or a portion thereof.

25 “Special Ruling No. 2020-10” means Special Ruling No. 2020-
26 10, issued by the acting director of the Division of Alcoholic
27 Beverage Control on June 3, 2020.
28

29 2. a. Notwithstanding the provisions of any law to the
30 contrary, during the period that this section is in effect, the owner or
31 operator of a restaurant, bar, distillery, or brewery may use outdoor
32 spaces which they own or lease and which are located either on, or
33 adjacent to, their business premises, as an extension of their
34 business premises for the purpose of conducting sales of food and
35 beverages, including alcoholic beverages if so licensed and
36 permitted by Special Ruling No. 2020-10.

37 b. The owner or operator of a restaurant, bar, distillery, or
38 brewery desiring to utilize outdoor spaces as an extension of their
39 businesses shall file an application with the municipal zoning
40 officer that includes: (1) a plan, sketch, picture, or drawing that
41 depicts the design, dimensional boundaries, and placement of tents,
42 canopies, umbrellas, tables, chairs, and other fixtures of the outdoor
43 spaces; and (2) a plan for the control of litter, the removal and
44 storage of garbage, and the cleaning of fixtures and grounds. If a
45 business premises’ parking lot is used for the service and sale of
46 either food or beverages, or both, including, but not limited to,
47 alcoholic beverages if so licensed, the restaurant, bar, distillery, or
48 brewery shall not encumber more than 75 percent of the lot’s total

1 parking spaces for such service and sale, unless the parking lot
2 contains less than eight parking spaces, and shall maintain at least
3 one handicapped parking space in the parking lot.

4 c. A municipality may require that an applicant provide one or
5 more of the following: (1) written consent of the owner of the
6 premises, if other than the applicant, (2) an insurance certificate
7 naming the municipality as an additional insured, with general
8 liability on an occurrence with a limit of liability of at least
9 \$1,000,000, with respect to losses arising solely from the operation
10 of the outdoor dining facility, or (3) an indemnification agreement
11 with the municipality with respect to losses arising solely from the
12 operation of the outdoor dining facility.

13 d. (1) The zoning officer shall issue an approval to the
14 applicant within 15 business days of the application being submitted
15 and deemed complete provided that the applicant meets and abides
16 by all qualifications and requirements of this act, with the exception
17 that the zoning officer may deny an application based on current
18 violations of any other health, safety, fire, permitted use, or zoning
19 regulation, or upon any applicable law permitting the denial of a
20 zoning permit, that is not otherwise directly superseded by this
21 section or Special Ruling No. 2020-10. An application under this
22 section shall not be considered a variance under the "Municipal
23 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

24 (2) A municipality may deny, revoke, or temporarily suspend
25 the permit of any applicant or permittee that violates, or is not in
26 compliance with, any provision of this act or any provision of a law,
27 ordinance, or regulation related to the consumption or control of
28 alcoholic beverages not otherwise under the jurisdiction of the
29 Division of Alcoholic Beverage Control, and may also deny,
30 revoke, or temporarily suspend the permit of any applicant or
31 permittee based on any action taken against the applicant or
32 permittee by the Division of Alcoholic Beverage Control related to
33 the division's enforcement of any law or regulation related to the
34 consumption or control of alcoholic beverages under its
35 jurisdiction.

36 (3) An appeal to any approval, denial, revocation, or suspension
37 may be filed through the municipal clerk with the governing body
38 of the municipality. The governing body, or its designee, shall
39 conduct a hearing and render a decision within 30 days of the filing
40 of the appeal. The governing body may designate a municipal
41 official or an attorney licensed in the State of New Jersey to serve
42 as a hearing officer in place of the governing body for the purpose
43 of conducting said hearing and rendering said decision.

44 Nothing in this act shall be construed to restrict the right of any
45 party to obtain a review by any court of competent jurisdiction,
46 according to law.

47 e. A municipality shall require that any restaurant, bar,
48 distillery, or brewery operating pursuant to this section shall follow,

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

6
7 3. a. Notwithstanding the provisions of any law to the
8 contrary, during the period that this section is in effect, the owners
9 and operators of restaurants, bars, distilleries, and breweries may
10 use public sidewalks as an extension of their business premises for
11 the purpose of conducting sales of food and beverages, including
12 alcoholic beverages if so licensed and permitted by Special Ruling
13 2020-10.

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

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

33 d. (1) The zoning officer shall issue an approval to the
34 applicant within 15 business days of the application being submitted
35 and deemed complete provided that the applicant meets and abides
36 by all qualifications and requirements of this act, with the exception
37 that the zoning officer may deny an application based on current
38 violations of any other health, safety, fire, permitted use, or zoning
39 regulation, or upon any applicable law permitting the denial of a
40 zoning permit that is not otherwise directly superseded by this
41 section or Special Ruling No. 2020-10. An application under this
42 section shall not be considered a variance under the "Municipal
43 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

44 (2) A municipality may deny, revoke, or temporarily suspend
45 the permit of any applicant or permittee that violates, or is not in
46 compliance with, any provision of this act or any provision of a law,
47 ordinance, or regulation related to the consumption or control of
48 alcoholic beverages not otherwise under the jurisdiction of the

1 Division of Alcoholic Beverage Control, and may also deny,
2 revoke, or temporarily suspend the permit of any applicant or
3 permittee based on any action taken against the applicant or
4 permittee by the Division of Alcoholic Beverage Control related to
5 the division's enforcement of any law or regulation related to the
6 consumption or control of alcoholic beverages under its
7 jurisdiction.

8 (3) An appeal to any approval, denial, revocation, or suspension
9 may be filed through the municipal clerk with the governing body
10 of the municipality. The governing body, or its designee, shall
11 conduct a hearing and render a decision within 30 days of the filing
12 of the appeal. The governing body may designate a municipal
13 official or an attorney licensed in the State of New Jersey to serve
14 as a hearing officer in place of the governing body for the purpose
15 of conducting said hearing and rendering said decision.

16 Nothing in this act shall be construed to restrict the right of any
17 party to obtain a review by any court of competent jurisdiction,
18 according to law.

19 e. Owners and operators of restaurants, bars, distilleries, or
20 breweries desiring to utilize outdoor spaces are subject to the
21 following conditions: (1) a walking path not less than four feet
22 wide must be maintained on the public sidewalk at all times so as to
23 not obstruct pedestrian traffic; (2) all fixtures must be removed
24 from public sidewalks at the conclusion of each day, if so required
25 by the municipality; and (3) the municipality reserves the right to
26 order the temporary suspension of outdoor dining and the removal
27 of all fixtures from public sidewalks due to road or utility
28 construction, predicted high winds or severe weather, predicted
29 snow or ice storms, the need to remove snow or ice from the
30 sidewalks, or any other public emergency that may arise.

31 f. Municipalities shall require that any restaurants, bars,
32 distilleries, or breweries operating pursuant to this section shall
33 follow, maintain, and enforce protocols promulgated by the
34 Commissioner of Health or Executive Order of the Governor in
35 response to the COVID-19 public health emergency, concerning
36 social distancing and use of personal protective equipment during
37 the period those protocols are in effect.

38

39 4. a. Notwithstanding the provisions of any other law to the
40 contrary, the expiration date of any COVID-19 Expansion Permit
41 issued by the Director of the Division of Alcoholic Beverage
42 Control pursuant to the provisions of Special Ruling No. 2020-10
43 shall be November 30, 2022 or the date on which indoor dining
44 resumes without capacity limitations pursuant to an executive order
45 issued by the Governor, whichever is later.

46 b. The governing body of a municipality may file with the
47 Division of Alcoholic Beverage Control an objection to the

1 continued operation under subsection a. of this section by any
2 licensee or permittee the governing body finds to have:

3 (1) failed to follow, maintain, and enforce protocols
4 promulgated by the Commissioner of Health or by Executive Order
5 of the Governor in response to the COVID-19 public health
6 emergency concerning social distancing and the use of personal
7 protective equipment; or

8 (2) violated any other health, safety, fire, permitted use, or
9 zoning regulations or ordinances not otherwise directly superseded
10 by this section or Special Ruling No. 2020-10.

11 Any decision rendered, or action taken, by the Director of the
12 Division of Alcoholic Beverage Control as a result of an objection
13 filed by the governing body of the municipality pursuant to this
14 subsection shall be a final agency action subject to judicial review
15 in the Appellate Division of the Superior Court of New Jersey in
16 accordance with the Rules of Court.

17 c. Nothing in this act shall preclude or limit the authority
18 provided to the Director of the Division of Alcoholic Beverage
19 Control pursuant to the provisions of Title 33 of the Revised
20 Statutes or the exercise of such authority thereby.

21
22 5. A public sidewalk or an outdoor space shall be considered a
23 portion of the premises which is open to the public for the purposes
24 of section 5 of P.L.1999, c.90 (C.2C:33-27).

25
26 6. a. Notwithstanding any provision of this act to the contrary,
27 all other municipal ordinances pertaining to sanitation, property
28 maintenance, noise, business days and hours of operation, and days
29 and hours of service of alcoholic beverages shall apply, unless
30 specifically suspended or modified by the municipality or
31 specifically prohibited by the provisions of this section.

32 b. With respect to restaurants, bars, distilleries, and breweries
33 operating in outdoor spaces pursuant to section 2 of this act, P.L. ,

34 c. (pending before the Legislature as this bill), municipalities shall
35 not prohibit or limit the days and hours of the outdoor service of
36 food and beverages, including alcoholic beverages, except that
37 municipalities may prohibit or limit operations for the hours after
38 10:00 p.m. and between 12:00 a.m. and 11:00 a.m. on Sundays
39 through Wednesdays, and between 12:00 a.m. and 11:00 a.m. on
40 Thursdays through Saturdays, with the exception that a municipal
41 ordinance prohibiting or limiting the days and hours of indoor
42 service of food and beverages, including alcoholic beverages, which
43 was in effect prior to March 1, 2020 may be applied to the outdoor
44 service of food and beverages, including alcoholic beverages, as a
45 condition of the zoning approval pursuant to section 2 of this act,
46 P.L. , c. (pending before the Legislature as this bill). This
47 provision shall not be construed as overruling or prohibiting the
48 authority of a city of the first class to impose more restrictive time

1 restrictions or prohibit or limit the days and hours of the outdoor
2 service of food and beverages due to increased positivity rate of
3 COVID-19.

4 c. A municipality may either prohibit or limit the days and
5 hours of any live performances, including musical performances,
6 and the playing or projection of any content from a recording,
7 streaming service or television, cable or internet broadcasting
8 service in outdoor spaces or on public sidewalks as a condition of
9 the zoning approval pursuant to sections 2 and 3 of this act, P.L. ,
10 c. (pending before the Legislature as this bill).

11 d. A municipality may deny, revoke, or temporarily suspend,
12 the outdoor dining activity of any establishment that violates, or is
13 not in compliance with, any provision of this act or any provision of
14 a law, ordinance, or regulation related to the consumption or control
15 of alcoholic beverages.

16 e. Notwithstanding the provisions of this section, a municipality
17 may by resolution opt to waive any or all requirements of this
18 section.

19
20 7. Nothing in this act shall be interpreted or construed as
21 permitting or mandating the opening, expansion, or resumption of
22 unlimited operations of a restaurant, bar, or brewery that is closed,
23 whether permanently or temporarily, or operating subject to
24 limitations on its operations, service, or hours, as a result of
25 disciplinary or legal sanctions imposed by, or entering into a
26 settlement agreement with, a court of the State of New Jersey, a
27 municipal court, the New Jersey Department of Law and Public
28 Safety, the New Jersey Division of Alcoholic Beverage Control, or
29 a municipal governing body acting as a local alcoholic beverage
30 control board, as applicable.

31
32 8. Nothing in this act permits the use of State-owned right of way
33 for the purposes of outdoor dining. Permits for the use of the State
34 right of way will be issued upon application and approval of the New
35 Jersey Department of Transportation. For the purposes of locally-
36 owned roads that intersect the State highway system, setbacks from the
37 State right of way line will be 50 feet from April 1 to October 31, and
38 100 feet from November 1 to March 31.

39
40 9. a. As used in this section:

41 “Roadside farm stand” means a location owned by a single
42 farmer or producer at which the farmer or producer sells
43 agricultural products only from the farmer’s or producer’s farm
44 directly to consumers.

45 “Seasonal farm market” means a premises or facility utilized for
46 the primary purpose of selling predominately agricultural or
47 horticultural products, and which is annually closed to business

1 during an off-season for a period of not less than 90 continuous
2 days.

3 b. The Director of the Division of Alcoholic Beverage Control
4 may, in accordance with regulations or a special ruling issued
5 pursuant to this section, issue to the holder of a limited brewery
6 license, restricted brewery license, craft distillery license, plenary
7 winery license, farm winery license, or cidery and meadery license,
8 as established pursuant to R.S.33:1-10, a daily or annual permit to
9 sell any of the licensee's products at a seasonal farm market for
10 consumption off of the premises of the seasonal farm market. The
11 licensee shall obtain a separate permit for each seasonal farm
12 market at which the licensee intends to sell its products. The
13 director shall not issue a permit pursuant to this section for use in
14 connection with a roadside farm stand.

15 c. Subject to regulation or special ruling, a licensee issued a
16 permit pursuant to this section may:

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

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

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

31 e. Notwithstanding any law or regulation to the contrary, the
32 director may establish a fee, in an amount determined by the
33 director, for the issuance and renewal of a permit under this section.

34 f. The Director of the Division of Alcoholic Beverage Control
35 shall issue a special ruling or adopt regulations necessary to
36 effectuate the purposes of this section. Regulations shall be
37 effective immediately upon filing with the Office of Administrative
38 Law for a period not to exceed 18 months, and may, thereafter, be
39 amended, adopted or readopted in accordance with the provisions of
40 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
41 et seq.).

42
43 10. This act shall take effect on the 30th day following
44 enactment and sections 1 through 8 shall expire on November 30,
45 2022 or on the date of the resumption, pursuant to an executive
46 order issued by the Governor, of indoor dining without capacity
47 limitations, whichever is later.

STATEMENT

This bill would create opportunities for restaurants, bars, distilleries, breweries, and farms to adjust operations in response to the COVID-19 public health emergency until November 30, 2022.

The bill would allow the owners and operators of restaurants, bars, distilleries, or breweries to use outdoor spaces which they own or lease and which are located on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages, including alcoholic beverages if so licensed. The bill defines “outdoor spaces” as including patios and decks, both covered and uncovered, yards, walkways, and parking lots, or a portion thereof. The bill would also allow the owners and operators of those establishments to use public sidewalks, as defined in the bill, as an extension of their business premises for that purpose, as well.

The bill requires owners and operators of those establishments seeking to utilize outdoor spaces or public sidewalks as extensions of their business premises pursuant to the provisions of the bill to file an application with the municipal zoning officer, including information concerning the use of the outdoor spaces or public sidewalks, as appropriate, pursuant to the requirements set forth in the bill.

The bill requires the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety to extend the provisions of Special Ruling 2020-10 issued by the acting director of the Division of Alcoholic Beverage Control on June 3, 2020 so that those provisions shall expire on November 30, 2022.

The bill also would allow the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety to issue to the holder of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license, a daily or annual permit to sell any of the licensee’s products at a seasonal farm market for consumption off the premises of the seasonal farm market. The bill would require the director to issue a separate permit for each seasonal farm market at which the licensee’s products are intended to be sold. Creating these permits will provide these businesses with additional opportunities to sell their products and increased revenue from those sales.

The provisions of the bill, except for those related to daily and annual permits for certain sales at seasonal farm markets, would expire on November 30, 2022.