

SENATE, No. 3340

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 7, 2021

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator NELLIE POU

District 35 (Bergen and Passaic)

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District 11 (Monmouth)

Senator NILSA I. CRUZ-PEREZ

District 5 (Camden and Gloucester)

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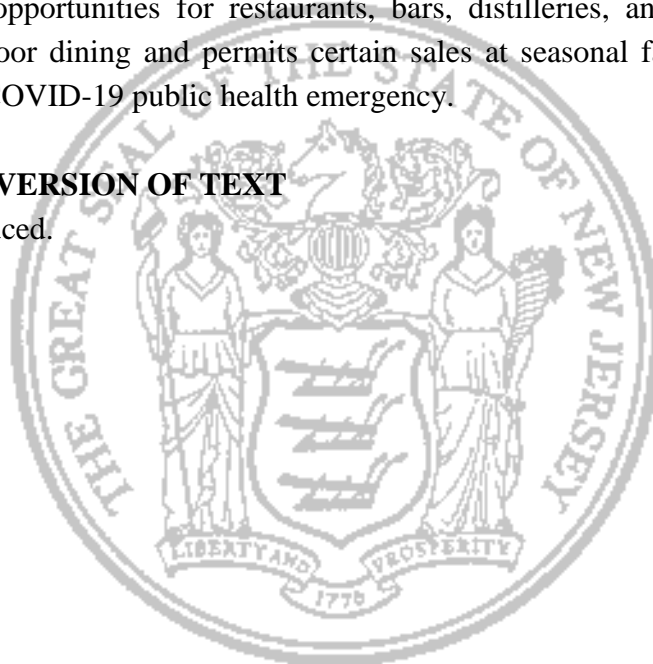
Senators Addiego, Bateman, Brown, A.M.Bucco, Corrado, Doherty, Holzapfel, T.Kean, Oroho, O'Scanlon, Pennacchio, Scutari, Singleton, Singer, B.Smith, Testa, Thompson and Turner

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 consistent with section 59 of P.L.1975, c.291
38 (C.40:55D-72), and other applicable provisions of the "Municipal
39 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and:

40 the commencement of the 20-day limitation period in section 59
41 of P.L.1975, c.291 (C.40:55D-72) shall begin on that date that the
42 appellant knew or should have known of the approval, denial,
43 revocation, or suspension, and

44 the deadline by which a decision on an appeal is to be rendered
45 under section 60 of P.L.1975, c.291 (C.40:55D-73) shall be 60
46 days. The governing body of a municipality may adjust, by
47 ordinance or resolution, any other deadlines under the "Municipal
48 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) with respect

1 to the filing of such appeal so as to allow compliance with this 60-
2 day limitation.

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

6 e. A municipality shall require that any restaurant, bar,
7 distillery, or brewery operating pursuant to this section shall follow,
8 maintain, and enforce protocols promulgated by the Commissioner
9 of Health or Executive Order of the Governor in response to the
10 COVID-19 public health emergency, concerning social distancing
11 and use of personal protective equipment during the period those
12 protocols are in effect.

13
14 3. a. Notwithstanding the provisions of any law to the
15 contrary, during the period that this section is in effect, the owners
16 and operators of restaurants, bars, distilleries, and breweries may
17 use public sidewalks as an extension of their business premises for
18 the purpose of conducting sales of food and beverages, including
19 alcoholic beverages if so licensed and permitted by Special Ruling
20 2020-10.

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

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

40 d. (1) The zoning officer shall issue an approval to the
41 applicant within 15 business days of the application being submitted
42 and deemed complete provided that the applicant meets and abides
43 by all qualifications and requirements of this act, with the exception
44 that the zoning officer may deny an application based on current
45 violations of any other health, safety, fire, permitted use, or zoning
46 regulation, or upon any applicable law permitting the denial of a
47 zoning permit that is not otherwise directly superseded by this
48 section or Special Ruling No. 2020-10. An application under this

1 section shall not be considered a variance under the “Municipal
2 Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

3 (2) A municipality may deny, revoke, or temporarily suspend
4 the permit of any applicant or permittee that violates, or is not in
5 compliance with, any provision of this act or any provision of a law,
6 ordinance, or regulation related to the consumption or control of
7 alcoholic beverages not otherwise under the jurisdiction of the
8 Division of Alcoholic Beverage Control, and may also deny,
9 revoke, or temporarily suspend the permit of any applicant or
10 permittee based on any action taken against the applicant or
11 permittee by the Division of Alcoholic Beverage Control related to
12 the division’s enforcement of any law or regulation related to the
13 consumption or control of alcoholic beverages under its
14 jurisdiction.

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

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

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

38 f. Municipalities shall require that any restaurants, bars,
39 distilleries, or breweries operating pursuant to this section shall
40 follow, maintain, and enforce protocols promulgated by the
41 Commissioner of Health or Executive Order of the Governor in
42 response to the COVID-19 public health emergency, concerning
43 social distancing and use of personal protective equipment during
44 the period those protocols are in effect.

45

46 4. a. Notwithstanding the provisions of any other law to the
47 contrary, the expiration date of any COVID-19 Expansion Permit
48 issued by the Director of the Division of Alcoholic Beverage

1 Control pursuant to the provisions of Special Ruling No. 2020-10
2 shall be November 30, 2022 or the date on which indoor dining
3 resumes without capacity limitations pursuant to an executive order
4 issued by the Governor, whichever is later.

5 b. The governing body of a municipality may file with the
6 Division of Alcoholic Beverage Control an objection to the
7 continued operation under subsection a. of this section by any
8 licensee or permittee the governing body finds to have:

9 (1) failed to follow, maintain, and enforce protocols
10 promulgated by the Commissioner of Health or by Executive Order
11 of the Governor in response to the COVID-19 public health
12 emergency concerning social distancing and the use of personal
13 protective equipment; or

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

17 Any decision rendered, or action taken, by the Director of the
18 Division of Alcoholic Beverage Control as a result of an objection
19 filed by the governing body of the municipality pursuant to this
20 subsection shall be a final agency action subject to judicial review
21 in the Appellate Division of the Superior Court of New Jersey in
22 accordance with the Rules of Court.

23 c. Nothing in this act shall preclude or limit the authority
24 provided to the Director of the Division of Alcoholic Beverage
25 Control pursuant to the provisions of Title 33 of the Revised
26 Statutes or the exercise of such authority thereby.

27

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

31

32 6. a. Notwithstanding any provision of this act to the contrary,
33 all other municipal ordinances pertaining to sanitation, property
34 maintenance, noise, business days and hours of operation, and days
35 and hours of service of alcoholic beverages shall apply, unless
36 specifically suspended or modified by the municipality or
37 specifically prohibited by the provisions of this section.

38 b. With respect to restaurants, bars, distilleries, and breweries
39 operating in outdoor spaces pursuant to section 2 of this act,
40 P.L. , c. (pending before the Legislature as this bill),
41 municipalities shall not prohibit or limit the days and hours of the
42 outdoor service of food and beverages, including alcoholic
43 beverages, except that municipalities may prohibit or limit
44 operations for the hours after 10:00 p.m. and between 12:00 a.m.
45 and 11:00 a.m. on Sundays through Wednesdays, and between
46 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
47 the exception that a municipal ordinance prohibiting or limiting the
48 days and hours of indoor service of food and beverages, including

1 alcoholic beverages, which was in effect prior to March 1, 2020
2 may be applied to the outdoor service of food and beverages,
3 including alcoholic beverages, as a condition of the zoning approval
4 pursuant to section 2 of this act, P.L. , c. (pending before the
5 Legislature as this bill). This provision shall not be construed as
6 overruling or prohibiting the authority of a city of the first class to
7 impose more restrictive time restrictions or prohibit or limit the
8 days and hours of the outdoor service of food and beverages due to
9 increased positivity rate of COVID-19.

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

17 d. A municipality may deny, revoke, or temporarily suspend,
18 the outdoor dining activity of any establishment that violates, or is
19 not in compliance with, any provision of this act or any provision of
20 a law, ordinance, or regulation related to the consumption or control
21 of alcoholic beverages.

22 e. Notwithstanding the provisions of this section, a
23 municipality may by resolution opt to waive any or all requirements
24 of this section.

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

37
38 8. Nothing in this act permits the use of State-owned right of way
39 for the purposes of outdoor dining. Permits for the use of the State
40 right of way will be issued upon application and approval of the New
41 Jersey Department of Transportation. For the purposes of locally-
42 owned roads that intersect the State highway system, setbacks from the
43 State right of way line will be 50 feet from April 1 to October 31, and
44 100 feet from November 1 to March 31.

45
46 9. a. As used in this section:

47 "Roadside farm stand" means a location owned by a single
48 farmer or producer at which the farmer or producer sells

1 agricultural products only from the farmer's or producer's farm
2 directly to consumers.

3 "Seasonal farm market" means a premises or facility utilized for
4 the primary purpose of selling predominately agricultural or
5 horticultural products, and which is annually closed to business
6 during an off-season for a period of not less than 90 continuous
7 days.

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

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

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

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

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

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

39 f. The Director of the Division of Alcoholic Beverage Control
40 shall issue a special ruling or adopt regulations necessary to
41 effectuate the purposes of this section. Regulations shall be
42 effective immediately upon filing with the Office of Administrative
43 Law for a period not to exceed 18 months, and may, thereafter, be
44 amended, adopted or readopted in accordance with the provisions of
45 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
46 1 et seq.).

1 10. This act shall take effect on the 30th day following
2 enactment and sections 1 through 8 shall expire on November 30,
3 2022 or on the date of the resumption, pursuant to an executive
4 order issued by the Governor, of indoor dining without capacity
5 limitations, whichever is later.

6

7

8

STATEMENT

9

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

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

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

30 The bill requires the Director of the Division of Alcoholic
31 Beverage Control in the Department of Law and Public Safety to
32 extend the provisions of Special Ruling 2020-10 issued by the
33 acting director of the Division of Alcoholic Beverage Control on
34 June 3, 2020 so that those provisions shall expire on November 30,
35 2022.

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

S3340 SARLO, POU

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