

[First Reprint]

SENATE, No. 3340

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 7, 2021

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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 amended by the General Assembly on January 11, 2021.

(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, ¹and
5 supplementing Title 33 of the Revised Statutes¹.
6

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

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

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

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

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

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

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

26 “Special Ruling No. 2020-10” means Special Ruling No. 2020-
27 10, issued by the acting director of the Division of Alcoholic
28 Beverage Control on June 3, 2020.
29

30 2. a. Notwithstanding the provisions of any law to the
31 contrary, during the period that this section is in effect, the owner or
32 operator of a restaurant, bar, distillery, or brewery may use outdoor
33 spaces which they own or lease and which are located either on, or
34 adjacent to, their business premises, as an extension of their
35 business premises for the purpose of conducting sales of food and
36 beverages ¹【, including alcoholic beverages if so licensed and
37 permitted by Special Ruling No. 2020-10】¹.

38 b. The owner or operator of a restaurant, bar, distillery, or
39 brewery desiring to utilize outdoor spaces as an extension of their
40 businesses shall file an application with the municipal zoning
41 officer that includes: (1) a plan, sketch, picture, or drawing that
42 depicts the design, dimensional boundaries, and placement of tents,
43 canopies, umbrellas, tables, chairs, and other fixtures of the outdoor
44 spaces; and (2) a plan for the control of litter, the removal and
45 storage of garbage, and the cleaning of fixtures and grounds. If a

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 floor amendments adopted January 11, 2021.

1 business premises' parking lot is used for the service and sale of
2 either food or beverages, or both, ¹including, but not limited to,
3 alcoholic beverages if so licensed, ¹the restaurant, bar, distillery,
4 or brewery shall not encumber more than 75 percent of the lot's
5 total parking spaces for such service and sale, unless the parking lot
6 contains less than eight parking spaces, and shall maintain at least
7 one handicapped parking space in the parking lot.

8 c. A municipality may require that an applicant provide one or
9 more of the following: (1) written consent of the owner of the
10 premises, if other than the applicant, (2) an insurance certificate
11 naming the municipality as an additional insured, with general
12 liability on an occurrence with a limit of liability of at least
13 \$1,000,000, with respect to losses arising solely from the operation
14 of the outdoor dining facility, or (3) an indemnification agreement
15 with the municipality with respect to losses arising solely from the
16 operation of the outdoor dining facility.

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

28 (2) A municipality may deny, revoke, or temporarily suspend
29 the permit of any applicant or permittee that violates, or is not in
30 compliance with, any provision of this act or any provision of a law,
31 ordinance, or regulation related to health, safety, fire, permitted
32 use, zoning, or¹ the consumption or control of alcoholic beverages
33 not otherwise under the jurisdiction of the Division of Alcoholic
34 Beverage Control, and may also deny, revoke, or temporarily
35 suspend the permit of any applicant or permittee based on any
36 action taken against the applicant or permittee by the Division of
37 Alcoholic Beverage Control related to the division's enforcement of
38 any law or regulation related to the consumption or control of
39 alcoholic beverages under its jurisdiction.

40 (3) An appeal to any approval, denial, revocation, or suspension
41 may be filed ¹consistent with section 59 of P.L.1975, c.291
42 (C.40:55D-72), and other applicable provisions of the "Municipal
43 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and:

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

1 the deadline by which a decision on an appeal is to be rendered
2 under section 60 of P.L.1975, c.291 (C.40:55D-73) shall be 60
3 days. The governing body of a municipality may adjust, by
4 ordinance or resolution, any other deadlines under the “Municipal
5 Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) with respect
6 to the filing of such appeal so as to allow compliance with this 60-
7 day limitation] through the municipal clerk with the governing body
8 of the municipality. The governing body, or its designee, shall
9 conduct a hearing and render a decision within 30 days of the filing of
10 the appeal. The governing body may designate a municipal official or
11 an attorney licensed in the State of New Jersey to serve as a hearing
12 officer in place of the governing body for the purpose of conducting
13 said hearing and rendering said decision¹.

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

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

24
25 3. a. Notwithstanding the provisions of any law to the
26 contrary, during the period that this section is in effect, the owners
27 and operators of restaurants, bars, distilleries, and breweries may
28 use public sidewalks as an extension of their business premises for
29 the purpose of conducting sales of food and beverages ¹], including
30 alcoholic beverages if so licensed and permitted by Special Ruling
31 2020-10]¹.

32 b. The owner or operator of a restaurant, bar, distillery, or
33 brewery desiring to utilize public sidewalks as an extension of their
34 businesses shall file an application with the municipal zoning
35 officer that includes: (1) a plan, sketch, picture, or drawing that
36 depicts the design, dimensional boundaries, and placement of tents,
37 canopies, umbrellas, tables, chairs, and other fixtures of the public
38 sidewalks; and (2) a plan for the control of litter, the removal and
39 storage of garbage, and the cleaning of fixtures and public
40 sidewalks.

41 c. A municipality may require that an applicant provide one or
42 more of the following: (1) written consent of the owner of the
43 premises, if other than the applicant, (2) an insurance certificate
44 naming the municipality as an additional insured, with general
45 liability on an occurrence with a limit of liability of at least
46 \$1,000,000, with respect to losses arising solely from the operation
47 of the outdoor dining facility located on public sidewalks, or (3) an
48 indemnification agreement with the municipality with respect to

1 losses arising solely from the operation of the outdoor dining
2 facility on public sidewalks.

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

14 (2) A municipality may deny, revoke, or temporarily suspend
15 the permit of any applicant or permittee that violates, or is not in
16 compliance with, any provision of this act or any provision of a law,
17 ordinance, or regulation related ¹to health, safety, fire, permitted
18 use, zoning, or¹ to the consumption or control of alcoholic
19 beverages not otherwise under the jurisdiction of the Division of
20 Alcoholic Beverage Control, and may also deny, revoke, or
21 temporarily suspend the permit of any applicant or permittee based
22 on any action taken against the applicant or permittee by the
23 Division of Alcoholic Beverage Control related to the division’s
24 enforcement of any law or regulation related to the consumption or
25 control of alcoholic beverages under its jurisdiction.

26 (3) An appeal to any approval, denial, revocation, or suspension
27 may be filed through the municipal clerk with the governing body
28 of the municipality. The governing body, or its designee, shall
29 conduct a hearing and render a decision within 30 days of the filing
30 of the appeal. The governing body may designate a municipal
31 official or an attorney licensed in the State of New Jersey to serve
32 as a hearing officer in place of the governing body for the purpose
33 of conducting said hearing and rendering said decision.

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

37 e. Owners and operators of restaurants, bars, distilleries, or
38 breweries desiring to utilize ¹【outdoor spaces】 public sidewalks¹ are
39 subject to the following conditions: (1) a walking path not less than
40 four feet wide must be maintained on the public sidewalk at all
41 times so as to not obstruct pedestrian traffic; (2) all fixtures must be
42 removed from public sidewalks at the conclusion of each day, if so
43 required by the municipality; and (3) the municipality reserves the
44 right to order the temporary suspension of outdoor dining and the
45 removal of all fixtures from public sidewalks due to road or utility
46 construction, predicted high winds or severe weather, predicted
47 snow or ice storms, the need to remove snow or ice from the
48 sidewalks, or any other public emergency that may arise.

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

8
9 4. a. Notwithstanding the provisions of any other law to the
10 contrary, the expiration date of any COVID-19 Expansion Permit
11 issued by the Director of the Division of Alcoholic Beverage
12 Control pursuant to the provisions of Special Ruling No. 2020-10
13 shall be November 30, 2022 or the date on which indoor dining
14 resumes without capacity limitations pursuant to an executive order
15 issued by the Governor, whichever is later.

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

20 (1) failed to follow, maintain, and enforce protocols
21 promulgated by the Commissioner of Health or by Executive Order
22 of the Governor in response to the COVID-19 public health
23 emergency concerning social distancing and the use of personal
24 protective equipment; or

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

28 Any decision rendered, or action taken, by the Director of the
29 Division of Alcoholic Beverage Control as a result of an objection
30 filed by the governing body of the municipality pursuant to this
31 subsection shall be a final agency action subject to judicial review
32 in the Appellate Division of the Superior Court of New Jersey in
33 accordance with the Rules of Court.

34 c. Nothing in this act shall preclude or limit the authority
35 provided to the Director of the Division of Alcoholic Beverage
36 Control pursuant to the provisions of Title 33 of the Revised
37 Statutes or the exercise of such authority thereby.

38
39 5. A public sidewalk or an outdoor space shall be considered a
40 portion of the premises which is open to the public for the purposes
41 of section 5 of P.L.1999, c.90 (C.2C:33-27).

42
43 6. a. Notwithstanding any provision of this act to the contrary,
44 all other municipal ordinances pertaining to sanitation, property
45 maintenance, noise, business days and hours of operation, and days
46 and hours of service of alcoholic beverages shall apply, unless
47 specifically suspended or modified by the municipality or
48 specifically prohibited by the provisions of this section.

1 b. With respect to restaurants, bars, distilleries, and breweries
2 operating in outdoor spaces pursuant to section 2 of this act,
3 P.L. , c. (pending before the Legislature as this bill),
4 municipalities shall not prohibit or limit the days and hours of the
5 outdoor service of food and beverages, including alcoholic
6 beverages, except that municipalities may prohibit or limit
7 operations for the hours after 10:00 p.m. and between 12:00 a.m.
8 and 11:00 a.m. on Sundays through Wednesdays, and between
9 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
10 the exception that a municipal ordinance prohibiting or limiting the
11 days and hours of indoor service of food and beverages, including
12 alcoholic beverages, which was in effect prior to March 1, 2020
13 may be applied to the outdoor service of food and beverages,
14 including alcoholic beverages, as a condition of the zoning approval
15 pursuant to section 2 of this act, P.L. , c. (pending before the
16 Legislature as this bill). This provision shall not be construed as
17 overruling or prohibiting the authority of a city of the first class to
18 impose more restrictive time restrictions or prohibit or limit the
19 days and hours of the outdoor service of food and beverages due to
20 increased positivity rate of COVID-19.

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

28 ¹[d. A municipality may deny, revoke, or temporarily suspend,
29 the outdoor dining activity of any establishment that violates, or is
30 not in compliance with, any provision of this act or any provision of
31 a law, ordinance, or regulation related to the consumption or control
32 of alcoholic beverages.

33 e. Notwithstanding the provisions of this section, a
34 municipality may by resolution opt to waive any or all requirements
35 of this section.】¹

36
37 7. Nothing in this act shall be interpreted or construed as
38 permitting or mandating the opening, expansion, or resumption of
39 unlimited operations of a restaurant, bar, or brewery that is closed,
40 whether permanently or temporarily, or operating subject to
41 limitations on its operations, service, or hours, as a result of
42 disciplinary or legal sanctions imposed by, or entering into a
43 settlement agreement with, a court of the State of New Jersey, a
44 municipal court, the New Jersey Department of Law and Public
45 Safety, the New Jersey Division of Alcoholic Beverage Control, or
46 a municipal governing body acting as a local alcoholic beverage
47 control board, as applicable.

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

8

9 9. a. As used in this section:

10 "Roadside farm stand" means a location owned by a single
11 farmer or producer at which the farmer or producer sells
12 agricultural products only from the farmer's or producer's farm
13 directly to consumers.

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

19 b. The Director of the Division of Alcoholic Beverage Control
20 may, in accordance with regulations or a special ruling issued
21 pursuant to this section, issue to the holder of a limited brewery
22 license, restricted brewery license, craft distillery license, plenary
23 winery license, farm winery license, or cidery and meadery license,
24 as established pursuant to R.S.33:1-10, a daily or annual permit to
25 sell any of the licensee's products 'in original containers'¹ at a
26 seasonal farm market for consumption off of the premises of the
27 seasonal farm market. The licensee shall obtain a separate permit
28 for each seasonal farm market at which the licensee intends to sell
29 its products. The director shall not issue a permit pursuant to this
30 section for use in connection with a roadside farm stand.

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

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

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

39 d. A daily permit shall be valid for the hours during which a
40 seasonal farm market is open within the 24-hour period for which
41 the daily permit is issued. An annual permit shall be valid for one
42 year from the date of issuance. The director may renew a permit,
43 provided the permit holder continues to hold a limited brewery
44 license, restricted brewery license, craft distillery license, plenary
45 winery license, farm winery license, or cidery and meadery license,
46 as applicable.

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

4 f. The Director of the Division of Alcoholic Beverage Control
5 shall issue a special ruling or adopt regulations necessary to
6 effectuate the purposes of this section. Regulations shall be
7 effective immediately upon filing with the Office of Administrative
8 Law for a period not to exceed 18 months, and may, thereafter, be
9 amended, adopted or readopted in accordance with the provisions of
10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
11 1 et seq.).

12

13 10. This act shall take effect on the 30th day following
14 enactment and sections 1 through 8 shall expire on November 30,
15 2022 or on the date of the resumption, pursuant to an executive
16 order issued by the Governor, of indoor dining without capacity
17 limitations, whichever is later.