

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 5135**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

ADOPTED JANUARY 13, 2021

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Co-Sponsored by:**

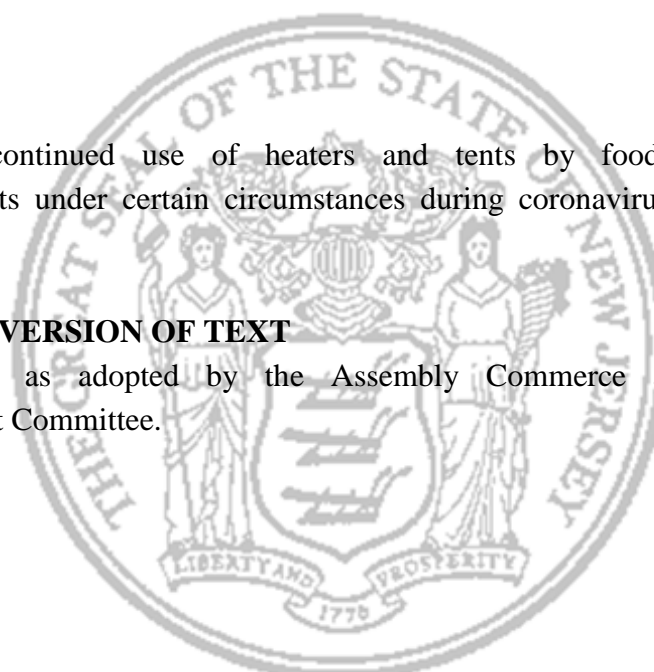
**Assemblymen Chiaravalloti, Benson, Moen, Mazzeo, Assemblywoman  
Pintor Marin, Assemblymen Catalano, McGuckin, Assemblywoman  
Lampitt, Assemblymen Thomson, Dancer, Freiman, Assemblywomen  
Vainieri Huttle, Downey, Assemblyman Houghtaling, Assemblywomen  
DiMaso, Jimenez, Timberlake, Schepisi, Assemblyman Space and  
Assemblywoman Swain**

**SYNOPSIS**

Allows continued use of heaters and tents by food or beverage establishments under certain circumstances during coronavirus disease 2019 pandemic.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Commerce and Economic Development Committee.



**(Sponsorship Updated As Of: 3/25/2021)**

1 AN ACT establishing Statewide standards for the use of heaters and  
2 tents by food and beverage establishments during the COVID-19  
3 public health emergency.  
4

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

8 1. As used in this act, “food or beverage establishment” means  
9 and includes a restaurant, cafeteria, dining establishment and food  
10 court, with or without a liquor license, as well as a bar, and any  
11 other holder of a liquor license with retail consumption privileges.  
12

13 2. During the period in which the State’s public health  
14 emergency in response to the COVID-19 pandemic is in effect,  
15 initially declared by the Governor pursuant to Executive Order No.  
16 103 of 2020 and subsequently extended, the standards and  
17 requirements for the use of tents and heaters by food or beverage  
18 establishments established in this act shall be in effect. The  
19 standards and requirements shall be applicable to the use by the  
20 owner or operator of a food or beverage establishment intending to  
21 use a heat source inside an enclosed, outdoor temporary dining tent.  
22 A municipality shall not establish and enforce any standards or  
23 requirements that are more restrictive than the standards established  
24 in this act; however, a municipality may establish or enforce less-  
25 restrictive, or alternative, standards than those established in this act  
26 only if those standards adequately and effectively protect the health  
27 and safety of patrons and employees of food or beverage  
28 establishments and the general public.  
29

30 3 The owner or operator of a food or beverage establishment  
31 that intends to offer service to customers under heated outdoor  
32 temporary dining tents during the COVID-19 pandemic public  
33 health emergency shall file an application with the fire official of  
34 the municipality in which the food or beverage establishment is  
35 located. No municipality shall charge a fee to the owner or operator  
36 of a food or beverage establishment related to such an application.  
37 The fire official shall approve the application after a review of the  
38 application and evidence from the owner or operator of the food or  
39 beverage establishment that the equipment intended to be used, and  
40 the plan for the use of a heated tent comply with the requirements  
41 of this act.  
42

43 4. Each outdoor temporary dining tent, and heating source  
44 intended to be used inside the tent, shall meet the following  
45 standards:

46 a. A tent shall be constructed of fire-retardant material, and  
47 documentation attesting to this standard shall be submitted with the  
48 application required in section 3 of this act;

- 1       b. No cooking or warming of food shall be performed under a  
2 tent;
- 3       c. At least one fire extinguisher shall be present inside the tent  
4 at all times, and shall be placed in an area that is easily accessible;
- 5       d. There shall be a minimum clearance of five feet between an  
6 open flame and any combustible material;
- 7       e. All heating units shall be placed on a stable base;
- 8       f. If an electric heater is to be used, there shall be a minimum  
9 clearance of five feet between the heater and any combustible  
10 material;
- 11       g. If a generator is to be used as a power source for a heater,  
12 the generator shall not be located within the tent or within five feet  
13 of the tent, and shall not be refueled if the generator is hot; and
- 14       h. An enclosed tent with heating devices inside shall have  
15 prominently marked entrances and exits.

16

17       5. In addition to the standards set forth in section 4 of this act,  
18 the owner or operator of a food or beverage establishment shall be  
19 responsible for taking the following actions to ensure the safe use of  
20 heaters inside tents during the period that this act is in effect:

- 21       a. Ensuring the safe storage of propane or other fuels at all  
22 times;
- 23       b. Ensuring that heaters and fuels are unplugged or turned off,  
24 and safely stored overnight; and
- 25       c. Providing, or arranging for, training for all employees on  
26 how to install fuel or fuel sources, and how to detect a fuel leak.

27

28       6. In addition to the standards set forth in section 4 of this act  
29 and the safety requirements for owners and operators of food or  
30 beverage establishments required in section 5 of this act, if a food  
31 or beverage establishment has located a tent having a heat source on  
32 a public street or in a public parking lot and there is a substantial  
33 possibility that a vehicle may impact the tent, the owner or operator  
34 of the establishment shall take reasonable precautions to prevent a  
35 vehicle impact with the tent, including but not limited to the  
36 installation of a vehicle impact protection system around the  
37 perimeter of the tent.

38

39       7. The Division of Fire Safety in the Department of  
40 Community Affairs shall, within 14 days of the effective date of  
41 this act, promulgate emergency rules and regulations as necessary  
42 to effectuate the provisions of this act. The Division of Fire Safety  
43 in the Department of Community Affairs shall readopt or amend the  
44 emergency rules and regulations pursuant to the "Administrative  
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

46

47       8. This act shall take effect immediately and shall expire on the  
48 later of:

- 1       (1) the date of expiration, termination, or rescission of any and
- 2 all executive or administrative orders issued by the Governor or
- 3 Commissioner of Health establishing coronavirus-related occupancy
- 4 or customer seating restrictions applicable to for food or beverage
- 5 establishments, or
- 6       (2) the first day of the seventh month following the date on
- 7 which the Governor declares that the state of emergency has ended.