[First Reprint]

SENATE, No. 3128

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
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District 36 (Bergen and Passaic)
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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)

AN ACT creating opportunities for restaurants, bars [1], distilleries,[1] and breweries to adjust operations in response to the COVID-19 public health emergency through expanded outdoor dining [1]; and for farms and other types of alcohol-related businesses to adjust operations[1].

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

1. As used in this act [1], and only for the purposes of this act[1]:

"Brewery" means a brewery operating under a brewery license pursuant to R.S.33:1-10.

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

"Food" means food that is cooked, prepared, sold, served, and consumed on the business premises.

"Outdoor space" means a patio or deck, either covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space.

"Public sidewalk" means a sidewalk on the [1]locally or county owned[1] public right-of-way which is adjacent to the business premises, or a portion thereof.

2. a. Notwithstanding the provisions of any law to the contrary, during the period that this act is in effect, the owner or operator of a restaurant, bar, [1]distillery,[1] or brewery may use outdoor spaces which they own or lease and which are located either 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.

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

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:
[1]Senate SBA committee amendments adopted November 12, 2020.

than eight parking spaces, and shall maintain at least one handicapped parking space in the parking lot.

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

d. An application that is compliant with the provisions of this section shall be approved by the zoning officer within [1]**[**10 **]** 15[1] business days of the application being submitted and deemed complete, and the municipality shall not charge a fee for either accepting the application or issuing the approval.

e. A municipality shall require that any restaurant, bar, [1]distillery,[1] or brewery operating pursuant to this section shall follow, maintain, and enforce protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19 public health emergency, concerning social distancing and use of personal protective equipment during the period those protocols are in effect.

[1]f. Notwithstanding the provisions of this section, a municipality may by resolution opt to waive any or all provisions or requirements of this section, except that a municipality shall not be permitted to waive the protocols provided in subsection e. of this section.[1]

3. a. Notwithstanding the provisions of any law to the contrary, during the period that this act is in effect, the owners and operators of restaurants, bars, [1]distilleries,[1] and breweries may use public sidewalks as an extension of their business premises for the purpose of conducting sales of food and beverages, including alcoholic beverages if so licensed.

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

c. A municipality may require that an applicant provide one or more of the following: (1) written consent of the owner of the premises, if other than the applicant, (2) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least

$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility located on public sidewalks, or (3) an indemnification agreement with the municipality with respect to losses arising solely from the operation of the outdoor dining facility on public sidewalks.

d. An application that is compliant with the provisions of this section shall be approved by the zoning officer within [1]**[**10 **]** 15[1] business days of the application being submitted and deemed complete, and the municipality shall not charge a fee for either accepting the application or issuing the approval.

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

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

[1]g. Notwithstanding the provisions of this section, a municipality may by resolution opt to waive any or all provisions or requirements of this section, except that a municipality shall not be permitted to waive the protocols provided in subsection f. of this section.[1]

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

The special ruling shall require that any restaurant, bar, [1]distillery,[1] or brewery operating pursuant to this section shall follow, maintain, and enforce protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19 public health emergency, concerning

social distancing and use of personal protective equipment during the period those protocols are in effect.

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

5. In accordance with section 5 of P.L.1999, c.90 (C.2C:33-27), the owners and operators of restaurants shall be permitted to conduct "bring-your-own-bottle" privileges in outdoor spaces and on public sidewalks, in accordance with the provisions of this act, and the applicable outdoor spaces and public sidewalks shall be considered a portion of the restaurant's premises for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

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

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

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

d. A municipality may deny, revoke, or temporarily suspend, the outdoor dining activity of any establishment that violates, or is not in

compliance with, any provision of this act or any provision of a law, ordinance, or regulation related to the consumption or control of alcoholic beverages.

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

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

[1]9. a. Notwithstanding any law, rule, regulation, ordinance, or best management practice to the contrary that sets forth a time limitation for the erection of certain temporary structures on commercial farms, an open or enclosed canopy or tent lawfully erected during the coronavirus disease 2019 (COVID-19) emergency on a commercial farm in accordance with the standards for on-farm direct marketing facilities, activities, and events adopted by the committee pursuant to P.L.1983, c.31 (C.4:1C-1 et seq.) may remain in place until the resumption, pursuant to an Executive Order issued by the Governor, of indoor dining without capacity limitations or December 31, 2020, whichever is later.

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

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

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

b. As used in this section:

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

"Committee" means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c.31 (C.4:1C-4).[1]

[1]10. a. The Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety may, subject to rules and regulations, 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, as established pursuant to R.S.33:1-10, 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 director shall issue a separate permit for each seasonal farm market at which the licensee's products are intended to be sold. The director shall not issue a permit pursuant to this section for use in connection with a roadside farm stand.

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

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

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

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

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

e. As used in this section, "roadside farm stand" means a location owned by a single farmer or producer at which the farmer or producer sells agricultural products only from the farmer's or producer's farm directly to consumers.[1]

[1][8.] 11.[1] This act shall take effect immediately and shall expire on January 2, 2023.