

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3128

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3128, with committee amendments.

As amended by the committee, this bill would create opportunities for restaurants, bars, distilleries, breweries, and farms to adjust operations in response to the COVID-19 public health emergency.

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. The zoning officer is required to approve an application that is compliant with the bill’s provisions within 15 business days of the submission of the application. The bill also prohibits municipalities from charging fees for the filing of the application or issuing the approval.

Under the bill, a municipality may require an applicant to 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.

Establishments operating under the provisions of the bill are required to follow, maintain, and enforce protocols promulgated by the Commissioner of Health or 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 bill also provides for the operation of “bring your own bottle” privileges in applicable outdoor spaces and on public sidewalks.

The bill also permits municipalities to control the days and hours of certain activities, including the outdoor service of food and beverages, including alcoholic beverages if so licensed, and live performances, as well as to deny, revoke, or suspend, the outdoor dining activity of any establishment that violates the provisions of the bill. Municipalities are permitted to waive these requirements if they choose to do so.

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.

As amended and reported by the committee, Senate Bill No. 3128 (1R) is identical to Assembly Bill No. 4525 (2R), which also was amended reported by the committee on this date.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- Include distilleries under the provisions of the bill;
- Authorize a municipality to approve all applications filed pursuant to sections 2 and 3 of the bill by resolution, rather than individually;
- Authorize a municipality to waive certain provisions of sections 2 and 3 of the bill;
- Clarify that the bill does not permit the use of State-owned right of way for the purposes of outdoor dining, and requires that permits for the use of the State right of way will be issued only upon application and approval of the New Jersey Department of Transportation;
- Clarifies that 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;
- Permits the Director of the Division of Alcoholic Beverage Control to issue permits for the sale at farm markets of products made by a brewery, craft distillery, winery, or meadery; and
- Permits temporary structures on farms to remain until indoor dining without restrictions is restored by the Governor.

FISCAL IMPACT:

The Office of Legislative Services anticipates that the bill will: a) nominally increase administrative and enforcement expenses for the State and municipalities related to the permitted use of certain outdoor spaces by restaurants, bars, distilleries, and breweries; b) potentially reduce municipal revenues as municipalities will be prohibited from collecting application fees for permits to use outdoor spaces; and c) produce two countervailing State revenue effects. State revenue will decline as the State will be prohibited from collecting fees for permits for the use of certain outdoor spaces by restaurants, bars, distilleries, and breweries. On the other side of the ledger, State revenues will increase as the bill authorizes the Division of Alcoholic Beverage Control to charge fees for new daily and annual permits that allow breweries, craft distilleries, wineries, cideries, and meaderies to sell their products at seasonal farm markets for consumption off the premises of the markets. Any fiscal impact will cease on January 2, 2023, the bill's expiration date.

On June 3, 2020, the Division of Alcoholic Beverage Control allowed businesses to apply, for a \$75 fee, for the "COVID-19 Expansion of Premises Permit" to expand their licensed premises into outdoor areas. All permits issued are set to expire on November 30, 2020. But on October 19, 2020, the division allowed for the extension of over 2,300 permits to March 31, 2021 for a fee of \$10. Under the bill, these fees would no longer be allowed to be charged.