

[Second Reprint]

ASSEMBLY, No. 4866

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED SEPTEMBER 23, 2024

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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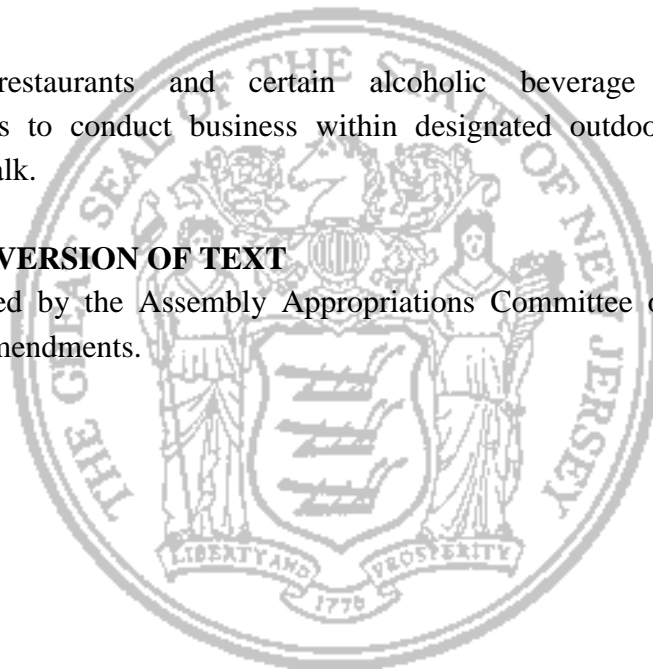
**Assemblyman Sauickie, Assemblywoman Swift, Assemblyman Allen,
Assemblywoman Reynolds-Jackson, Assemblyman Scharfenberger,
Assemblywomen Flynn, Speight, Assemblyman Sampson, Assemblywomen
Peterpaul, Donlon, Fantasia, Bagolie, Assemblymen Inganamort and
DePhillips**

SYNOPSIS

Permits restaurants and certain alcoholic beverage retailers and manufacturers to conduct business within designated outdoor space or on public sidewalk.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on October 24, 2024, with amendments.



(Sponsorship Updated As Of: 10/28/2024)

1 AN ACT concerning outdoor sale of food and alcoholic beverages
2 and supplementing Title 40 of the Revised Statutes.

3

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

6

7 1. As used in this act:

8 “Alcoholic beverage manufacturer license” or “license” means a
9 plenary winery license, farm winery license, ²**[out-of-State winery**
10 **license,]**² limited brewery license, restricted brewery license, cidery
11 and meadery license, and craft distillery license issued pursuant to
12 R.S.33:1-10.

13 “Alcoholic beverage retail consumption license” or “license”
14 means a plenary retail consumption license, plenary retail
15 consumption license used in connection with a hotel or motel,
16 seasonal retail consumption license, or club license issued pursuant
17 to R.S.33:1-12, or a concessionaire permit issued pursuant to Title
18 33 of the Revised Statutes that authorizes the sale of all alcoholic
19 beverages for consumption on the licensed premises.

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

22 “Outdoor space” means a patio or deck, whether covered or
23 uncovered, a yard, a walkway, or a parking lot, or a portion of any
24 such space, that is located on ¹**[or adjacent to]**¹ the business
25 premises, ¹contiguous to the business premises, or in a non-
26 contiguous location in accordance with paragraph (2) of subsection
27 a. of section 2 of P.L. _____, c. _____ (C. _____) (pending before the
28 Legislature as this bill)¹ which space is owned, leased, or otherwise
29 in the lawful control of the owner or operator of the business
30 premises.

31 “Premises expansion permit” means a permit issued to a
32 manufacturer ¹**[license]** license holder¹ or retail consumption
33 ¹**[license]** license holder¹ that entitles the license holder to use
34 outdoor spaces ¹as an extension of their business premises¹ that
35 they own or lease and that are located either on ¹**[, or adjacent to,]**¹
36 their business premises, ¹**[as an extension of their business**
37 **premises]** contiguous to the business premises, or in a non-
38 contiguous location in accordance with paragraph (2) of subsection
39 a. of section 2 of P.L. _____, c. _____ (C. _____) (pending before the
40 Legislature as this bill)¹ for the purpose of conducting sales of food
41 and beverages ²as allowed by law².

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

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 AOF committee amendments adopted October 17, 2024.

²Assembly AAP committee amendments adopted October 24, 2024.

1 2. a. ¹(1) ²**【The】** Following the issuance of a special ruling or
2 adoption of regulations pursuant to subsection f. of this section, the²
3 Director of the Division of Alcoholic Beverage Control shall issue
4 to the holder of an alcoholic beverage manufacturer license or retail
5 consumption license a premises expansion permit upon application
6 by the license holder. ²Application for the permit shall be made on
7 an annual basis and the administrative fee for the permit shall be
8 fixed by the director.² The permit shall entitle the license holder to
9 sell alcoholic beverages in outdoor spaces ¹as an extension of their
10 business premises¹that they own or lease and that are located either
11 on ¹【, or adjacent to,】¹ their business premises, ¹【as an extension of
12 their business premises】 contiguous to the business premises, or in
13 a non-contiguous location in accordance with paragraph (2) of this
14 subsection¹. ²The director may impose any conditions upon the
15 issuance or renewal of this permit deemed necessary and proper to
16 achieve the objectives of this section.²

17 ¹(2) The permit shall entitle the license holder to expand the
18 licensed premises to non-contiguous property, provided the property
19 is in reasonable proximity to the licensed premises and the license
20 holder has established safeguards to ensure that alcoholic beverages
21 will be sold and served in accordance with Title 33 of the Revised
22 Statutes. A license holder who obtains a premises expansion permit
23 for a contiguous and non-contiguous property shall demonstrate that
24 the license holder has a possessory interest and control over the
25 property and shall be entitled to exercise the same privileges
26 afforded on the existing licensed premises.¹

27 b. An applicant for a premises expansion permit shall file an
28 application with the director with the following information:

29 (1) the name, address, and license number of the applicant;

30 (2) a description of the property that is the subject of the
31 application as well as a sketch or photographs of the property;

32 (3) written approval or documentation from the property owner
33 authorizing the temporary use of the expanded property by a
34 licensee if the licensed property is not owned by the license holder;
35 and

36 (4) proposed security plan for sale and service of alcoholic
37 beverages on the expanded premises including prevention of pass-
38 offs, underage drinking, and over-consumption ¹【;】¹

39 c. The director shall ²**【transfer】** transmit² the application for a
40 premises expansion permit to the municipal clerk and police chief
41 of the municipal governing body in which the manufacturer license
42 or retail consumption license ¹is¹ situated. For licensed premises
43 located on property owned by or under the control of any political
44 subdivision of this State, the application shall be reviewed and
45 approved by a designated administrative official and the chief law
46 enforcement officer responsible for the licensed property.

1 The director shall not approve or deny an application until it
2 receives an endorsement or approval by the appropriate governing
3 body officials.

4 d. ²~~[A]~~ Following the initial issuance, the renewal date of a²
5 premises expansion permit issued pursuant to this section ²~~[renews~~
6 on] shall be² the same ²as the renewal² date ²~~[that]~~ of² the retail
7 consumption license or manufacturer license ²~~[is renewed by the~~
8 license holder]².

9 e. ²~~(1)~~² A license holder who held a temporary expansion
10 permit issued pursuant to the director's special ruling prior to the
11 effective date of this act shall be entitled ², upon notice to the
12 director and payment of a fee as shall be fixed by the director,² to
13 convert the permit to a premises expansion permit established
14 pursuant to this section. A license holder who held the temporary
15 expansion permit prior ¹to¹ the effective date of this act and
16 converts the permit pursuant to this subsection shall not be required
17 to submit to the director or municipal governing authority an
18 additional application pursuant to P.L. , c. (C.) (pending
19 before the Legislature as this bill).

20 ²~~(2)~~ A temporary expansion permit issued pursuant to the
21 director's special ruling prior to the effective date of this act shall
22 remain in effect pending the director's issuance of a special ruling
23 or adoption of regulations pursuant to subsection f. of this section
24 until either November 30, 2025 or until the license holder is issued
25 a premises expansion permit pursuant to this section.

26 f. No later than May 30, 2025, the director shall issue a special
27 ruling or adopt regulations necessary to effectuate the purposes of
28 this section. Regulations shall be effective immediately upon filing
29 with the Office of Administrative Law for a period not to exceed 18
30 months, and may, thereafter, be amended, adopted or readopted in
31 accordance with the provisions of the "Administrative Procedure
32 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).²
33

34 3. a. Notwithstanding the provisions of any law to the
35 contrary, the owner or operator of a restaurant that does not sell
36 alcoholic beverages and the holder of an alcoholic beverage
37 manufacturer license or retail consumption license may use ², for
38 purposes other than selling alcoholic beverages in such spaces as
39 authorized pursuant to section 2 of P.L. , c. (C.)(pending
40 before the Legislature as this bill),² outdoor spaces ¹as an extension
41 of their business premises¹ that they own or lease and that are
42 located either on ¹~~[, or adjacent to,]~~¹ their business premises ¹~~[, as~~
43 an extension of their business premises] contiguous to the business
44 premises, or in a non-contiguous location¹.

1 b. The owner or operator of a restaurant that does not sell
2 alcoholic beverages and the holder of an alcoholic beverage
3 manufacturer license or retail consumption license seeking to utilize
4 2, for purposes other than selling alcoholic beverages in such spaces
5 as authorized pursuant to section 2 of P.L. , c. (C.)(pending
6 before the Legislature as this bill),² outdoor spaces as an extension
7 of their businesses shall file an application with the municipal
8 zoning officer. The application to the municipal zoning officer
9 shall include:

10 (1) a plan, sketch, picture, or drawing that depicts the design,
11 dimensional boundaries, and placement of tents, canopies,
12 umbrellas, tables, chairs, and other fixtures of the outdoor spaces;
13 and

14 (2) a plan for the control of litter, the removal and storage of
15 garbage, and the cleaning of fixtures and grounds. If a business
16 premises' parking lot is used for the service and sale of either food
17 or beverages, or both, the owner or operator of a restaurant that
18 does not sell alcoholic beverages and the holder of an alcoholic
19 beverage manufacturer license or retail consumption license shall
20 not encumber more than 75 percent of the lot's total parking spaces
21 for service and sale, unless the parking lot contains less than eight
22 parking spaces, and shall maintain at least one handicapped parking
23 space in the parking lot.

24 c. A municipality may require that an applicant provide one or
25 more of the following:

26 (1) written consent of the owner of the premises, if other than
27 the applicant;

28 (2) an insurance certificate naming the municipality as an
29 additional insured, with general liability on an occurrence with a
30 limit of liability of at least \$1,000,000, with respect to losses arising
31 solely from the operation of the outdoor dining facility; or

32 (3) an indemnification agreement with the municipality with
33 respect to losses arising solely from the operation of the outdoor
34 dining facility.

35 d. (1) The zoning officer shall issue an approval to the
36 applicant within 15 business days of the application being submitted
37 and deemed complete provided that the applicant meets and abides
38 by all qualifications and requirements of P.L. , c. (C.)
39 (pending before the Legislature as this bill), with the exception that
40 the zoning officer may deny an application based on current
41 violations of any other health, safety, fire, permitted use, or zoning
42 regulation, or upon any applicable law permitting the denial of a
43 zoning permit. An application under this section shall not be
44 considered a variance under the "Municipal Land Use Law,"
45 P.L.1975, c.291 (C.40:55D-1 et seq.).

46 (2) A municipality may deny, revoke, or temporarily suspend
47 the permit of any applicant or permittee that violates, or is not in
48 compliance with, any provision of P.L. , c. (C.) (pending

1 before the Legislature as this bill) or any provision of a law,
2 ordinance, or regulation related to health, safety, fire, permitted use,
3 zoning, or the consumption or control of alcoholic beverages not
4 otherwise under the jurisdiction of the Division of Alcoholic
5 Beverage Control, and may also deny, revoke, or temporarily
6 suspend the permit of any applicant or permittee based on any
7 action taken against the applicant or permittee by the Division of
8 Alcoholic Beverage Control related to the division's enforcement of
9 any law or regulation related to the consumption or control of
10 alcoholic beverages under its jurisdiction.

11 (3) An appeal to any approval, denial, revocation, or suspension
12 may be filed through the municipal clerk with the governing body
13 of the municipality. The governing body, or its designee, shall
14 conduct a hearing and render a decision within 30 days of the filing
15 of the appeal. The governing body may designate a municipal
16 official or an attorney licensed in the State of New Jersey to serve
17 as a hearing officer in place of the governing body for the purpose
18 of conducting said hearing and rendering said decision. Nothing in
19 P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall be construed to restrict the right of any party to obtain a
21 review by any court of competent jurisdiction, according to law.

22 e. A permit issued pursuant to this section to a restaurant
23 without an alcoholic beverage retail license shall ²**[renew annually]**
24 be subject to annual renewal².

25 f. A municipality that approves an application for the holder of
26 an alcoholic beverage manufacturer license or retail consumption
27 license shall submit its endorsement to the Director of the Division
28 of Alcoholic Beverage Control pursuant to section 2 of P.L. , c.
29 (C.) (pending before the Legislature as this bill).

30 g. The owner or operator of a restaurant that does not sell
31 alcoholic beverages and the holder of an alcoholic beverage
32 manufacturer license or retail consumption license who held a
33 temporary permit issued by the municipality prior to the effective
34 date of this act shall be entitled to convert the permit to a premises
35 expansion permit established pursuant to this section ²to be used for
36 purposes other than selling alcoholic beverages in such spaces as
37 authorized pursuant to section 2 of P.L. , c. (C.)(pending
38 before the Legislature as this bill)². An owner or operator of a
39 restaurant that does not sell alcoholic beverages and the holder of
40 an alcoholic beverage manufacturer license or retail consumption
41 license who held a temporary permit issued by the municipality
42 prior ¹**[prior]** to¹ the effective date of this act and converts the
43 permit pursuant to this subsection shall not be required to ²submit
44 to the² municipal governing authority an additional application
45 pursuant to P.L. , c. (C.) (pending before the Legislature
46 as this bill).

1 4. The installation and continuous use of tents, canopies,
2 umbrellas, tables, chairs, and other fixtures on private property or
3 public property or right of way designated by a municipality
4 pursuant to P.L. , c. (C.) (pending before the Legislature as
5 this bill) shall be a permitted use provided that the tent, canopy,
6 umbrella, table, chairs, or other fixture conforms to all applicable
7 provisions of the State Uniform Construction Code and Uniform
8 Fire Code, which have been adopted by the Commissioner of
9 Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et
10 seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

11
12 5. a. Notwithstanding any provision of P.L. , c. (C.)
13 (pending before the Legislature as this bill) to the contrary, all other
14 municipal ordinances pertaining to sanitation, property
15 maintenance, noise, business days and hours of operation, and days
16 and hours of service of alcoholic beverages shall apply, unless
17 specifically suspended or modified by the municipality or
18 specifically prohibited by the provisions of this section.

19 b. With respect to a restaurant that does not sell alcoholic
20 beverages and the holder of premises expansion permit issued
21 pursuant section 2 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) operating in outdoor spaces pursuant to
23 section 2 of P.L. , c. (C.) (pending before the Legislature
24 as this bill), a municipality shall not prohibit or limit the days and
25 hours of the outdoor service of food and beverages, including
26 alcoholic beverages, except that municipalities may prohibit or limit
27 operations for the hours after 10:00 p.m. and between 12:00 a.m.
28 and 11:00 a.m. on Sundays through Wednesdays, and between
29 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
30 the exception that a municipal ordinance prohibiting or limiting the
31 days and hours of indoor service of food and beverages, including
32 alcoholic beverages, may be applied to the outdoor service of food
33 and beverages, including alcoholic beverages, as a condition of the
34 zoning approval pursuant to section 3 of P.L. , c. (C.)
35 (pending before the Legislature as this bill). This provision shall
36 not be construed as overruling or prohibiting the authority of a city
37 of the first class to impose more restrictive time restrictions or
38 prohibit or limit the days and hours of the outdoor service of food
39 and beverages.

40 c. A municipality may either prohibit or limit the days and
41 hours of any live performances, including musical performances,
42 and the playing or projection of any content from a recording,
43 streaming service or television, cable, or Internet broadcasting
44 service in outdoor spaces or on public sidewalks as a condition of
45 the zoning approval pursuant to sections 3 and 4 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill).

1 6. A public sidewalk or an outdoor space ¹, including pedestrian
2 walkways and pedestrian malls, ^{1 2}which is subject to a premises
3 expansion permit issued pursuant to section 2 or section 3 of P.L. ,
4 c. (C.)(pending before the Legislature as this bill)² shall be
5 considered a portion of the premises that is open to the public for the
6 purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

7
8 7. Nothing in P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be interpreted or construed as permitting
10 or mandating the opening, expansion, or resumption of unlimited
11 operations of a restaurant that does not sell alcoholic beverages and the
12 holder of a ²COVID-19 Expansion Permit issued by the Director of
13 the Division of Alcoholic Beverage Control pursuant to the
14 provisions of Special Ruling No. 2020-10 or a² premises expansion
15 permit issued pursuant section 2 of P.L. , c. (C.) (pending before
16 the Legislature as this bill) that is closed, whether permanently or
17 temporarily, or operating subject to limitations on its operations,
18 service, or hours, as a result of disciplinary or legal sanctions imposed
19 by, or entering into a settlement agreement with, a court of the State of
20 New Jersey, a municipal court, the New Jersey Department of Law
21 and Public Safety, the New Jersey Division of Alcoholic Beverage
22 Control, or a municipal governing body acting as a local alcoholic
23 beverage control board, as applicable.

24
25 ²8. Section 4 of P.L.2021, c.15 is amended to read as follows:

26 4. a. Notwithstanding the provisions of any other law to the
27 contrary, the expiration date of any COVID-19 Expansion Permit
28 issued by the Director of the Division of Alcoholic Beverage Control
29 pursuant to the provisions of Special Ruling No. 2020-10 shall be
30 November 30, **[2024]** 2025, except that any such permit shall expire
31 prior to that date upon the conversion of the permit to, or issuance to
32 the permit holder of, a premises expansion permit pursuant to section 2
33 of P.L. , c. (C.)(pending before the Legislature as this bill).

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

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

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

45 Any decision rendered, or action taken, by the Director of the
46 Division of Alcoholic Beverage Control as a result of an objection

1 filed by the governing body of the municipality pursuant to this
2 subsection shall be a final agency action subject to judicial review in
3 the Appellate Division of the Superior Court of New Jersey in
4 accordance with the Rules of Court.

5 c. Nothing in this act shall preclude or limit the authority
6 provided to the Director of the Division of Alcoholic Beverage Control
7 pursuant to the provisions of Title 33 of the Revised Statutes or the
8 exercise of such authority thereby.²
9 (cf: P.L.2022, c.85, s.2)

10

11 ²9. Section 10 of P.L.2021, c.15 is amended to read as follows:

12 10. This act shall take effect on the 30th day following enactment
13 and sections 1 through 8 shall expire at 11:59 p.m. on November 30,
14 **[2024] 2025.**²
15 (cf: P.L.2022, c.85, s.3)

16

17 ²[8.] 10.² Nothing in P.L. , c. (C.) (pending before the
18 Legislature as this bill) permits the use of State-owned rights-of-
19 way for the purposes of outdoor dining. A permit for the use of the
20 State rights-of-way shall be issued upon application and approval of
21 the New Jersey Department of Transportation. For the purposes of
22 locally-owned roads that intersect the State highway system,
23 setbacks from the State right-of-way line will be 50 feet from April
24 1 to October 31, and 100 feet from November 1 to March 31.

25

26 ²[9.] 11.² This act shall take effect immediately ², except that
27 subsections a. through e. of section 2 shall remain inoperative until
28 May 30, 2025 but the director may take such anticipatory action as
29 may be necessary to effectuate those provisions of this act².