

[Second Reprint]

SENATE, No. 3608

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED SEPTEMBER 19, 2024

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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 amended by the General Assembly on October 28, 2024.

(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 consumption
15 license used in connection with a hotel or motel, seasonal retail
16 consumption license, or club license issued pursuant to R.S.33:1-12, or
17 a concessionaire permit issued pursuant to Title 33 of the Revised
18 Statutes that authorizes the sale of all alcoholic beverages for
19 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 premises,
25 ¹contiguous to the business premises, or in a non-contiguous location
26 in accordance with paragraph (2) of subsection a. of section 2 of
27 P.L. , c. (C.) (pending before the Legislature as this bill)¹ which
28 space is owned, leased, or otherwise in the lawful control of the owner
29 or operator of the business premises.

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

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

43

44 2. a. ¹(1)¹ ²~~The~~ Following the issuance of a special ruling or
45 adoption of regulations pursuant to subsection f. of this section, the²

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:

¹Senate SBA committee amendments adopted October 7, 2024.

²Assembly floor amendments adopted October 28, 2024.

1 Director of the Division of Alcoholic Beverage Control shall issue to
2 the holder of an alcoholic beverage manufacturer license or retail
3 consumption license a premises expansion permit upon application by
4 the license holder. ²Application for the permit shall be made on an
5 annual basis and the administrative fee for the permit shall be fixed by
6 the director.² The permit shall entitle the license holder to sell
7 alcoholic beverages in outdoor spaces ¹as an extension of their
8 business premises¹ that they own or lease and that are located either on
9 ¹[, or adjacent to,]¹ their business premises, ¹[, as an extension of their
10 business premises] contiguous to the business premises, or in a non-
11 contiguous location in accordance with paragraph (2) of this
12 subsection¹. ²The director may impose any conditions upon the
13 issuance or renewal of this permit deemed necessary and proper to
14 achieve the objectives of this section.²

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

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

- 27 (1) the name, address, and license number of the applicant;
28 (2) a description of the property that is the subject of the
29 application as well as a sketch or photographs of the property;
30 (3) written approval or documentation from the property owner
31 authorizing the temporary use of the expanded property by a licensee
32 if the licensed property is not owned by the license holder; and
33 (4) proposed security plan for sale and service of alcoholic
34 beverages on the expanded premises including prevention of pass-offs,
35 underage drinking, and over-consumption ¹[:] ¹

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

44 The director shall not approve or deny an application until it
45 receives an endorsement or approval by the appropriate governing
46 body officials.

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

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

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

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

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

41 b. The owner or operator of a restaurant that does not sell
 42 alcoholic beverages and the holder of an alcoholic beverage
 43 manufacturer license or retail consumption license seeking to utilize ²,
 44 for purposes other than selling alcoholic beverages in such spaces as
 45 authorized pursuant to section 2 of P.L. , c. (C.) (pending before
 46 the Legislature as this bill),² outdoor spaces as an extension of their

1 businesses shall file an application with the municipal zoning officer.

2 The application to the municipal zoning officer shall include:

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

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

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

18 (1) written consent of the owner of the premises, if other than the
19 applicant;

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

24 (3) an indemnification agreement with the municipality with
25 respect to losses arising solely from the operation of the outdoor
26 dining facility.

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

37 (2) A municipality may deny, revoke, or temporarily suspend the
38 permit of any applicant or permittee that violates, or is not in
39 compliance with, any provision of P.L. , c. (C.) (pending
40 before the Legislature as this bill) or any provision of a law, ordinance,
41 or regulation related to health, safety, fire, permitted use, zoning, or
42 the consumption or control of alcoholic beverages not otherwise under
43 the jurisdiction of the Division of Alcoholic Beverage Control, and
44 may also deny, revoke, or temporarily suspend the permit of any
45 applicant or permittee based on any action taken against the applicant
46 or permittee by the Division of Alcoholic Beverage Control related to
47 the division's enforcement of any law or regulation related to the
48 consumption or control of alcoholic beverages under its jurisdiction.

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

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

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

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

36
37 4. The installation and continuous use of tents, canopies,
38 umbrellas, tables, chairs, and other fixtures on private property or
39 public property or right of way designated by a municipality
40 pursuant to P.L. , c. (C.) (pending before the Legislature as
41 this bill) shall be a permitted use provided that the tent, canopy,
42 umbrella, table, chairs, or other fixture conforms to all applicable
43 provisions of the State Uniform Construction Code and Uniform
44 Fire Code, which have been adopted by the Commissioner of
45 Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et
46 seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

1 5. a. Notwithstanding any provision of P.L. , c. (C.)
2 (pending before the Legislature as this bill) to the contrary, all other
3 municipal ordinances pertaining to sanitation, property
4 maintenance, noise, business days and hours of operation, and days
5 and hours of service of alcoholic beverages shall apply, unless
6 specifically suspended or modified by the municipality or
7 specifically prohibited by the provisions of this section.

8 b. With respect to a restaurant that does not sell alcoholic
9 beverages and the holder of premises expansion permit issued
10 pursuant section 2 of P.L. , c. (C.) (pending before the
11 Legislature as this bill) operating in outdoor spaces pursuant to
12 section 2 of P.L. , c. (C.) (pending before the Legislature
13 as this bill), a municipality shall not prohibit or limit the days and
14 hours of the outdoor service of food and beverages, including
15 alcoholic beverages, except that municipalities may prohibit or limit
16 operations for the hours after 10:00 p.m. and between 12:00 a.m.
17 and 11:00 a.m. on Sundays through Wednesdays, and between
18 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
19 the exception that a municipal ordinance prohibiting or limiting the
20 days and hours of indoor service of food and beverages, including
21 alcoholic beverages, may be applied to the outdoor service of food
22 and beverages, including alcoholic beverages, as a condition of the
23 zoning approval pursuant to section 3 of P.L. , c. (C.)
24 (pending before the Legislature as this bill). This provision shall
25 not be construed as overruling or prohibiting the authority of a city
26 of the first class to impose more restrictive time restrictions or
27 prohibit or limit the days and hours of the outdoor service of food
28 and beverages.

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

36
37 6. A public sidewalk or an outdoor space ¹, including
38 pedestrian walkways and pedestrian malls, ¹ which is subject to a
39 premises expansion permit issued pursuant to section 2 or section 3
40 of P.L. , c. (C.) (pending before the Legislature as this bill) ²
41 shall be considered a portion of the premises that is open to the
42 public for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).
43

44 7. Nothing in P.L. , c. (C.) (pending before the
45 Legislature as this bill) shall be interpreted or construed as permitting
46 or mandating the opening, expansion, or resumption of unlimited
47 operations of a restaurant that does not sell alcoholic beverages and the
48 holder of a ²COVID-19 Expansion Permit issued by the Director of the

1 Division of Alcoholic Beverage Control pursuant to the provisions of
2 Special Ruling No. 2020-10 or a² premises expansion permit issued
3 pursuant ²to² section 2 of P.L. , c. (C.) (pending before the
4 Legislature as this bill) that is closed, whether permanently or
5 temporarily, or operating subject to limitations on its operations,
6 service, or hours, as a result of disciplinary or legal sanctions imposed
7 by, or entering into a settlement agreement with, a court of the State of
8 New Jersey, a municipal court, the New Jersey Department of Law
9 and Public Safety, the New Jersey Division of Alcoholic Beverage
10 Control, or a municipal governing body acting as a local alcoholic
11 beverage control board, as applicable.
12

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

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

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

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

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

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

39 c. Nothing in this act shall preclude or limit the authority
40 provided to the Director of the Division of Alcoholic Beverage Control
41 pursuant to the provisions of Title 33 of the Revised Statutes or the
42 exercise of such authority thereby.²

43 (cf: P.L.2022, c.85, s.2)
44

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

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

5
6 ²**[8.] 10.**² Nothing in P.L. , c. (C.) (pending before the
7 Legislature as this bill) permits the use of State-owned rights-of-
8 way for the purposes of outdoor dining. A permit for the use of the
9 State rights-of-way shall be issued upon application and approval of
10 the New Jersey Department of Transportation. For the purposes of
11 locally-owned roads that intersect the State highway system,
12 setbacks from the State right-of-way line will be 50 feet from April
13 1 to October 31, and 100 feet from November 1 to March 31.

14
15 ²**[9.] 11.**² This act shall take effect immediately ², except that
16 subsections a. through e. of section 2 shall remain inoperative until
17 May 30, 2025 but the director may take such anticipatory action as
18 may be necessary to effectuate those provisions of this act².