

SENATE, No. 3608

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED SEPTEMBER 19, 2024

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator VINCENT J. POLISTINA

District 2 (Atlantic)

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 introduced.



(Sponsorship Updated As Of: 9/30/2024)

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, out-of-State winery
10 license, 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 or adjacent to the business premises,
25 which space is owned, leased, or otherwise in the lawful control of
26 the owner or operator of the business premises.

27 “Premises expansion permit” means a permit issued to a
28 manufacturer license or retail consumption license that entitles the
29 license holder to use outdoor spaces that they own or lease and that
30 are located either on, or adjacent to, their business premises, as an
31 extension of their business premises for the purpose of conducting
32 sales of food and beverages.

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

36

37 2. a. The Director of the Division of Alcoholic Beverage
38 Control shall issue to the holder of an alcoholic beverage
39 manufacturer license or retail consumption license a premises
40 expansion permit upon application by the license holder. The permit
41 shall entitle the license holder to sell alcoholic beverages in outdoor
42 spaces that they own or lease and that are located either on, or
43 adjacent to, their business premises, as an extension of their
44 business premises.

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

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

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

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

7 (4) proposed security plan for sale and service of alcoholic
8 beverages on the expanded premises including prevention of pass-
9 offs, underage drinking, and over-consumption;

10 c. The director shall transfer the application for a premises
11 expansion permit to the municipal clerk and police chief of the
12 municipal governing body in which the manufacturer license or
13 retail consumption license situated. For licensed premises located
14 on property owned by or under the control of any political
15 subdivision of this State, the application shall be reviewed and
16 approved by a designated administrative official and the chief law
17 enforcement officer responsible for the licensed property.

18 The director shall not approve or deny an application until it
19 receives an endorsement or approval by the appropriate governing
20 body officials.

21 d. A premises expansion permit issued pursuant to this section
22 renews on the same date that the retail consumption license or
23 manufacturer license is renewed by the license holder.

24 e. A license holder who held a temporary expansion permit
25 issued pursuant to the director's special ruling prior to the effective
26 date of this act shall be entitled to convert the permit to a premises
27 expansion permit established pursuant to this section. A license
28 holder who held the temporary expansion permit prior the effective
29 date of this act and converts the permit pursuant to this subsection
30 shall not be required to submit to the director or municipal
31 governing authority an additional application pursuant to P.L. ,
32 c. (C.) (pending before the Legislature as this bill).

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 outdoor
38 spaces that they own or lease and that are located either on, or
39 adjacent to, their business premises, as an extension of their
40 business premises.

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
44 outdoor spaces as an extension of their businesses shall file an
45 application with the municipal zoning officer. The application to
46 the municipal zoning officer shall include:

47 (1) a plan, sketch, picture, or drawing that depicts the design,
48 dimensional boundaries, and placement of tents, canopies,

1 umbrellas, tables, chairs, and other fixtures of the outdoor spaces;
2 and

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

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

15 (1) written consent of the owner of the premises, if other than
16 the applicant;

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

21 (3) an indemnification agreement with the municipality with
22 respect to losses arising solely from the operation of the outdoor
23 dining facility.

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

35 (2) A municipality may deny, revoke, or temporarily suspend
36 the permit of any applicant or permittee that violates, or is not in
37 compliance with, any provision of P.L. , c. (C.) (pending
38 before the Legislature as this bill) or any provision of a law,
39 ordinance, or regulation related to health, safety, fire, permitted use,
40 zoning, or the consumption or control of alcoholic beverages not
41 otherwise under the jurisdiction of the Division of Alcoholic
42 Beverage Control, and may also deny, revoke, or temporarily
43 suspend the permit of any applicant or permittee based on any
44 action taken against the applicant or permittee by the Division of
45 Alcoholic Beverage Control related to the division's enforcement of
46 any law or regulation related to the consumption or control of
47 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
3 of the municipality. The governing body, or its designee, shall
4 conduct a hearing and render a decision within 30 days of the filing
5 of the appeal. The governing body may designate a municipal
6 official or an attorney licensed in the State of New Jersey to serve
7 as a hearing officer in place of the governing body for the purpose
8 of conducting said hearing and rendering said decision. Nothing in
9 P.L. , c. (C.) (pending before the Legislature as this bill)
10 shall be construed to restrict the right of any party to obtain a
11 review by any court of competent jurisdiction, according to law.

12 e. A permit issued pursuant to this section to a restaurant
13 without an alcoholic beverage retail license shall renew annually.

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

19 g. The owner or operator of a restaurant that does not sell
20 alcoholic beverages and the holder of an alcoholic beverage
21 manufacturer license or retail consumption license who held a
22 temporary permit issued by the municipality prior to the effective
23 date of this act shall be entitled to convert the permit to a premises
24 expansion permit established pursuant to this section. An owner or
25 operator of a restaurant that does not sell alcoholic beverages and
26 the holder of an alcoholic beverage manufacturer license or retail
27 consumption license who held a temporary permit issued by the
28 municipality prior prior the effective date of this act and converts
29 the permit pursuant to this subsection shall not be required to
30 municipal governing authority an additional application pursuant to
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32
33 4. The installation and continuous use of tents, canopies,
34 umbrellas, tables, chairs, and other fixtures on private property or
35 public property or right of way designated by a municipality
36 pursuant to P.L. , c. (C.) (pending before the Legislature as
37 this bill) shall be a permitted use provided that the tent, canopy,
38 umbrella, table, chairs, or other fixture conforms to all applicable
39 provisions of the State Uniform Construction Code and Uniform
40 Fire Code, which have been adopted by the Commissioner of
41 Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et
42 seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

43
44 5. a. Notwithstanding any provision of P.L. , c. (C.)
45 (pending before the Legislature as this bill) to the contrary, all other
46 municipal ordinances pertaining to sanitation, property
47 maintenance, noise, business days and hours of operation, and days
48 and hours of service of alcoholic beverages shall apply, unless

1 specifically suspended or modified by the municipality or
2 specifically prohibited by the provisions of this section.

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

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

31

32 6. A public sidewalk or an outdoor space shall be considered a
33 portion of the premises that is open to the public for the purposes of
34 section 5 of P.L.1999, c.90 (C.2C:33-27).

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36 7. Nothing in P.L. , c. (C.) (pending before the
37 Legislature as this bill) shall be interpreted or construed as
38 permitting or mandating the opening, expansion, or resumption of
39 unlimited operations of a restaurant that does not sell alcoholic
40 beverages and the holder of a premises expansion permit issued
41 pursuant section 2 of P.L. , c. (C.) (pending before the
42 Legislature as this bill) that is closed, whether permanently or
43 temporarily, or operating subject to limitations on its operations,
44 service, or hours, as a result of disciplinary or legal sanctions
45 imposed by, or entering into a settlement agreement with, a court of
46 the State of New Jersey, a municipal court, the New Jersey
47 Department of Law and Public Safety, the New Jersey Division of

1 Alcoholic Beverage Control, or a municipal governing body acting
2 as a local alcoholic beverage control board, as applicable.

3
4 8. Nothing in P.L. , c. (C.) (pending before the
5 Legislature as this bill) permits the use of State-owned rights-of-
6 way for the purposes of outdoor dining. A permit for the use of the
7 State rights-of-way shall be issued upon application and approval of
8 the New Jersey Department of Transportation. For the purposes of
9 locally-owned roads that intersect the State highway system,
10 setbacks from the State right-of-way line will be 50 feet from April
11 1 to October 31, and 100 feet from November 1 to March 31.

12
13 9. This act shall take effect immediately.

14
15

16 STATEMENT

17

18 This bill permits restaurants and certain alcoholic beverage
19 retailers and manufacturers to extend their premises to certain
20 outdoor locations. Under the bill, owners and operators of these
21 businesses may be permitted to use outdoor spaces, as defined in the
22 bill, that they own or lease and that are located on, or adjacent to, their
23 business premises, as an extension of their business premises for the
24 purpose of conducting sales of food and beverages, including alcoholic
25 beverages if licensed. The bill provides that alcoholic beverage
26 retailers and manufacturers are to include, the holder of a plenary retail
27 consumption license, plenary retail consumption license used in
28 connection with a hotel or motel, seasonal retail consumption license,
29 or club license or concessionaire permit, plenary winery license, farm
30 winery license, out-of-State winery license, limited brewery license,
31 restricted brewery license, cidery and meadery license, and craft
32 distillery license.

33 The bill also allows the owners and operators of those
34 establishments to use public sidewalks, as defined in the bill, as an
35 extension of their business premises for that purpose.

36 Under the bill, the Director of the Division of Alcoholic Beverage
37 Control (ABC) is to issue to the holder of an alcoholic beverage
38 manufacturer license or retail consumption license a premises
39 expansion permit upon application by the license holder. The permit is
40 to entitle the license holder to sell alcoholic beverages in outdoor
41 spaces that they own or lease and that are located either on, or
42 adjacent to, their business premises, as an extension of their
43 business premises. The ABC director would then transfer the
44 application for premises expansion permit to the municipal clerk and
45 police chief of the municipal governing body in which the
46 manufacturer license or retail consumption license situated. The
47 director would not approve or deny an application until receipt of
48 an endorsement or approval by the appropriate governing body

1 officials. The holder of a temporary expansion permit issued by the
2 ABC director prior to the bill's enactment would be entitled to
3 convert that temporary permit into a permanent permit issued under
4 the bill.

5 In addition, the bill requires owners and operators of those
6 establishments seeking to utilize outdoor spaces or public sidewalks as
7 extensions of their business premises to file an application with the
8 municipal zoning officer, including information concerning the use of
9 the outdoor spaces or public sidewalks, as appropriate, pursuant to the
10 requirements provided in the bill.

11 The installation and continuous use of tents, canopies, umbrellas,
12 tables, chairs, and other fixtures on private property or public
13 property or right of way designated by a municipality are to be a
14 permitted use provided that the tent, canopy, umbrella, table, chairs,
15 or other fixture conforms to all applicable provisions of the State
16 Uniform Construction Code and Uniform Fire Code.

17 The bill provides that all other municipal ordinances pertaining
18 to sanitation, property maintenance, noise, business days and hours
19 of operation, and days and hours of service of alcoholic beverages
20 are to apply, unless specifically suspended or modified by the
21 municipality or specifically prohibited by the provisions of the bill.

22 With respect to a restaurant, bar, distillery, or brewery operating
23 in outdoor spaces, a municipality is not to prohibit or limit the days
24 and hours of the outdoor service of food and beverages, including
25 alcoholic beverages, except that municipalities may prohibit or limit
26 operations for the hours after 10:00 p.m. and between 12:00 a.m.
27 and 11:00 a.m. on Sundays through Wednesdays, and between
28 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
29 the exception that a municipal ordinance prohibiting or limiting the
30 days and hours of indoor service of food and beverages, including
31 alcoholic beverages, may be applied to the outdoor service of food
32 and beverages, including alcoholic beverages, as a condition of the
33 zoning approval pursuant to the bill. This provision shall not be
34 construed as overruling or prohibiting the authority of a city of the
35 first class to impose more restrictive time restrictions or prohibit or
36 limit the days and hours of the outdoor service of food and
37 beverages.

38 The bill provides that a municipality may either prohibit or limit
39 the days and hours of any live performances, including musical
40 performances, and the playing or projection of any content from a
41 recording, streaming service or television, cable, or Internet
42 broadcasting service in outdoor spaces or on public sidewalks as a
43 condition of the zoning approval.

44 Nothing in the bill is to be interpreted or construed as permitting
45 or mandating the opening, expansion, or resumption of unlimited
46 operations of a restaurant, bar, or brewery that is closed, whether
47 permanently or temporarily, or operating subject to limitations on
48 its operations, service, or hours, as a result of disciplinary or legal

1 sanctions imposed by, or entering into a settlement agreement with,
2 a court of the State of New Jersey, a municipal court, the New
3 Jersey Department of Law and Public Safety, the New Jersey
4 Division of Alcoholic Beverage Control, or a municipal governing
5 body acting as a local alcoholic beverage control board, as
6 applicable. Further, nothing in the bill permits the use of State-
7 owned rights-of-way for the purposes of outdoor dining. A permit
8 for the use of the State rights-of-way is to be issued upon
9 application and approval of the New Jersey Department of
10 Transportation. For the purposes of locally-owned roads that
11 intersect the State highway system, setbacks from the State right-of-
12 way line will be 50 feet from April 1 to October 31, and 100 feet
13 from November 1 to March 31.

14 Under the bill, a permit issued to a restaurant, bar, distillery, or
15 brewery with an alcoholic beverage retail license issued by the
16 Division of Alcoholic Beverage Control in the Department of Law
17 and Public Safety is to renew with that license, provided the legal
18 entity holding the license has not changed. A permit issued to a
19 restaurant without an alcoholic beverage retail license is to renew
20 annually.