

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 594

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H594-ABB-29 [v.8]

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Amends Title [YES]
Third Edition

Date _____, 2020

Senator Gunn

1 moves to amend the bill on page 1, line 5, by deleting "(COVID-19)." and substituting
2 "(COVID-19) AND TO ALLOW CERTAIN EXISTING ESTABLISHMENTS TO OFFER
3 AND OPERATE OUTDOOR DINING AND BEVERAGE SERVICE OPTIONS.";

4
5
6 and on page 1, line 7, by deleting "SECTION 1." And substituting "SECTION 1.(a).";

7
8
9 and on page 2, line 35-38 by rewriting the lines to read:

10
11 "SECTION 1.(b). This section is effective when it becomes law and expires 30 days
12 after any declaration of emergency prohibitions and restrictions applicable expire or are
13 otherwise terminated to permit indoor or outdoor fitness and exercise facilities, gyms, health
14 clubs, and fitness centers to open for full unrestricted operations.

15 SECTION 2.(a). Notwithstanding any declaration of emergency issued under Article
16 1A of Chapter 166A of the General Statutes or any municipal or county ordinance adopted under
17 that Article related to the public health emergency created by COVID-19, any establishment that
18 prepares or serves food or drink, as defined in and regulated under Part 6 of Article 8 of Chapter
19 130A of the General Statutes, may open and operate its food and drink service for on-premises
20 consumption provided all the following apply:

- 21 (1) The establishment was in existence on March 10, 2020, is properly licensed
22 and permitted, and holds all necessary State and local regulatory permits,
23 including, if applicable, any necessary ABC permits.
24 (2) If the establishment holds ABC permits, the establishment is not any of the
25 following:
26 a. A private club as defined by G.S. 18B-1000.
27 b. A private bar as defined by G.S. 18B-1000.
28 c. A winery permitted pursuant to G.S. 18B-1101 or G.S. 18B-1102.
29 d. A distillery permitted pursuant to G.S. 18B-1105.
30 (3) The food and drink service operation for on-premises consumption is limited
31 to any authorized indoor seating and to the outdoor seating location. The
32 owner or owners of that outdoor seating location must have granted the



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- 1 establishment permission to use the location for its food and drink service
2 operation.
- 3 (4) The outdoor food and drink service seating capacity is limited to fifty percent
4 (50%) of the current indoor seating capacity of the establishment, or 100
5 customers, whichever is less.
- 6 (5) The outdoor seating location is on the same parcel or is contiguous to or in
7 close proximity to the underlying establishment and contains or has access to
8 lavatory and toilet facilities for employees and customers as required for such
9 establishments under rules established by the North Carolina Department of
10 Health and Human Services.
- 11 (6) If the establishment holds ABC permits and serves alcohol pursuant to those
12 permits, the outdoor seating location must have delineated vertical boundaries
13 that the consumer would recognize as indicating the boundaries that
14 physically separate areas where consumption of alcohol is allowed from areas
15 open to the general public other than customers of the establishment.
- 16 (7) The establishment maintains and enforces the social distancing requirements
17 recommended by the federal Centers for Disease Control and Prevention and
18 the North Carolina Department of Health and Human Services.
- 19 (8) The establishment complies with all rules and regulations promulgated by the
20 Division of Public Health of the North Carolina Department of Health and
21 Human Services applicable to outdoor food and drink service.
- 22 (9) The outdoor seating location may include a covered patio or areas covered by
23 tents, awnings, tarps, umbrellas, or other similar coverings. For purposes of
24 this subdivision, "tent" shall mean a temporary structure, with or without side
25 panels, constructed by draping or otherwise attaching sheets of fabric, plastic,
26 or other material to a framework of poles or supports.
- 27 (10) The outdoor seating location may include areas on a public sidewalk if the
28 local government allows through its ordinances or permitting process the use
29 of public sidewalks for the service of and consumption of food or drink and
30 the establishment obtains any necessary local government approval. Nothing
31 in this act is intended to require a local government to approve the use of
32 public sidewalks for the service of and consumption of food or drink.
- 33 (11) The outdoor seating location may include areas on a public street if the local
34 government allows through its ordinances or permitting process the use of
35 public streets during periods of temporary street closure for the service of and
36 consumption of food or drink and the establishment obtains any necessary
37 local government approval. Nothing in this act is intended to require a local
38 government to temporarily close public streets for the service of and
39 consumption of food or drink or to allow the service of and consumption of
40 food or drink on public streets during a period of temporary closure.

41 **SECTION 2.(b).** Notwithstanding any declaration of emergency issued under
42 Article 1A of Chapter 166A of the General Statutes or any municipal or county ordinance adopted
43 under that Article related to the public health emergency created by COVID-19, any (i) private

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1 club or private bar as defined by G.S. 18B-1000, (ii) winery permitted pursuant to G.S. 18B-1101
2 or G.S. 18B-1102, or (iii) distillery permitted pursuant to G.S. 18B-1105 may open and serve
3 alcohol for on-premises consumption provided all the following apply:

- 4 (1) The establishment was in existence on March 10, 2020, is properly licensed
5 and permitted, and holds all necessary State and local regulatory permits,
6 including any necessary ABC permits.
- 7 (2) The service is limited to an outdoor seating location and the owner or owners
8 of that outdoor seating location have granted the establishment permission to
9 use the location for its service.
- 10 (3) The outdoor seating location is on the same parcel or is contiguous to or in
11 close proximity to the underlying establishment and contains or has access to
12 lavatory and toilet facilities for employees and customers as required for such
13 establishments under rules established by the North Carolina Alcoholic
14 Beverage Control Commission.
- 15 (4) The outdoor seating location has delineated vertical boundaries that the
16 consumer would recognize as indicating the boundaries that physically
17 separate areas where consumption of alcohol is allowed from areas open to
18 the general public other than customers of the establishment.
- 19 (5) The outdoor service seating capacity is limited to fifty percent (50%) of the
20 current indoor seating capacity of the establishment, or 100 customers,
21 whichever is less.
- 22 (6) The establishment maintains and enforces the social distancing requirements
23 recommended by the federal Centers for Disease Control and Prevention and
24 the North Carolina Department of Health and Human Services.
- 25 (7) The establishment complies with all rules and regulations promulgated by the
26 Division of Public Health of the North Carolina Department of Health and
27 Human Services applicable to outdoor food and drink service.
- 28 (8) The outdoor seating location may include a covered patio or areas covered by
29 tents, awnings, tarps, umbrellas, or other similar coverings. For purposes of
30 this subdivision, "tent" shall mean a temporary structure, with or without side
31 panels, constructed by draping or otherwise attaching sheets of fabric, plastic,
32 or other material to a framework of poles or supports.
- 33 (9) The outdoor seating location may include areas on a public sidewalk if the
34 local government allows through its ordinances or permitting process the use
35 of public sidewalks for the service of and consumption of food or drink and
36 the establishment obtains any necessary local government approval. Nothing
37 in this act is intended to require a local government to approve the use of
38 public sidewalks for the service of and consumption of food or drink.
- 39 (10) The outdoor seating location may include areas on a public street if the local
40 government allows through its ordinances or permitting process the use of
41 public streets during periods of temporary street closure for the service of and
42 consumption of food or drink and the establishment obtains any necessary
43 local government approval. Nothing in this act is intended to require a local

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1 government to temporarily close public streets for the service of and
2 consumption of food or drink or to allow the service of and consumption of
3 food or drink on public streets during a period of temporary closure.

4 **SECTION 2.(c).** The outdoor seating area authorized in Sections 2(a) and 2(b) of
5 this section shall not be prohibited by a municipality or county because the outdoor seating area
6 is not a permitted use for operation of food and drink services under zoning ordinances.

7 **SECTION 2.(d).** This section is effective when it becomes law and expires upon the
8 later of (i) 30 days after any declaration of emergency prohibitions and restrictions applicable
9 expire or are otherwise terminated to permit the establishment to open for full unrestricted service
10 of food and drink or (ii) October 31, 2020.

11 **SECTION 3.** Notwithstanding Sections 1 and 2 of this act, the Governor may, with
12 a concurrence of the majority of the Council of State, exercise powers granted under
13 G.S. 166A-19.30(b) or (c) related to establishments that prepare or serve food or drink, private
14 clubs or private bars, wineries, distilleries, exercise and fitness facilities, gyms, health clubs, or
15 fitness centers. In obtaining a concurrence of a majority of the Council of State for this purpose,
16 the Governor shall contact each member of the Council of State regarding the potential exercise
17 of the emergency powers under G.S. 166A-19.30(b) or (c) and seek the concurrence or
18 nonconcurrence of that member. The Governor shall document and release the concurrence,
19 nonconcurrence, or no response provided by each member of the Council of State by name. Upon
20 receiving and releasing the majority concurrence, the Governor may exercise the power or
21 powers under G.S. 166A-19.30(b) or (c) as described to the members of the Council of State.

22 **SECTION 4.** Notwithstanding the provisions of G.S. 130A-20, the Secretary of
23 Health and Human Services or the Secretary of Environmental Quality may only order an
24 abatement of an imminent hazard related to COVID-19 that requires closure of establishments
25 that prepare or serve food or drink, private clubs or private bars, wineries, distilleries, exercise
26 and fitness facilities, gyms, health clubs, or fitness centers upon notification to the Governor and
27 with a concurrence of the majority of the Council of State. In obtaining a concurrence of a
28 majority of the Council of State for this purpose, each member of the Council of State shall be
29 contacted regarding the potential exercise of the powers under G.S. 130A-20 and seek the
30 concurrence or nonconcurrence of that member. Each response shall be documented and released
31 with respect to concurrence, nonconcurrence, or no response provided by each member of the
32 Council of State by name. Upon receiving and releasing the majority concurrence, the appropriate
33 Secretary may exercise the power under G.S. 130A-20 as described to the members of the
34 Council of State.

35 **SECTION 5.** This act is effective when it becomes law."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
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