

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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**HOUSE BILL 633
Committee Substitute Favorable 4/29/19
Senate Judiciary Committee Substitute Adopted 6/26/19
Fourth Edition Engrossed 8/26/19
Proposed Conference Committee Substitute H633-PCCS40703-BB-2**

Short Title: Temp. Outdoor Restaurant/Bar.

(Public)

Sponsors:

Referred to:

April 10, 2019

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN EXISTING ESTABLISHMENTS TO OFFER AND OPERATE TEMPORARY OUTDOOR DINING AND BEVERAGE SERVICE OPTIONS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding Executive Order No. 141, Easing Restrictions on Travel, Business Operations, and Mass Gatherings: Phase Two, issued by Governor Roy A. Cooper on May 20, 2020, any establishment that prepares or serves food or drink, as defined in and regulated under Part 6 of Article 8 of Chapter 130A of the General Statutes, may open and operate its food and drink service for on-premises consumption provided all of the following apply:

- (1) The establishment was in existence on March 10, 2020, is properly licensed and permitted, and holds all necessary State and local regulatory permits, including, if applicable, any necessary ABC permits.
- (2) If the establishment holds ABC permits, the establishment is not any of the following:
 - a. A private club as defined by G.S. 18B-1000.
 - b. A private bar as defined by G.S. 18B-1000.
 - c. A winery permitted pursuant to G.S. 18B-1101 or G.S. 18B-1102.
 - d. A distillery permitted pursuant to G.S. 18B-1105.
- (3) The food and drink service operation for on-premises consumption is limited to any authorized indoor seating and to the outdoor seating location. The owner or owners of that outdoor seating location must have granted the establishment permission to use the location for its food and drink service operation.
- (4) The outdoor food and drink service seating capacity is limited to fifty percent (50%) of the current indoor seating capacity of the establishment, or 100 customers, whichever is less.
- (5) The outdoor seating location is on the same parcel or is contiguous to or in close proximity to the underlying establishment and contains or has access to lavatory and toilet facilities for employees and customers as required for such establishments under rules established by the North Carolina Department of Health and Human Services.



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

31 **SECTION 1.(b)** Notwithstanding Executive Order No. 141, Easing Restrictions on
32 Travel, Business Operations, and Mass Gatherings: Phase Two, issued by Governor Roy A.
33 Cooper on May 20, 2020, any (i) private club or private bar as defined by G.S. 18B-1000, (ii)
34 winery permitted pursuant to G.S. 18B-1101 or G.S. 18B-1102, or (iii) distillery permitted
35 pursuant to G.S. 18B-1105 may open and serve alcohol for on-premises consumption provided
36 all of the following apply:

- 37 (1) The establishment was in existence on March 10, 2020, is properly licensed
38 and permitted, and holds all necessary State and local regulatory permits,
39 including any necessary ABC permits.
- 40 (2) The service is limited to an outdoor seating location and the owner or owners
41 of that outdoor seating location have granted the establishment permission to
42 use the location for its service.
- 43 (3) The outdoor seating location is on the same parcel or is contiguous to or in
44 close proximity to the underlying establishment and contains or has access to
45 lavatory and toilet facilities for employees and customers as required for such
46 establishments under rules established by the North Carolina Alcoholic
47 Beverage Control Commission.
- 48 (4) The outdoor seating location has delineated vertical boundaries that the
49 consumer would recognize as indicating the boundaries that physically
50 separate areas where consumption of alcohol is allowed from areas open to
51 the general public other than customers of the establishment.

- 1 (5) The outdoor service seating capacity is limited to fifty percent (50%) of the
2 current indoor seating capacity of the establishment, or 100 customers,
3 whichever is less.
- 4 (6) The establishment maintains and enforces the social distancing requirements
5 recommended by the federal Centers for Disease Control and Prevention and
6 the North Carolina Department of Health and Human Services.
- 7 (7) The establishment complies with all rules and regulations promulgated by the
8 Division of Public Health of the North Carolina Department of Health and
9 Human Services applicable to outdoor food and drink service.
- 10 (8) The outdoor seating location may include a covered patio or areas covered by
11 tents, awnings, tarps, umbrellas, or other similar coverings. For purposes of
12 this subdivision, "tent" shall mean a temporary structure, with or without side
13 panels, constructed by draping or otherwise attaching sheets of fabric, plastic,
14 or other material to a framework of poles or supports.
- 15 (9) The outdoor seating location may include areas on a public sidewalk if the
16 local government allows through its ordinances or permitting process the use
17 of public sidewalks for the service of and consumption of food or drink and
18 the establishment obtains any necessary local government approval. Nothing
19 in this act is intended to require a local government to approve the use of
20 public sidewalks for the service of and consumption of food or drink.
- 21 (10) The outdoor seating location may include areas on a public street if the local
22 government allows through its ordinances or permitting process the use of
23 public streets during periods of temporary street closure for the service of and
24 consumption of food or drink and the establishment obtains any necessary
25 local government approval. Nothing in this act is intended to require a local
26 government to temporarily close public streets for the service of and
27 consumption of food or drink or to allow the service of and consumption of
28 food or drink on public streets during a period of temporary closure.

29 **SECTION 1.(c)** The outdoor seating area authorized in subsections (a) and (b) of
30 this section shall not be prohibited by a municipality or county because the outdoor seating area
31 is not a permitted use for operation of food and drink services under zoning ordinances.

32 **SECTION 2.** This act is effective when it becomes law and expires when Executive
33 Order No. 141, issued on May 20, 2020, is repealed, replaced, or rescinded.