

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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**HOUSE BILL 536
Committee Substitute Favorable 5/1/19
Committee Substitute #2 Favorable 6/27/19
Committee Substitute #3 Favorable 7/8/19
Fifth Edition Engrossed 7/9/19
Senate Commerce and Insurance Committee Substitute Adopted 5/26/20
Seventh Edition Engrossed 5/28/20**

Short Title: Temp Outdoor Restaurants for Outdoor Seating. (Public)

Sponsors:

Referred to:

April 3, 2019

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN EXISTING ESTABLISHMENTS TO OFFER AND OPERATE OUTDOOR DINING AND BEVERAGE SERVICE OPTIONS WHILE ALSO SAFEGUARDING THE PUBLIC HEALTH TO PREVENT THE SPREAD OF CORONAVIRUS DISEASE 2019 (COVID-19).

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any declaration of emergency issued under Article 1A of Chapter 166A of the General Statutes or any municipal or county ordinance adopted under that Article related to the public health emergency created by COVID-19, 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 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



1 lavatory and toilet facilities for employees and customers as required for such
2 establishments under rules established by the North Carolina Department of
3 Health and Human Services.

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

34 **SECTION 2.** Notwithstanding any declaration of emergency issued under Article
35 1A of Chapter 166A of the General Statutes or any municipal or county ordinance adopted under
36 that Article related to the public health emergency created by COVID-19, any (i) private club or
37 private bar as defined by G.S. 18B-1000, (ii) winery permitted pursuant to G.S. 18B-1101 or
38 G.S. 18B-1102, or (iii) distillery permitted pursuant to G.S. 18B-1105 may open and serve
39 alcohol for on-premises consumption provided all the following apply:

- 40 (1) The establishment was in existence on March 10, 2020, is properly licensed
41 and permitted, and holds all necessary State and local regulatory permits,
42 including any necessary ABC permits.
- 43 (2) The service is limited to an outdoor seating location and the owner or owners
44 of that outdoor seating location have granted the establishment permission to
45 use the location for its service.
- 46 (3) The outdoor seating location is on the same parcel or is contiguous to or in
47 close proximity to the underlying establishment and contains or has access to
48 lavatory and toilet facilities for employees and customers as required for such
49 establishments under rules established by the North Carolina Alcoholic
50 Beverage Control Commission.

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

33 **SECTION 3.** The outdoor seating area authorized in Sections 1 and 2 of this act shall
34 not be prohibited by a municipality or county because the outdoor seating area is not a permitted
35 use for operation of food and drink services under zoning ordinances.

36 **SECTION 4.** This act is effective when it becomes law and expires upon the later of
37 (i) 30 days after any declaration of emergency prohibitions and restrictions applicable expire or
38 are otherwise terminated to permit the establishment to open for full unrestricted service of food
39 and drink or (ii) October 31, 2020.