



HOUSE BILL 536: Temp Outdoor Restaurants for Outdoor Seating.

2019-2020 General Assembly

Committee:		Date:	October 27, 2020
Introduced by:	Reps. McGrady, Boles, Hardister	Prepared by:	Erika Churchill Staff Attorney
Analysis of:	Ratified		

OVERVIEW: *House Bill 536 would have temporarily authorized existing food establishment, private clubs or private bars, wineries, and distilleries to offer and operate outdoor dining and beverage service options, provided specific conditions were met. House Bill 536 was ratified by the General Assembly on May 28, 2020, and was vetoed by the Governor on June 5, 2020.*

CURRENT LAW AND BACKGROUND:

- On March 10, 2020, by Executive Order No. 116, Governor Cooper declared a State of Emergency to address COVID-19.
- On March 17th, under Executive Order No. 118, the Governor limited the sale of food and beverages by restaurants and bars to carry-out, drive-through, and delivery only until March 31st, or until the Order was rescinded or replaced.
- On March 27th by Executive Order No. 121, the restrictions for off-premises consumption only were upheld to be effective for 30 days from March 30th unless repealed, replaced, or rescinded by another Order.
- On April 23, 2020 by Executive Order No. 135, the restrictions on restaurants and bars were further extended to May 8, 2020.
- On May 5, 2020, the Governor issued Executive Order No. 138 which extended restrictions on restaurants and bars. Executive Order No. 138 remained in effect until 5:00 p.m. on May 22nd.
- Effective 5:00 p.m. on May 22, 2020, Executive Order No. 141 permitted restaurants to allow on-premises consumption of food and beverages under certain restrictions, but does not permit bars to allow on-premises consumption of beverages.
- Since March 10, 2020, various counties and cities have also declared states of emergency related to COVID-19, some placing restrictions and prohibitions on operation of restaurants and bars.

BILL ANALYSIS: HB 536 would have allowed any food establishment that prepares or serves food or drink (Part 6, Article 8 of Chapter 130A of the General Statutes) to open and operate for on-premises consumption of food and beverage provided at least all of the following conditions were met:

- The establishment is properly licensed and permitted and was in existence on March 10, 2020, and does not hold an ABC permit as a private club, private bar, winery, or distillery.

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Director

H536-SMST-121(rat)-v-4

Legislative Analysis
Division
919-733-2578

House Bill 536

Page 2

- Service is limited to any indoor seating permitted by the emergency declaration restrictions and the temporary outdoor seating location.
- The outdoor seating location is limited to 50% of the current indoor capacity or 100 customers, whichever is less.
- If the establishment holds ABC permits, vertical boundaries delineate the alcohol consumption area in the outdoor seating location from general public areas.
- The establishment maintains and enforces social distancing, as recommended by the Centers for Disease Control and NC Department of Health and Human Services and complies with outdoor food and drink service regulations promulgated by the NC Division of Public Health.
- The outdoor seating location is on the same parcel or contiguous to, or in close proximity to, the establishment and can include public sidewalks and public streets, if allowed by local government.

The bill would have also allowed any private club or private bar (G.S. 18B-1000), winery (G.S. 18B-1101), or distillery (G.S. 18B-1105) to open and serve alcohol for on-premises consumption provided the all of the following conditions were met:

- The establishment is properly licensed and permitted and was in existence on March 10, 2020.
- Service is limited to an outdoor seating location, the owner(s) of that location have permitted the establishment use the location, and vertical boundaries delineate the alcohol consumption area of the outdoor seating location.
- The outdoor seating location is limited to 50% of the normal indoor capacity or 100 customers, whichever is less.
- The establishment maintains and enforces social distancing, as recommended by the CDC and NCDHHS and complies with outdoor food and drink service regulations promulgated by the Division of Public Health.
- The outdoor seating location can include areas on public sidewalks and public streets, if allowed by the local government.
- Service is limited to an outdoor seating location and has access to toilet facilities for employees and customers.

With respect to the temporary outdoor seating authority for both restaurants and bars, a local government cannot prohibit the temporary outdoor seating location based upon it not being a permitted use for operation of food and drink services under any applicable local zoning ordinances.

EFFECTIVE DATE: HB 536 was ratified by the General Assembly on May 28, 2020, and was vetoed by the Governor on June 5, 2020.