



HOUSE BILL 594: Temp Open Gyms/Health Clubs/Fitness Ctrs.

2019-2020 General Assembly

Committee:		Date:	June 10, 2020
Introduced by:	Reps. K. Hall, Howard, D. Hall, Richardson	Prepared by:	Amy Darden
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *House Bill 594 would do the following:*

- *Authorize existing indoor or outdoor exercise and fitness facilities, gyms, health clubs, and fitness centers to open and resume operations, provided specific conditions are met, although temporarily closed by executive order due to COVID-19.*
- *Authorize existing food establishment, private clubs or private bars, wineries, and distilleries to offer and operate outdoor dining and beverage service options, provided specific conditions are met, although temporarily closed by executive order due to COVID-19.*
- *Allow the Governor, with a concurrence of the majority of the Council of State, to exercise emergency powers to reclose the restaurants, bars, and fitness facilities opened by House Bill 594, provided the concurrence is documented and released.*
- *Require the Secretary of Health and Human Services or the Secretary of Environmental Quality to seek the concurrence of the majority of the Council of State has been obtained and released when issuing an order of abatement related to COVID-19 that requires closure of restaurants, bars, and fitness facilities.*

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by restaurants and bars to carry-out, drive-through, and delivery only until March 31st, or until the Order was rescinded or replaced.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 23, 2020, under Executive Order No. 120, Governor Cooper ordered entertainment facilities without a retail or dining component to close at 5:00 p.m. on March 25th. Indoor exercise facilities, gyms, and health clubs were among the listed businesses ordered to close. Any retail or dining component of a facility could continue to operate solely for that purpose with limitations. The Order was to remain in effect for 30 days.
- 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121, the restrictions for off-premises consumption only were upheld to be effective for 30 days from March 30th unless repealed, replaced, or rescinded by another Order.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.

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- On May 5, 2020, by Executive Order No. 138 (Phase One), Governor Cooper extended restrictions on restaurants and bars, but does not permit bars to allow on-premises consumption of beverages. Executive Order 138 also extended the closure of indoor exercise facilities, gyms, health clubs, and fitness centers until 5:00 p.m. on May 22, 2020.
- On May 20, 2020, through Executive Order No. 141 (Phase Two), Governor Cooper ordered indoor exercise and fitness facilities, gyms, health clubs, and fitness centers to remain closed until June 26th at 5:00 p.m.
 - In the Order, examples of indoor exercise facilities are yoga studios, dance studios, martial arts facilities, indoor trampoline and rock climbing facilities.
 - Indoor fitness facilities are "including but not limited to" basketball, volleyball, racquetball, squash, and tennis courts.
- 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:

Section 1 effective when it becomes law and expires 30 days after any declaration of emergency prohibitions and restrictions applicable expire or are otherwise terminated to permit indoor or outdoor fitness and exercise facilities, gyms, health clubs, and fitness centers open for full unrestricted operations, would allow any indoor or outdoor exercise and fitness facilities, gyms, health clubs, and fitness centers to open and operate if certain conditions are met:

- The establishment existed on March 10, 2020 or had a valid certificate of occupancy and business license issued by that date.
- The total indoor capacity is limited to 50% of the authorized fire capacity. On-premises childcare is limited to 50%.
- Employees are screened daily for symptoms and must wear facemasks.
- Contactless and social distancing check-in is available.
- Bottles with disinfectant, disinfectant wipes, and hand sanitizer stations are available throughout the establishment.
- Employees must conduct frequent routine cleanings of high-touch equipment and high-use areas during operating hours, and a deep clean must be done after the close of business every day.
- For open space cardio, weight training, and exercise areas, equipment must be used in a manner to ensure social distancing, and employees must monitor the space to ensure equipment is being cleaned after each user.
- For studio and group fitness classes, participants must stay at least six feet apart and rooms and equipment must be cleaned after each class. Doors must remain open when possible, or facilities may review possible HVAC system upgrades to promote improved air filtration.

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- Only toilets, lavatories, and lockers are open for use. Water fountains are limited to filling water bottles only.

Section 2(a), effective when it becomes law, and expiring upon the later of 30 days after any declaration of emergency prohibitions and restrictions expire or are otherwise terminated to allow full unrestricted food and drink service or October 31, 2020, would allow any food establishment that prepares or serves food or drink (Part 6, Article 8 of Chapter 130A) to open and operate for on-premises consumption of food and beverage provided all of the following conditions are 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.
- 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 may include public sidewalks and public streets, if allowed by local government.

Section 2(b) effective when it becomes law, and expiring upon the later of 30 days after any declaration of emergency prohibitions and restrictions expire or are otherwise terminated to allow full unrestricted food and drink service or October 31, 2020, would allow 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 all of the following conditions are 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 may 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 may not 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.

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Section 3 provides that the Governor may, with a concurrence of the majority of the Council of State, exercise powers granted under the Emergency Management Act in G.S. 166A-19.30(b) or (c) related to establishments that prepare or serve food or drink, private clubs or private bars, wineries, distilleries, exercise and fitness facilities, gyms, health clubs, or fitness centers. Prior to exercising that authority, the Governor must contact the members of the Council of State to seek their concurrence or nonconcurrence to the potential exercise of this power. Once the Governor has obtained and released the concurrence, he may exercise the powers granted under G.S. 166A-19.30(b) or (c).

Section 4 would require that the Secretary of Health and Human Services or the Secretary of Environmental Quality seek a concurrence of the majority of the Council of State when exercising their power to declare properties in this State an imminent hazard, potentially closing a class of properties if the imminent hazard is related to COVID-19 with respect to the restaurants, bars and fitness facilities opened by House Bill 594. Each response must be documented and released, specifying concurrence, nonconcurrence, or no response provided by each Council of State member. Once the concurrence has been obtained and released, the Secretary may exercise the powers granted under G.S. 103A-20.

EFFECTIVE DATE: Except as otherwise stated, effective when it becomes law.

**Staff Attorney, Kristen Harris, substantially contributed to this summary.*