



HOUSE BILL 594: Temporarily Open Gyms/Health Clubs/Fitness Centers.

2019-2020 General Assembly

Committee:		Date:	October 21, 2020
Introduced by:	Reps. K. Hall, Howard, D. Hall, Richardson	Prepared by:	Amy Darden
Analysis of:	Ratified		Staff Attorney

OVERVIEW: *House Bill 594 would have done 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 HB594, 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.*

House Bill 594 was ratified by the General Assembly on June 10, 2020, and vetoed by the Governor on June 19, 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by restaurants and bars to carry-out, drive-through, and delivery only until March 31st, or until the Order was rescinded or replaced.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 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121, the restrictions for off-premises consumption only were upheld to be effective for 30 days from March 30th unless repealed, replaced, or rescinded by another Order.

Jeffrey Hudson
Director

H594-SMBB-90(rat)-v-5

Legislative Analysis
Division
919-733-2578

House Bill 594

Page 2

- 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, 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 would have been effective when it became law and expired 30 days after any declaration of emergency prohibitions and restrictions applicable expired or were otherwise terminated to permit indoor or outdoor fitness and exercise facilities, gyms, health clubs, and fitness centers opened for full unrestricted operations, would have allowed any indoor or outdoor exercise and fitness facilities, gyms, health clubs, and fitness centers to open and operate if certain conditions were 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 was limited to 50% of the authorized fire capacity. On-premises childcare was limited to 50%.
- Employees were screened daily for symptoms and must have worn facemasks.
- Contactless and social distancing check-in was available.
- Bottles with disinfectant, disinfectant wipes, and hand sanitizer stations were available throughout the establishment.
- Employees must have conducted frequent routine cleanings of high-touch equipment and high-use areas during operating hours, and a deep clean must have been done after the close of business every day.
- For open space cardio, weight training, and exercise areas, equipment must have been used in a manner to ensure social distancing, and employees must have monitored the space to ensure equipment was being cleaned after each user.

House Bill 594

Page 3

- For studio and group fitness classes, participants must have stayed at least six feet apart and rooms and equipment must have been cleaned after each class. Doors must have remained open when possible, or facilities could review possible HVAC system upgrades to promote improved air filtration.
- Only toilets, lavatories, and lockers were open for use. Water fountains were limited to filling water bottles only.

Section 2(a) would have been effective when it became law and expired 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 have allowed 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 were met:

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

Section 2(b) would have been effective when it became law and expired upon the later of 30 days after any declaration of emergency prohibitions and restrictions expired or are otherwise terminated to allow full unrestricted food and drink service or October 31, 2020, would have 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 all of the following conditions were met:

- The establishment was properly licensed and permitted and was in existence on March 10, 2020.
- Service was limited to an outdoor seating location, the owner(s) of that location had permitted the establishment use the location, and vertical boundaries delineated the alcohol consumption area of the outdoor seating location.
- The outdoor seating location was limited to 50% of the normal indoor capacity or 100 customers, whichever was less.
- The establishment maintained and enforced social distancing, as recommended by the CDC and NCDHHS and complied with outdoor food and drink service regulations promulgated by the Division of Public Health.
- The outdoor seating location could include areas on public sidewalks and public streets, if allowed by the local government.

House Bill 594

Page 4

- Service was limited to an outdoor seating location and had 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.

Section 3 would have provided that the Governor can, 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 can exercise the powers granted under G.S. 166A-19.30(b) or (c).

Section 4 would have required 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 HB 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 can exercise the powers granted under G.S. 103A-20.

EFFECTIVE DATE: House Bill 594 was ratified by the General Assembly on June 10, 2020, and vetoed by the Governor on June 19, 2020.