

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2019

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HOUSE BILL 594

Committee Substitute Favorable 5/3/19

Senate Commerce and Insurance Committee Substitute Adopted 6/4/20

Fourth Edition Engrossed 6/9/20

Short Title: Temp Open Gyms/Health Clubs/Fitness Ctrs.

(Public)

Sponsors:

Referred to:

April 8, 2019

1 **A BILL TO BE ENTITLED**

2 AN ACT TO AUTHORIZE INDOOR OR OUTDOOR EXERCISE AND FITNESS
3 FACILITIES, GYMS, HEALTH CLUBS, AND FITNESS CENTERS TO RESUME
4 OPERATIONS WHILE ALSO SAFEGUARDING THE PUBLIC HEALTH TO PREVENT
5 THE SPREAD OF THE CORONAVIRUS DISEASE 2019 (COVID-19) AND TO ALLOW
6 CERTAIN EXISTING ESTABLISHMENTS TO OFFER AND OPERATE OUTDOOR
7 DINING AND BEVERAGE SERVICE OPTIONS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** Notwithstanding any declaration of emergency issued under Article

10 1A of Chapter 166A of the General Statutes or any municipal or county ordinance adopted under
11 that Article related to the public health emergency created by COVID-19, any indoor or outdoor
12 (i) exercise and fitness facilities, (ii) gyms, (iii) health clubs, and (iv) fitness centers as referenced
13 in Section 8 of Executive Order No. 141, Easing Restrictions on Travel, Business Operations,
14 and Mass Gatherings: Phase Two, issued by Governor Roy A. Cooper on May 20, 2020, may
15 open and resume operations provided all of the following apply:

- 16 (1) The establishment was in existence on March 10, 2020, or had a valid
17 certificate of occupancy and business license issued by that date.
18 (2) Total indoor capacity is limited to fifty percent (50%) of the authorized fire
19 capacity. Employees are excluded from the total indoor capacity.
20 (3) All employees answer a health questionnaire and have their temperature taken
21 daily prior to working. Any employee showing symptoms or with a fever is
22 not allowed to enter the establishment.
23 (4) All employees wear face masks, except when actively leading a group fitness
24 class or when outdoors and socially distanced. All members and visitors are
25 strongly encouraged to wear face masks.
26 (5) Contactless check-in is available, including propping open all entry doors
27 when possible, or facilities may review possible HVAC system upgrades to
28 promote improved air filtration and at a minimum provide MERV 11 level
29 filtration. Markings are on the ground to denote proper social distancing of at
30 least 6 feet in the check-in area.
31 (6) Sanitation spray bottles with disinfectant or disinfectant wipes that are
32 EPA-approved for SARS-CoV-2 (the virus that causes COVID-19) are
33 available throughout the establishment.



- (7) Hand sanitizer stations are available throughout the establishment. All hand sanitizer is comprised of at least sixty percent (60%) alcohol.
 - (8) Employees conduct frequent routine cleanings of high-touch equipment and high-use areas while the establishment is open and conduct a deep clean of the entire establishment after the close of business every day. For establishments that are open 24 hours a day, a deep clean of the entire establishment must occur at least once every 24 hours. Disinfectants that are EPA-approved for SARS-CoV-2 (the virus that causes COVID-19) are used for all cleanings.
 - (9) For open space cardiovascular, weight training, and exercise areas, the following practices must be maintained:
 - a. Cardiovascular and weight training equipment is used in a manner to ensure social distancing of at least 6 feet.
 - b. Signage directs foot traffic for social distancing.
 - c. Employees monitor the areas for social distancing and to ensure that equipment is being cleaned with disinfectant or disinfectant wipes after each user.
 - (10) For studio and group fitness classes, the following practices must be maintained:
 - a. Markings are on the ground at the entrances to classes to denote proper social distancing of at least 6 feet apart.
 - b. Participants must maintain social distancing of at least 6 feet during the classes.
 - c. Stations or equipment used during classes is arranged and used in a manner to ensure social distancing of at least 6 feet.
 - d. All doors to studio and group fitness classes must remain open when possible, or facilities may review possible HVAC system upgrades to promote improved air filtration and at a minimum provide MERV 11 level filtration.
 - e. All rooms and any equipment used must be thoroughly cleaned between classes.
 - (11) On-premises childcare is limited to fifty percent (50%) of its current allowed occupancy.
 - (12) Social distancing of at least 6 feet is employed on all open courts and fields.
 - (13) All personal hygiene areas and amenity services are closed, except for toilets, lavatories, and lockers where social distancing must be maintained.
 - (14) Water fountains are limited to filling water bottles only.
 - (15) Signage is posted to remind employees, members, and visitors of the social distancing and sanitation requirements in place.

SECTION 1.(b) This section is 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 to open for full unrestricted operations.

SECTION 2.(a) 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.

- 1 (2) If the establishment holds ABC permits, the establishment is not any of the
2 following:
3 a. A private club as defined by G.S. 18B-1000.
4 b. A private bar as defined by G.S. 18B-1000.
5 c. A winery permitted pursuant to G.S. 18B-1101 or G.S. 18B-1102.
6 d. A distillery permitted pursuant to G.S. 18B-1105.
- 7 (3) The food and drink service operation for on-premises consumption is limited
8 to any authorized indoor seating and to the outdoor seating location. The
9 owner or owners of that outdoor seating location must have granted the
10 establishment permission to use the location for its food and drink service
11 operation.
- 12 (4) The outdoor food and drink service seating capacity is limited to fifty percent
13 (50%) of the current indoor seating capacity of the establishment, or 100
14 customers, whichever is less.
- 15 (5) The outdoor seating location is on the same parcel or is contiguous to or in
16 close proximity to the underlying establishment and contains or has access to
17 lavatory and toilet facilities for employees and customers as required for such
18 establishments under rules established by the North Carolina Department of
19 Health and Human Services.
- 20 (6) If the establishment holds ABC permits and serves alcohol pursuant to those
21 permits, the outdoor seating location must have delineated vertical boundaries
22 that the consumer would recognize as indicating the boundaries that
23 physically separate areas where consumption of alcohol is allowed from areas
24 open to the general public other than customers of the establishment.
- 25 (7) The establishment maintains and enforces the social distancing requirements
26 recommended by the federal Centers for Disease Control and Prevention and
27 the North Carolina Department of Health and Human Services.
- 28 (8) The establishment complies with all rules and regulations promulgated by the
29 Division of Public Health of the North Carolina Department of Health and
30 Human Services applicable to outdoor food and drink service.
- 31 (9) The outdoor seating location may include a covered patio or areas covered by
32 tents, awnings, tarps, umbrellas, or other similar coverings. For purposes of
33 this subdivision, "tent" shall mean a temporary structure, with or without side
34 panels, constructed by draping or otherwise attaching sheets of fabric, plastic,
35 or other material to a framework of poles or supports.
- 36 (10) The outdoor seating location may include areas on a public sidewalk if the
37 local government allows through its ordinances or permitting process the use
38 of public sidewalks for the service of and consumption of food or drink and
39 the establishment obtains any necessary local government approval. Nothing
40 in this act is intended to require a local government to approve the use of
41 public sidewalks for the service of and consumption of food or drink.
- 42 (11) The outdoor seating location may include areas on a public street if the local
43 government allows through its ordinances or permitting process the use of
44 public streets during periods of temporary street closure for the service of and
45 consumption of food or drink and the establishment obtains any necessary
46 local government approval. Nothing in this act is intended to require a local
47 government to temporarily close public streets for the service of and consumption of
48 food or drink or to allow the service of and consumption of food or drink on public streets during a period of temporary closure.

50 **SECTION 2.(b)** Notwithstanding any declaration of emergency issued under Article
51 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 (i) private club or private bar as defined by G.S. 18B-1000, (ii) winery permitted pursuant to G.S. 18B-1101 or G.S. 18B-1102, or (iii) distillery permitted pursuant to G.S. 18B-1105 may open and serve alcohol 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 any necessary ABC permits.
- (2) The service is limited to an outdoor seating location and the owner or owners of that outdoor seating location have granted the establishment permission to use the location for its service.
- (3) 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 Alcoholic Beverage Control Commission.
- (4) The outdoor seating location has delineated vertical boundaries that the consumer would recognize as indicating the boundaries that physically separate areas where consumption of alcohol is allowed from areas open to the general public other than customers of the establishment.
- (5) The outdoor service seating capacity is limited to fifty percent (50%) of the current indoor seating capacity of the establishment, or 100 customers, whichever is less.
- (6) The establishment maintains and enforces the social distancing requirements recommended by the federal Centers for Disease Control and Prevention and the North Carolina Department of Health and Human Services.
- (7) The establishment complies with all rules and regulations promulgated by the Division of Public Health of the North Carolina Department of Health and Human Services applicable to outdoor food and drink service.
- (8) The outdoor seating location may include a covered patio or areas covered by tents, awnings, tarps, umbrellas, or other similar coverings. For purposes of this subdivision, "tent" shall mean a temporary structure, with or without side panels, constructed by draping or otherwise attaching sheets of fabric, plastic, or other material to a framework of poles or supports.
- (9) The outdoor seating location may include areas on a public sidewalk if the local government allows through its ordinances or permitting process the use of public sidewalks for the service of and consumption of food or drink and the establishment obtains any necessary local government approval. Nothing in this act is intended to require a local government to approve the use of public sidewalks for the service of and consumption of food or drink.
- (10) The outdoor seating location may include areas on a public street if the local government allows through its ordinances or permitting process the use of public streets during periods of temporary street closure for the service of and consumption of food or drink and the establishment obtains any necessary local government approval. Nothing in this act is intended to require a local government to temporarily close public streets for the service of and consumption of food or drink or to allow the service of and consumption of food or drink on public streets during a period of temporary closure.

SECTION 2.(c) The outdoor seating area authorized in Sections 2(a) and 2(b) of this section shall not be prohibited by a municipality or county because the outdoor seating area is not a permitted use for operation of food and drink services under zoning ordinances.

1 **SECTION 2.(d)** This section is effective when it becomes law and expires upon the
2 later of (i) 30 days after any declaration of emergency prohibitions and restrictions applicable
3 expire or are otherwise terminated to permit the establishment to open for full unrestricted service
4 of food and drink or (ii) October 31, 2020.

5 **SECTION 3.** Notwithstanding Sections 1 and 2 of this act, the Governor may, with
6 a concurrence of the majority of the Council of State, exercise powers granted under
7 G.S. 166A-19.30(b) or (c) related to establishments that prepare or serve food or drink, private
8 clubs or private bars, wineries, distilleries, exercise and fitness facilities, gyms, health clubs, or
9 fitness centers. In obtaining a concurrence of a majority of the Council of State for this purpose,
10 the Governor shall contact each member of the Council of State regarding the potential exercise
11 of the emergency powers under G.S. 166A-19.30(b) or (c) and seek the concurrence or
12 nonconcurrence of that member. The Governor shall document and release the concurrence,
13 nonconcurrence, or no response provided by each member of the Council of State by name. Upon
14 receiving and releasing the majority concurrence, the Governor may exercise the power or
15 powers under G.S. 166A-19.30(b) or (c) as described to the members of the Council of State.

16 **SECTION 4.** Notwithstanding the provisions of G.S. 130A-20, the Secretary of
17 Health and Human Services or the Secretary of Environmental Quality may only order an
18 abatement of an imminent hazard related to COVID-19 that requires closure of establishments
19 that prepare or serve food or drink, private clubs or private bars, wineries, distilleries, exercise
20 and fitness facilities, gyms, health clubs, or fitness centers upon notification to the Governor and
21 with a concurrence of the majority of the Council of State. In obtaining a concurrence of a
22 majority of the Council of State for this purpose, each member of the Council of State shall be
23 contacted regarding the potential exercise of the powers under G.S. 130A-20 and seek the
24 concurrence or nonconcurrence of that member. Each response shall be documented and released
25 with respect to concurrence, nonconcurrence, or no response provided by each member of the
26 Council of State by name. Upon receiving and releasing the majority concurrence, the appropriate
27 Secretary may exercise the power under G.S. 130A-20 as described to the members of the
28 Council of State.

29 **SECTION 5.** This act is effective when it becomes law.