

January 4, 2021

ASSEMBLY BILL NO. 4525
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Assembly Bill No. 4525 (Second Reprint) without my approval.

This bill would make various revisions to current law intended to assist restaurants, bars, and other liquor license holders, as well as certain commercial farms, for the duration of the Coronavirus disease 2019 ("COVID-19") health emergency. Among other things, the bill would permit owners and operators of restaurants, bars, distilleries, and breweries to utilize outdoor spaces or public sidewalks as extensions of their business premises. Owners and operators seeking to take advantage of the expansions authorized in the bill would be required to file an application with their local municipal zoning officer. The zoning officer would be required to approve an application that complies with the criteria outlined in the bill, including the submission of plans for the outdoor space and litter control, within 15 business days of the submission of the application. The bill also would prohibit municipalities from charging fees for accepting the application or issuing the approval.

Although the bill would permit municipalities to waive the bill's requirements if they so choose, municipalities would be prohibited from restricting the hours of outdoor dining beyond the timeframes established in the bill, unless the municipality had previously delineated more restrictive hours for indoor dining via ordinance prior to March 1, 2020.

The bill also would require the Director of the Division of Alcoholic Beverage Control ("ABC") in the Department of Law and Public Safety to issue a separate permit to each seasonal farm market at which a brewery, craft distillery, winery, or cidery and meadery licensee intends to be a vendor, in order to make it easier for these licensees to sell their products at farm markets.

Finally, the bill contains a provision aimed at providing relief to New Jersey farmers who host events and outdoor gatherings by permitting canopies and tents to remain erected on commercial farms until indoor dining resumes at full capacity, regardless of any constraints contained in current law, regulation, or ordinance on the amount of time temporary structures may remain in place.

I commend the bill's sponsors for their efforts to assist New Jersey's businesses and farms in finding creative ways to continue to operate during the COVID-19 emergency. Bars and restaurants are among the businesses hardest hit by the pandemic. Small producers and retailers of alcoholic beverages also have not been immune from the devastating impacts of the crisis. However, in seeking to deliver a degree of relief to these businesses, the bill circumvents existing licensing and regulation processes critical to protecting the public's health and safety.

For example, the process outlined in the bill for expanding into outdoor spaces would divest the ABC of the enforcement authority it concurrently shares with municipalities, and transfers review and oversight exclusively to local governments. At the same time, the bill would significantly limit a municipality's review by requiring approval of all applications that contain the requisite information. As a result, municipalities would have almost no ability to reject an application based on public health or safety concerns, such as a proposed expanded area's proximity to a school or church, or a licensee's previous violations of the Alcoholic Beverage Control Act.

The bill also would restrict a municipality's ability to regulate the hours of operation of restaurants and bars in contravention of Executive Order No. 195 (2020), which empowers municipalities and counties to limit the hours of operation of non-essential businesses based on COVID-19 public health concerns. This would have immediate consequences, as the City of Newark currently limits outdoor dining after 9:00 p.m., pursuant to an

Executive Order by Mayor Ras Baraka. Signing this bill into law would immediately overturn these restrictions and disrupt Newark's plan to combat COVID-19.

Other provisions of the bill raise similar concerns regarding health and safety. For example, the provision of the bill related to tents and canopies could be construed to circumvent the Uniform Construction Code ("UCC") and Uniform Fire Code safety requirements.

Fortunately, the ABC and the Department of Community Affairs ("DCA") have already taken proactive measures to respond to many of the issues identified in this bill in ways that achieve the laudable goals of the legislation without compromising the public's health and safety. On June 3, 2020, the Director of the ABC issued Special Ruling 2020-10, which allows businesses to apply for a new "COVID-19 Expansion of Premises Permit," which enables licensees and permittees to expand their licensed premises into outdoor areas. On October 19, 2020, the ABC Director issued Special Ruling 2020-21, which extended the new permitting program until at least March 31, 2021. ABC has issued over 2,300 permits since June 2020. Importantly, the program maintains the concurrent enforcement authority between ABC and local governments. Under the program in place, the ABC provides notice to the Police Chief and the Municipal Clerk in the municipality in which a licensee is located when the licensee submits an application to extend its licensed premises to an outdoor space or public sidewalk.

In November 2020, the DCA issued outdoor dining guidance to help establishments adapt to the ongoing COVID-19 pandemic. Among other things, the guidance clarified that a UCC permit is required for tents and canopies in use from December 1st through March 31st and reminded local construction officials and business owners that variations to the code are permitted, provided safety is not compromised. The guidance also strongly encouraged local construction offices to work with businesses to determine appropriate

variations to the code and provided options and suggestions for granting these variations.

I applaud the sponsors of Assembly Bill No. 4525 (Second Reprint) for their efforts to assist New Jersey businesses that are struggling during this critical time. However, because aspects of the bill encroach on the authority of both the ABC and municipal governments to protect the public's health and safety, and because many of the bill's goals have already been achieved, I am unable to support it. I look forward to working closely with my partners in the Legislature in the days and weeks ahead to continue to advance creative solutions to help combat the economic turmoil caused by the COVID-19 pandemic.

Accordingly, I herewith return Assembly Bill No. 4525 (Second Reprint) without my approval.

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Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor