

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: S3/22/21

# A Bill

SENATE BILL 479

5 By: Senator C. Tucker  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW TO PROVIDE RELIEF FOR  
9 RESTAURANTS; TO ALLOW RESTAURANTS TO EXPAND OUTDOOR  
10 DINING WITHOUT PRIOR APPROVAL FROM THE ALCOHOLIC  
11 BEVERAGE CONTROL DIVISION; TO DELAY THE PAYMENT OF  
12 RESTAURANT SALES TAXES; TO CAP THE FEES THAT A THIRD-  
13 PARTY DELIVERY SERVICE MAY CHARGE RELATED TO THE  
14 CORONAVIRUS 2019 (COVID-19) PANDEMIC; TO DECLARE AN  
15 EMERGENCY; AND FOR OTHER PURPOSES.  
16

## Subtitle

17  
18  
19 TO PROVIDE RELIEF FOR RESTAURANTS; TO  
20 ALLOW RESTAURANTS TO EXPAND OUTDOOR  
21 DINING; TO DELAY THE PAYMENT OF  
22 RESTAURANT SALES TAXES; TO CAP THE FEES  
23 THAT A THIRD-PARTY DELIVERY SERVICE MAY  
24 CHARGE; AND TO DECLARE AND EMERGENCY.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

29 SECTION 1. DO NOT CODIFY. Legislative findings.

30 (a) The General Assembly finds that:

31 (1) On January 30, 2020, the World Health Organization  
32 designated the coronavirus 2019 (COVID-19) outbreak as a public health  
33 emergency of international concern;

34 (2) Coronavirus 2019 (COVID-19) is a highly contagious and  
35 sometimes fatal respiratory disease;

36 (3) On March 11, 2020, the Governor issued Executive Order 20-03



1 declaring an emergency in the State of Arkansas in response to an outbreak of  
2 coronavirus 2019 (COVID-19);

3 (4) On March 20, 2020, the Secretary of the Department of  
4 Health, in consultation with the Governor, issued a directive that closed  
5 indoor dining areas in all bars and restaurants to limit the spread of  
6 coronavirus 2019 (COVID-19);

7 (5) On May 5, 2020, the Governor issued Executive Order 20-25,  
8 which extended the emergency declaration;

9 (6) On May 11, 2020, the secretary issued a directive regarding  
10 resuming in-person restaurant dining that required a phased-in approach, with  
11 the first phase including a limitation on the number of customers to one-  
12 third (1/3) of the total capacity, specifications regarding the spacing of  
13 tables, and other requirements related to sanitation and prohibited  
14 practices;

15 (7) On May 18, 2020, the secretary issued a directive regarding  
16 resuming in-person restaurant dining that provided for an increase in the  
17 total seating capacity for restaurants, permitted bar service to resume,  
18 adjusted the spacing between seating at adjacent tables, and continued  
19 certain requirements from the first phase;

20 (8) On June 18, 2020, the Governor issued Executive Order 20-37,  
21 which terminated the emergency declared under Executive Order 20-03 and  
22 declared anew the public health and disaster emergency and declaration of the  
23 State of Arkansas as a disaster area;

24 (9) On July 16, 2020, the Governor issued Executive Order 20-43  
25 regarding the issuance of a face-covering directive by the secretary, which  
26 required every person in Arkansas to wear a face covering over the mouth and  
27 nose during all indoor activities with some exceptions;

28 (10) On August 14, 2020, the Governor issued Executive Order 20-  
29 45, which renewed the emergency declared under Executive Order 20-37 for an  
30 additional sixty (60) days;

31 (11) On October 13, 2020, the Governor issued Executive Order  
32 20-48, which renewed the emergency declared under Executive Order 20-37 for  
33 an additional sixty (60) days;

34 (12) On December 11, 2020, the Governor issued Executive Order  
35 20-51, which renewed the emergency declared under Executive Order 20-37;

36 (13) On December 29, 2020, the Governor issued Executive Order

1 20-53, which renewed the emergency declared under Executive Order 20-37 for  
2 an additional sixty (60) days;

3 (14) On February 26, 2021, the Governor issued Executive Order  
4 21-03, which renewed the emergency declared under Executive Order 20-37 until  
5 March 31, 2021, and left in place the mask mandate;

6 (15) The Centers for Disease Control and Prevention has advised  
7 that coronavirus 2019 (COVID-19) is spread mainly by person-to-person  
8 contact, and the best means of slowing the spread of the virus is through  
9 practicing social distancing and protecting oneself and others by minimizing  
10 personal contact with environments where this potential deadly virus may be  
11 transmitted;

12 (16) The restaurant industry has been significantly impacted by  
13 coronavirus 2019 (COVID-19) and the social distancing required to limit its  
14 spread; and

15 (17) The preservation and fiscal stability of the restaurant  
16 industry is critical to the economic security and cultural vitality of this  
17 state and is the fundamental policy objective of this act.

18  
19 SECTION 2. Arkansas Code Title 3, Chapter 4, Subchapter 1, is amended  
20 to add an additional section to read as follows:

21 3-4-107. Expansion of outdoor dining at restaurants.

22 (a)(1) Except as provided in subsection (b) of this section, a  
23 restaurant with a valid alcoholic beverage permit from the Alcoholic Beverage  
24 Control Division may expand its outdoor dining availability at the restaurant  
25 with approval from the local government zoning authority of the municipality  
26 or county in which it is located without obtaining prior approval from the  
27 division.

28 (2) A restaurant seeking approval to expand outdoor dining under  
29 subdivision (a)(1) of this section shall provide notice to the division of  
30 the expansion and change in floor plan.

31 (b) If the expansion in outdoor dining increases the seating capacity  
32 in a way that could result in a change in permit type, the restaurant shall  
33 obtain division approval prior to expanding the outdoor dining area at the  
34 restaurant.

35 (c) A restaurant that expands outdoor dining under this section shall  
36 comply with division rules regarding outdoor dining.

1  
2 SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Limit fees of third-  
3 party delivery service platforms during emergency.

4 (a) As used in this section:

5 (1) "Covered establishment" means a restaurant or other eating  
6 or drinking establishment offering same-day food or drink for sale in a  
7 single commercial transaction through a third-party delivery service platform  
8 from one (1) or more retail locations in this state;

9 (2) "COVID-19" means severe acute respiratory syndrome  
10 coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) or any  
11 other disease, health condition, or threat caused by severe acute respiratory  
12 syndrome coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe  
13 acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

14 (3) "COVID-19 emergency" means the state of emergency declared  
15 by the Governor on March 11, 2020, in order to address COVID-19;

16 (4) "Customer" means an individual using a third-party delivery  
17 service platform to place an online order;

18 (5) "Online order" means an order for food or drinks placed by a  
19 customer through a third-party delivery service platform provided by a third-  
20 party delivery service company for pickup or delivery in this state;

21 (6)(A) "Purchase price" means the menu price publicly offered on  
22 the third-party delivery service platform by a covered establishment.

23 (B) "Purchase price" does not include any taxes,  
24 gratuities, or other fees that may make up the total cost charged to the  
25 customer for an online order;

26 (7) "Third-party delivery service company" means a corporation,  
27 partnership, sole proprietorship, or other entity registered to do business  
28 in this state that is engaged in facilitating same-day delivery or pickup of  
29 food and beverages through a third-party delivery service platform; and

30 (8) "Third-party delivery service platform" means an online-  
31 enabled application, software, website, or system offered or utilized by a  
32 third-party delivery service company to facilitate the sale of food and  
33 beverages prepared by, and the same-day delivery or same-day pickup of food  
34 and beverages from, a covered establishment.

35 (b) Notwithstanding any law to the contrary, beginning on the  
36 effective date of this act and for a period of ninety (90) days after the

1 termination of the COVID-19 emergency, a third-party delivery service company  
2 shall not charge a covered establishment a fee per online order for the use  
3 of the third-party delivery service company's services that totals more than  
4 fifteen percent (15%) of the purchase price of the online order.

5 (c) If any part of this section conflicts with a local ordinance or  
6 rule relating to a third-party delivery service platform and fees of a third-  
7 party delivery service company, including an agreement with a covered  
8 establishment using a third-party delivery service company, then this section  
9 shall control to the extent of the conflict.

10 (d)(1) A violation of this section is an unfair and deceptive act or  
11 practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

12 (2) All remedies, penalties, and authority granted to the  
13 Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq.,  
14 shall be available to the Attorney General for the enforcement of this  
15 section.

16  
17 SECTION 4. DO NOT CODIFY. TEMPORARY LANGUAGE.

18 (a) As used in this section, "taxpayer" means a restaurant that is a  
19 public or private establishment that:

20 (1) Is kept, used, maintained, advertised, and held out to the  
21 public or to a private or restricted membership as a place where complete  
22 meals are actually and regularly served;

23 (2) Has as its primary purpose the serving of complete meals;

24 (3) Provides adequate and sanitary kitchen and dining equipment;

25 (4) Has a seating capacity of at least twenty-five (25) persons;

26 (5) Employs a sufficient number and variety of employees to  
27 prepare, cook, and serve suitable food for its guests or members;

28 (6) Serves at least one (1) meal per day; and

29 (7) Is open a minimum of five (5) days per week, with the  
30 exception of holidays, vacations, and periods of redecorating.

31 (b) A taxpayer that is required to collect and remit to the Secretary  
32 of the Department of Finance and Administration the tax levied by the  
33 Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., may delay remitting  
34 sales tax and filing returns otherwise required under the Arkansas Gross  
35 Receipts Act of 1941, § 26-52-501 et seq., as follows:

36 (1) All sales tax remittances and reports for sales tax

1 collected in March, April, and May of 2021 may be filed with the secretary by  
2 June 20, 2021;

3 (2) All sales tax remittances and reports for sales tax  
4 collected in June, July, and August of 2021 may be filed with the secretary  
5 by September 20, 2021;

6 (3) All sales tax remittances and reports for sales tax  
7 collected in September, October, and November of 2021 may be filed with the  
8 secretary by December 20, 2021; and

9 (4) All sales tax remittances and reports for sales tax  
10 collected in December of 2021 and January and February of 2022 may be filed  
11 with the secretary by March 20, 2022.

12 (c) If a taxpayer files the required returns and remits the required  
13 sales tax in the time frames under subsection (b) of this section:

14 (1) No late fees or penalties shall be assessed against the  
15 taxpayer; and

16 (2) The taxpayer is eligible for the discounts for early payment  
17 stated in § 26-52-503(a) and (c).

18 (d) The secretary may promulgate rules to implement this section.

19 (e) This section expires March 20, 2022.

20  
21 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
22 General Assembly of the State of Arkansas that restaurants have been uniquely  
23 and profoundly impacted by coronavirus 2019 (COVID-19); that the unique  
24 impact includes significant reduction in revenue and increased administrative  
25 burdens associated with trying to remain in business; that many restaurants  
26 are still struggling to stay in business; that the continued struggle of the  
27 restaurants in this state imperils Arkansas's further economic recovery from  
28 the pandemic; and that this act is immediately necessary because it  
29 alleviates some of the administrative burdens on restaurants and increases  
30 the probability that more restaurants will be able to stay in business and  
31 strengthen our economy. Therefore, an emergency is declared to exist, and  
32 this act being immediately necessary for the preservation of the public  
33 peace, health, and safety shall become effective on:

34 (1) The date of its approval by the Governor;

35 (2) If the bill is neither approved nor vetoed by the Governor,  
36 the expiration of the period of time during which the Governor may veto the

1 bill; or

2 (3) If the bill is vetoed by the Governor and the veto is  
3 overridden, the date the last house overrides the veto.

4

5 */s/C. Tucker*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36