



Final Analysis

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Legislative Service Commission

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(As Passed by the General Assembly)

Sens. Gardner, Watts

Reps. Trakas, Mottley, Healy, Schuler, Brading, Evans, Corbin

Effective date: *

ACT SUMMARY

- Creates the D-8 permit to be issued to certain retail stores to allow the sale of tasting samples of beer, wine, and mixed beverages.
- Allows local option elections on Sunday sale of intoxicating liquor between the hours of 10 a.m. and midnight.
- Makes changes in the law governing local option elections on beer and intoxicating liquor sales at specific locations.
- Exempts from the effects of local option elections the sale of beer and intoxicating liquor at premises located in or at the Ohio Historical Society area or the State Fairgrounds.
- Allows Sunday liquor sales at certain outdoor performing arts centers and at premises located in or at the Ohio Historical Society area or the State Fairgrounds, whether or not such sales previously have been approved by a local option election.
- Creates a Sunday liquor sales question regarding Sunday sales at certain outdoor performing arts centers that may be submitted to the electors of a precinct during the two-year period after the act's effective date, and

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

makes the results of the election on that question applicable to an outdoor performing arts center that has been issued a D-6 permit.

- Changes certain requirements that must be met by the holder of a D-5i permit.
- Specifies that agency contract-related appeals are not within the Liquor Control Commission's jurisdiction.
- Defines a "sales area or territory" for purposes of the Liquor Control Law and the Alcoholic Beverage Franchise Law.

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CONTENT AND OPERATION

Creation of the D-8 permit

The act creates the D-8 permit and allows it to be issued to the holder of a C-1, C-2, or C-2x permit issued to a retail store that has *either* of the following characteristics: (1) the store has at least 5,500 square feet of floor area and it generates more than 60% of its sales in general merchandise items and food for consumption off the premises where sold, or (2) wine constitutes at least 60% of the value of the store's inventory (sec. 4303.184(A)).



A D-8 permit holder may sell tasting samples of beer, wine, and mixed beverages, but not spirituous liquor, at retail, for consumption on the premises where sold in an amount not to exceed two ounces or another amount designated by rule of the Liquor Control Commission. A tasting sample must not be sold for general consumption. The act prohibits a D-8 permit holder from allowing any authorized purchaser to consume more than four tasting samples of beer, wine, or mixed beverages, or any combination of beer, wine, or mixed beverages, per day. (Sec. 4303.184(B).)

The privileges authorized under a D-8 permit may only be exercised in conjunction with, and during the hours of operation authorized by, a C-1, C-2, C-2x, or D-6 permit, and a D-8 permit must not be transferred to another location. The fee for the D-8 permit is \$250. (Sec. 4303.184(C), (D), and (E).)

A D-8 permit holder must have an independent audit performed at the end of the first full year of operation following issuance of the permit, and at the end of each second year thereafter, in order to verify that the permit holder satisfies one of the act's requirements governing the type of retail store to which such a permit may be issued (see above). The permit holder must transmit the results of the independent audit to the Division of Liquor Control in the Department of Commerce. If the results of the independent audit indicate noncompliance with either of those requirements, the Division must not renew the D-8 permit of the permit holder. (Sec. 4303.184(F).)

Finally, the act amends the Open Container Law to reflect the creation of the D-8 permit and to allow consumption of tasting samples to take place on a D-8 permit premises (sec. 4301.62(C)(1)(a)).

New questions on Sunday sale of intoxicating liquor between 10 a.m. and midnight

Continuing law

Continuing law generally prohibits the sale of intoxicating liquor on Sunday after 2:30 a.m. by a permit holder unless the sale has been approved in a local option election held in the election precinct in which the premises is located (sec. 4301.22(D), not in the act; sec. 4303.182(A)--under the act). Prior to the act, three questions governed the Sunday sale, *between 1 p.m. and midnight*, of intoxicating liquor that could be legally sold in an election precinct or part of an election precinct on days of the week other than Sunday. These questions are continued by the act. One question deals with sales of wine and mixed beverages for off-premises consumption, a second question deals with sales of intoxicating liquor for on-premises consumption, and a third question deals with sales of intoxicating liquor for on-premises consumption at premises where the sale of



food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises. (Sec. 4301.351(B)(1), (2), and (3)--under the act, and sec. 4301.354(B)(1), (2), and (3)--under the act.)

Changes made by the act

The act creates three additional questions regarding the Sunday sale of intoxicating liquor. The questions are substantively the same as those that may be submitted in an election precinct under continuing law, except that these new questions govern intoxicating liquor sales between *10 a.m. and midnight on Sunday*. (Secs. 4301.351(C)(1), (2), and (3), 4301.354(C)(1), (2), and (3), and 4303.182(A)--under the act.) As under continuing law, the results of the election on these additional Sunday sales questions stay in effect until another election is held in the precinct on the same question, but no election can be held on the same question in the same precinct more than once in each four years (secs. 4301.361, 4301.364, and 4301.37(B) and (D)).

Changes in procedure for local option elections on sales at a particular location

Background law

Continuing law allows a local option election to be held in an election precinct on the sale of beer and intoxicating liquor at a particular location within the precinct if the petitioner for the election is one of the following: (1) an applicant for the issuance or transfer of a liquor permit at, or to, a particular location within the precinct, (2) the holder of a liquor permit at a particular location within the precinct, (3) a person who operates or seeks to operate a liquor agency store at a particular location within the precinct, or (4) the designated agent for an applicant, permit holder, or liquor agency store described in item (1), (2), or (3) above (sec. 4301.333(A); sec. 4303.323, not in the act).

Change in the form of the petition and accompanying documents

Former law required that the petition for the election described in the immediately preceding paragraph contain written evidence of the designation of the petitioner as the agent for an applicant, liquor permit holder, or liquor agency store if the petitioner was such an agent. The act instead requires that this written evidence be provided to the board of elections, not in the petition, but separately at the time the petitioner files the petition with the board. (Sec. 4301.333(B)(3) and (C)(1)(b).)

The act provides that failure to supply the affidavit required to be filed with the petition under continuing law, or to supply the written evidence of the



designation of an agent (when applicable), at the time the petition is filed invalidates the entire petition (sec. 4301.333(C)(2)).

Wording of the questions presented to voters

Under the act, the questions that will be placed on the ballot and that must be described in the petition seeking an election on sales at a particular location must refer to the specific type or types of alcoholic beverages (beer, "wine and mixed beverages," or intoxicating liquor) to be sold under the permit sought for or sold under the permit issued to the particular premises, or sold at the liquor agency store, that is the subject of the election. Under former law, these questions referred only to "beer and any intoxicating liquor." (Secs. 4301.333(B)(1), 4301.355(B), and 4301.365(A), (B), (C), (D), and (E).)

Required minimum time period between elections

Former law provided that, when a local option election was held on sales at a particular location, the results of that election were generally in effect at that location until another election was held on sales at that location, but no such election could be held on sales at that location regarding the same use for a period of *at least four calendar years* from the date of the most recent election on that question. The act instead requires that this time period be *at least four years* from that date. (Sec. 4301.37(E).)

The act also makes the change described in the immediately preceding paragraph with regard to the minimum time period between (1) elections on beer and intoxicating liquor sales at a permit premises previously adjudged by a court to be a nuisance or (2) elections on beer and intoxicating liquor sales at a community facility that are held in an entire municipal corporation or the entire unincorporated area of a township (sec. 4301.37(C) and (F)). A "community facility" is either of the following: (1) certain convention, sports, or entertainment facilities or complexes, or any combination of them or (2) an area designated as a community entertainment district by a municipal corporation or township (sec. 4301.01(B)(19)).

Exemptions from effects of local option elections

Continuing law exempts sales of beer or intoxicating liquor at certain locations from the effects of local option elections (sec. 4301.40; sec. 4301.402, not in the act). The act additionally provides that a local option election, whether held before, on, or after its effective date, does not prohibit or otherwise affect the sale of beer or intoxicating liquor in or at the *Ohio Historical Society* area or the *State Fairgrounds* under a permit issued under the Liquor Permit Law. The act defines "Ohio Historical Society area" as the Ohio Historical Center and Ohio



Village, both located contiguous to the State Fairgrounds, and defines "State Fairgrounds" as the property that is held by the state for the purpose of conducting fairs, expositions, and exhibits and all other contiguous property that is owned, maintained, or managed by the Ohio Expositions Commission under the State Expositions Law. (Sec. 4301.40(B).)

Exemptions from effects of local option elections for Sunday sale

Continuing law allows the D-6 (Sunday liquor sales) permit to be issued to the holders of specified liquor permits to allow sale of beer or intoxicating liquor under the D-6 permit between the hours of 1 p.m. and midnight on Sunday, or, in one case, between the hours of 11 a.m. and midnight on Sunday, if that sale has been authorized by a Sunday liquor sales election conducted under continuing law (sec. 4303.182(A) and (D)--under the act). In addition, the holders of certain liquor permits must be issued a D-6 permit *whether or not* Sunday sale of beer or intoxicating liquor between 1p.m. and midnight has been so authorized (sec. 4303.182(B) and (C)--under the act).

The act changes from 1 p.m. to 10 a.m. the hour on Sunday at which sales of beer or intoxicating liquor may begin (1) at a premises that is located at certain publicly owned airports and that has been issued a D-4a (private club sponsored by an airline), D-5d (airport restaurant), or other permit that authorizes the sale of beer or intoxicating liquor or (2) at a licensed hotel or motel that contains at least 50 rooms for registered transient guests, that has a restaurant on its premises, and that has been issued a D-3, D-3a, or D-5a (hotel, motel, or restaurant, as applicable) permit (sec. 4303.182(B) and (C)--under the act). The locations described in items (1) and (2) in the immediately preceding sentence are locations to which a D-6 permit must be issued under continuing law whether or not Sunday sales have been authorized by a Sunday liquor sales election.

The act also requires that a D-6 permit be issued to the holder of any permit that authorizes the sale of beer or intoxicating liquor and that is issued to a premises located in or at the Ohio Historical Society area or the State Fairgrounds to allow sale under that permit between the hours of 10 a.m. and midnight on Sunday, whether or not that sale has been authorized by a Sunday liquor sales election (sec. 4303.182(E)).

The act further requires that a D-6 permit be issued to the holder of any permit that authorizes the sale of intoxicating liquor and that is issued to an *outdoor performing arts center* to allow sale under the D-6 permit between the hours of 1p.m. and midnight on Sunday, whether or not that sale has been authorized under a Sunday liquor sales election. Such a D-6 permit, however, is subject to the results of a local option election held within the precinct in which the center is located, regarding Sunday sales at outdoor performing arts centers



(see the immediately following paragraph). The act defines "outdoor performing arts center" as an outdoor performing arts center that is located on not less than 800 acres of land and that is open for performances from April 1 to October 31 of each year. (Sec. 4303.182(F).)

The act allows a question on Sunday liquor sales between the hours of 1 p.m. and midnight at outdoor performing arts centers to be submitted to the electors of a precinct, but only if the legislative authority of the municipal corporation in which, or the board of trustees of the township in which, the outdoor performing arts center is located submits, not later than 4 p.m. of the 75th day before the day of a primary or general election that occurs *within two years after the act's effective date*, to the board of elections of the county in which the precinct is located, a copy of an ordinance or resolution requesting the submission of that question to the electors of the precinct. Such an election may not be sought by a petition of the electors of the precinct concerned; continuing law requires that other Sunday liquor sales elections be sought by such a petition. Following the end of the two-year period during which such an election may be held, sales of intoxicating liquor may continue at an outdoor performing arts center under a D-6 permit authorized by the act, unless an election is held on the question mentioned above during the two-year period and a majority of voters voting in the precinct concerned on that question vote "no." (Secs. 4301.351(B)(4), 4301.361, and 4303.182(F).)

Changes to certain requirements for D-5i permits

Former law established certain requirements that needed to be met in order for a D-5i permit to be issued to either the owner or operator of a food service operation that was licensed under the Food Service Operations Law. The act continues most of those requirements, but it revises two of them. First, it lowers the minimum square footage of floor area required for a D-5i permit premises from 5,000 to 4,000 (sec. 4303.181(I)(3)). Second, it lowers the value that a D-5i operation's real and personal property must exceed from \$925,000 to \$725,000 (sec. 4303.181(I)(6)).

Appeals involving agency contracts

The act prohibits the Liquor Control Commission from hearing or considering any appeal involving any agency contract that the Division of Liquor Control enters into under continuing law (sec. 4301.28(A)(2)).¹ The Division enters into liquor agency contracts with mercantile establishments to sell

¹ *Continuing law generally permits an aggrieved person to appeal to the Commission from the Division's action refusing to issue a liquor permit.*

spirituous liquor (all intoxicating liquor containing more than 21% of alcohol by volume) on the Division's behalf. Liquor agency contracts must contain a clause that provides for the *termination* of the contract *at will* by the Division upon its giving 90 days' notice in writing to the agent of the Division's intention to do so. (Sec. 4301.01(B)(5); sec. 4301.17(A) and (C), not in the act.)

Definition of "sales area or territory"

Continuing law, within the Liquor Control Law, requires each manufacturer and "supplier" of *beer* to assign to each of the manufacturer's or supplier's distributors an "exclusive" sales area or territory within which each distributor must be the distributor of the one or more brands of the manufacturer or supplier (sec. 4301.241). Continuing law, within the Alcohol Beverage Franchise (ABF) Law, also generally prohibits a manufacturer or "distributor" of *alcoholic beverages* (1) from awarding an additional franchise for the sale of the same brand within the same sales area or territory or (2) from substantially changing a sales area or territory, without the prior consent of the other party involved, for other than just cause and without at least 60 days' written notice to that other party setting forth reasons for the substantial change. The ABF Law sets forth circumstances under which "just cause" does not exist to justify a substantial change in a sales area or territory without prior consent, and circumstances under which the "60 days' notice" is not required and "just cause" exists to justify a substantial change in a sales area or territory without prior consent. (Secs. 1333.84(B) and 1333.85.)

The act defines the term "sales area or territory," as used in the provisions of continuing law described in the immediately preceding paragraph, to mean an *exclusive* geographic area or territory that is assigned to a particular A (manufacturer) or B (wholesale distributor) permit holder and that either has one or more political subdivisions as its boundaries or consists of an area of land with readily identifiable geographic boundaries. "Sales area or territory" does not include, however, any particular retail location in an exclusive geographic area or territory that is assigned to another A or B permit holder. The act makes conforming changes in the Liquor Control Law to reflect the fact that the defined term includes the concept of exclusivity. (Secs. 1333.82(G), 4301.01(B)(22), and 4301.241.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-00	p. 1444
Reported, S. Agriculture	04-13-00	p. 1607



Passed Senate (26-5)	05-03-00	pp.	1655-1656
Reported, H. State Government	05-22-00	p.	2014
Rereferred to H. State Government	09-12-00	p.	2236
Re-reported, H. State Government	11-16-00	p.	2388
Passed House (68-22)	12-05-00	pp.	2417-2418
Senate concurred in House amendments (31-2)	12-06-00	pp.	2310-2311

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