



Phil Mullin

Bill Analysis
Legislative Service Commission

H.B. 402

123rd General Assembly
(As Introduced)

Reps. Schuck, Bateman, Boyd, Clancy, DePiero, Jerse, D. Miller, Trakas

BILL SUMMARY

- Creates the D-5j liquor permit that is to be issued to adult cabarets where certain sexually explicit activity occurs and establishes a local option election question regarding beer and liquor sales at adult cabarets that can be submitted to the electors of the election precinct where the cabarets are located.

CONTENT AND OPERATION

Creation of the D-5j liquor permit

Covered premises

The bill creates the D-5j liquor permit (see **COMMENT 1**) and authorizes it to be issued to either the owner or operator or intended owner or operator of an adult cabaret (see below). On or after the bill's effective date, an applicant for any permit issued under the Liquor Permit Law must be issued *only the D-5j permit* if the applicant owns, operates, or intends to own or operate an adult cabaret (see **COMMENT 2**). (Sec. 4303.181(J)(1) and (2).)

Within 90 days after the bill's effective date, the Division of Liquor Control must identify those premises for which permits were issued before the bill's effective date and that qualify to be issued a D-5j permit. The bill requires the Division to cancel the permits issued for the premises so identified and issue to the holder of each permit so canceled a D-5j permit for that premises, notwithstanding the population quota and distance restrictions placed on the issuance of D-5j permits under the bill (see below). (Sec. 4303.181(J)(3).)

The bill defines "adult cabaret" as meaning a nightclub, bar, restaurant, or similar commercial establishment that regularly features or permits any of the following: (1) persons who appear *semi-nude* (see below) or in a *state of nudity* (see below), (2) live performances characterized by the exposure of *specified*

anatomical areas (see below) or by the performance of specified sexual activities, or (3) films, motion pictures, video cassettes, slides, or other visual images that depict or describe specified sexual activities or specified anatomical areas (sec. 4303.181(J)(5)(a)). "State of nudity" means any of the following: (1) the appearance of the human male or female bare buttocks or anus, human male or female genitals, human male or female pubic region, or the areola or nipple of the human female breast, (2) the simulated appearance of the human male or female bare buttocks or anus, human male or female genitals, human male or female pubic region, or the areola or nipple of the human female breast, or (3) a state of dress that fails to opaquely and fully cover the human male or female buttocks or anus, human male or female genitals, human male or female pubic region, or the areola or nipple of the human female breast (sec. 4303.181(J)(5)(b)).

The bill defines "semi-nude" as meaning a state of dress in which clothing covers no more than the human male or female genitals, the human male or female pubic region, and the areolae of human female breasts, as well as portions of the human body covered by supporting straps or devices (sec. 4303.181(J)(5)(c)). "Specified anatomical areas" means any of the following: (1) less than completely and opaquely covered human male or female genitals, human male or female pubic region, human buttocks or anus, or human female breasts below a point immediately above the top of the areolae or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered (sec. 4303.181(J)(5)(d)). Finally, "specified sexual activities" means any of the following: (1) the fondling or other intentional touching of human male or female genitals, the human male or female pubic region, the human male or female buttocks or anus, or a human female breast, (2) actual or simulated sexual conduct, as defined in the Sex Offenses Law (see **COMMENT 3**), (3) actual or simulated human masturbation, (4) the presentation of the human male or female genitals in a state of sexual excitement, as defined in the Sex Offenses Law (see **COMMENT 3**), or (5) human excretory functions as part of or in connection with any of the activities described in the immediately preceding items (1) through (4) (sec. 4303.181(J)(5)(e)).

Scope of the permit: in general

The bill authorizes the holder of a D-5j permit to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and to sell the same products in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 and D-2 permits (permits that are issued to hotels and restaurants and that allow the sale of beer, wine, and mixed beverages for consumption both on and off the premises where sold). A D-5j permit holder *cannot sell* beer or intoxicating liquor for consumption on the

premises where sold after midnight but can exercise the same privileges as the holder of a D-5 (night club) permit. A D-5j permit cannot be transferred to another location within the precinct in which it was issued (although it may be transferred to a location in another precinct), and not more than one D-5j permit may be issued for each 2,000 population or part of that population in each municipal corporation or the unincorporated area of each township. The fee for the D-5j permit is \$1,875. (Sec. 4303.181(J)(4).)

The bill requires the Division of Liquor Control to refuse to issue, renew, or transfer the ownership or location of a D-5j permit if it finds that the place for which the permit is sought is within 1,000 feet from the boundaries of a parcel of real estate having on it a school, church, library, public playground, or township park. This prohibition does not apply to or affect premises to which permits were issued before the bill's effective date and that qualify to be issued a D-5j permit. (Sec. 4303.292(G).)

Other aspects of the permit

The bill grants the holder of a D-5j permit the same privileges granted to, and subjects the holder to the same requirements imposed upon, holders of most other D permits (permits that allow the sale of beer and intoxicating liquor for consumption on the premises where sold and the sale of beer, wine, and mixed beverages for consumption off the premises where sold) (secs. 4301.62(C), 4303.07, 4303.10, 4303.30, and 4303.35). The bill, however, prohibits a D-6 (Sunday sales) permit from being issued to the holder of a D-5j permit (sec. 4303.182).

Local option election on the operation of D-5j permits

Under the Local Option Election Law, certain local option election questions may be submitted to the voters of an election precinct. The local option questions that may be submitted in a precinct concern the sale of beer, wine, mixed beverages, intoxicating liquor, and/or spirituous liquor for consumption on and/or off the premises where sold (see, for example, sec. 4301.35). To place a local option question on the ballot in a precinct, a petition must be signed by a number of voters of that precinct equal to 35% of the total number of votes cast in the precinct for the office of Governor at the preceding general election for that office and must be filed with the board of elections (sec. 4301.33).

The bill allows a local option question on the sale of beer and intoxicating liquor by the holders of D-5j permits to be submitted to the electors of a precinct in the same manner prescribed for questions under current law, as described in the immediately preceding paragraph (secs. 4301.33 and 4301.35(E)). If a majority of the electors voting in a precinct vote "yes" on the question, sales under D-5j

permits will continue subject only to other provisions of the Liquor Control Law. If a majority of the electors voting in a precinct vote "no" on the question, the bill prohibits a D-5j permit holder from selling beer or intoxicating liquor within the precinct during the period that the election is in effect. (Sec. 4301.36.) Another election could not be held on the question until four years have passed (sec. 4301.37(A), not in the bill).

Statement of legislative findings and intent

The bill declares that, with respect to its D-5j liquor permit issuance provisions, the General Assembly does all of the following (sec. 4303.181(K)(1) and (2)):

(1) Finds that numerous studies conducted in localities within and outside Ohio document that sexually oriented businesses, because of their very nature, may have a deleterious effect on other businesses and residential areas adjacent to them, causing, among other adverse secondary effects, increased crime and the downgrading of property values;

(2) Finds that increased crime and unhealthful conduct tend to accompany, concentrate around, and be aggravated by sexually oriented businesses, including prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances, violent crimes against persons and property, and the spread of sexually transmitted diseases, including AIDS;

(3) Recognizes the possible harmful effects of sexually oriented businesses upon children and minors who walk through or visit the immediate neighborhood of those businesses;

(4) Finds that the sale or consumption of beer and intoxicating liquor aggravates the adverse secondary effects associated with sexually oriented businesses and that special supervision from public safety and health agencies is required to protect and preserve the health, safety, and welfare of the patrons of those businesses as well as those who reside, or frequent establishments located, near those businesses when they sell or serve beer or intoxicating liquor;

(5) Desires to minimize and control the adverse secondary effects associated with sexually oriented businesses and thereby protect the health, safety, and welfare of citizens; to protect citizens from increased crime; to preserve the quality of life; to preserve the property values and character of surrounding neighborhoods and businesses; to deter the spread of urban blight; and to protect against the threat to health from the spread of communicable and social diseases;

(6) Has considered specified and other United States Supreme Court decisions regarding regulation of sexually oriented businesses and concludes that liquor licensing and other police power regulations are legitimate and reasonable means of accountability to ensure that the operators of sexually oriented businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects that naturally accompany their operation.

The bill also states that it is not the General Assembly's intent to (1) suppress any speech activities protected by the First Amendment to the United States Constitution or (2) condone or legitimize the distribution of obscene materials or performances. Rather, the bill states that its intent is to enact a content neutral statute that addresses the adverse secondary effects of sexually oriented businesses. (Sec. 4303.181(K).)

COMMENT

1. Am. Sub. H.B. 283 of the 123rd General Assembly, effective September 29, 1999, created the D-5j permit to be issued only in community entertainment districts. H.B. 402 was drafted before Am. Sub. H.B. 283 went into effect. Consequently, it would be necessary for the General Assembly to redesignate the liquor permit contemplated by the bill before enacting H.B. 402.

2. Rule 4301:1-1-52 of the Ohio Administrative Code, a rule adopted by the Liquor Control Commission, currently prohibits any permit holder, or the permit holder's agent or employee, from knowingly or willingly allowing in and upon the permit holder's premises any persons to (among other activities) (1) engage in any lewd or disorderly activities, (2) appear in a state of nudity, (3) touch, fondle, or caress the genitals, public area, buttocks, or female breasts of any person, or (4) commit improper conduct of any kind, type, or character, that would offend the public's sense of decency, sobriety, or good order. Thus, the holder of a D-5j permit might be allowing on the premises, by the definition of "adult cabaret," certain activity that currently violates this rule.

3. The Sex Offenses Law defines "sexual conduct" as meaning vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. It defines "sexual excitement" as meaning the condition of human male or female genitals when in a state of stimulation or arousal. (Sec. 2907.01(A) and (G), not in the bill.)

HISTORY



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