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***Bill Analysis***  
*Legislative Service Commission*

## **Sub. S.B. 262**

123rd General Assembly

(As Reported by H. State Government)

**Sens. Gardner, Watts**

**Rep. Trakas**

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### **BILL 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 liquor sales at specific locations.
- Exempts from the effects of local option elections the sale of beer and intoxicating liquor (1) at certain publicly owned golf courses and (2) at premises located in or at the Ohio Historical Society area or the State Fairgrounds.
- Allows Sunday liquor sales at certain publicly owned golf courses, 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 bill's effective date, and 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.

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## CONTENT AND OPERATION

### Creation of the D-8 permit

The bill 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 bill 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 bill specifies that 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 bill'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 bill 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)).

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

### **Existing law**

Existing 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 bill; sec. 4303.182(A)--under the bill). Three questions currently govern the Sunday sale, *between 1 p.m. and midnight*, of intoxicating liquor that may be legally sold in an election precinct or part of an election precinct on days of the week other than Sunday. 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 bill, and sec. 4301.354(B)(1), (2), and (3)--under the bill.)

### **Changes made by the bill**

The bill 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 existing 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 bill.) As under existing 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**

Existing 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 items (1), (2), or (3) above (sec. 4301.333(A); sec. 4303.323, not in the bill).

### **Change in the form of the petition and accompanying documents**

Existing law requires 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 is such an agent. The bill 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 bill provides that failure to supply the affidavit required to be filed with the petition under existing 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 bill, 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 existing law, these questions refer 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**

Existing law provides that, when a local option election is held on sales at a particular location, the results of that election are generally in effect at that location until another election is held on sales at that location, but no such election can 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 bill instead requires that this time period be *at least four years* from that date. (Sec. 4301.37(E).)

The bill also makes the latter change with regard to the minimum time period between (1) elections on beer and liquor sales at a permit premises previously adjudged by a court to be a nuisance or (2) elections on beer and 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), not in the bill).

**Relationship of election on sales at a particular location to elections affecting all or part of a precinct**

Existing law specifies that the results of a local option election held in a precinct on sales at a particular location do not prohibit the holding of, *but are affected by the results of*, a local option election that applies to all premises within the precinct or a part of the precinct. The bill instead provides that the results of an election on sales at a particular location are *not* affected by the results of either of these other types of elections. (Sec. 4301.37(E).)

**Exemptions from effects of local option elections**

Existing law exempts sales of beer or intoxicating liquor at certain locations from the effects of local option elections (secs. 4301.40 and 4301.402). The bill adds two additional exemptions as described below.

First, the bill 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 bill 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).)

In addition, the bill exempts *golf courses* owned by the state or a conservancy district, metropolitan park district (one created under R.C. Chapter 1545.), or other political subdivision of the state from the effects of local option elections that prohibit the sale of beer or intoxicating liquor. Under existing law, sales of beer or intoxicating liquor at certain licensed hotels, motels, and lodges owned by the state, a conservancy district, or political subdivision are not prohibited or otherwise affected by a local option election. (Sec. 4301.402.)

**Exemptions from effects of local option elections for Sunday sale**

Existing law allows the D-6 (Sunday liquor sales) permit to be issued to the holders of specified liquor permits to allow sale under the D-6 permit between the

hours of 1 p.m. and midnight, on Sunday, if that sale has been authorized by a Sunday liquor sales election conducted under existing law. 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 those hours has been so authorized. (Sec. 4303.182.)

The bill changes from 1 p.m. to 10 a.m. the hour on Sunday at which sales of 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 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 bill). 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 existing law whether or not Sunday sales have been authorized by a Sunday liquor sales election.

The bill 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 (1) to a golf course owned by the state, a conservancy district, a metropolitan park district (see above), or another political subdivision or (2) to 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(D) and (E)).

The bill 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 1 p.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 bill 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 bill 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 bill'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; current law requires that other Sunday liquor sales elections be sought by such a petition. (Secs. 4301.351(B)(4), 4301.361, and 4303.182(F).)

**Changes to certain requirements for D-5i permits**

Current law establishes certain requirements that need 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 is licensed under the Food Service Operations Law. The bill revises two of those requirements. 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)).

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**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

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