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Final Analysis

Legislative Service Commission

Sub. H.B. 371

124th General Assembly
(As Passed by the General Assembly)

Reps. Trakas, DePiero, Evans, Husted, Schmidt, Setzer, Sullivan, Seitz, Young, Blasdell, Calvert, Clancy, Carano, Sferra, Niehaus, Coates, Faber, Schneider

Sens. Robert Gardner, Prentiss, Spada, DiDonato

Effective date: October 11, 2002

ACT SUMMARY

- Defines "beer" to include all beverages brewed or fermented wholly or in part from malt products and containing one-half of 1% or more, but not more than 12%, of alcohol by volume.
- Removes statutory references to "malt," "malt liquor," "malt beverages," and certain other related beverages.
- Revises the exclusions from the definition of "food" in the Sales Tax Law to include wine and mixed beverages, thus subjecting them to the sales tax.
- Prohibits a wholesale distributor of beer or intoxicating liquor, or an employee of such a wholesale distributor, from having any direct or indirect financial interest in the establishment, maintenance, or promotion of the business of any retail dealer of beer or liquor.
- Specifies that elections on Sunday liquor sales at a particular location may seek the approval of hours of sale between 10 a.m. and midnight or between 1 p.m. and midnight.
- Authorizes the transfer of ownership of a permit issued to a particular location as a result of an election on sales at that location as long as the general nature of the business at that location remains the same after the transfer.

- Exempts the sale of beer and intoxicating liquor at publicly owned golf courses from the effects of local option elections, and allows Sunday liquor sales at these golf courses under a D-6 liquor permit whether or not Sunday sales have been approved in a local option election.
- Creates the D-5k liquor permit, allows this permit to be issued to certain nonprofit organizations that own or operate a botanical garden, and authorizes the holder of this permit to sell beer and any intoxicating liquor for consumption on the premises where sold.
- Creates the F-4 permit to be issued for certain events coordinated by nonprofit associations or corporations.
- Allows beer and intoxicating liquor to be possessed in a public place in an opened container when it is to be consumed during tastings and samplings approved by rule of the Liquor Control Commission.
- Specifies that the prohibition against keeping a place where beer or intoxicating liquor is sold, furnished, or given away in violation of law does not apply to any premises for which a liquor permit has been issued while that permit is in effect.
- Clarifies the conditions under which a C-1, C-2, D-1, D-2, D-3, or D-5 permit may be transferred to an economic development project, and allows a permit transferred to such a project to be subsequently transferred to a different owner or different location in the same municipal corporation or in the unincorporated area of the same township as long as the same or new location meets the economic development project criteria set forth in continuing law.
- Allows a D-8 permit to be issued to the holder of a C-1, C-2, or C-2x permit only if the premises of the permit holder are located where the sale of beer, wine, or mixed beverages is permitted for consumption off the premises where sold, and specifies that sales under a D-8 permit are not affected by whether sales for consumption on the premises where sold are permitted where the D-8 premises are located.
- Eliminates the quotas for D-5f permits that limited the total number of permits to 15 and the per-county number to two.

- Requires suppliers of wine that is bottled outside Ohio and intended for sale in this state to furnish invoice information to the Tax Commissioner, requires the information to be open to public inspection, and exempts the information from the prohibition against the release of certain tax information by the Department of Taxation.

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CONTENT AND OPERATION

Change in the definition of "beer"

Formerly, the Liquor Control Law defined "beer," "malt liquor," and "malt beverages" all in the same way: as including all brewed or fermented malt products containing one-half of 1% or more of alcohol by volume, but not more

than 6% of alcohol by weight. The act revises this definition by defining "beer" *alone* to include all beverages brewed or fermented wholly or in part from malt products and containing one-half of 1% or more, but not more than 12%, of alcohol by volume. (Sec. 4301.01(B)(2).)

The act amends various sections of the Liquor Control Law, the Liquor Permit Law, and other sections of the Revised Code to remove references to "malt," "malt liquor," and "malt beverages" and references to related beverages such as "ale," "porter," and "stout" since these beverages are included within the scope of the new definition of "beer." Occasionally, when the act removes references to these beverages, it substitutes a reference to "beer," but, if "beer" already is referred to in the context of a section, that substitution is unnecessary. (Secs. 1333.82(A), 1502.07, 3719.44(I), 4301.03(D) and (I), 4301.041, 4301.042, 4301.24, 4301.241, 4301.42, 4301.47, 4301.54, 4301.55, 4303.01, 4303.02, 4303.06, 4303.22, 4303.30, 4303.332, 4303.35, 4305.01, 4305.03, 4305.04, 4399.15, and 5733.065(A)(1).)

Revision of "food" definition exclusions in the Sales Tax Law

Law unchanged by the act levies a sales tax on each retail sale made in Ohio for specified purposes. Generally, food is exempt from the sales tax and is defined for that purpose to include certain food items. However, food does not include other specified items. Under former law, it did not include spirituous or malt liquors. The act replaces malt liquors with beer in the exclusion since malt liquors are included within the scope of the act's new definition of "beer" (see above). It also adds wine and mixed beverages to the items excluded from the definition of "food" in the Sales Tax Law, thus subjecting them to the sales tax. (Sec. 5739.02(B).)

Prohibited interests by wholesale distributors and their employees

Former law generally prohibited a wholesale distributor from having a financial interest, directly or indirectly, by stock ownership, through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of the business of any retail dealer. The act replaces this prohibition with a new one that prohibits a wholesale distributor *or an employee of a wholesale distributor* from having a financial interest, directly or indirectly, by stock ownership, through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of the business of any retail dealer. (Sec. 4301.24.)

Effect of local option elections on sales at a particular location

Sunday hours of sale

Continuing law allows a question to be submitted to the electors of an election precinct regarding the sale of intoxicating liquor at a particular location on Sunday. Under former law, the question did not designate the hours of sale (sec. 4301.355(B)(2)). The act requires that the petition that seeks approval of Sunday sales at a particular location, and the question submitted to the voters, state *whether the hours of sale sought are between 10 a.m. and midnight or between 1 p.m. and midnight* (secs. 4301.333(B)(4), 4301.355(B)(2), and 4301.365(A), (D), and (E)). Under law retained by the act, when Sunday sales questions are submitted to the voters of an entire precinct governing sales throughout the precinct or to the voters of part of a precinct governing sales in that part of the precinct, the petition seeking the election and the question submitted must state whether the hours of sale sought are between 10 a.m. and midnight or between 1 p.m. and midnight (secs. 4301.351(B) and (C) and 4301.354(B) and (C), not in the act).

Transfer of ownership of a permit issued as the result of an election approving sales at a particular location

Under continuing law, when a question is submitted to the voters of an election precinct regarding sales at a particular location within that precinct, both the petition seeking the election on the question and the question itself must state the general nature of the business in which the applicant for the liquor permit or the liquor permit holder seeking the election is or will be engaged at that particular location (secs. 4301.333(B)(3)(c) and 4301.355(B)(1) and (2)). The act provides that the provisions of the Liquor Control Law governing local option elections do not prohibit the transfer of ownership of a permit that was issued to a particular location as the result of a local option election held on sales of beer, wine and mixed beverages, or intoxicating liquor at that particular location *as long as the general nature of the business at that particular location described in the petition for that election remains the same after the transfer* (sec. 4301.365(G)).

Exemption of publicly owned golf courses from the effects of local option elections

The act exempts a golf course owned by the state or a conservancy district, metropolitan park district, or other political subdivision of the state from the effects of local option elections that prohibit the sale of beer or intoxicating liquor. Under continuing law, sales of beer or intoxicating liquor at certain licensed hotels, motels, and lodges owned by the state, a conservancy district, or other



political subdivision are not prohibited by or otherwise affected by a local option election. (Sec. 4301.402.)

In addition, the act requires that a D-6 (Sunday liquor sales) permit be issued to the holder of any permit that authorizes the sale of beer or intoxicating liquor and that is issued to a golf course owned by the state or a conservancy district, metropolitan park district, or other political subdivision of the state to allow sales 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(G)).

Creation of the D-5k permit

The act creates the D-5k permit, which may be issued to any nonprofit organization that: (1) is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code of 1986, (2) is the owner or operator of a botanical garden recognized by the American Association of Botanical Gardens and Arboreta, and (3) has not less than 2,500 bona fide members (sec. 4303.181(K)(1)). The holder of a D-5k permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, on the premises where sold (sec. 4303.181(K)(2)).

The act prohibits the holder of a D-5k permit from selling beer or intoxicating liquor for consumption on the premises where sold after 1 a.m. and from transferring the D-5k permit to another location. There can be no quota restrictions placed on the number of D-5k permits that may be issued. (Sec. 4303.181(K)(3), (4), and (5).) The fee for the D-5k permit is \$1,500 (sec. 4303.181(K)(6)).

The act amends several provisions of law otherwise unchanged by the act to add the D-5k permit to lists of previously created permits (secs. 4301.62(C)(1)(a), 4303.07, 4303.10, 4303.182(A) and (I), 4303.30, 4303.35, and 4399.12).

Creation of the F-4 permit to be issued for certain events coordinated by nonprofit associations or corporations

Qualifications for the permit

The act creates the F-4 permit and authorizes the Division of Liquor Control to issue this permit to an association or corporation organized not-for-profit in Ohio to conduct an event that includes the introduction, showcasing, or promotion of Ohio wines if the event: (1) is coordinated by that association or corporation and the association or corporation is responsible for the activities at it, (2) has as one of its purposes the intent to introduce, showcase, or promote Ohio

wines to persons who attend it, (3) includes the sale of food for consumption on the premises where sold, and (4) features at least three A-2 permit holders (wine manufacturers) who sell Ohio wine at it (sec. 4303.204(A)). The Division cannot issue more than six F-4 permits to the same association or corporation in any calendar year (sec. 4303.204(E)).

An F-4 permit holder must not allow an A-2 permit holder to participate in the event for which the F-4 permit is issued if the A-2 or A-1-A permit of that A-2 permit holder is under suspension (sec. 4303.204(G)(2)). Additionally, the Division may refuse to issue an F-4 permit to an applicant who has violated any provision of the Liquor Control Law or Liquor Permit Law during the applicant's previous operation under an F-4 permit, for a period of up to two years after the date of the violation (sec. 4303.204(G)(3)).

Sales authority under the permit

Subject to the limitations mentioned below, the holder of an F-4 permit: (1) may furnish, without charge, wine that it has obtained from the A-2 permit holders that are participating in the event for which the F-4 permit is issued, in two-ounce samples for consumption on the premises where furnished, and (2) may sell such wine by the glass for consumption on the premises where sold. Subject also to the limitations mentioned below, the holder of an A-2 permit that is participating in the event for which the F-4 permit is issued also may sell at the event wine that it has manufactured, in sealed containers for consumption off the premises where sold. Possession of wine in an opened container, when it is served for consumption on the premises of an event by the holder of an F-4 permit as described above, does not violate the Open Container Law. (Secs. 4301.62(C)(1)(b) and 4303.204(B).)

Certain limitations apply to this wine furnishing and sale authority. First, wine may be furnished or sold on the premises of an event for which an F-4 permit is issued only where and when the sale of wine is otherwise permitted by law (sec. 4303.204(B)). Second, no F-4 permit can be effective for more than 72 consecutive hours. And third, no furnishing or sales of wine can take place under an F-4 permit after one a.m. (Sec. 4303.204(D).)

The holder of an F-4 permit is responsible for, and is subject to penalties for, any violations of the Liquor Control Law, the Liquor Permit Law, or the rules adopted under either of those laws (sec. 4303.204(G)(1)).

Premises of an event

The premises of the event for which an F-4 permit is issued must be clearly defined and sufficiently restricted to allow proper enforcement of the permit by

state and local law enforcement officers. If the permit is issued for all or a portion of the same premises for which another class of permit is issued, that permit holder's privileges will be suspended in that portion of the premises in which the F-4 permit is in effect. (Sec. 4303.204(C).)

Application for the permit

An applicant must apply for an F-4 permit not later than 30 days prior to the first day of the event for which the permit is sought. The application must list all of the A-2 permit holders that will participate in the event. The fee for the permit is \$30 per day. (Sec. 4303.204(F).)

The Division must prepare and make available an F-4 permit application form. It may require applicants for and holders of the permit to provide information in addition to that required by the act when necessary for the administration of the F-4 permit provisions. (Sec. 4303.204(F).)

Exceptions to Liquor Control Law provisions

Notwithstanding a Liquor Control Law provision that prohibits a liquor permit holder from giving away beer or intoxicating liquor at any time in connection with the permit holder's business, an A-2 permit holder that participates in an event for which an F-4 permit is issued may donate wine that it has manufactured to the holder of that F-4 permit. The holder of the F-4 permit may return unused and sealed containers of that wine to the A-2 permit holder at the conclusion of the event. (Sec. 4303.204(H)(1); sec. 4301.22(E), not in the act.)

Finally, the act specifies that participation by an A-2 permit holder or its employees in an event for which an F-4 permit is issued does not violate the Liquor Control Law provision that generally prohibits a manufacturer of beer or intoxicating liquor from aiding or assisting, by gift or loan of any money, property of any description, or other valuable thing, the holder of any liquor permit that authorizes retail sale (secs. 4301.24 and 4303.204(H)(2)).

Exemption of tastings and samplings approved by Liquor Control Commission rule from the Open Container Law

Law retained by the act generally prohibits any person from having in the person's possession *in a public place* an opened container of beer or intoxicating liquor, subject to many exceptions. The act specifically allows a person to have in the person's possession an opened container of beer or intoxicating liquor if it is to be consumed during tastings and samplings approved by rule of the Liquor Control Commission. (Sec. 4301.62(C)(1)(d).)

Exemption of permit premises from the Keeper of the Place Law

Law generally unchanged by the act prohibits any person from keeping a place where beer or intoxicating liquor is sold, furnished, or given away in violation of law. On conviction of a person for a subsequent violation of this prohibition, the court must: (1) order the place where the beer or intoxicating liquor is sold, furnished, or given away to be "abated as a nuisance," or (2) order the person so convicted to give bond payable to the state in the sum of \$1,000, with sureties acceptable to the court, that the person will not sell, furnish, or give away beer or intoxicating liquor in violation of law and will pay all fines, costs, and damages assessed against the person for that subsequent violation. (Sec. 4399.09.) The act provides that this prohibition does not apply to any premises for which a liquor permit has been issued while that permit is in effect (sec. 4399.09(B)).

Transfer of a liquor permit to an economic development project

Law generally retained by the act allows the transfer of location, or the transfer of ownership and location, of a C-1 permit (authorizing beer sales for off-premises consumption), C-2 permit (authorizing wine and mixed beverage sales for off-premises consumption), D-1 permit (authorizing beer sales for on-premises consumption), D-2 permit (authorizing wine and mixed beverage sales for on-premises or off-premises consumption), D-3 permit (authorizing spirituous liquor sales for on-premises consumption), and D-5 permit (authorizing beer and liquor sales at a night club) *from* a municipal corporation or the unincorporated area of a township in which the number of permits of that class exceeds the number of such permits authorized to be issued in that municipal corporation or the unincorporated area of that township under population quota restrictions established by law *to* an economic development project located in another municipal corporation or the unincorporated area of another township in which no additional permits of that class may be issued under those restrictions (sec. 4303.29(B)(3)).

The act specifies that the transfer of location or transfer of ownership and location of the permit may occur only if: (1) the applicant notifies the municipal corporation or township to which the location of the permit will be transferred regarding the transfer, and (2) that municipal corporation or township acknowledges in writing to the Division of Liquor Control, at the time the application for the transfer is filed, that the transfer will be to an economic development project. This acknowledgment does not prohibit the municipal corporation or township from requesting a hearing on the transfer as authorized under continuing law. (Sec. 4303.29(B)(3)(b).)

The act specifies that the applicant is eligible to apply for and receive the transfer of location of the permit under the circumstances described above if: (1)



all permits of that class that may be issued in the applicable municipal corporation or unincorporated area of the township have already been issued, or (2) the number of applications filed for permits of that class in that municipal corporation or the unincorporated area of that township exceed the number of permits of that class that may be issued there (sec. 4303.29(B)(3)(b)).

Finally, the act provides that a permit transferred to an economic development project may be subsequently transferred to a different owner at the same location, or to the same owner or a different owner at a different location in the same municipal corporation or in the unincorporated area of the same township, as long as the same or new location meets the economic development project criteria set forth in continuing law (sec. 4303.29(B)(3)(b)). Continuing law requires the Superintendent of Liquor Control, using specified factors, to determine whether the existing or proposed business that is seeking the transfer of a liquor permit qualifies as an economic development project (sec. 4303.29(B)(3)(b)).

Issuance of a D-8 permit

Under law generally unchanged by the act, a D-8 permit may be issued to the holder of a C-1 (beer retailer), C-2 (wine and mixed beverages retailer), or C-2x (beer, wine, and mixed beverages retailer) permit issued to a retail store that has met specified characteristics (sec. 4303.184(A)). The holder of a D-8 permit 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 cannot be sold for general consumption. A D-8 permit holder must not allow an 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 act adds that a D-8 permit may be issued to the holder of a C-1, C-2, or C-2x permit only if the premises of the permit holder are located in a precinct, or at a particular location in a precinct, in which the sale of beer, wine, or mixed beverages is permitted for consumption off the premises where sold. It specifies that sales under a D-8 permit are not affected by whether sales for consumption on the premises where sold are permitted in the precinct or at the particular location where the D-8 premises are located. (Sec. 4303.184(B).)

Quotas for D-5f permits

Continuing law authorizes a D-5f permit to be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law that operates as

a restaurant permitted to serve alcohol under the Liquor Permits Law and that meets specified conditions. The holder of a D-5f permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold. The Division of Liquor Control cannot issue a D-5f permit if the permit premises or proposed permit premises are located within an area in which the sale of spirituous liquor by the glass is prohibited. Former law prohibited the Division from issuing more than 15 D-5f permits and more than two permits per county. The act eliminates both of these quotas. (Sec. 4303.181(F).)

Information on wine that is bottled outside Ohio

Requirements for suppliers

The act requires a supplier of wine that is bottled outside Ohio and that is shipped into and intended for sale within Ohio to furnish to the Tax Commissioner two copies of the invoice for each shipment of that wine into this state. The supplier in order to assist with the collection of the tax levied on the sale or distribution of wine in Ohio may furnish the invoice information electronically in a format prescribed by the Tax Commissioner. All such invoices and invoice information must be open to public inspection during regular business hours. (Sec. 4301.433.)

Release of information by the Department of Taxation

Except as discussed below, law unchanged by the act prohibits an agent of the Department of Taxation, except in the agent's report to the Department or when called on to testify in any court or proceeding, from divulging any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the Department. Whoever violates this prohibition must be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the Department. (Sec. 5703.21(A).)

Continuing law establishes several exceptions to that prohibition. The act adds to these exceptions the releasing of invoices or invoice information furnished under the act's requirements discussed above. (Sec. 5703.21(C)(8).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-18-01	pp. 835-836
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Re-referred to H. State Gov't	03-19-02	pp.	1566-1567
Re-reported, H. State Gov't	03-20-02	p.	1591
Passed House (87-7)	03-21-02	pp.	1604-1605
Reported, S. Agriculture	06-18-02	p.	1907
Passed Senate (28-4)	06-18-02	pp.	1912-1915
House concurred in Senate amendments (86-8)	06-19-02	pp.	1921-1922

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