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Bill Analysis
Legislative Service Commission

Sub. H.B. 371

124th General Assembly
(As Reported by H. State Government)

Reps. Trakas, DePiero, Evans, Husted, Schmidt, Setzer, Sullivan, Seitz

BILL SUMMARY

- Defines "beer" to mean beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, that contain one-half of one percent or more, but not more than 12%, of alcohol by volume and that are brewed or produced from malt, wholly or in part, or from any product used as a substitute for malt.
- Removes statutory references to "malt," "malt liquor," "malt beverages," and certain other related beverages.
- 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.
- Allows a local option election on sales at a particular location to take place less than four years after the date of the most recent election on sales at that location, but only if the petitioner for the election is not the same person as the petitioner for that most recent election.

- 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.
- Allows beer and intoxicating liquor to be possessed in a public place in an open container when it is to be consumed during tastings and samplings approved by rule of the Liquor Control Commission.
- 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.
- Clarifies the conditions under which a C-1, C-2, D-1, D-2, D-3, or D-5 permit may be transferred to a 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.
- 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.

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CONTENT AND OPERATION

Change in the definition of "beer"

The current Liquor Control Law defines "beer," "malt liquor," and "malt beverages" *all in the same way*: as including all brewed or fermented malt products containing one-half of one per cent or more of alcohol by volume but not more than six per cent of alcohol by weight. The bill revises this definition by defining "beer" *alone* to mean beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description, that contain one-half of one per cent or more, but not more than 12%, of alcohol by volume and that are brewed or produced from malt, wholly or in part, or from any product used as a substitute for malt. (Sec. 4303.01(B)(2).)

The bill 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 the bill includes these beverages within the new definition of "beer." Occasionally, when the bill removes references to these beverages, it substitutes a reference to "beer"; but, if "beer" currently 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, 5733.065(A)(1), and 5739.02(B).)

Prohibited interests by wholesale distributors and their employees

Current law generally prohibits 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 bill 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

Current 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, but the question does not designate the hours of sale (sec. 4301.355(B)(2)). The bill requires that the petition that seeks approval of Sunday sales at a particular location, and the question submitted to the voters, must 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 current law, 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 bill).

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

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 in at that particular location (secs. 4301.333(B)(3)(c) and 4301.355(B)(1) and (2)). The bill 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)).

Frequency of local option elections on sales at a particular location

Current law provides that when a local option election is held on sales at a particular location, no election may be held regarding the same use at that particular location for at least four years from the date of the most recent election on that question (sec. 4301.37(E)). The bill allows such an election to be held on a date occurring less than four years from the date of the most recent election on sales at that particular location *if the petitioner for the new election is not the same applicant for a liquor permit, liquor permit holder, or liquor agency store that was the petitioner for that most recent election* (sec. 4301.37(E)(1) and (2)).

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

The bill 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 existing 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 bill requires that the 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 bill 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, 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 bill 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 bill amends several provisions of current law to add the D-5k permit to lists of existing 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 bill 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 must not 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)). And, 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, 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 bill, 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 bill.)

Finally, the bill 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

Current law 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 bill 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

Existing law 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 bill 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

Current law 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 (1) 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 (2)

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 bill 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 existing law. (Sec. 4303.29(B)(3)(b).)

The bill specifies that the applicant is eligible to apply for and receive the transfer of location of the permit under the circumstances described in the immediately preceding paragraph 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 bill 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 current law (sec. 4303.29(B)(3)(b)). Current law requires the Superintendent of Liquor Control, using factors specified in that law, 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)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-18-01	pp. 835-836
Reported, H. State Gov't	01-30-02	p. 1353

h0371-rh.124/kl

