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Bill Analysis
Legislative Service Commission

Sub. S.B. 131*

126th General Assembly
(As Reported by H. State Government)

Sens. Mumper, Dann, Zurz, Schuler

BILL SUMMARY

- Prohibits the sale, offering for sale, purchase, and use of alcohol vaporizing devices, and prescribes criminal penalties for violations.
- Allows opened bottles of wine that are purchased at restaurants to be transported in motor vehicles under specified conditions, notwithstanding the general prohibitions of the Opened Container Law.
- Allows a person to possess on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the D-2 permit holder if that premises is an outdoor performing arts center, the person is attending an orchestral performance, and the D-2 permit holder grants permission for possession and consumption of the wine in certain predesignated areas of the premises.
- Requires, in order for an individual to qualify for an exception to an otherwise applicable prohibition, that a person under age 21 be supervised, not merely accompanied, by a parent, spouse who is age 21 or older, or legal guardian before the underage person knowingly can possess, consume, be under the influence, be sold, or be furnished beer or intoxicating liquor in any public or private place.
- Revises the law governing the allocation of state liquor stores or agencies by clarifying that the notification requirements and procedures apply to the assignment of agency store contracts and by applying those requirements and procedures to the relocation of agency stores.

* *This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Eliminates certain population quota restrictions for C and D liquor permits.
- Eliminates certain procedures and requirements governing the transfer of location of C and D liquor permits.

CONTENT AND OPERATION

Prohibitions regarding alcohol vaporizing devices

The bill prohibits a person from selling or offering for sale an alcohol vaporizing device (R.C. 4301.65(B)). "Alcohol vaporizing device" means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation (R.C. 4301.65(A)). A person who violates this prohibition generally is guilty of a misdemeanor of the third degree. But, for a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person who violates this prohibition is guilty of a misdemeanor of the first degree. (R.C. 4301.99(J).)

The bill further prohibits a person from purchasing or using an alcohol vaporizing device (R.C. 4301.65(C)). A person who violates this prohibition is guilty of a minor misdemeanor (R.C. 4301.99(A)).

Transportation of opened bottles of wine

Existing law prohibits a person from having in the person's possession an opened container of beer or intoxicating liquor in various circumstances. A violation of the prohibition is a minor misdemeanor (R.C. 4301.99(A)). One of the circumstances is while *operating* or *being a passenger* in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking. Another of the circumstances is while being in or on a *stationary* motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking. (R.C. 4301.62(B)(4) and (5).)

However, with regard to both of the circumstances mentioned above, existing law excludes a person who pays for a chauffeured limousine, or a guest of the person, from the opened container prohibition when all of the following apply (R.C. 4301.62(D)):

- (1) The person or guest is a passenger in the limousine.

(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment where the operator is located.

(3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

The bill also excludes from the opened container prohibition an opened bottle of wine that was purchased from the holder of a permit that authorizes the sale of wine for consumption on the premises where sold if both of the following apply (R.C. 4301.62(B)(4) and (5) and (E)):

(1) The opened bottle of wine is securely resealed by the permit holder or an employee of the permit holder before the bottle is removed from the premises. The bottle must be secured in such a manner that it is visibly apparent if the bottle has been subsequently opened or tampered with.

(2) The opened bottle of wine that is resealed is stored in the trunk of a motor vehicle or, if the motor vehicle does not have a trunk, behind the last upright seat or in an area not normally occupied by the driver or passengers and not easily accessible by the driver.

Possession of wine containers at an outdoor performing arts center

The bill allows a person to have in the person's possession on a D-2 liquor permit premises an *opened* or *unopened* container of wine that was not purchased from the holder of the D-2 permit if all of the following apply: (1) the premises for which the D-2 permit is issued is an outdoor performing arts center, (2) the person is attending an orchestral performance, and (3) the holder of the D-2 permit grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued (R.C. 4301.62(C)(3)(a)).¹

¹ *The D-2 permit authorizes the sale of wine and mixed beverages for consumption on the premises where sold. The permit may be issued to the owner or operator of a hotel, of a retail food establishment or a food service operation licensed pursuant to R.C. Chapter 3717. that operates a restaurant, or of a club, boat, or vessel. (R.C. 4303.14--not in the bill.)*

"Outdoor performing arts center" means 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. "Orchestral performance" means a concert comprised of a group of not fewer than 40 musicians playing various musical instruments. (R.C. 4301.62(C)(3)(b).)

Sales of beer and liquor to minors accompanied by parent or legal guardian

Existing law

Existing law generally prohibits any person from *selling* or *furnishing* beer or intoxicating liquor to, or *buying* beer or intoxicating liquor for, a person under age 21 ("underage person") and relatedly prohibits an *underage person* from knowingly ordering, paying for, sharing the cost of, attempting to purchase, *possessing*, or *consuming* any beer or intoxicating liquor in any public or private place. Exceptions to both prohibitions exist when the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes and when the underage person is *accompanied* by a parent, spouse who is not an underage person, or legal guardian.² (R.C. 4301.69(A) and (E)(1).) A person who violates the first prohibition mentioned above commits a misdemeanor (fine of not less than \$500 or more than \$1,000 and possible imprisonment for a definite term of not more than six months), and an underage person who violates the second prohibition mentioned above is guilty of a misdemeanor of the first degree and, if under 18 years of age and either the operator of or a passenger in a motor vehicle at the time of the offense, subject to mandatory probationary driver's license or temporary instruction permit suspension or ineligibility (R.C. 4301.99(C) and (I)).

Existing law also provides that no person is required to permit the engagement of accommodations at any hotel, inn, cabin, or campground by or for an underage person, if the person engaging the accommodations knows or has reason to know (1) that the underage person is intoxicated or (2) that the underage person possesses any beer or intoxicating liquor and is not *accompanied* by a parent, spouse who is not an underage person, or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person (R.C. 4301.69(D)(1)). This provision apparently is a prohibition because a violation of it is proscribed as a misdemeanor of the first degree (R.C. 4301.99(C)).

Changes proposed by the bill

The bill provides that, in each of the "**Existing law**" provisions described above, an underage person must be *supervised*, rather than merely *accompanied*,

² *An underage person also is prohibited from knowingly being under the influence of beer or intoxicating liquor in a public place. The exception mentioned in the text above applies to an underage person only for knowingly (a) possessing, (b) consuming, or (c) being under the influence of beer or intoxicating liquor, and not for knowingly ordering, paying for, sharing the cost of, or attempting to purchase beer or intoxicating liquor. (R.C. 4301.69(E)(1).)*

by a parent, spouse who is not an underage person, or legal guardian in order for the seller, buyer, or furnisher of beer or intoxicating liquor, for the underage person, or for the person engaging accommodations to take advantage of the exception to the applicable prohibition (R.C. 4301.69(A), (D)(1), and (E)(1)).

Relocation of state liquor stores or agencies

Political subdivision notification

Existing law generally authorizes five state liquor stores or agencies to be established in each county. Additional ones may be established in a county based on certain population requirements. But, both of these authorizations are subject to local option election limitation. (R.C. 4301.17(A)(1).)

Also under existing law, when an agency store contract *is proposed* or when an existing agency store contract *is assigned* to a new agent, before entering into the contract or consenting to the assignment, the Division of Liquor Control must notify the legislative authority of the municipal corporation in which the agency store will be located, or the board of county commissioners and the board of township trustees of the county and the township in which the agency store will be located if the store will be located outside the corporate limits of a municipal corporation, of the proposed contract or assignment. The Division also must provide an opportunity to officials or employees of the municipal corporation, or the county and township, for a complete hearing on the advisability of entering into the contract or consenting to the assignment. When the Division sends notice to the legislative authority of the political subdivision, it must notify, by certified mail or by personal service, the chief peace officer of the political subdivision, who may appear and testify, either in person or through a representative, at any hearing held on the advisability of entering into the contract or consenting to the assignment. (R.C. 4301.17(B).)

The bill retains this law governing proposed new agency store contracts and the assignment of existing agency store contracts, and *expands* and applies it to *relocations* of agency stores. Thus, the Division, before consenting to any relocation, also must notify the applicable legislative authority of a political subdivision(s) and provide an opportunity for a hearing when an existing agency proposes to relocate or when an existing agency is relocated and assigned within the jurisdiction of the applicable political subdivision. (R.C. 4301.17(B).)

Other entity notifications

Under existing law, if a *proposed agency store* would be located within 500 feet of a school, church, library, public playground, or township park, the Division cannot enter into an agency store contract until it has notified the authorities in

control of the school, church, library, playground, or park and provided them with an opportunity for a complete hearing on the advisability of entering into the contract. The bill retains this law and applies it to the assignment of an agency store contract and to the relocation of an agency store. Thus, if the assignment of an agency store contract or the relocation of an agency store would be located within 500 feet of a school, church, library, public playground, or township park, the Division cannot enter into an agency store contract until it has notified the applicable authorities and provided them with an opportunity for a complete hearing on the advisability of entering into the contract. (R.C. 4301.17(B).)

Also, under existing law, if an *agency store located within 500 feet* of a school, church, library, public playground, or township park *is operating under an agency contract*, the Division may consent to the assignment of that contract to operate an agency store at the same location, but not until it has notified the applicable authorities and provided them with an opportunity for a complete hearing on the advisability of consenting to the assignment. The bill retains those provisions but specifies that, if an agency store located within 500 feet of a school, church, library, public playground, or township park is operating under an agency contract, the Division may consent to its relocation. The bill also authorizes the Division to consent to the assignment of an existing agency store contract simultaneously with the relocation of the agency store. In any such assignment or relocation, the assignee and the location are subject to the same requirements that the existing location met at the time that the contract was first entered into as well as any additional requirements imposed by the Division in rules adopted by the Superintendent of Liquor Control. However, as under existing law governing the assignment of an agency store contract, the Division cannot consent to the relocation of an agency store until it has notified the applicable authorities and provided them with an opportunity for a complete hearing on the advisability of consenting to the relocation. (R.C. 4301.17(B).)

C and D liquor permits

Population quota restrictions

Under existing law, no more than one of each type of C permit (sales for off-premises consumption) or D permit (sales for on-premises consumption and, under certain instances, sales for off-premises consumption) authorizing beer, wine, mixed beverages, and/or spirituous or intoxicating liquor retail sales can be issued to any one person, firm, or corporation in any county having a population of less than 25,000, and no more than one of each type of C or D permit can be issued to any one person, firm, or corporation for any additional 25,000 or major fraction thereof in any county having a population greater than 25,000, provided that, in the case of D-3, D-3a, D-4, and D-5 permits, no more than one permit can be issued to any one person, firm, or corporation in any county having a

population of less than 50,000, and no more than one such permit can be issued to any one person, firm, or corporation for any additional 50,000 or major fraction thereof in any county having a population greater than 50,000. (R.C. 4303.29(B).)

The bill eliminates all of those restrictions. But, it does not affect the population quota restrictions that govern the number of C-1, C-2, D-1, D-2, D-3, D-4, and D-5 permits that can be issued *within a municipal corporation* or the *unincorporated territory of a township*. (R.C. 4303.29(B) and 4303.292(C).)

Transfer of location of permits

Current law prohibits the Division of Liquor Control from permitting the transfer of location of a C or D permit until it investigates the proposed new premises and finds that the transfer would not be detrimental for any of the reasons that are grounds for refusal to issue, transfer the ownership or location of, or renew any retail liquor permit. In an order permitting or denying such a transfer of location, the Division must state in writing, if it permits the transfer, why the transfer would not be detrimental and, if it denies the transfer, why the transfer would be detrimental. In making the finding, the Division must consider, in addition to the results of its own investigation, any testimony presented in a hearing that is held for the applicable board of county commissioners, board of township trustees, or legislative authority of a municipal corporation for the issuance, transfer of ownership, or transfer of location of a liquor permit. An order permitting or denying the transfer of location of a C or D permit is a public record and must be open to public inspection at the office of the Division. The Division must provide a copy of such an order to any person upon request and may charge a reasonable fee not to exceed the cost of copying and delivering the order. The bill eliminates all of those provisions. (R.C. 4303.273--outright repealed in Section 2 of the bill.)

HISTORY

ACTION	DATE
Introduced	04-21-05
Reported, S. Agriculture	03-29-06
Passed Senate (31-0)	03-29-06
Reported, H. State Gov't	---

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