



Jeff Grim

## *Bill Analysis*

*Legislative Service Commission*

**Sub. S.B. 131\***  
126th General Assembly  
(As Reported by S. Agriculture)

**Sens. Mumper, Dann, Zurz**

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### **BILL SUMMARY**

- Prohibits the sale, offering for sale, purchase, and use of alcohol vaporizing devices.
- Allows opened bottles of wine that are purchased at restaurants to be transported in motor vehicles under specified conditions.
- 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 contracts and by applying those requirements and procedures to the relocation of agency stores.
- Eliminates the population quota restrictions for C and D liquor permits.
- Eliminates the procedures and requirements governing the transfer of location of C and D liquor permits.
- Changes from no less than 5,000 to no less than 1,500 the membership requirement for a nonprofit organization that owns or operates a fine arts museum to qualify for the issuance of a D-5h liquor permit.

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### **CONTENT AND OPERATION**

#### **Prohibitions regarding alcohol vaporizing devices**

The bill prohibits a person from selling or offering for sale an alcohol vaporizing device (sec. 4301.65(B)). "Alcohol vaporizing device" means a

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

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 (sec. 4301.65(A)). A person who violates this prohibition is guilty of a misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree. (Sec. 4301.99(J).)

The bill further prohibits a person from purchasing or using an alcohol vaporizing device (sec. 4301.65(C)). A person who violates this prohibition is guilty of a minor misdemeanor (sec. 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. One of these 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 these 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. (Sec. 4301.62(B)(4) and (5).) However, with regard to both of those circumstances, current 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:

- (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 of the limousine where the operator of the limousine is located; and
- (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 (sec. 4301.62(D)).

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:

- (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. (Sec. 4301.62(E).)

### **Relocation of state liquor stores or agencies**

Current law authorizes five state liquor stores or agencies to be established in each county and additional ones based on certain population requirements subject to local option elections (sec. 4301.17(A)(1)). 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 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, the Division 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.

The bill retains current law governing proposed new agency contracts and the assignment of existing agency contracts and expands and applies that law to relocations of agency stores. Thus, the Division, before consenting to any relocation, also must notify the applicable legislative authority of a political subdivision 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. (Sec. 4301.17(B).)

Under existing law, if the 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 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 current law and applies it to the assignment of an agency contract and the relocation of an agency store. Thus, if the assignment of an agency 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 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.

Under current 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 the Division cannot consent to an assignment 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 and applies them to relocations of agency stores. Thus, 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 relocation of the agency store. The bill also authorizes the Division to consent to the assignment of an existing agency 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 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. (Sec. 4301.17(B).)

### **C and D liquor permits**

#### **Population quota restrictions**

Under existing law, no more than one of each type of C (sales for off-premises consumption) or D (sales for on-premises consumption and, under certain instances, sales for off-premises consumption) permit 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. The bill eliminates all of those restrictions. (Secs. 4303.29 and 4303.292.)

**Transfer of location of permits**

Current law prohibits the Division of Liquor Control from permitting the transfer of location of a class 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, 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 class 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. (Sec. 4303.273.)

**D-5h permit for fine arts museum**

Current law allows the D-5h liquor permit to be issued to any nonprofit organization that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code and that owns or operates a fine arts museum, community arts center, or community theater, each of which must meet specified requirements. The bill revises the requirements for a fine arts museum. Instead of requiring that a nonprofit organization that owns or operates a fine arts museum have no less than 5,000 bona fide members possessing full membership privileges as under current law, the bill requires the nonprofit organization to have no less than 1,500 bona fide members possessing full membership privileges. (Sec. 4303.181(H).)

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**HISTORY**

| ACTION                   | DATE     |
|--------------------------|----------|
| Introduced               | 04-21-05 |
| Reported, S. Agriculture | ---      |

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