



Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Am. Sub. H.B. 243 129th General Assembly (As Passed by the General Assembly)

Reps. Kozlowski and Young, Huffman, Beck, Thompson, Ramos, Maag, Hall, Mecklenborg, Dovilla, Fedor, Letson, R. Adams, Anielski, Antonio, Balderson, Barnes, Blessing, Bubb, Buchy, Carney, Damschroder, Driehaus, Duffey, Foley, Garland, Goyal, Grossman, R. Hagan, Lundy, Mallory, McClain, Milkovich, Murray, Peterson, Rosenberger, Ruhl, Slaby, Uecker, Wachtmann, Yuko

Sens. Bacon, Faber, Sawyer, Hughes, Hite, Beagle, Balderson, Brown, Burke, Cafaro, Coley, Eklund, Gentile, Jordan, Lehner, Manning, Niehaus, Patton, Seitz, Skindell

Effective date: March 22, 2012

ACT SUMMARY

Sale of beer by A-1 permit holders

- Allows an A-1 liquor permit holder to offer for sale beer or beer products manufactured on the premises at retail for consumption on the premises where sold.

A-3a liquor permit

- Eliminates the restriction on the number of A-3a liquor permits that may be issued per county.
- Eliminates the restriction on the issuance of an A-3a permit in a county with a population of 800,000 or less.
- Specifies that a new A-3a permit issued after the act's effective date is subject to local option election.
- Authorizes an A-3a permit holder to offer for sale to each person each day not more than four servings of not more than a quarter ounce of spirituous liquor as tasting samples.
- Eliminates an inconsistency in the Liquor Law regarding the A-3a permit fee.

Issuance of D-5j liquor permits in community entertainment districts

- Allows a D-5j liquor permit (applicable to community entertainment districts) to be issued to a retail food establishment or food service operation located in either of the following:
 - a municipal corporation that meets certain conditions related to population, date of incorporation, and other factors;
 - a township that meets certain conditions related to population and financial investment.

Issuance of D-5l liquor permits in revitalization districts

- Authorizes the D-5l liquor permit (applicable to revitalization districts) to be issued to the owner or operator of any business establishment, rather than only to a retail food establishment or a food service operation as in former law.
- Removes a restriction in prior law that provided that a D-5l permit could only be issued to a premises that had gross annual receipts from the sale of food and meals that constituted not less than 75% of its total annual gross receipts.
- Increases the number of D-5l permits that may be issued within a single revitalization district from five to fifteen.
- Prohibits a D-5l permit from being issued to an adult entertainment establishment.

Dispensing of beer into growlers by D-8 liquor permit holders

- Allows a D-8 liquor permit holder to dispense beer from containers that have a capacity equal to or greater than five and one-sixth gallons into glass growlers (containers not exceeding one gallon) for purposes of off-premises consumption if certain conditions are met.

Tasting samples of spirituous liquor

- Allows tasting samples of spirituous liquor to be sold at agency stores under certain conditions.
- Requires the owner of an agency store to obtain a D-8 permit authorizing the sale of spirituous liquor samples at the agency store.
- Establishes requirements and procedures governing the sale of such tasting samples.

Issuance of F-9 liquor permits

- Creates the F-9 liquor permit to be issued to a nonprofit corporation that operates a city park or provides or manages entertainment for a nonprofit corporation that operates a city park to allow the sale of beer and intoxicating liquor by the individual drink.
- Establishes requirements governing the issuance of an F-9 permit, and specifies that the permit may be issued only with respect to a park that is located in a county with a specified population.
- Allows a person to have in the person's possession on an F-9 permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the holder of the permit if certain conditions are met.

Miscellaneous

- Eliminates a provision that limited the transfer of a C-1, C-2, D-1, D-2, D-3, D-4, or D-5 liquor permit from a municipal corporation or township to an economic development project located in another municipal corporation or township only if the transferor municipal corporation or township had exceeded its quota for such a permit.

TABLE OF CONTENTS

Background: definitions.....	3
Sale of beer by A-1 permit holders.....	4
A-3a liquor permit.....	4
Issuance of D-5j liquor permits in community entertainment districts.....	5
Issuance of D-5l liquor permits in revitalization districts.....	6
Dispensing of beer into growlers by D-8 permit holders	7
Tasting samples of spirituous liquor	8
Prohibitions	10
Registration of trade marketing professionals and trade marketing companies	11
Exemption from Open Container Law.....	11
Issuance of F-9 liquor permits.....	11
Possession of beer and intoxicating liquor on F-9 permit premises	13
Miscellaneous	13

CONTENT AND OPERATION

Background: definitions

Generally, under continuing law, beer includes all beverages brewed or fermented wholly or in part from malt products and containing .5% or more, but not

more than 12%, of alcohol by volume. Intoxicating liquor includes all liquids and compounds, other than beer, containing .5% or more of alcohol by volume. Spirituous liquor includes all intoxicating liquor containing more than 21% of alcohol by volume.¹

Sale of beer by A-1 permit holders

The act allows an A-1 liquor permit holder to sell beer and beer products manufactured on the premises at retail for consumption on the premises where sold. The new authority to sell beer is in addition to continuing authority that allows an A-1 permit holder to manufacture beer, and to sell beer products in bottles or containers for home use and to retail and wholesale liquor permit holders under rules adopted by the Division of Liquor Control.²

A-3a liquor permit

Under law unchanged by the act, an A-3a liquor permit is issued to a distiller that manufactures less than 10,000 gallons of spirituous liquor per year. An A-3a permit holder may sell spirituous liquor that the permit holder manufactures to a personal consumer, in sealed containers for consumption off the premises where manufactured. However, sales to the personal consumer may occur only by an in-person transaction at the permit premises.³

The act eliminates a restriction against the issuance of more than one A-3a permit in a county. Furthermore, the act eliminates a restriction against the issuance of an A-3a permit in a county with a population of 800,000 or less. It also generally prohibits any A-3a permits from being issued unless the sale of spirituous liquor by the glass for on-premises consumption or by the package for off-premises consumption is authorized in the election precinct in which the A-3a permit is proposed to be located. However, this prohibition does not prohibit the issuance of an A-3a permit to an applicant for such a permit who has filed an application with the Division of Liquor Control before the act's effective date.⁴

The act also authorizes an A-3a permit holder to offer for sale tasting samples of spirituous liquor. The A-3a permit holder must not serve more than four tasting samples of spirituous liquor per person per day. A tasting sample must not exceed a quarter ounce. Tasting samples must only be for the purpose of allowing a purchaser to

¹ R.C. 4301.01, not in the act.

² R.C. 4303.02.

³ R.C. 4303.041(A).

⁴ R.C. 4303.041(B).

determine, by tasting only, the quality and character of the spirituous liquor. The tasting samples, which A-3a permit holders were not authorized to offer under former law, must be offered for sale in accordance with rules adopted by the Division.⁵

The act eliminates an inconsistency in the Liquor Law regarding the A-3a permit fee. Under continuing law, an A-3a permit holder may only produce less than 10,000 gallons of spirituous liquor per year. However, former law stated that the fee for an A-3a permit was \$3,906 for each plant that produced more than 25,000 gallons of spirituous liquor per year. For each plant that produced less than 25,000 gallons of spirituous liquor per year, the fee was \$2 per 50 gallon barrel. The act eliminates the inconsistency between the 10,000 gallon annual maximum production limit and the fee for production of more than 25,000 gallons per year. Thus, the act specifies that the fee for all A-3a permits is \$2 per 50 gallon barrel produced.⁶

Issuance of D-5j liquor permits in community entertainment districts

Under continuing law, the D-5j liquor permit authorizes the owner or operator of a retail food establishment or food service operation licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor for on- or off-premises consumption. A D-5j permit can be issued only within a community entertainment district that is designated under continuing law and that is located in a municipal corporation or township that meets certain requirements.⁷ Community entertainment districts are created by statute for bounded areas located in municipal corporations or townships. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.⁸

The act expands the locations for which a D-5j permit may be issued. First, a D-5j permit may be issued to a retail food establishment or food service operation that is located within a community entertainment district that is located in a municipal corporation with a population between 10,000 and 20,000, and to which both of the following apply:

(1) The municipal corporation was incorporated as a village prior to 1840 and currently has a historic downtown business district.

⁵ R.C. 4303.041(C)(1).

⁶ R.C. 4303.041(A) and (D).

⁷ R.C. 4303.181(J).

⁸ R.C. 4301.80, not in the act.

(2) The municipal corporation is located in the same county as another municipal corporation with at least one community entertainment district.⁹

Second, a D-5j permit may be issued to a retail food establishment or food service operation that is located within a community entertainment district that is located in a township with a population of at least 20,000, and not less than \$70 million will be invested in development and construction in the community entertainment district's area located in the township.¹⁰

Issuance of D-5l liquor permits in revitalization districts

The act revises the provisions governing the issuance of D-5l liquor permits. The act authorizes the D-5l permit to be issued to the owner or operator of a business establishment to sell beer and intoxicating liquor for on- and off-premises consumption. Formerly, the permit could be issued only to the owner or operator of a retail food establishment or a food service operation that was licensed under the Retail Food Establishment and Food Service Operation Law.¹¹

The act retains the law that requires the D-5l permit to be issued only to a premises that is located (1) within a revitalization district (see below) that is designated under continuing law, (2) in a municipal corporation or township in which the number of D-5l liquor permits issued equals or exceeds the number of those permits that may be issued in that municipal corporation or township under ongoing law, and (3) in a county with a population of 125,000 or less according to the population estimates certified by the Department of Development for calendar year 2006. However, the act removes a provision of law that restricted the issuance of a D-5l permit to a premises that had gross annual receipts from the sale of food and meals that constituted not less than 75% of its total annual gross receipts.¹²

The act increases the number of D-5l permits that may be issued within a single revitalization district from five to fifteen.¹³ It also prohibits a D-5l permit from being issued to an adult entertainment establishment. "Adult entertainment establishment" generally means an adult arcade, adult bookstore, adult novelty store, adult video store,

⁹ R.C. 4303.181(J)(5).

¹⁰ R.C. 4303.181(J)(4).

¹¹ R.C. 4303.181(L)(1).

¹² R.C. 4303.181(L)(2).

¹³ R.C. 4303.181(L)(4).

adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment.¹⁴

Under law unchanged by the act, revitalization districts are created by statute for bounded areas located in municipal corporations or unincorporated areas of townships that meet certain population requirements. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.¹⁵

Dispensing of beer into growlers by D-8 permit holders

Generally, the act allows a D-8 liquor permit holder to dispense beer into glass containers commonly known as "growlers" if certain conditions are met. Specifically, the act states that a D-8 permit holder may sell beer that is dispensed from containers that have a capacity equal to or greater than five and one-sixth gallons if all of the following conditions are met:

(1) A product registration for the beer has been paid as required in continuing law.

(2) The beer is dispensed only in glass containers whose capacity does not exceed one gallon (glass growlers) and not for consumption where sold.

(3) The containers are sealed, marked, and transported in accordance with the continuing law provisions governing the resealing and transportation of opened bottles of wine.

(4) The containers have been cleaned immediately before being filled in accordance with rules governing the cleaning and sterilization of beer manufacturing equipment.¹⁶

The act specifies that beer that is sold and dispensed as provided above is subject to both of the following:

¹⁴ R.C. 4303.181(L)(5). "Adult entertainment establishment" is defined by reference to R.C. 2907.39, not in the act.

¹⁵ R.C. 4301.81, not in the act.

¹⁶ R.C. 4303.184(D)(1).

(1) All applicable rules adopted by the Liquor Control Commission, including rules governing manufacturer's brand name appearing on beer spigots and the minimum mark-up on the price of beer; and

(2) All applicable federal laws and regulations.¹⁷

Under continuing law, the D-8 permit may be issued to the holder of a C-1 liquor permit (retail sale of beer from specified containers for off-premises consumption), C-2 liquor permit (retail sale of wine and mixed beverages for off-premises consumption), or C-2x liquor permit (retail sale of beer from specified containers for off-premises consumption with a C-2 liquor permit). The D-8 permit holder is authorized to 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 Commission. The act does not authorize an agency store for which a D-8 permit has been issued under the act to sell and dispense beer into glass growlers (see "**Tasting samples of spirituous liquor**," below).¹⁸

Tasting samples of spirituous liquor

The act authorizes the sale of tasting samples of spirituous liquor at an agency store. An agency store is a store that contracts with the state to sell spirituous liquor. Under the act, a D-8 liquor permit must be obtained for an agency store in order to qualify the store for the sale of spirituous liquor tasting samples. Under former law, an agency store was not authorized to sell tasting samples of spirituous liquor. A "tasting sample" is defined to mean a small amount of spirituous liquor that is provided in a serving of not more than a quarter ounce of spirituous liquor and, if provided, not more than one ounce of nonalcoholic mixer to an authorized purchaser and that allows the purchaser to determine, by tasting only, the quality and character of the beverage.¹⁹

An agency store that has been issued a D-8 permit may allow a trade marketing professional, broker, or solicitor to offer for sale tasting samples of spirituous liquor when conducted in accordance with the act. A tasting sample must not be used for the purposes of general consumption.²⁰

The act defines "trade marketing professional" as an individual who is an employee of, or is under contract with, a trade marketing company and who has

¹⁷ R.C. 4303.184(D)(2).

¹⁸ R.C. 4303.184(A) and (C).

¹⁹ R.C. 4301.171(A)(2).

²⁰ R.C. 4301.171(B).

successfully completed a training program on subjects such as the illegal serving of alcohol to persons under 21 years of age.²¹ "Trade marketing company" means a company that solicits the purchase of beer and intoxicating liquor and educates the public about beer and intoxicating liquor.²²

"Broker" means a company that solicits sales of alcoholic beverages on behalf of a manufacturer or supplier, but generally does not take possession of the beverages. "Solicitor" generally means an individual who solicits sales of alcoholic beverages on behalf of a manufacturer, supplier, wholesale distributor, or broker, but generally does not take possession of the beverages.²³

A trade marketing professional, broker, or solicitor may offer tasting samples of spirituous liquor for sale at an agency store if all of the following apply:

(1) The tasting samples are sold in the area of the agency store in which the spirituous liquor is sold and that area is open to the public.

(2) The tasting samples are sold only by the trade marketing professional, broker, or solicitor.

(3) The spirituous liquor is registered with the Division of Liquor Control to be sold in the state as required under continuing law.

(4) Not less than five business days prior to the sale, the trade marketing professional, broker, or solicitor has provided written notice to the Division of the date and time of the sampling, and of the type and brand of spirituous liquor to be sampled at the agency store.²⁴

The sale of tasting samples of spirituous liquor is subject to rules adopted by the Superintendent of Liquor Control or the Liquor Control Commission. An offering for sale of tasting samples must be limited to a period of not more than two hours. Not more than five events at which the sale of tasting samples of spirituous liquor are offered can occur at an agency store in a calendar month.²⁵

²¹ R.C. 4301.171(A)(4).

²² R.C. 4301.171(A)(3).

²³ R.C. 4301.171(A)(1), by reference to O.A.C. 4301-1-01.

²⁴ R.C. 4301.171(C).

²⁵ R.C. 4301.171(D), (E), and (L).

For purposes of offering for sale tasting samples of spirituous liquor, an agency store must purchase the spirituous liquor at the current retail price. An authorized purchaser must be charged not less than 50¢ for each tasting sample. However, the aggregate amount charged for the sale of tasting samples must be sufficient to cover the wholesale price of the spirituous liquor being tasted as that price is fixed by the Division of Liquor Control under ongoing law. Of the amount collected from the sale of tasting samples, the trade marketing professional, broker, or solicitor must reimburse the agency store for the amount of the retail price of the spirituous liquor. When the sale of tasting samples at an agency store is completed, any bottles of spirituous liquor used to provide tasting samples that are not empty must be marked as "sample" and removed from the agency store by the trade marketing professional, broker, or solicitor, as applicable.²⁶

Prohibitions

The act establishes several prohibitions regarding the offering for sale of tasting samples of spirituous liquor. It prohibits any trade marketing professional, broker, or solicitor from doing any of the following:

(1) Advertising the offering for sale of tasting samples of spirituous liquor other than at the agency store where the tasting samples will be offered;

(2) Soliciting orders from or making sales to an authorized purchaser of tasting samples of spirituous liquor for quantities greater than four tasting samples of spirituous liquor per day;

(3) Allowing any authorized purchaser to consume more than four tasting samples of spirituous liquor per day.²⁷

The purchase of a tasting sample of spirituous liquor must not be contingent upon the purchase of any other product from an agency store. No person under 21 years of age is permitted to consume a tasting sample of spirituous liquor.²⁸

No employee of an agency store that allows the sale of tasting samples of spirituous liquor may purchase or consume a tasting sample while on duty.²⁹ If an employee of an agency store that allows the sale of tasting samples of spirituous liquor

²⁶ R.C. 4301.171(F).

²⁷ R.C. 4301.171(G).

²⁸ R.C. 4301.171(H) and (K).

²⁹ R.C. 4301.171(I).

consumes a tasting sample of spirituous liquor, the employee must not perform the employee's duties and responsibilities at the agency store on the day that the tasting sample is consumed.³⁰

A trade marketing professional, trade marketing company, broker, solicitor, owner or operator of an agency store, or an agent or employee of the owner or operator is prohibited from violating the provisions governing the sale of tasting samples of spirituous liquor or any applicable rules adopted by the Superintendent or the Commission.³¹

Registration of trade marketing professionals and trade marketing companies

The act authorizes the Superintendent of Liquor Control to adopt rules requiring a trade marketing professional or trade marketing company to register with the Division in order to solicit liquor permit holders authorized to deal in beer and intoxicating liquor. The act further specifies that a trade marketing professional may be registered for more than one trade marketing company. Under continuing law, the Superintendent may adopt rules requiring a person acting as an agent, solicitor, or salesperson for a manufacturer, supplier, broker, or wholesale distributor of alcohol to register with the Division in order to solicit liquor permit holders authorized to deal in beer and intoxicating liquor.³² The applicable registration fee is \$50.³³

Exemption from Open Container Law

The act exempts consumption of spirituous liquor as part of a tasting sample at an agency store from the Open Container Law.³⁴

Issuance of F-9 liquor permits

The act authorizes the Division of Liquor Control to issue an F-9 liquor permit to a nonprofit corporation that operates a park on property leased from a municipal corporation or a nonprofit corporation that provides or manages entertainment programming pursuant to an agreement with a nonprofit corporation that operates a park on such property. The F-9 permit authorizes the sale of beer or intoxicating liquor by the individual drink at specific events conducted within the park property and

³⁰ R.C. 4301.171(J).

³¹ R.C. 4301.171(M).

³² R.C. 4303.25.

³³ R.C. 4301.10(A)(8).

³⁴ R.C. 4301.62.

appurtenant streets, but only if, and only at times at which, the sale of beer and intoxicating liquor on the premises is otherwise permitted by law. Additionally, an F-9 permit may be issued only if the park property is located in a county that has a population of between 1.1 million and 1.2 million on the provision's effective date.

The Division may issue separate F-9 permits to a nonprofit corporation that operates a park on property leased from a municipal corporation and a nonprofit corporation that provides or manages entertainment programming pursuant to an agreement with a nonprofit corporation that operates a park on such property to be effective during the same time period. However, the permit privileges may be exercised by only one of those permit holders at specific events. The other holder of an F-9 permit must certify to the Division that it will not exercise its permit privileges during that specific event.

Under the act, the premises on which an F-9 permit will be used must be clearly defined and sufficiently restricted to allow proper supervision of the permit's use by state and local law enforcement officers. No sales of intoxicating liquor under an F-9 permit can be made after one a.m.

The fee for an F-9 permit is \$1,700. An F-9 permit is effective for up to nine months as specified in the permit. An F-9 permit is not transferable or renewable. However, the holder of an F-9 permit may apply for a new F-9 permit at any time. The holder of an F-9 permit must make sales only at those specific events about which the permit holder has notified in advance the Division, the Department of Public Safety, and the chief, sheriff, or other principal peace officer of the local law enforcement agencies having jurisdiction over the premises.³⁵

An application for an F-9 permit is subject to the notice and hearing requirements established in ongoing law regarding new liquor permit applications. The Liquor Control Commission must adopt rules necessary to administer the F-9 permit.³⁶

The act prohibits an F-9 permit holder from selling beer or intoxicating liquor beyond the hours of sale allowed by the permit. The act states that this prohibition imposes strict liability on the holder of an F-9 permit and on any officer, agent, or employee of that permit holder.³⁷

³⁵ R.C. 4303.209(A).

³⁶ R.C. 4303.209(B).

³⁷ R.C. 4303.29(C).

The act states that nothing in its provisions governing the issuance of the F-9 permit prohibits the Division from issuing an F-2 liquor permit for a specific event not conducted by an F-9 permit holder provided that the F-9 permit holder certifies to the Division that it will not exercise its permit privileges during that specific event.³⁸ Generally, the F-2 permit authorizes certain entities to sell beer or intoxicating liquor by the individual drink at special events for no longer than 48 hours.³⁹

Possession of beer and intoxicating liquor on F-9 permit premises

The act adds an exemption to the continuing law prohibition against a person's having in the person's possession an opened container of beer or intoxicating liquor on the premises of the holder of any permit issued by the Division and in any other public place. The act allows a person to have in the person's possession on an F-9 permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the F-9 permit holder if the person is attending an orchestral performance and the F-9 permit holder grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of the premises during the period for which the F-9 permit is issued. "Orchestral performance" means a concert comprised of a group of at least 40 musicians playing various musical instruments.⁴⁰

Miscellaneous

Law unchanged by the act establishes population quota restrictions on the issuance of C-1 (retail sale of beer from specified containers for off-premises consumption), C-2 (retail sale of wine and mixed beverages for off-premises consumption), D-1 (retail sale of beer for on- or off-premises consumption), D-2 (retail sale of wine and mixed beverages for on- or off-premises consumption), D-3 (retail sale of spirituous liquor for on-premises consumption), D-4 (sale of beer and intoxicating liquor to club members for on-premises consumption), and D-5 (retail sale of beer and intoxicating liquor for on- or off-premises consumption) liquor permits.

Continuing law also specifies that the provisions establishing the quota restrictions do not prohibit the transfer of the location or the transfer of ownership and location of any of those permits from a municipal corporation or township to an economic development project located in another municipal corporation or township which has reached its quota restriction. However, former law limited such transfers

³⁸ R.C. 4303.29(D).

³⁹ R.C. 4303.202, not in the act.

⁴⁰ R.C. 4301.62(C)(5).

only from a municipal corporation or township that had exceeded its quota restriction. The act eliminates this limitation.⁴¹

HISTORY

ACTION	DATE
Introduced	06-01-11
Reported, H. State Gov't & Elections	06-22-11
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Reported, S. Insurance, Commerce & Labor	11-30-11
Passed Senate (33-0)	12-14-11
House concurred in Senate amendments (89-1)	12-14-11

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⁴¹ R.C. 4303.29(B)(2)(b)(i).

