



Ohio Legislative Service Commission

Final Analysis

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Sub. S.B. 48

130th General Assembly
(As Passed by the General Assembly)

Sens. Balderson, Hite, Burke, Faber, Seitz

Reps. Dovilla, Buchy, Gerberry, Cera, Clyde, R. Adams, Anielski, Antonio, Baker, Barborak, Beck, Bishoff, Blair, Boose, Brown, Burkley, Carney, Celebrezze, Damschroder, DeVitis, Foley, Grossman, Hackett, C. Hagan, R. Hagan, Hall, Heard, Henne, Hill, Hottinger, Lynch, Maag, McClain, McGregor, Milkovich, O'Brien, Pillich, Ramos, Retherford, Rogers, Rosenberger, Scherer, Sears, Slesnick, Smith, Stinziano, Strahorn, Szollosi, Wachtmann, Winburn, Young, Batchelder

Effective date: July 30, 2013

ACT SUMMARY

Beer manufacturing permits

- Creates the A-1c liquor permit to allow beer manufacturers that produce up to 31 million gallons of beer annually to manufacture beer and sell beer products for home use, for consumption on the premises where manufactured, and to retail and wholesale permit holders.
- Limits the applicability of the A-1 liquor permit to beer manufacturers that produce more than 31 million gallons of beer annually and eliminates the authority for A-1 permit holders to sell beer to retail permit holders.
- Allows A-1 liquor permit holders who obtained the permit prior to the act's effective date to continue to operate under that permit until it expires, even if the permit holder would otherwise be eligible for an A-1c permit under the act.
- Specifies that on the act's effective date, A-1 liquor permit holders who obtained the permit prior to the act's effective date are prohibited from selling beer products to retail permit holders unless the A-1 permit holder would otherwise qualify to hold an A-1c permit (i.e. produce no more than 31 million gallons of beer annually).

Distribution franchises and territories

- Prohibits a manufacturer of alcoholic beverages from awarding a distribution franchise or territory to itself, a subsidiary, or another entity in which it has any financial interest, if that franchise, territory, or portion of that territory has been previously awarded to a distributor.
- Prohibits a manufacturer of alcoholic beverages from acquiring a distribution franchise or territory if that franchise, territory, or portion of that territory has been previously awarded to a distributor.
- Notwithstanding the above prohibitions, generally authorizes a manufacturer of alcoholic beverages or subsidiary of a manufacturer that operated a distribution franchise prior to the act's effective date to continue that operation.
- Specifies that the above prohibitions do not apply to the holder of an A-1c liquor permit (applicable to beer manufacturers manufacturing up to 31 million gallons per year); and to the holder of a B-2a liquor permit (applicable to a brand owner, importer, or manufacturer of wine under specified circumstances).
- Notwithstanding the above prohibitions, authorizes a manufacturer of alcoholic beverages to acquire or award itself a distribution franchise or territory for not longer than 180 days in certain circumstances in which a distributor has entered into bankruptcy proceedings.

Population-based liquor permit quotas – exemptions

- For purposes of an existing exemption from C and D liquor permit quotas, makes permissive, instead of mandatory, the use of specified factors in determining the designation of an economic development project.
- Allows a specified C or D liquor permit that has been transferred for an economic development project in a quota restricted city or township to be subsequently transferred to a location that does not qualify as an economic development project regardless of the quota.
- Removes a provision that required a municipal corporation that owns an airport to attempt to obtain a specified D liquor permit from an existing permit holder prior to receiving an exemption from statutory population quota restrictions regarding the airport.
- Removes a provision that required the owner of a premises located on a specified publicly owned golf course to attempt to obtain a specified D liquor permit from an



existing permit holder prior to receiving an exemption from statutory population quota restrictions regarding the premises.

A-1-A liquor permit

- Expands the locations at which an A-1-A liquor permit may be located to include a premises that is situated on a parcel or tract of land that is not more than one-half mile from an A-1, A-1c, or A-2 manufacturing permit premises. (An A-1, A-1c, or A-2 liquor permit is required in order to receive an A-1-A liquor permit.)

CONTENT AND OPERATION

Beer manufacturing permits

Introduction

Under prior law, an A-1 liquor permit could be obtained by any beer manufacturer, regardless of production volume, to manufacture beer and sell beer products in bottles or containers for home use, sell beer manufactured on the premises at retail for on-premises consumption, and sell beer products to retail and wholesale permit holders.¹ The act creates a distinction between large and small beer manufacturers by creating the A-1c permit for beer manufacturers that produce up to 31 million gallons annually and limiting the applicability of the A-1 liquor permit to manufacturers that produce more than 31 million gallons annually. The terms of the A-1 and A-1c permits differ as discussed below, specifically with respect to the authority of a permit holder to sell beer directly to retailers.

A-1c liquor permit

The act creates the A-1c liquor permit to allow beer manufacturers that produce up to 31 million gallons of beer per calendar year to manufacture beer and sell beer products in bottles or containers for home use, sell beer manufactured on the premises at retail for on premises consumption, and sell beer products to retail and wholesale permit holders. The fee for the permit is \$1,000 for each plant during the year covered by the permit.²

The act clarifies that A-1c permit holders are eligible to receive a continuing tax credit, which previously applied to A-1 permit holders who produced no more than 31 million gallons of beer per year. The act also requires A-1c permit holders to comply

¹ R.C. 4303.02.

² R.C. 4303.022.



with record keeping and advance tax payment requirements, allows the issuance of A-1-A permits to A-1c permit holders, and makes other conforming changes.³

A-1 liquor permit

The act limits the applicability of the A-1 liquor permit, which previously applied to all beer manufacturers, to beer manufacturers that produce more than 31 million gallons per calendar year. Further, the act removes the authority for A-1 liquor permit holders to sell beer products to retail permit holders. However, the act retains the authority for an A-1 liquor permit holder to manufacture beer and sell beer products in bottles or containers for home use, sell beer manufactured on the premises at retail for on premises consumption, and sell beer products to wholesale permit holders. The fee for the A-1 liquor permit, unchanged by the act, is \$3,906 for each plant during the year covered by the permit.⁴

Under the act, A-1 liquor permit holders, who obtained the permit prior to the effective date of the act and who would otherwise be eligible to obtain an A-1c liquor permit, are permitted to continue operating under that permit until it expires. However, on the act's effective date A-1 liquor permit holders who obtained the permit prior to that date will be prohibited from selling beer products to retail permit holders unless the A-1 liquor permit holder would qualify for an A-1c liquor permit (i.e. produce no more than 31 million gallons per calendar year).⁵

Distribution franchises and territories

Continuing law contains a number of restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers. However, under prior law there was a broad exception that allowed manufacturers of alcoholic beverages to hold a wholesale distribution permit and sell the manufacturer's products directly to retail permit holders. The act removes this provision and generally limits the situations in which manufacturers of alcoholic beverages may act as distributors.⁶

Specifically, the act prohibits a manufacturer of alcoholic beverages from awarding a distribution franchise or territory to itself, a subsidiary, or another entity in which it has any financial interest if that franchise, territory, or portion of that territory has been previously awarded, sold, assigned, or transferred to a distributor. The act also

³ R.C. 4301.47, 4303.021, 4303.06, 4303.33, and 4303.332.

⁴ R.C. 4303.02.

⁵ R.C. 4303.02 and Section 3.

⁶ R.C. 4301.24.



prohibits a manufacturer from acquiring a franchise or territory if that franchise, territory, or portion of that territory has been previously awarded, sold, assigned, or transferred to a distributor.⁷

However, the act creates three exceptions to these prohibitions. The first exception authorizes a manufacturer or subsidiary of a manufacturer to continue to operate a distribution franchise or distribute alcoholic beverages within a designated territory if, prior to the act's effective date, the manufacturer either acquired the distribution franchise or territory or awarded the franchise or territory to itself or a subsidiary.⁸

The second exception specifies that the prohibitions do not apply to the holder of an A-1c or B-2a liquor permit. An A-1c liquor permit, which is created under the act, may be obtained by a beer manufacturer that produces up to 31 million gallons per calendar year to manufacture beer and sell beer products in bottles or containers for home use, sell beer manufactured on the premises at retail for on premises consumption, and sell beer products to retail and wholesale permit holders. A B-2a permit, which exists under continuing law, may be obtained by a wine brand owner, U.S. importer of wine, or certain wine manufacturers that produce less than 250,000 gallons of wine per year to sell wine to a retail permit holder.⁹

The third exception authorizes a manufacturer of alcoholic beverages to acquire or award a distribution franchise or territory to itself for no longer than 180 days if an existing distribution franchise is cancelled because the existing distributor has filed for bankruptcy or an involuntary petition for bankruptcy has been filed against it. The exception also allows the manufacturer to sell alcoholic beverages to retail permit holders without obtaining a distribution permit during that 180-day period. After the 180-day period, the manufacturer must sell or transfer the franchise or territory to a distributor in which the manufacturer has no financial interest.¹⁰

Population-based liquor permit quotas – exemptions

Liquor permits for economic development projects

Continuing law generally establishes population-based quota restrictions on the number of C-1, C-2, D-1, D-2, D-3, D-4, and D-5 liquor permits ("C or D liquor permits")

⁷ R.C. 1333.84(G)(1)(a) and (b).

⁸ R.C. 1333.84(G)(2) and 4301.24(G).

⁹ R.C. 1333.84(G)(3), 4301.24(H), 4303.022, and 4303.071 (not in the act).

¹⁰ R.C. 1333.84(G)(4).



that may be issued in each municipal corporation or in the unincorporated area of each township. If a municipal corporation or the unincorporated area of a township has reached its quota for the number of C or D liquor permits issued, no more permits may be issued in, or transferred into, the municipal corporation or township. However, under continuing law, there is an exception to the permit quota for the transfer of a C-1, C-2, D-1, D-2, D-3, or D-5 liquor permit for an economic development project that meets certain criteria.¹¹ (See the table below for a description of each of these permits and the quota restrictions.)

Transfer to an economic development project

Under prior law, the Superintendent of Liquor Control was required to consider the following factors in order to determine whether an existing or proposed business that was seeking a permit quota exception qualified as an economic development project:

- (1) Architectural certification of the plans and the cost of the project;
- (2) The number of jobs that will be created by the project;
- (3) Projected earnings of the project;
- (4) Projected tax revenues for the political subdivisions in which the project will be located; and
- (5) The amount of financial investment in the project.

The act makes the Superintendent's consideration of these factors permissive. Under continuing law, if the Superintendent determines that the business qualifies, the Superintendent must designate the business as an economic development project and a C or D permit may be transferred to that business despite the quota restriction.¹²

Transfer from an economic development project

Prior law provided that a C or D liquor permit transferred for an economic development project could 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 met the economic development project criteria set forth above. The act allows a C or D liquor permit that has been transferred for an economic

¹¹ R.C. 4303.29(B)(2)(a) and (b).

¹² R.C. 4303.29(B)(2)(b)(ii).



development project to be subsequently transferred to a location that does not qualify as an economic development project without regard to any quota restriction.¹³

Liquor permits for golf courses and municipally owned airports

Generally, continuing law specifies that a municipal corporation applying for a D-1, D-2, D-3, D-4, or D-5 liquor permit for use at a municipally owned airport at which commercially owned airlines operate is not subject to the population quota restrictions established for those permits. However, former law required the municipal corporation, prior to applying for the particular D permit, to certify to the Division of Liquor Control and the Liquor Control Commission that the municipal corporation attempted to obtain, but did not obtain, the class of permit that the municipal corporation sought from a permit holder with a premises located in that municipal corporation. The act removes the requirement that a municipal corporation must attempt to obtain the class of permit that it seeks from a permit holder whose premises is located in that municipal corporation, but retains the general exemption from the quota restrictions.¹⁴

Continuing law establishes similar requirements with regard to a golf course owned by the state or a municipal corporation, township, county, or metropolitan park district. If the owner of a premises located on such a golf course applies for a D-1, D-2, D-3, D-4, or D-5 liquor permit, the application is not subject to the population quota restrictions established for those permits. However, under prior law the owner of the premises, prior to applying for the particular D permit, was required to certify to the Division of Liquor Control and the Liquor Control Commission that the owner attempted to obtain, but did not obtain, the class of permit that the owner sought from a permit holder with a premises located in the same municipal corporation or the unincorporated area of a township as the premises. The act removes the requirement that the premises owner must attempt to obtain the class of permit that it seeks from a permit holder whose premises is located in the municipal corporation or unincorporated area in which the premises is located, but retains the general exemption from the quota restrictions.¹⁵

Background on liquor permit quotas

The quota restrictions on C and D permits are as follows:

¹³ R.C. 4303.29(B)(2)(b)(i).

¹⁴ R.C. 4303.29(B)(3).

¹⁵ R.C. 4303.29(B)(5).



Permit	Description	Quota Restrictions ¹⁶
C-1	Authorizes the retail sale of beer in containers for off-premises consumption (R.C. 4303.11)	One C-1 liquor permit can be issued for each 1,000 population or part of that population in each municipal corporation and in the unincorporated area of each township
C-2	Authorizes the retail sale of wine or mixed beverages in containers for off-premises consumption (R.C. 4303.12)	One C-2 liquor permit can be issued for each 1,000 population or part of that population in each municipal corporation and in the unincorporated area of each township
D-1	Authorizes the retail sale of beer by the individual glass or in containers for on- or off-premises consumption (R.C. 4303.13)	One D-1 liquor permit can be issued for each 2,000 population or part of that population in each municipal corporation and in the unincorporated area of each township
D-2	Authorizes the retail sale of wine or mixed beverages by the individual glass or in containers for on- or off-premises consumption (R.C. 4303.14)	One D-2 liquor permit can be issued for each 2,000 population or part of that population in each municipal corporation and in the unincorporated area of each township
D-3	Authorizes the retail sale of spirituous liquor until 1 a.m. for on-premises consumption (R.C. 4303.15)	Only one D-3, D-4, or D-5 liquor permit can be issued for each 2,000 population or part of that population in each municipal corporation and in the unincorporated area of each township. However, in any municipal corporation with a population of 55,000 or more, one additional D-3 permit may be issued for each 1,500 population or part of that population.
D-4	Authorizes the retail sale of beer and intoxicating liquor for on-premises consumption to members at a club that has been in existence at least three years prior to the issuance of the permit (R.C. 4303.17)	
D-5	Authorizes the retail sale of beer or intoxicating liquor by the individual glass for on-premises consumption and the retail sale of beer, wine, or mixed beverages for off-premises consumption (R.C. 4303.18)	

¹⁶ R.C. 4303.29(B)(2).



A-1-A liquor permit

Under continuing law, an A-1-A liquor permit may be issued to an A-1 (large beer manufacturer), A-1c (small beer manufacturer), or A-2 (wine manufacturer) liquor permit holder to sell beer and intoxicating liquor at retail, only by the individual drink or from a container, provided that the A-1-A premises is situated at specified locations. Under prior law the specified locations included only premises that are:

(1) Situated on the same parcel or tract of land as the related A-1, A-1c, or A-2 manufacturing permit premises; or

(2) Separated from the parcel or tract of land on which is located the A-1, A-1c, or A-2 manufacturing permit premises only by public streets or highways or by other lands owned by the A-1, A-1c, or A-2 permit holder and used by the permit holder in connection with or in promotion of the permit holder's A-1, A-1c, or A-2 permit business.¹⁷

The act expands the locations at which an A-1-A liquor permit may be located to include a premises that is situated on a parcel or tract of land that is not more than one-half mile from the A-1, A-1c, or A-2 manufacturing permit premises.¹⁸

HISTORY

ACTION	DATE
Introduced	02-20-13
Reported, S. Agriculture	03-20-13
Passed Senate (33-0)	03-20-13
Reported, H. Policy & Legislative Oversight	04-17-13
Passed House (97-0)	04-17-13
Senate concurred in House amendments (32-0)	04-17-13

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¹⁷ R.C. 4303.021(A)(1) and (2).

¹⁸ R.C. 4303.021(A)(3).

