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133rd General Assembly

Final Analysis

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SUMMARY

Sole and exclusive regulation of alcohol

- States that the State of Ohio has the sole and exclusive authority to regulate the sale and distribution of beer and intoxicating liquor in Ohio under the Twenty-first Amendment to the U.S. Constitution (repeal of Prohibition).
- Finds that the General Assembly's authority to so regulate is exercised through the liquor control laws and other relevant statutes.

Delivery of spirituous liquor

- Allows the Division of Liquor Control to deliver spirituous liquor to personal consumers in original containers pursuant to rules adopted by the Superintendent of Liquor Control.

Intoxicating liquor pods

- Treats a pod containing spirituous liquor (more than 21% alcohol by volume [ABV]) as a mixed beverage (0.5% to 21% ABV) for regulatory purposes.
- Defines "pod" to mean a sealed capsule made from specified materials and to which certain requirements apply, including:
 - The alcohol content of the pod exceeds 21% ABV;
 - Processing the pod involves releasing the contents of the capsule through a machine specifically designed to process the contents; and
 - The beverage that results after processing the capsule has an ABV of 0.5% to 21%.

Brewpubs

- Exempts certain brewpubs (A-1-A liquor permit holders) from the requirement to obtain a retail food establishment or food service operation license from a local board of health and operate as a restaurant.
- Instead, allows a brewpub to:
 - Serve unopened commercially prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor, under exemptions from board of health regulation; or
 - Maintain a schedule with the owner or operator of a licensed mobile retail food establishment or a mobile food service operation to serve food to the brewpub's customers.
- Eliminates the requirement that beer growlers sold by a brewpub for off-premises consumption be made of glass.

Alcohol consumption in restricted areas of airports

- Expands the area in which a person who buys beer or intoxicating liquor from a restaurant at a public airport (D-5d liquor permit holder) may consume the beer or intoxicating liquor.
- Specifies that the expanded area includes the portion of the airport terminal in which people are taking flights to and from the airport, provided certain conditions are met, including the airport's governing body authorizes consumption in the area.
- Specifies that consumption in the expanded area is not a violation of the Opened Container Law.
- Broadens the type of public airport at which a D-5d permit may be issued to include an airport operated by a municipal corporation.

F-11 liquor permit

- Authorizes the Division to issue an F-11 liquor permit to a nonprofit organization to conduct an event if one of the event's purposes is the introduction, showcasing, or promotion of craft beers manufactured in Ohio.
- Establishes duties and responsibilities for F-11 permit holders, and allows the permit holder to sell, at the event, beer that it has purchased from the breweries that are participating in the event.
- Establishes requirements and procedures for the issuance of an F-11 permit.

F-12 liquor permit

- Authorizes the Division to issue an F-12 liquor permit to specified organizations to purchase beer or wine from permitted beer or wine manufacturers and wholesalers and

to sell the beer or wine at special functions held during the permit's 90-day validity period.

- Prohibits more than one permit from being issued to the same applicant in any one-year period.

Gifts of glassware

- Allows a manufacturer or supplier of alcoholic beverages to provide glassware intended for the serving of beer to a permit holder authorized to sell beer for on-premises consumption if the manufacturer or supplier provides a receipt to the permit holder.
- Establishes requirements and procedures for the provider of the glassware.
- Exempts the gifts of glassware from restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers.

F permit leasing agreements with manufacturers

- Exempts a manufacturer's lease or rental of property to an F class liquor permit holder from the restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers.

DETAILED ANALYSIS

Sole and exclusive regulation of alcohol

The act states that the General Assembly finds that the Twenty-first Amendment to the U.S. Constitution (repeal of Prohibition) confers upon the State of Ohio sole and exclusive authority to regulate the sale and distribution of beer and intoxicating liquor in Ohio. Intoxicating liquor includes wine, mixed beverages, and spirituous liquor. The act declares that this authority, so conferred, has rested with the state of Ohio since the ratification of the Twenty-first Amendment.¹

The General Assembly also finds that its authority to so regulate is exercised through the liquor control laws and other relevant statutes. The laws and statutes reflect the intent of the General Assembly to:

1. Promote temperance by preventing consumption of beer and intoxicating liquor by underage persons and by discouraging abusive consumption;
2. Promote orderly markets by requiring transparent, accountable, and stable distribution of beer and intoxicating liquor and preventing unfair competition; and

¹ The Twenty-First Amendment to the United States Constitution, Section 2, states: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." Note: the amendment references the laws of a state.

3. Facilitate the collection of taxes related to the sale and consumption of beer and intoxicating liquor.²

Delivery of spirituous liquor

The act allows the Division of Liquor Control to deliver spirituous liquor (more than 21% alcohol by volume [ABV]) to personal consumers in original containers pursuant to rules adopted by the Superintendent of Liquor Control.³

Intoxicating liquor pods

The act treats a pod containing spirituous liquor as a mixed beverage (0.5% to 21% ABV) for purposes of the liquor control laws and alcoholic beverage taxes. Thus, a pod may be sold by a retail liquor permit holder that is authorized to sell mixed beverages. Normally, spirituous liquor products may only be sold by a liquor agency having a contract with the Division.

A “pod” is a sealed capsule made from plastic, glass, aluminum, or a combination of those materials to which the following apply:

1. The capsule contains intoxicating liquor of more than 21% ABV;
2. The capsule also contains a concentrated flavoring mixture;
3. The contents of the capsule are not readily accessible or intended for consumption unless certain manufacturer’s processing instructions are followed;
4. The instructions include releasing the capsule’s contents through a machine specifically designed to process the contents; and
5. After the capsule is processed according to the manufacturer’s instructions, the resulting beverage contains between 0.5% ABV and 21% ABV.⁴

Brewpubs

Food sales

The act exempts certain brewpubs (A-1-A liquor permit holders) from the requirement to obtain a retail food establishment or food service operation license from a board of health and operate as a restaurant. In lieu of operating as a restaurant and obtaining one of those licenses, a brewpub may do either of the following:

1. Serve unopened commercially prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor, without a retail food establishment or food service

² R.C. 4301.011.

³ R.C. 4301.101(D).

⁴ R.C. 4301.01(B)(4), (5), and (23).

operation license. Thus, the act allows sales of food under this circumstance without licensure by a board of health.⁵

2. Maintain a schedule with the owner or operator of a mobile retail food establishment or a mobile food service operation licensed by a board of health to serve food to the brewpub's customers. The schedule must be in writing and agreed to a week in advance. In addition, the brewpub must maintain the schedule for a minimum of one month.⁶

Containers for dispensing beer

The act eliminates the requirement that beer growlers sold by a brewpub for off-premises consumption be made of glass.⁷

Alcohol consumption in restricted areas of airports

The act expands the area in which a person who buys beer or intoxicating liquor from a restaurant at an airport (D-5d liquor permit holder) may consume the beer or intoxicating liquor. It specifies that the expanded area includes the portion of the airport terminal in which people are taking flights to and from the airport. Consumption in the expanded area is not a violation of the Open Container Law, provided:

1. The airport's governing body authorizes consumption in the area;
2. The restaurant is located in the same area;
3. The airport is a public airport that has commercial flight activity and has one or more passenger or property screening checkpoints or restricted areas used as security measures; and
4. The beer or intoxicating liquor is served solely in plastic bottles or other plastic containers that clearly identify the restaurant.

The act retains law that allows a person to buy and consume beer or intoxicating liquor at the restaurant premises.⁸

Airports in which D-5d may be issued

The act allows a D-5d permit to be issued to restaurants located in an airport operated by a municipal corporation. Continuing law allows the D-5d permit to be issued to restaurants

⁵ Sales of food by retail food establishments and food service operations are regulated by the Department of Health and the Department of Agriculture, respectively. Boards of health are generally responsible for implementing rules adopted by those Departments. See R.C. Chapter 3717.

⁶ R.C. 3717.22(A)(2), 3717.42(B)(15), and 4303.021(C)(1) and (2).

⁷ R.C. 4303.021(C)(3)

⁸ R.C. 4301.62(H) and 4303.181(D).

located in an airport operated by a board of county commissioners, a port authority, or a regional airport authority.⁹

F-11 liquor permit

The act creates the F-11 liquor permit. The Division may issue an F-11 liquor permit to a nonprofit organization that has at least 250 members. Under the permit, the nonprofit organization may conduct an event if the event has all of the following characteristics:

1. The event is coordinated by the nonprofit organization and the nonprofit organization is responsible for the activities at the event;
2. One of the event's purposes is the introduction, showcasing, or promotion of craft beers manufactured in Ohio;
3. The event includes the sale of food for consumption on the premises where sold; and
4. The event features at least 20 craft breweries (A-1c liquor permit holders) as participants who are members of the nonprofit organization. The nonprofit organization may allow any number of large breweries (A-1 liquor permit holders) to participate in the event.¹⁰

F-11 permit holder duties and responsibilities

At an event, an F-11 permit holder may sell beer that it has purchased from the breweries that are participating in the event. The F-11 permit holder may sell the beer in four-ounce samples or in containers up to 16 ounces for consumption on the premises where sold. Beer may be sold on the F-11 permit premises only where and when the sale of beer is otherwise permitted by law.

An F-11 permit holder must clearly define and sufficiently restrict the premises of the event to allow proper enforcement of the permit by state and local law enforcement officers. If an F-11 permit is issued for all or a portion of the same premises for which another class of liquor permit is issued, that permit holder's privileges are suspended in that portion of the premises in which the F-11 permit is in effect.

An F-11 permit holder is responsible, and is subject to penalties, for any violations of the liquor control laws that occur during the event. An F-11 permit holder cannot allow a brewery to participate in the event if the brewery or, if applicable, the bar or restaurant permit of that brewery is under suspension.

Notwithstanding the restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers or any rule adopted by the Liquor Control

⁹ R.C. 4303.181(D)(1).

¹⁰ R.C. 4303.2011(A) and (B).

Commission to the contrary, employees of a brewery or beer distributor, or employees or agents of a beer distributor, may assist an F-11 permit holder in serving beer at an event.¹¹

Application and issuance

An applicant for an F-11 permit must apply for the permit at least 30 days prior to the first day of the event. In the application, the applicant must list all of the breweries that will participate in the event. The fee for the F-11 permit is \$60 for each day of the event.

The Division must prepare and make available an F-11 permit application form. The Division may require applicants to provide information that is in addition to that required by the act, provided the information is necessary to administer the act's provisions. The Division cannot issue more than six F-11 permits to the same nonprofit organization in any calendar year.

The Division may refuse to issue an F-11 permit if both:

1. The applicant has pleaded guilty to or has been convicted of violating the liquor control laws while operating under a previously issued F-11 permit; and
2. The violation occurred within the two years preceding the filing of the new F-11 permit application.¹²

An F-11 permit is effective for up to 72 consecutive hours. However, for an exposition at the state fairgrounds, an F-11 permit is effective for the duration of the exposition. No sales of beer can take place under an F-11 permit after 1:00 a.m.¹³

F-12 liquor permit

The act creates the F-12 liquor permit. The Division may issue an F-12 permit to specified organizations (see below) to both:

1. Purchase beer or wine from permitted beer or wine manufacturers and wholesalers; and
2. Sell the beer or wine at special functions held during the permit's 90-day validity period.

An organization includes an association or employer of ten or more persons, a labor union, or a charitable organization. A special function is a function that has a social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purpose, but does not include any function that is for the profit or gain of any individual.

The Division may issue an F-12 permit to an organization if the premises of the event for which the F-12 permit is sought is located in a precinct, or at a particular location in a precinct, in which the sale of beer and wine is otherwise permitted by law. However, sales under an F-12

¹¹ R.C. 4303.2011(C), (D), (H)(1) and (2), and (I).

¹² R.C. 4303.2011(F), (G), and (H)(3).

¹³ R.C. 4303.2011(E).

permit on Sundays are not affected by whether Sunday sales of beer and wine for consumption on the premises where sold are allowed to be made by persons holding another type of liquor permit in the precinct or at the particular location where the event is to be held.

The act prohibits the Division from issuing more than one F-12 permit to the same applicant in any one-year period. The fee for the F-12 permit is \$500.¹⁴

Gifts of glassware

The act allows a manufacturer or supplier to provide glassware intended for the serving of beer to a permit holder authorized to sell beer for on-premises consumption. However, the manufacturer or supplier cannot annually provide more than four cases of the glassware (24 individual pieces of glassware per case) to the permit holder. In order to provide the glassware, the manufacturer or supplier must provide a receipt to the permit holder. Restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers do not apply to this provision.¹⁵

Glassware is a glass, of no more than 24 ounces, that has the brand name of a beer or the name of the beer's manufacturer or supplier permanently and prominently marked on it. A receipt is a record that contains specified information, including:

1. The name and address of both the recipient and provider of the glassware;
2. The date that the glassware is provided;
3. The amount, if any, that the manufacturer or supplier charged the permit holder for the glassware;
4. A description and the amount of glassware provided to the permit holder; and
5. The amount that the manufacturer or supplier paid to have the glassware manufactured.¹⁶

F permit leasing agreements with manufacturers

The act exempts a manufacturer's rental of property to an F class liquor permit holder from restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers. Specifically, under the act, a manufacturer may rent or lease property to an F class permit holder for purposes of an event for which the F class permit has been issued.¹⁷

¹⁴ R.C. 4303.2012.

¹⁵ R.C. 4301.24(A) and 4301.246(A)(1), (B), and (C).

¹⁶ R.C. 4301.246(A)(2) and (3).

¹⁷ R.C. 4301.24(E)(5).

Severability

The act provides that its provisions are severable. This statement does not represent a change in the law, because the Revised Code's rules of statutory construction already stipulate a general severability principle.¹⁸

Background

Below is a list of permits referenced above, along with a description of the authorized activity under the permit. For a list of all authorized liquor permits, complete up to the enactment of this legislation, see the LSC Members Brief, [Ohio Liquor Permits](#).

Class of liquor permit ¹⁹	Authorized activity
A-1c	Craft brewery may sell its beer for on- or off-premises consumption.
A-1-A	Brewery, winery, or distillery may sell beer and any intoxicating liquor by glass or from a container; and a brewery may sell beer for off-premises consumption.
F class	Organizations that operate festivals that have a short duration may sell beer or intoxicating liquor.

HISTORY

Action	Date
Introduced	05-26-20
Reported, H. Commerce & Labor	06-10-20
Passed House (76-16)	06-11-20
Reported, S. Agriculture & Natural Resources	12-10-20
Passed Senate (28-1)	12-18-20
House concurred in Senate amendments (75-10)	12-22-20

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¹⁸ Section 3. See R.C. 1.50, not in the act.

¹⁹ R.C. 4303.021 to 4303.183, 4303.19, 4303.20 to 4303.2010.