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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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S.B. 102*
134th General Assembly

Bill Analysis

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Version: As Reported by House Commerce and Labor

Primary Sponsor: Sen. Roegner

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SUMMARY

Home brewers

- Allows a home brewer to brew or ferment homemade beer or wine without obtaining a liquor permit if specified conditions apply.
- Allows a home brewer to serve homemade beer or wine for personal consumption on private property, to the home brewer's family, neighbors, co-workers, and friends on private property, and at certain events without a liquor permit.
- Allows a person to conduct, sponsor, or host (host) an event if the person:
 - Is a home brewer or fraternal organization that does not hold a valid liquor permit and hosts the event on private property or the premises of the fraternal organization; or
 - Is a small brewery, winery, microdistillery, club, or a permitted restaurant associated with a winery, microdistillery, or small brewery and the person hosts the event on the permitted premises.
- Prohibits a person who is hosting the event from taking certain actions, including selling any homemade beer or wine.
- Exempts a liquor permit holder that hosts an event for home brewers from the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers.

* This analysis was prepared before the report of the House Commerce and Labor Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Exempts a person with an opened container of homemade beer or wine that is served on private property, at a fraternal organization, or at a small brewery, winery, microdistillery, club, or a permitted restaurant associated with a winery, microdistillery, or small brewery from the Open Container Law.

Sales of alcohol on Sunday

- Authorizes a retail liquor permit holder or a liquor agency store to sell beer or intoxicating liquor on Sunday during the same hours that the permit holder or agency contract holder may sell those products on Monday through Saturday.
- States that Sunday sales under an F class permit are not affected by whether Sunday sales are authorized for other liquor permit holders in the precinct, provided that the F class permit is issued for other days of the week in addition to Sunday.
- For a Sunday sales question that is the sole local option question on a ballot for a particular location or in part or all of a precinct, requires 50 people to sign the petition, rather than 35% of the people who voted in the last gubernatorial election as provided in current law.

Special elections for local option

- Allows a local option election on the sale of beer and intoxicating liquor to be held at a special election on a day on which a primary election may be held, even if no primary election is held that day.

Outdoor refreshment areas (DORAs)

- Divides outdoor refreshment areas (DORAs) into two population categories (municipal corporations and townships [local communities] with a population of 50,000 or less and those with more than 50,000) instead of three as in current law (35,000 or less; 35,001 to 50,000; and above 50,000).
- Increases the allowable acreage of a DORA by specified amounts.
- Increases the number of DORAs allowed in a local community.
- Reduces the number of qualified permit holders that must be included in a DORA created in a local community with a population of 50,000 or less from four to two.

Age of alcohol servers

- Allows a person who is 18, rather than 19 as in current law, to handle beer and intoxicating liquor in open containers in the capacity of a waiter or waitress in a hotel, bar, or restaurant.

Cider growlers

- Allows a D-2, D-5, or D-5a-p liquor permit holder to sell cider in growlers for on- or off-premises consumption.

Use of social media for advertising

- Allows a distributor, manufacturer, trade marketing professional, solicitor, or broker of alcoholic beverages to use free services provided by social media to advertise an on-premises brand promotion or a product location communication.
- Prohibits a distributor, manufacturer, trade marketing professional, solicitor, or broker from using free services provided by social media to advertise to persons under 21.

Charitable organization fundraising prizes

- Allows a political organization or 501(c)(3) charitable organization to give away beer or intoxicating liquor, without a permit, as a prize in a raffle or silent auction or as a door prize (fundraiser).
- Requires beer or intoxicating liquor used in the fundraiser to be purchased from a person issued an Ohio liquor permit or from an Ohio-based agency store.
- Requires a donor of spirituous liquor to a political or charitable organization for purposes of a fundraiser to submit receipts to the organization showing that the donor purchased the spirituous liquor from an Ohio-based agency store.

Use of gift card for alcohol purchases

- Eliminates a provision of law that prohibits using more than 30% of a food and beverage gift certificate (e.g., a restaurant gift card) for the purchase of beer or intoxicating liquor for on-premises consumption.

Expansion of sales area of liquor permit premises

- Extends a provision set to expire on December 31, 2022, to December 31, 2023, that allows a qualified permit holder to expand the area in which it may sell alcoholic beverages under certain circumstances.
- Modifies specified aspects of that provision, including removing A-3a liquor permit holders (microdistilleries) from eligibility to expand outdoor areas and requiring all alcoholic beverages sold in an expanded outdoor area to be delivered by the qualified permit holder or their employees.

D-5 liquor permit hours of alcohol sales

- Codifies the authorized hours of alcohol sales for certain types of D-5 liquor permits by stating that a bar or restaurant may sell beer and intoxicating liquor from 5:30 a.m. to 2:30 a.m. the following day, but not between 2:30 a.m. and 5:30 a.m. on any day.
- Extends the authorized hours of alcohol sales for a D-5h (sales of beer and intoxicating liquor for on-premises consumption at an art museum or center or community) and D-5k (sales of beer and intoxicating liquor for on-premises consumption at specified botanical gardens) from 1:00 a.m. to 2:30 a.m.

F-10 liquor permit

- Corrects a drafting error in the F-10 liquor permit (temporary permit to allow wineries to sell wine at a farmers market) by eliminating the authorization for large out-of-state wineries to sell at a farmers market.
- Allows farm wineries to sell their wine at a farmers market.

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DETAILED ANALYSIS

Home brewers

Manufacturing

The bill allows a home brewer to brew beer or ferment wine without obtaining a liquor permit, which is generally required for alcoholic beverage manufacturers, if all of the following apply:

1. The home brewer does not sell the homemade beer or wine for commercial purposes;

2. The home brewer does not receive compensation for participating in any event (which is a demonstration or competition that is not open to the public) at which tasting samples of homemade beer or wine (2 oz. or less) are served, other than a prize that is cash or a cash equivalent awarded at the event or a free or discounted admission;
3. The home brewer annually brews or ferments homemade beer or wine in either of the following amounts:
 - a. Up to 100 gallons if the home brewer's household has only one person who is 21 or older; or
 - b. Up to 200 gallons if the home brewer's household has two or more persons who are 21 or older.¹

Serving

The bill also allows a home brewer to serve homemade beer or wine the home brewer brews or ferments without a liquor permit as follows:

1. For personal consumption on private property or to the home brewer's family, neighbors, co-workers, and friends on private property; and
2. At an event, if the event is held on private property, the premises of a fraternal organization, or the premises of a small brewery, winery, microdistillery, club, or a permitted restaurant associated with a winery, microdistillery, or small brewery. (A fraternal organization is a society, order, or association within Ohio, except a college or high school fraternity, that is a nonprofit, a chapter of a national or state organization, and exists exclusively for the common business or sodality of its members.)²

Hosting an event

A person may conduct, sponsor, or host (host) an event if the person:

1. Is a home brewer or fraternal organization that does not hold a valid liquor permit and hosts the event on private property or the premises of a fraternal organization; or
2. Is a permitted small brewery, winery, microdistillery, club, or a permitted restaurant associated with a winery, microdistillery, or small brewery and the person hosts the event on the permitted premises. The permit holder must suspend its permit privileges in the portion of the permit premises where the event is to occur and for the duration of the event. The permit holder must provide notice to the Division of Liquor Control and the Department of Public Safety's Investigative Unit within ten days prior to the date of the event.

When hosting the event, the person is prohibited from doing any of the following:

¹ R.C. 4301.201(A)(1), (A)(3) to (6), and (B).

² R.C. 4301.201(A)(2) and (C). A small brewery, winery, microdistillery, or club is issued an A-1c, A-2, A-2f, or D-4 liquor permit (see "**Liquor permit reference**," below).

1. Selling any homemade beer or wine;
2. Unless the person is the home brewer of the homemade beer or wine, acquiring an ownership interest in any homemade beer or wine served at the event;
3. Charging a fee for the consumption of the homemade beer or wine at the event. However, if an event is hosted by a home brewers club or group, the club or group may charge a registration fee to a member of the club or group to attend the event.
4. If the person is a liquor permit holder and hosts the event on the permit holder's permitted premises, fail to store the homemade beer or wine on the premises so that it is clearly identified and kept separate from any beer or intoxicating liquor that is intended for sale by the permit holder under the authority of the holder's permit.³

Miscellaneous

The bill exempts a liquor permit holder that hosts an event for home brewers from the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers. It also exempts a person with an opened container of homemade beer or wine that is served on private property, at a fraternal organization, or at a craft brewery, winery, microdistillery, club, or a permitted restaurant associated with a winery, microdistillery, or small brewery from the Open Container Law.⁴ Finally, a home brewer or the home brewer's designated representative may transport homemade beer or wine brewed or fermented by the home brewer without an H liquor permit (see below).⁵

Sales of alcohol on Sunday

Background

Generally, a retail liquor permit holder⁶ or an agency store (a store under contract to sell spirituous liquor on behalf of the state) only may sell beer and intoxicating liquor for on- or off-premises consumption on Sunday if:

1. The permit holder is authorized to do so by a local option election; and
2. For sales of wine, mixed beverages, or spirituous liquor, the permit holder is issued a D-6 liquor permit.

The D-6 liquor permit allows a retail liquor permit holder to sell wine, mixed beverages, or spirituous liquor (as allowed by the permit holder's permit) on Sunday between 10:00 a.m. or 11:00 a.m. and midnight, depending on which hours are approved by the voters in the relevant local option election. The D-6 permit is not required for the sale of beer on Sunday.

³ R.C. 4301.201(E) and (F).

⁴ R.C. 4301.24(E)(6) and 4301.62(B)(2) and (J).

⁵ R.C. 4301.201(D).

⁶ A retail permit holder is an A-1-A, A-2, A-2f, A-3a, A-5, C-2, or class D liquor permit holder, see "**Liquor permit reference**," below.

On Monday through Saturday, a retail liquor permit holder generally may sell beer and intoxicating liquor between 5:30 a.m. and 1:00 a.m. or 2:30 a.m. the following day, depending on the type of permit. An agency store may sell spirituous liquor during hours specified in the store's contract with the Division of Liquor Control. According to a Division spokesperson, the agency store's hours of sale are authorized generally between 9:00 a.m. and 11:00 p.m. each day.

Sunday sales of alcohol

The bill authorizes retail liquor permit holders and agency stores to sell beer, wine, mixed beverages, or spirituous liquor (depending on the permit) on Sunday during the same hours that the permit holder or contract holder may sell those products on Monday through Saturday.⁷ The bill also states that Sunday sales under an F class permit are not affected by whether Sunday sales are authorized for other liquor permit holders in the precinct, provided that the F class permit is issued for other days of the week in addition to Sunday.⁸

The bill also revises the number of signatures that are needed to place a Sunday sales question described above on the ballot for a particular location or in part or all of a precinct. If the Sunday sales question is not combined with another local option question for a particular location or in part or all of a precinct, the bill requires 50 people to sign a petition to place a question on the ballot. If the Sunday sales question is combined with a question on sales Monday through Saturday for a particular location or in part or all of a precinct, it retains current law that requires 35% of the people who voted in the last gubernatorial election to sign a petition to place a question on the ballot.⁹

Special elections for local option

The bill allows a local option election on the sale of beer and intoxicating liquor to be held at a special election on a day on which a primary election may be held, even if no primary election is held that day. Current law only allows a local option election on a day on which a primary or general election is held.¹⁰

Designated outdoor refreshment areas (DORAs)

Background

Under current law, a municipal corporation or township (local community) may create an outdoor refreshment area (also known as a DORA). While in a DORA, a person may purchase beer or intoxicating liquor from a designated liquor permit holder and walk around outdoors with that opened container of beer or intoxicating liquor. Thus, the person is exempt

⁷ R.C. 4301.172 and 4303.182.

⁸ R.C. 4303.191.

⁹ R.C. 4301.33, 4301.332, and 4301.133.

¹⁰ R.C. 4301.33, 4301.331, 4301.332, 4301.333, 4301.334, and 4301.356.

from the law governing opened containers, which generally prohibits a person from carrying an opened container of beer or intoxicating liquor in public.

A local community may create a DORA with the approval of its legislative authority. Once the DORA is created, the Division must issue an outdoor refreshment area designation to liquor permit holders in the area that are in compliance with the liquor control laws and the terms of their particular permit. Current law establishes procedures and requirements for the review of the operation of a DORA and the dissolution of a DORA or portion of a DORA.¹¹

Revisions to size, number, and liquor permit holders

The bill revises the law governing DORAs as follows:

1. It divides DORAs into two population categories (local communities with a population of 50,000 or less and those with more than 50,000) instead of three as in current law (35,000 or less; 35,001 to 50,000; and above 50,000);
2. It increases the allowable acreage of a DORA to 640 acres for a DORA created in a local community with a population of more than 50,000 and 320 acres for a DORA created in a local community with a population of 50,000 or less. Current law sets the acreage limit at 320 for populations above 35,000 and 150 for populations of 35,000 or less.
3. For purposes of the number of DORAs allowed in a local community, does both of the following:
 - a. Increases the number of DORAs allowed in a local community with a population above 50,000 from four to six;
 - b. Increases to three the number of DORAs allowed in a local community with a population of 50,000 or less, rather than two DORAs for local communities with a population of 35,001 to 50,000 and one DORA for local communities with a population of 35,000 or less as in current law.
4. Reduces the number of qualified liquor permit holders that must be included in a DORA created in a local community with a population of 50,000 or less from four to two. The bill retains the existing requirement that DORAs in local communities above 50,000 must include four qualified permit holders.¹²

A qualified permit holder is a brewery, winery, bar, or restaurant.¹³

¹¹ R.C. 4301.82.

¹² R.C. 4301.82.

¹³ An A-1, A-1-A, A-1c, A-2, A-2f, or D class liquor permit holder – see “**Liquor permit reference**,” below.

Age of alcohol servers

The bill allows a person who is 18, rather than 19 as in current law, to handle beer and intoxicating liquor in open containers in the capacity of a waiter or waitress in a hotel, bar, or restaurant.¹⁴

Cider growlers

The bill allows a bar or restaurant with a D-2, D-5, or D-5a through p liquor permit to sell cider in growlers for on- or off-premises consumption. Current law allows a bar or restaurant with a D-2, D-5, or D-5a through p permit to sell cider in a glass or in a bottle for on-premises consumption or in a sealed container for off-premises consumption.¹⁵

Use of social media for advertising

Notwithstanding the existing restrictions on the interrelationship between alcoholic beverage manufacturers, distributors, and retailers, the bill allows a distributor, manufacturer, trade marketing professional, solicitor, or broker (sales person) to use free services provided by social media to advertise any of the following:

1. An on-premises brand promotion. An on-premises brand promotion is a promotion of a brand of beer or intoxicating liquor by a sales person of that brand at a retail liquor permit premises.
2. Beer, wine, or spirituous liquor tastings sold in accordance with the liquor control laws; and
3. A product location communication. A product location communication is a listing or program that allows an individual to determine the availability of a specific brand of beer or intoxicating liquor at retail liquor permit holders or agency stores in a certain geographic area.

The bill also exempts a trade marketing professional, solicitor, or broker that advertises tasting samples on social media from the existing prohibition against that advertisement. However, it prohibits a manufacturer, distributor, trade marketing professional, solicitor, or broker from using free services provided by social media to advertise to persons under 21.

Under the bill, social media is a service, platform, or website where users communicate with one another free of charge and share media such as pictures, videos, music, and blogs. It includes the website of a sales person.¹⁶ Under current law, a broker is a company that solicits sales of alcoholic beverages on behalf of a manufacturer or supplier, but does not take possession of the alcoholic beverages in Ohio, except as provided in the liquor control laws. A solicitor is an individual who solicits liquor permit holders or the Division for sales of alcoholic

¹⁴ R.C. 4301.22(A)(3).

¹⁵ R.C. 4303.03, 4303.031, 4303.14, 4303.18, and 4303.181.

¹⁶ R.C. 4301.171(G)(1), 4301.24(A), and 4301.245(A)(2) to (4), (B), and (C).

beverages on behalf of a manufacturer, supplier, wholesale distributor, or broker, but does not take possession of the alcoholic beverages in Ohio, except as provided in the liquor control laws.¹⁷

A trade marketing professional is an individual who is an employee of, or is under contract with, a trade marketing company and who has successfully completed a training program on the liquor control laws, conflict management, and safety provisions in an emergency.¹⁸

Charitable organization fundraising prizes

Current law generally only allows a person to sell (which includes giving away) beer, intoxicating liquor, and ethyl alcohol under the authority of a valid liquor permit issued by the Division. The bill allows a political or charitable organization¹⁹ to give away, without a permit, beer, wine, mixed beverages, or spirituous liquor as a fundraising prize under the following conditions:

1. The fundraiser involves a raffle conducted in accordance with the Gambling Law, a silent auction, or an event where a door prize is awarded;
2. Any beer, wine, or mixed beverages offered as a prize is purchased from an Ohio-based liquor permit holder;
3. Any spirituous liquor offered as a prize is purchased from an Ohio-based agency store;
4. Regarding spirituous liquor that is donated to the political or charitable organization for purposes of the fundraiser, the donor cannot be an Ohio-based agency store and must submit receipts to the organization showing that the donor purchased the spirituous liquor from an Ohio-based agency store; and
5. The political or charitable organization must submit purchase receipts for spirituous liquor given away via a fundraiser to the Division. The Division must establish procedures for the submission of receipts.²⁰

¹⁷ R.C. 4301.245(A)(1), by reference to Ohio Administrative Code 4301-1-01(B).

¹⁸ R.C. 4301.245(A)(5). A trade marketing company is a company that solicits the purchase of beer and intoxicating liquor and educates the public about beer and intoxicating liquor (R.C. 4301.171(A)(3)).

¹⁹ A political organization is a political organization defined under section 527 of the Internal Revenue Code (IRC). A charitable organization is an organization described under section 501(c)(3) of the IRC and exempt from federal taxation under section 501(a) of the IRC. R.C. 4301.58.

²⁰ R.C. 4301.58.

Use of gift card for alcohol purchases

The bill eliminates a provision of law that prohibits using more than 30% of a food or beverage gift certificate (e.g., a restaurant gift card) for the purchase of beer or intoxicating liquor for on-premises consumption.²¹

Expansion of sales area of liquor permit premises

The bill extends a provision in H.B. 669 of the 133rd General Assembly set to expire on December 31, 2022, to December 31, 2023. That provision does both of the following:

1. Allows a qualified permit holder to expand the area in which it may sell alcoholic beverages by the individual drink for on-premises consumption as follows:
 - a. In any area of the qualified permit holder's property in which sales are not currently authorized and that is outdoors, including the qualified permit holder's parking area;
 - b. In any outdoor area of public property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains written consent from the local government that owns the property;
 - c. In any outdoor area of private property that is immediately adjacent to the qualified permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.
2. Requires the qualified permit holder to notify the Division of Liquor Control and the Investigative Unit of the Department of Public Safety ten days before the expansion.

In addition, the bill modifies the above provision as follows:

1. Requires a qualified permit holder that seeks to extend the use of an expanded outdoor area beyond 2022 and until December 31, 2023, to renew the expanded outdoor area for the additional time period;
2. Removes A-3a liquor permit holders (microdistilleries) from eligibility to expand outdoor areas;
3. Requires all alcoholic beverages sold in an expanded outdoor area to be delivered by the qualified permit holder or the holder's employees; and
4. Clarifies that a qualified permit holder may apply to the Division for permanent expansion of their permit premises in accordance with current law.²²

Liquor permit hours for D-5 liquor permits

The bill codifies Division rules that establish the authorized hours that certain types of D-5 liquor permittees (bars, restaurants, and clubs) may sell alcohol. These hours are 5:30 a.m.

²¹ R.C. 4301.22(G).

²² Sections 4 and 5.

to 2:30 a.m. the following day, but not between 2:30 a.m. and 5:30 a.m. on any day. The bill also extends the required closing hours for D-5h and D-5k liquor permittees sales from 1:00 a.m. to 2:30 a.m. (see “**Liquor permit reference**” below).²³

F-10 liquor permit

The bill corrects a drafting error in the F-10 liquor permit (temporary permit to allow wineries to sell wine at a farmers market) by eliminating the authorization for large out-of-state wineries to sell at a farmers market. The F-10 permit was created to allow small wineries (producing less than 250,000 gallons of wine per year), in state and out-of-state, to sell their wine at a farmers market.

The bill also allows small farm wineries to sell their wine at a farmers market. The A-2f liquor permit for a farm winery did not exist when the F-10 permit was created.²⁴

Liquor permit reference

Below is a list of permits referenced above, along with a description of the authorized activity under the permit.

Class of liquor permit ²⁵	Authorized activity
A-1	Large brewery may sell its beer for on- or off-premises consumption.
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.
A-2	Winery may sell wine to personal consumers for on- or off-premises consumption and to wholesalers.
A-2f	Farm winery (same authorized activity as a winery, but winery grows grapes and other agricultural products).

²³ R.C. 4303.18 and 4303.181.

²⁴ R.C. 4303.2010.

²⁵ R.C. 4303.021 to 4303.183 and 4303.20 to 4303.2010.

Class of liquor permit ²⁵	Authorized activity
A-3a	Micro-distillery (less than 100,000 gallons a year) may sell to personal consumers a specified amount of spirituous liquor.
C-1	Retail carryout store may sell beer for off-premises consumption.
C-2	Retail carryout store may sell wine and mixed beverages for off-premises consumption.
D-1	Restaurant or other specified entity may sell beer for on- or off-premises consumption.
D-2	Restaurant or other specified entity may sell wine or certain mixed beverages for on- or off-premises consumption.
D-3	Restaurant or other specified entity may sell spirituous liquor for on-premises consumption until 1:00 a.m.
D-3a	D-3 permit holder may sell until 2:30 a.m.
D-4	Club may sell beer or intoxicating liquor to members only for on-premises consumption, until 1:00 a.m.
D-4a	Allows a D-4 permit holder to sell until 2:30 a.m.
D-5	Restaurant or night club may sell beer or intoxicating liquor for on- or off-premises consumption until 2:30 a.m.
D-5h	Nonprofit that operates an art museum or center or community theater may sell beer and intoxicating liquor for on-premises consumption
D-5k	Certain botanical gardens may sell beer and intoxicating liquor for on-premises consumption
D-5a to D-5g, D-5i, D-5j, D-5l to D-5o	Various establishments may sell beer or intoxicating liquor for on- or off-premises consumption, depending on the circumstances until 1:00 a.m. or 2:30 a.m.

Class of liquor permit ²⁵	Authorized activity
D-7	Restaurant or other specified entity in a resort area may sell beer or intoxicating liquor for on-premises consumption until 2:30 a.m.
F class	Organizations that operate festivals that have a short duration may sell beer or intoxicating liquor.
H	For-hire motor carriers and rail carriers may transport and deliver beer and intoxicating liquor.

HISTORY

Action	Date
Introduced	03-02-21
Reported, S. Agriculture & Natural Resources	05-26-21
Passed Senate (31-1)	05-26-21
Reported, H. Commerce & Labor	---