



Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Sub. H.B. 47

131st General Assembly
(As Passed by the General Assembly)

Reps. Blessing and Driehaus, Ramos, Retherford, Becker, Conditt, Maag, Kuhns, Antani, Reece, Slesnick, Young, Dever, Kraus, M. O'Brien, Lepore-Hagan, Anielski, Antonio, Barnes, Brinkman, Buchy, Celebrezze, Dovilla, Hackett, Rogers, Schuring, Sheehy, Strahorn, Terhar, Rosenberger

Sens. Uecker, Yuko, Bacon, Brown, Burke, Coley, Eklund, Hite, Hughes, Lehner, Oelslager, Patton, Schiavoni, Seitz, Thomas, Williams

Effective date: Emergency, April 30, 2015

ACT SUMMARY

Outdoor refreshment areas

- Authorizes the creation of outdoor refreshment areas (ORAs) in municipal corporations and townships.
- Exempts from the Open Container Law any person who is carrying an opened container of beer or intoxicating liquor within an ORA, provided that the container is purchased from a specified liquor permit holder with an ORA designation.
- Requires the Division of Liquor Control to issue an ORA designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the ORA that is in compliance with the Liquor Control Law and the terms of the holder's permit.
- Limits the number of ORAs that may be created in a municipal corporation or township with a population exceeding 35,000 as follows:
 - Not more than one ORA may be created in a municipal corporation or township with a population of 35,001-50,000; and
 - Not more than two ORAs may be created in a municipal corporation or township with a population exceeding 50,000.

- Delays until April 30, 2017, the authority of municipal corporations or townships with populations of 35,000 or less to create ORAs, and limits them to creating one ORA each.
- Establishes procedures that the legislative authority of a municipal corporation or township must follow to create an ORA.
- Requires a municipal corporation or township to adopt public health and safety requirements for ORAs, including the specific boundaries of the ORA, hours of operation, and a sanitation plan that will help maintain the appearance and public health of the ORA.
- Requires a municipal corporation or township to review the operation of an ORA every five years after its creation.
- Authorizes the dissolution of all or a part of an ORA.

Open Container Law – commercial quadricycle exemption

- Exempts from the Open Container Law a person possessing an opened container of beer or wine while a passenger riding on a commercial quadricycle pedaled solely by human power, under certain conditions.
- Authorizes the legislative authority of a municipal corporation or township to enact an ordinance or resolution that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

F liquor permits

- Revises the conditions for issuing F-8 liquor permits (allow alcohol sales at events held on public property) by allowing the Division to issue them in any county with a population exceeding 750,000, rather than any county that had a population between 750,000 and 900,000 on July 10, 2007, as under former law.
- Allows an F liquor permit (authorizes an employer, association, labor union, or charitable organization to purchase and sell beer) to be issued for the same location as an F-8 liquor permit, if the two permits are not exercised concurrently.

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CONTENT AND OPERATION

Outdoor refreshment areas

Overview

The act allows the executive officer of a municipal corporation or the fiscal officer of a township to submit an application to the corresponding legislative authority of the municipal corporation or township to establish an outdoor refreshment area (ORA). Upon approval by the legislative authority, the ORA is created. Once the ORA is created, the Division of Liquor Control must issue an ORA designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder that is in compliance with the Liquor Control Law and the specific terms of the holder's permit. Any person who is located in an ORA and who is carrying an opened container of beer or intoxicating liquor purchased from an establishment with an ORA designation is exempt from the Open Container Law. Under the Open Container Law, a person generally is prohibited from carrying an opened container of beer or intoxicating liquor in public, unless a specific exception applies.

Number and size of ORAs

The number of ORAs that may be established in a municipal corporation or township, and an ORA's maximum size, depend on the population of the municipal corporation or township, as follows:¹

¹ R.C. 4301.82(A), (B)(1), and (D) and Section 3.



Population of municipal corp. or township	Maximum number of ORAs	Size of ORAs
More than 50,000	2	Up to 320 contiguous acres or ½ square mile
35,001-50,000	1	Same as above
35,000 or less	Before 4/30/2017: 0 Beginning 4/30/2017: 1	Up to 150 contiguous acres

The population of a municipal corporation or township is based on the most recent federal decennial census.²

Minimum permit holders in ORA

Each ORA also must include at least four A-1, A-1-A, A-1c, or D liquor permit holders.³ The A-1, A-1-A, A-1c, A-2, and D permits generally allow the permit holder to sell beer or intoxicating liquor for on-premises consumption or in sealed containers for off-premises consumption. Intoxicating liquor includes all beverages, except for beer, containing 0.5% or more of alcohol by volume.⁴

Application process

Under the act, the executive officer of a municipal corporation or the fiscal officer of a township may file an application for the creation of an ORA with the corresponding legislative authority of the municipal corporation or township in which the proposed ORA will be created. An application to create an ORA must contain the following information:

- A map or survey of the proposed ORA in sufficient detail to identify its boundaries;
- A statement of the nature and types of establishments within, or proposed to be within, the proposed ORA;
- A statement that the proposed ORA will encompass not fewer than four A-1, A-1-A, A-1c, A-2, or D permit holders;

² R.C. 4301.82(D).

³ R.C. 4301.82(B)(3) and (D)(3).

⁴ R.C. 4301.01(A)(1), 4303.02 to 4303.022, 4303.03, and 4303.13 to 4303.184, not in the act.



- Evidence that the uses of land within the proposed ORA are in accord with the municipal corporation's or township's master zoning plan or map; and
- Proposed public health and safety regulations.⁵

Within 45 days after the application is filed with the legislative authority, the legislative authority must publish public notice of the application once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or township. The legislative authority must ensure that the notice states that the application is on file in the office of the clerk of the municipal corporation or township and is available for inspection by the public during regular business hours. The notice also must indicate the date and time of any public hearing regarding the application.⁶

Application approval or disapproval

Not earlier than 30 but not later than 60 days after initial publication of the notice, the legislative authority must approve or disapprove the application. To approve the application, it must pass an ordinance or resolution by an affirmative majority vote. If the application is approved, the proposed ORA is created. Upon creation of the ORA, the legislative authority must send notice of the approval and a description of the ORA to the Division of Liquor Control and the Investigative Unit in the Department of Public Safety. If the application is disapproved, the applicant may make changes to secure approval.⁷

ORA designations for liquor permit holders

After the creation of an ORA, the Division of Liquor Control must issue an ORA designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the ORA that is in compliance with the Liquor Control Law and the specific terms of the holder's permit. The Division is prohibited from charging a fee for issuing the designation. The designation allows the patrons of the establishment owned by the permit holder to carry opened containers of beer or intoxicating liquor purchased at the establishment at outdoor locations within the ORA, as discussed below.⁸

⁵ R.C. 4301.82(B).

⁶ R.C. 4301.82(C).

⁷ R.C. 4301.82(C).

⁸ R.C. 4301.82(E).



Public health and safety requirements

At the time it creates an ORA, the legislative authority of the municipal corporation or township must adopt an ordinance or resolution establishing requirements that it determines necessary to ensure public health and safety within the ORA. The legislative authority must include in the ordinance or resolution all of the following:

- (1) Specific boundaries of the ORA, including street addresses;
- (2) The number, spacing, and type of signage designating the ORA;
- (3) The ORA's hours of operation;
- (4) The number of personnel needed to ensure public safety in the ORA;
- (5) A sanitation plan that will help maintain the appearance and public health of the ORA;
- (6) The number of personnel needed to execute the sanitation plan; and
- (7) A requirement that beer and intoxicating liquor must be served solely in plastic bottles or other plastic containers in the ORA.

The legislative authority may, but is not required to, include any public health and safety requirements proposed by the mayor or fiscal officer as part of the application to create or modify the ORA. Any public health and safety regulations adopted by the legislative authority may be modified at any time.⁹

Prior to adopting an ordinance or resolution to establish or modify the health and safety regulations, the legislative authority must give notice of its proposed action by publication once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or township. After adopting the ordinance or resolution, the legislative authority must provide notice to the Division of Liquor Control and the Investigative Unit in the Department of Public Safety.¹⁰

⁹ R.C. 4301.82(F)(1).

¹⁰ R.C. 4301.82(F)(2) and (3).



Expansion of existing ORAs

The act authorizes a municipal corporation or township to expand an existing ORA. To do so, it generally must follow the same procedures to create an ORA.¹¹

Review and dissolution of an ORA

The act requires the legislative authority of a municipal corporation or township in which an ORA is located to review the operation of an ORA every five years as long as the ORA is in operation. As part of the review, the legislative authority must adopt an ordinance or resolution either approving the ORA's continued operation or dissolving it. Prior to adopting the ordinance or resolution, the legislative authority must give notice of the proposed action by publication once a week for two consecutive weeks in a newspaper of general circulation in the municipal corporation or township.¹²

Additionally, at any time, the legislative authority may, by ordinance or resolution, dissolve all or part of the ORA. It must give notice of the proposed dissolution by publication once a week for two consecutive weeks in a newspaper of general circulation in the municipal corporation or township.

Once an ORA or portion of it is dissolved, the area that is the subject of the ordinance or resolution no longer constitutes an ORA.

The municipal corporation or township must provide notice of its actions to the Division of Liquor Control and the Investigative Unit of the Department of Public Safety. Upon receipt of the notice, the Division must revoke all ORA designations issued to establishments within the dissolved area.¹³

Open Container Law – ORA exemption

The act creates an exemption from the Open Container Law, which generally prohibits a person from carrying an opened container of beer or intoxicating liquor in any public place. Under the act, a person who purchases beer or intoxicating liquor from the holder of a permit with an ORA designation is permitted to have that beverage in an opened container at any outdoor location within the ORA. However, no person may either:

¹¹ R.C. 4301.82(A) through (E).

¹² R.C. 4301.82(H).

¹³ R.C. 4301.82(H) and (I).



(1) Enter the premises of another establishment with an opened container of beer or intoxicating liquor purchased elsewhere;

(2) Possess an opened container of beer or intoxicating liquor while being in or on a motor vehicle in an ORA, unless (a) the motor vehicle is stationary and is not being operated in a lane of vehicular travel, or (b) the possession is otherwise authorized under continuing exemptions to the Open Container Law governing chauffeured limousines and the transport of opened bottles of wine that are properly resealed.¹⁴

Limitations on the liability of a liquor permit holder

The act clarifies the liability of a liquor permit holder within an ORA by specifically providing that the Dram Shop Law applies to a permit holder located within an ORA in the same manner as if the permit holder were not located in an ORA.¹⁵ The Dram Shop Law imposes distinct limitations on the ability of any person to bring a cause of action against a liquor permit holder, or a permit holder's employee, for damage caused by an intoxicated person who was served by the permit holder. The standard for determining liability depends on whether the damage occurred on or off the permit holder's premises. With regard to damages occurring on the premises, the Dram Shop Law provides:

Notwithstanding [the general procedure for seeking damages for a criminal act] and except as otherwise provided in this section, no person, and no executor or administrator of the person, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person has a cause of action against any liquor permit holder or an employee of a liquor permit holder who sold beer or intoxicating liquor to the intoxicated person unless the personal injury, death, or property damage occurred on the permit holder's premises or in a parking lot under the control of the permit holder and was proximately caused by the negligence of the permit holder or an employee of the permit holder.

With regard to damages occurring off the premises, the Law provides:

A person has a cause of action against a permit holder or an employee of a permit holder for personal injury, death, or

¹⁴ R.C. 4301.62(B)(3) and (C)(7).

¹⁵ R.C. 4301.82(G).

property damage caused by the negligent actions of an intoxicated person occurring off the premises or away from a parking lot under the permit holder's control only when both of the following can be shown by a preponderance of the evidence:

(A) The permit holder or an employee of the permit holder knowingly sold an intoxicating beverage to at least one of the following:

(1) A noticeably intoxicated person in violation of [the law prohibiting serving an intoxicated person]; or

(2) A person [under the age twenty-one].

(B) The person's intoxication proximately caused the personal injury, death, or property damage.¹⁶

Open Container Law – commercial quadricycle exemption

The act generally exempts from the Open Container Law a person who possesses an opened container of beer or wine while, pursuant to a prearranged contract, a passenger riding on a commercial quadricycle pedaled solely by human power, if:

(1) The person is not occupying a seat in the front of the commercial quadricycle where the operator is steering or braking;

(2) The commercial quadricycle is being operated on a street, highway, or other public or private property open to the public for purposes of vehicular travel or parking; and

(3) The person possesses not more than either 36 ounces of beer or 18 ounces of wine.

However, notwithstanding the act's exemption from the state law, the legislative authority of a municipal corporation or township may enact an ordinance or adopt a resolution that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

¹⁶ R.C. 4399.18, not in the act.



A commercial quadricycle to which the exemption applies is a vehicle that has fully operative pedals for propulsion entirely by human power and meets all of the following requirements:

- (1) It has four wheels and is operated in a manner similar to a bicycle;
- (2) It has at least five seats for passengers;
- (3) It is designed to be powered by the pedaling of the operator and the passengers;
- (4) It is used for commercial purposes; and
- (5) It is operated by the vehicle owner or an employee of the owner.¹⁷

F liquor permits

F-8 permit population requirements

The act revises the population conditions for issuing F-8 liquor permits. Under former law, the Division of Liquor Control was authorized to issue an F-8 permit in a county that had a population between 750,000 and 900,000 on July 10, 2007. Under the act, the Division may issue an F-8 permit in a county that has a population exceeding 750,000 on or after the act's effective date.

Generally, the Division may issue an F-8 permit to a nonprofit organization that manages, for the benefit of the public and by contract with a political subdivision of the state, publicly owned property. Under the F-8 permit, the nonprofit organization may sell beer or intoxicating liquor by the individual drink at specific events conducted on the publicly owned property and appurtenant streets. An F-8 permit is valid for not more than nine months.¹⁸

F and F-8 permits for the same location

The act allows the Division to issue an F liquor permit for the same location as an F-8 liquor permit, provided the two permits are not exercised concurrently. Generally, the F permit authorizes an employer or association of ten or more persons, or a labor union or charitable organization, to purchase and sell beer for a special event. An F

¹⁷ R.C. 4301.62(F).

¹⁸ R.C. 4303.208(A).



permit is not valid for more than five days and no more than two may be issued to the same applicant in any 30-day period.¹⁹

HISTORY

ACTION	DATE
Introduced	02-10-15
Reported, H. Gov't Accountability & Oversight	03-25-15
Passed House (82-12)	03-26-15
Reported, S. State & Local Gov't	04-22-15
Passed Senate (32-0)	04-22-15
House concurred in Senate amendments (87-8)	04-29-15

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¹⁹ R.C. 4303.208(D).

