



# Ohio Legislative Service Commission

## Bill Analysis

Jeff Grim

### Sub. H.B. 47\*

131st General Assembly

(As Reported by S. State and Local Government)

**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

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## BILL SUMMARY

### Outdoor refreshment areas

- Authorizes the creation of an outdoor refreshment area by the legislative authority of a municipal corporation or township and limits the number of such areas as follows:
  - Not more than one per municipal corporation or township with a population of 35,001-50,000; and
  - Not more than two per municipal corporation or township with a population of 50,001 or more.
- Generally prohibits a municipal corporation or township with a population of 35,000 or less from creating an outdoor refreshment area, but beginning two years after the bill's effective date, allows a municipal corporation or township with such a population to create one outdoor refreshment area if specified criteria apply.
- Requires the Division of Liquor Control to issue an outdoor refreshment area designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the outdoor refreshment area that is in compliance with the Liquor Control Law and the specific terms of the holder's permit.

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\* This analysis was prepared before the report of the Senate State and Local Government Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Exempts from the Open Container Law any person who is carrying an opened container of beer or intoxicating liquor, purchased from an establishment with an outdoor refreshment area designation, while at an outdoor location within the outdoor refreshment area.
- Requires a municipal corporation or township to adopt public health and safety requirements for outdoor refreshment areas, including the specific boundaries of the area, hours of operation for the area, and a sanitation plan that will help maintain the appearance and public health of the area.
- Requires a municipal corporation or township to review the operation of an outdoor refreshment area every five years after its creation.
- Authorizes the dissolution of all or a part of an outdoor refreshment area.

### **Open Container Law – commercial quadricycle exemption**

- Exempts from the Open Container Law any person who, pursuant to a prearranged contract, is a passenger riding on a commercial quadricycle while possessing an opened container of beer or wine when certain conditions apply, including both of the following:
  - The person has in their possession on the commercial quadricycle an opened container of beer or wine;
  - The person has in their possession on the commercial quadricycle not more than 36 ounces of beer or 18 ounces of wine.
- Authorizes the legislative authority of a municipal corporation or township to enact an ordinance or resolution, as applicable, that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

### **Issuance of certain F liquor permits**

- Authorizes an F-8 liquor permit (allows alcohol sales at special events held on public property) to be issued in a county that has a population of more than 750,000 on or after the bill's effective date, rather than in a county that has a population of between 750,000 and 900,000 on July 10, 2007 as under current law.
- Allows an F liquor permit (authorizes an association, labor union, or nonprofit organization to purchase and sell beer) to be issued for the same location as an F-8 liquor permit, provided that the two permits are not exercised concurrently.



## Emergency clause

- Declares an emergency.

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## TABLE OF CONTENTS

Outdoor refreshment areas .....	3
Overview .....	3
Restrictions on the creation of outdoor refreshment areas .....	4
Application process .....	5
Application approval or disapproval.....	5
Outdoor refreshment area designations .....	6
Adoption of public health and safety requirements .....	6
Expansion of existing areas .....	7
Review and dissolution of an outdoor refreshment area .....	7
Open Container Law exception for outdoor refreshment areas.....	8
Limitations on the liability of a liquor permit holder .....	8
Open Container Law – commercial quadricycle exemption .....	9
Issuance of certain F liquor permits.....	10
F-8 liquor permit population requirements .....	10
Issuance of F and F-8 liquor permits for same location .....	11

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## CONTENT AND OPERATION

### Outdoor refreshment areas

#### Overview

The bill allows the executive officer of a municipal corporation or the fiscal officer of a township to submit an application to the legislative authority of the municipal corporation or township to establish an outdoor refreshment area. Upon approval by the legislative authority, the outdoor refreshment area is created. Once the outdoor refreshment area is created, the Division of Liquor Control must issue an outdoor refreshment area 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 carrying an opened container of beer or intoxicating liquor, purchased from an establishment with an outdoor refreshment area designation, while at an outdoor location within the outdoor refreshment area is exempted 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.



## Restrictions on the creation of outdoor refreshment areas

The bill establishes restrictions on the creation of outdoor refreshment areas depending on the population size of a municipal corporation or township. The number of outdoor refreshment areas that may be created within a single municipal corporation or township are limited as follows:

- Not more than one per municipal corporation or township with a population of 35,001-50,000 people; and
- Not more than two per municipal corporation or township with a population of 50,001 or more people.

A municipal corporation or township with a population of 35,000 or less may not create an outdoor refreshment area. However, beginning two years after the bill's effective date, a municipal corporation or township with a population of 35,000 or less may create one outdoor refreshment area if certain criteria apply (see (2), below). For purposes of making population determinations under the bill, the population of a municipal corporation or township is the population included in the most recent regular federal decennial census.

The bill limits the size of an outdoor refreshment area and specifies the minimum number of qualified permit holders required for an area as follows:

(1) If the municipal corporation or township has a population greater than 35,000, the area cannot exceed 320 contiguous acres or one-half square mile and must contain no fewer than four total A-1, A-1-A, A-1c, A-2, or D liquor permit holders.

(2) If the municipal corporation or township has a population of 35,000 or less, the area must be 150 or fewer contiguous acres and must contain no fewer than four total A-1, A-1-A, A-1c, A-2, or D permit holders.<sup>1</sup>

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.<sup>2</sup> Intoxicating liquor includes all beverages, except for beer, containing .5% or more of alcohol by volume.<sup>3</sup>

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<sup>1</sup> R.C. 4301.82(A), (B)(1), and (D) and Section 3.

<sup>2</sup> R.C. 4303.02, 4303.021, 4303.022, 4303.03, and 4303.13 to 4303.184, not in the bill.

<sup>3</sup> R.C. 4301.01(A)(1), not in the bill.



## **Application process**

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

- A map or survey of the proposed area in sufficient detail to identify the boundaries of the area;
- A statement of the nature and types of establishments within, or proposed to be within, the proposed area;
- A statement that the proposed district will encompass not fewer than four A-1, A-1-A, A-1c, A-2, or D permit holders;
- Evidence that the uses of land within the proposed area are in accord with the municipal corporation's master zoning plan or map; and
- Proposed public health and safety regulations.<sup>4</sup>

Within 45 days after the application is filed with the legislative authority, the legislative authority must publish a public notice, 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.<sup>5</sup>

## **Application approval or disapproval**

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

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<sup>4</sup> R.C. 4301.82(B).

<sup>5</sup> R.C. 4301.82(C).



Safety. If the application is disapproved, the applicant may make changes to secure approval.<sup>6</sup>

### **Outdoor refreshment area designations**

After the creation of an outdoor refreshment area, the Division of Liquor Control must issue an outdoor refreshment area designation to any A-1, A-1-A, A-1c, A-2, or D liquor permit holder located within the area 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 the issuance of 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 outdoor refreshment area, as discussed below.<sup>7</sup>

### **Adoption of public health and safety requirements**

At the time of the creation of an outdoor refreshment area, the legislative authority of a municipal corporation or township in which such an area is located must adopt an ordinance or resolution that establishes requirements the legislative authority determines necessary to ensure public health and safety within the area. The legislative authority must include in the ordinance or resolution all of the following:

- (1) Specific boundaries of the area, including street addresses;
- (2) The number, spacing, and type of signage designating the area;
- (3) The hours of operation for the area;
- (4) The number of personnel needed to ensure public safety in the area;
- (5) A sanitation plan that will help maintain the appearance and public health of the area;
- (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 area.

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 an

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<sup>6</sup> R.C. 4301.82(C).

<sup>7</sup> R.C. 4301.82(E).



application for the creation or modification of the outdoor refreshment area (see above). Any public health and safety regulations adopted by the legislative authority may be modified at any time.<sup>8</sup>

Prior to adopting an ordinance or resolution to establish or modify public health and safety regulations for an outdoor refreshment area, 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. Subsequent to adopting any 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.<sup>9</sup>

### **Expansion of existing areas**

The bill authorizes a municipal corporation or township to expand an existing outdoor refreshment area. To expand an area, a municipal corporation or township generally must follow the same procedures that are required to create an area.<sup>10</sup>

### **Review and dissolution of an outdoor refreshment area**

The bill requires the legislative authority of a municipal corporation or township in which an outdoor refreshment area is located to review the operation of an outdoor refreshment area every five years so long as the area is in operation. As part of the review, the legislative authority must adopt an ordinance or resolution, as applicable, either approving the continued operation of the area or dissolving the area. Prior to adopting the ordinance or resolution, the legislative authority must give notice of any proposed action by publication once a week for two consecutive weeks in a newspaper of general circulation in the municipal corporation or township.<sup>11</sup>

Additionally, at any time, all or part of an outdoor refreshment area may be dissolved by the legislative authority of the municipal corporation or township in which the area is located. After giving notice of the proposed action, by publication once a week for two consecutive weeks in a newspaper of general circulation, the legislative authority may dissolve the entire area or a portion of the area.<sup>12</sup>

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<sup>8</sup> R.C. 4301.82(F)(1).

<sup>9</sup> R.C. 4301.82(F)(2) and (3).

<sup>10</sup> R.C. 4301.82(A) through (E).

<sup>11</sup> R.C. 4301.82(H).

<sup>12</sup> R.C. 4301.82(I).



Upon dissolution of an outdoor refreshment area, the Division of Liquor Control must revoke all outdoor refreshment area designations issued to establishments within the dissolved area or portion of the area.<sup>13</sup>

### **Open Container Law exception for outdoor refreshment areas**

Generally, under current law, a person is prohibited from carrying an opened container of beer or intoxicating liquor in any public place. Under the bill, a person who purchases beer or intoxicating liquor from the holder of a permit with an outdoor refreshment area designation is permitted to have that beverage in an opened container at any outdoor location within the outdoor refreshment area. However, no person may do either of the following:

(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 outdoor refreshment area, unless the motor vehicle is stationary and is not being operated in a lane of vehicular travel or unless the possession is otherwise authorized under existing exemptions to the Open Container Law governing chauffeured limousines and the transport of opened bottles of wine that are properly resealed.<sup>14</sup>

### **Limitations on the liability of a liquor permit holder**

The bill clarifies the liability of a liquor permit holder within an outdoor refreshment area by specifically providing that the existing Dram Shop Law applies to a liquor permit holder located within an outdoor refreshment area in the same manner as if the liquor permit holder were not located in an outdoor refreshment area.<sup>15</sup> The existing Dram Shop Law imposes distinct limitations on the ability of any person to bring a cause of action against a liquor permit holder, or an employee of a liquor permit holder, for damage caused by an intoxicated person who was served by the permit holder. The standard for determining liability depends upon whether the damage occurred on the premises or off the premises of the liquor permit holder. 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

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<sup>13</sup> R.C. 4301.82(H) and (I).

<sup>14</sup> R.C. 4301.62(B)(3) and (C)(7).

<sup>15</sup> R.C. 4301.82(G).





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

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

### **Open Container Law – commercial quadricycle exemption**

The bill generally exempts from the Open Container Law a person who, pursuant to a prearranged contract, is a passenger riding on a commercial quadricycle when all of the following apply:

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<sup>16</sup> R.C. 4399.18, not in the bill.



(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.

(3) The person has in their possession an opened container of beer or wine.

(4) The person has in their possession not more than either 36 ounces of beer or 18 ounces of wine.

Notwithstanding the exemption to the Open Container Law, the legislative authority of a municipal corporation or township may enact an ordinance or adopt a resolution, as applicable, that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

Under the bill, a commercial quadricycle is a vehicle that has fully operative pedals for propulsion entirely by human power and that 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.

(5) It is operated by the vehicle owner or an employee of the owner.<sup>17</sup>

## **Issuance of certain F liquor permits**

### **F-8 liquor permit population requirements**

The bill revises the population requirements regarding the issuance of F-8 liquor permits. Currently, an F-8 permit may be issued only if the property for which the permit is issued is located in a county that has a population of between 750,000 and 900,000 on July 10, 2007. Instead, the bill authorizes an F-8 permit to be issued in a county that has a population of more than 750,000 on or after the bill's effective date.

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<sup>17</sup> R.C. 4301.62(F).



Generally, the F-8 permit is issued 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 to 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.<sup>18</sup>

### **Issuance of F and F-8 liquor permits for same location**

The bill allows an F liquor permit to be issued for the same location as an F-8 liquor permit, provided that the two permits are not exercised concurrently. Generally, the F permit is issued to an association, labor union, or nonprofit organization to purchase and sell beer. An F permit is not valid for more than five days and no more than two may be issued to the same applicant in a 30-day period.<sup>19</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
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	---

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<sup>18</sup> R.C. 4303.208(A).

<sup>19</sup> R.C. 4303.208(D).

