



# Ohio Legislative Service Commission

## Final Analysis

Amanda George

### Sub. H.B. 178

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

**Reps.** Manning, Sweeney, LaTourette, Brenner, Thompson, Becker, Young, Blessing, Henne, Duffey, Cera, Roegner, Boyd, Maag, Buchy, Anielski, Antonio, Arndt, Baker, Brown, Celebrezze, Dovilla, Fedor, Grossman, Hackett, Hambley, Howse, Huffman, Lepore-Hagan, M. O'Brien, S. O'Brien, Patterson, Perales, Phillips, Ramos, Retherford, Rogers, Ruhl, Ryan, Schuring, Sears, Sheehy, Strahorn

**Sens.** Uecker, Balderson, Burke, Coley, Eklund, Hite, Hottinger, Hughes, Jones, Jordan, Lehner, Manning, Obhof, Patton, Peterson, Schiavoni, Seitz, Tavares, Thomas, Yuko

**Effective date:** September 14, 2016

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## ACT SUMMARY

- Establishes the F-10 liquor permit to authorize a person who organizes a farmers market to allow A-2 liquor permit holders (Ohio-based wine manufacturers) or S liquor permit holders (wine manufacturers that ship wine directly to Ohio consumers) to sell both of the following at the farmers market:
  - Tasting samples of wine manufactured by the A-2 or S permit holder for consumption on the premises of the farmers market; and
  - Sealed containers of wine manufactured by the A-2 or S permit holder for consumption off the premises.
- Limits the eligibility of A-2 permit holders to make these sales at farmers markets to those that produce less than 250,000 gallons of wine per year.
- Prohibits an A-2 or S permit holder from engaging in certain activities at a farmers market under an F-10 permit, including selling a variety of wine that is offered for distribution by a wholesale distributor in any state and selling more than 4½ liters of wine per household for off-premises consumption.
- Exempts a person who sells wine at a farmers market under an F-10 permit from the requirement to be licensed as a retail food establishment.

- Exempts from the Open Container Law a person who has in the person's possession an opened container of wine served as a tasting sample for on-premises consumption at a farmers market for which an F-10 permit has been issued.

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## **CONTENT AND OPERATION**

### **Sale of wine at farmers markets**

The act establishes the F-10 liquor permit and authorizes the Division of Liquor Control to issue it to a person who organizes a farmers market. The F-10 permit holder may allow a farmers market participant that is an A-2 liquor permit holder (Ohio-based wine manufacturer) or S liquor permit holder (wine manufacturer that ships wine directly to Ohio consumers) to do the following at the farmers market:

- (1) Sell tasting samples of wine manufactured by the A-2 or S permit holder for consumption on the premises where the farmers market is located; and
- (2) Sell wine manufactured by the A-2 or S permit holder in sealed containers for consumption off the premises.

### **Ineligible farmers markets and production limitations for A-2 permit holders**

An F-10 permit may be issued for farmers markets registered with the Department of Agriculture, excluding the following:

- (1) A for-profit farmers market;
- (2) A farmers market located at a rest area within the limits of the right-of-way of an interstate highway;
- (3) A farmers market located at a service facility that is along the Ohio Turnpike; and
- (4) A farmers market with fewer than five farmers market participants.

Moreover, in the case of A-2 permit holders, those that produce 250,000 gallons or more of wine per year are ineligible to make these sales at a farmers market under an F-10 permit.<sup>1</sup> This production cap provides consistency with the S permit holder

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<sup>1</sup> R.C. 4303.2010(A) and (B).



production cap. Under continuing law, S permit holders are not permitted to produce 250,000 gallons or more of wine per year.<sup>2</sup>

### **Prohibited sales activities at a farmers market**

The act prohibits an A-2 or S permit holder from doing any of the following at a farmers market for which an F-10 permit has been issued:

- (1) Selling a tasting sample that exceeds one ounce;
- (2) Selling more than one sample of each wine offered for sale to any one person;
- (3) Selling more than five varieties of wine as tasting samples per day;

(4) Selling a variety of wine that is offered for distribution by a wholesale distributor in any state. However, the act specifies that this prohibition does not apply to a variety of wine solely distributed by the A-2 or S permit holder. Thus, an A-2 or S permit holder is effectively precluded from selling a variety of wine at a farmers market under the F-10 permit if anyone other than the permit holder distributes that wine in the United States.

(5) Selling more than 4½ liters of wine per household for off-premises consumption; and

(6) Allowing any person other than the A-2 or S permit holder, a member of the permit holder's family, or an employee of the permit holder to sell wine.<sup>3</sup>

The act also prohibits an A-2 or S permit holder from selling wine at a farmers market unless the sale of wine for consumption on the premises and the sale of wine for consumption off the premises is authorized in the election precinct in which the farmers market is located. Finally, the act prohibits an F-10 permit holder from allowing more than four A-2 permit holders, four S permit holders, or a combination of four A-2 and S permit holders per day to sell tasting samples and sealed containers of wine at the farmers market.<sup>4</sup>

### **F-10 liquor permit requirements**

An applicant for an F-10 permit must submit an application for the permit to the Division of Liquor Control and include in it the location of the farmers market. The F-10

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<sup>2</sup> R.C. 4303.232(A)(1), not in the act.

<sup>3</sup> R.C. 4303.2010(E).

<sup>4</sup> R.C. 4303.2010(G) and (H).



permit is effective for nine months and is not renewable. However, a person who organizes a farmers market may re-apply for a new permit. The fee for the F-10 permit is \$100.<sup>5</sup>

The premises of the farmers market for which an F-10 permit is issued must be clearly defined and sufficiently restricted to allow proper enforcement of the permit by state and local law enforcement officers. If an F-10 permit is issued for all or a portion of the same premises for which another class of permit is issued, the Division must suspend that permit holder's privileges in that portion of the premises in which the F-10 permit is in effect.<sup>6</sup>

### **Exemptions**

The act exempts a person who sells wine at a farmers market under an F-10 permit from the requirement to be licensed as a retail food establishment.<sup>7</sup> It also exempts a person who has an opened container of wine served as a tasting sample by an A-2 or S permit holder at a farmers market for which an F-10 permit has been issued from the law prohibiting opened containers of alcohol in a public place.<sup>8</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-29-15
Reported, H. Gov't Accountability & Oversight	01-13-16
Passed House (97-1)	01-27-16
Reported, S. Agriculture	05-25-16
Passed Senate (32-0)	05-25-16

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<sup>5</sup> R.C. 4303.2010(C) and (F).

<sup>6</sup> R.C. 4303.2010(D).

<sup>7</sup> R.C. 3717.22(B)(2)(d).

<sup>8</sup> R.C. 4301.62(C)(1)(b).

