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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 160\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Agriculture and Natural Resources

**Primary Sponsor:** Rep. Ingram

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### SUMMARY

#### Expansion of sales area of liquor permit premises

- Allows certain liquor permit holders to expand their sales area as follows:
  - In any area of the permit holder's property in which sales are not currently authorized and that is outdoors, including the permit holder's parking area;
  - In any outdoor area of public property that is immediately adjacent to the permit holder's premises, if the permit holder obtains written consent from the appropriate local government in accordance with procedures established by the bill; or
  - In any outdoor area of private property that is immediately adjacent to the permit holder's premises, if the permit holder obtains the written consent of the owner of the private property.
- Specifies that the bill's provisions governing expanded sales areas are operative only during the period of the emergency declared by Executive Order 2020-01D (related to COVID-19), issued on March 9, 2020, but not beyond December 1, 2020.

#### Outdoor Refreshment Areas (DORAs)

- Revises the number of outdoor refreshment areas (DORAs) that may be created in a municipal corporation or township as follows:
  - If the population is more than 50,000, increases the number from two to four; and
  - If the population is between 35,000 and 50,000, increases the number from one to two.

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\* This analysis was prepared before the report of the Senate Agriculture and Natural Resources Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

## **Sales of alcohol in an agency store**

- Revises the law governing the sale and consumption of beer, wine, mixed beverages, and spirituous liquor in an agency store.

## **Sales of alcoholic ice cream**

- Allows an alcoholic ice cream manufacturer (A-5 liquor permit holder) to ship the ice cream to a personal consumer via a permitted shipper and to sell the ice cream to retail liquor permit holders for resale to personal consumers.
- Allows an A-5 permit holder to ship alcoholic ice cream to a personal consumer only if certain conditions are met, including verification that the personal consumer is at least 21.
- Eliminates the restriction on the number of pints (four pints) of alcoholic ice cream that a personal consumer may purchase each day from an A-5 permit holder.
- Clarifies that an alcoholic ice cream manufacturer may sell on Sunday under a D-6 liquor permit if such sales have been authorized by local option election.

## **Bottle limits for micro-distilleries**

- Increases from two to four the number of 750 ml spirituous liquor bottles that a micro-distillery may sell to a customer per day.

## **Small wineries exemption**

- Regarding the retail food establishment license exemption for a small winery (A-2 or A-2f liquor permit holder) – which applies only when the winery sells commercially prepackaged food that constitutes 5% or less of sales – clarifies that commercially prepackaged food does not include wine.
- Requires the commercially prepackaged food to be unopened and specifies that the 5% threshold is based on the winery's sales in the previous year.
- Modifies the notice (regarding the exemption) that an exempt small winery must provide to customers.

## **Emergency**

- Declares an emergency.

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## **DETAILED ANALYSIS**

### **Expansion of sales area of liquor permit premises**

During the period of the emergency declared by Executive Order 2020-01D (related to COVID-19), but not beyond December 1, 2020, the bill allows a bar, restaurant, brewery, distillery, or winery (qualified permit holder) to expand the sales area where it may sell drinks.

The drinks may include beer, wine, mixed beverages, or spirituous liquor depending on the type of permit held by the permit holder.<sup>1</sup> In addition to areas in which a qualified permit holder may sell drinks under the relevant permit, the bill allows the permit holder to sell drinks for on-premises consumption as follows:

1. 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;
2. 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 in accordance with the bill (see below);
3. 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.

If a qualified permit holder sells alcoholic beverages in an outdoor area, the qualified permit holder must clearly delineate the area where personal consumers may consume alcoholic beverages.<sup>2</sup>

A qualified permit holder is an A-1, A-1-A, A-1c, A-2, A-2f, A-3, A-3a, or class D permit holder (see "**Background**," below).

### **Approval by public entities**

To expand to an outdoor area of public property as discussed above, a qualified permit holder must obtain the written consent of either of the following:

1. If the public property is located in a municipal corporation, the chief executive officer of the municipal corporation or the chief executive officer's designee. If the chief executive officer or the designee denies consent, the qualified permit holder may appeal the denial to the legislative authority of the municipal corporation. The legislative authority may adopt a resolution requesting the executive officer to reconsider the executive officer's denial.
2. If the public property is located in the unincorporated area of a township, the fiscal officer of the township or the fiscal officer's designee. If the fiscal officer or the fiscal officer's designee denies consent, the qualified permit holder may appeal the denial to the legislative authority of the township. The legislative authority may adopt a resolution consenting to the sale of alcoholic beverages.<sup>3</sup>

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<sup>1</sup> A qualified permit holder is an A-1-A, A-1c, A-2, A-2f, A-3a, or D class liquor permit holder (see "**Background**," below).

<sup>2</sup> Section 3(A), (B), and (E).

<sup>3</sup> Section 3(C).

## **Notification of the Division of Liquor Control**

A qualified permit holder that sells drinks in an outdoor area must notify the Division of Liquor Control of the areas that the qualified permit holder intends to sell the alcoholic beverages. The qualified permit holder must provide the notice within ten days before the commencement of the sales.<sup>4</sup>

### **Open Container Law exemptions**

The bill exempts from the Open Container Law the consumption of an alcoholic beverage in an expanded outdoor area of a qualified permit holder.<sup>5</sup>

## **Outdoor refreshment areas (DORA)**

### **Background**

Under current law, a municipal corporation or township may create an outdoor refreshment area (also known as a DORA) that allows a person to purchase beer or intoxicating liquor from a designated liquor permit holder and walk around outdoors with that opened container of beer or intoxicating liquor in the area. Thus, the person is exempt from the law governing opened containers, which generally prohibits a person from carrying an opened container of beer or intoxicating liquor in public.

A municipal corporation or township may create a DORA with the approval of the legislative authority of the municipal corporation or township. 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 an area or portion of an area.<sup>6</sup>

### **Number of DORAS**

The bill revises the number of DORAs that may be created in a municipal corporation or township as follows:

1. If the population is more than 50,000, increases the number from two to four;
2. If the population is between 35,000 and 50,000, increases the number from one to two.<sup>7</sup>

## **Sales of alcohol in an agency store**

The bill revises the law governing the consumption of beer, wine, mixed beverages, and spirituous liquor in an agency store. Specifically, it does all of the following regarding sales of alcohol at an agency store:

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<sup>4</sup> Section 3(E).

<sup>5</sup> Section 3(D).

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

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

1. Limits the current authorization for an agency store to obtain a D-1, D-2, or D-5 liquor permit (these permits allow on-premises consumption of beer, wine, mixed beverages, or spirituous liquor depending on the permit) to those agency stores with an agency store contract that specifically authorizes the acquisition of those permits;
2. Allows an agency store that is issued a D-5 liquor permit to sell spirituous liquor for on-premises consumption. Current law specifies that an agency store to which a D-5 permit has been issued may only sell beer, wine, and mixed beverages for on- or off-premises consumption.
3. Allows an agency store to be issued a D-3 liquor permit to sell spirituous liquor for on-premises consumption if:
  - a. The agency store's contract specifically authorizes the acquisition of that permit; and
  - b. The agency store contains at least 14,000 square feet of sales floor area.
4. Prohibits the transfer of the D-3 permit to a new location;
5. Requires the Division of Liquor Control to revoke the D-3 permit if the agent no longer operates the agency store;
6. Prohibits the Division from issuing a D-3a liquor permit (permit D-3a allows a D-3 permit holder to sell until 2:30 a.m. instead of 1:00 a.m.) to an agency store;
7. Eliminates a prohibition against the consumption of beer, wine, mixed beverages, and spirituous liquor in the agency store area; and
8. Allows an agency store to sell beer, wine, mixed beverages, and spirituous liquor for on-premises consumption only between 9:00 a.m. and 11:00 p.m.<sup>8</sup>

Current law authorizes a D-1, D-2, and D-5 permit holder to sell beer, wine, mixed beverages, or spirituous liquor for on- or off-premises consumption, depending on the type of permit (see "**Background**," below).

## **Sales of alcoholic ice cream**

The bill allows a manufacturer of alcoholic ice cream (A-5 liquor permit holder) to:

1. Ship alcoholic ice cream to a personal consumer via an H liquor permit holder (e.g., FedEx or UPS); and
2. Sell alcoholic ice cream to retail liquor permit holders for resale to personal consumers.<sup>9</sup>

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<sup>8</sup> R.C. 4301.17.

<sup>9</sup> R.C. 4503.051(A), (C), and (E). Under the bill, a retail permit holder also may sell alcoholic ice cream produced by manufacturers located in other states.

It also eliminates the cap on the amount of alcoholic ice cream (four pints) that a personal consumer may purchase from an A-5 permit holder in any given day.<sup>10</sup>

Under current law, alcoholic ice cream contains between 0.5% and 6% of alcohol by volume. An A-5 permit holder may sell it only to personal consumers at the permit holder's premises (for on- or off-premises consumption).<sup>11</sup>

### **Shipping requirements**

In addition to the requirement to use an H permit holder as the shipper, a shipment of alcoholic ice cream by an A-5 permit holder to a personal consumer is subject to the following:

1. The package (in which the ice cream is being shipped) must be clearly marked with the words "alcohol enclosed" in bold print;
2. Prior to sending the shipment, the A-5 permit holder (or an employee) must make an effort to ensure that the personal consumer is at least 21; and
3. At the time of delivery, the H permit holder (or an employee) must verify that the personal consumer is at least 21.<sup>12</sup>

An A-5 permit holder must keep a record of each shipment of alcoholic ice cream sent to a personal consumer. Also, the A-5 permit holder must annually provide to the Division of Liquor Control a report that includes (1) the name and address of each personal consumer who purchased alcoholic ice cream via shipment, and (2) the quantity that the consumer purchased.<sup>13</sup>

### **Sunday sales of alcoholic ice cream**

The bill clarifies that an alcoholic ice cream manufacturer may sell on Sunday under a D-6 liquor permit if such sales have been authorized by local option election. Under current law, the fee for the D-6 permit is \$500.<sup>14</sup>

### **Bottle limits for micro-distilleries**

The bill increases from two to four the number of 750 ml spirituous liquor bottles that a micro-distillery (A-3a liquor permit holder) may sell to a customer per day.<sup>15</sup>

### **Small wineries exemption**

The bill revises the law exempting a small winery (A-2 or A-2f permit holder) that meets certain conditions from the requirement to be licensed as a retail food establishment. Under

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<sup>10</sup> R.C. 4303.051(B).

<sup>11</sup> R.C. 4503.051(A).

<sup>12</sup> R.C. 4303.051(C).

<sup>13</sup> R.C. 4303.051(D).

<sup>14</sup> R.C. 4303.182(A) and (M).

<sup>15</sup> R.C. 4303.041(C)(2).

current law, a retail food establishment is an establishment that stores, processes, prepares, manufactures, or otherwise handles food for retail sale. Examples of retail food establishments are grocery stores and gas stations. A retail food establishment must be licensed to operate by a board of health with oversight by the Director of Agriculture.<sup>16</sup>

Existing law exempts a small winery from licensure as a retail food establishment if the winery meets several conditions, including:

- The winery serves commercially prepackaged food (including alcoholic beverages) in a form that prevents direct human contact prior to and during service; and
- The winery has sales of the prepackaged food that do not exceed 5% of the winery's total gross receipts.

The bill clarifies that, for purposes of the 5% threshold, commercially prepackaged food does not include wine. It also requires the commercially prepackaged food to be unopened and the 5% threshold to be based on the winery's sales in the previous year. Finally, it requires an owner or operator of a retail food establishment to display a notice in a place conspicuous to all guests informing them that the establishment is not required to be licensed as a retail food establishment. Current law requires an owner or operator to disclose to customers that the establishment is exempt from a retail food establishment license.<sup>17</sup>

## Background

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

Class of liquor permit <sup>18</sup>	Authorized activity
A-1	Large 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; a brewery may sell beer for off-premises consumption.
A-1c	Craft brewery may sell its beer for on- or 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).

<sup>16</sup> R.C. 3717.01 and 3717.21, not in the bill.

<sup>17</sup> R.C. 3717.22(B)(17).

<sup>18</sup> R.C. 4303.021 to 4303.183, 4303.19, 4303.20 to 4303.2010.

Class of liquor permit <sup>18</sup>	Authorized activity
A-3	Distillery may sell to the Division of Liquor Control and export manufactured products.
A-3a	Micro-distillery (less than 100,000 gallons a year) may sell to personal consumers a specified amount of spirituous liquor.
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-5a 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.
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.

## HISTORY

Action	Date
Introduced	03-25-19
Reported, H. State & Local Gov't	06-13-19
Passed House (76-16)	10-02-19
Reported, S. Agriculture & Natural Resources	---

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