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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

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsor:** Rep. Ingram

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Jeff Grim, Research Analyst

## SUMMARY

### 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.
- Reduces, from two to one, the required number of notices that the legislative authority of a municipal corporation or township must publish prior to taking certain actions regarding a DORA.

### Sales of alcohol in an agency store

- Allows the sale of beer, wine, mixed beverages, and spirituous liquor in an agency store for on-premises consumption and makes other changes to the law governing those sales.

### 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 if certain conditions are met, including verification that the personal consumer is at least 21.
- Allows an A-5 permit holder to sell alcoholic ice cream to retail liquor permit holders for resale to personal consumers.
- 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 A-5 permit holder may sell alcoholic ice cream on Sunday under a D-6 liquor permit if those 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.

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## **DETAILED ANALYSIS<sup>1</sup>**

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

Under continuing law, a municipal corporation or township may create an outdoor refreshment area (also known as a DORA). 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 in the area. Thus, the person is exempt from the law governing opened containers, which generally prohibits a person from carrying an opened container 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 of Liquor Control 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. Continuing 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>2</sup>

### **Number of DORAS**

The act 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;

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<sup>1</sup> See “**Background**” in the Detailed Analysis for a description of all permits referenced below.

<sup>2</sup> R.C. 4301.82.

2. If the population is between 35,000 and 50,000, increases the number from one to two.<sup>3</sup>

## Notice

The act retains a requirement that a legislative authority of a municipal corporation or township publish notice prior to taking certain actions regarding a DORA. But it eliminates the requirement that the notice be published once a week for two consecutive weeks. Thus, under the act, the legislative authority may publish the notice only once. The notice applies to the following proposed actions:

1. The adoption of requirements to ensure public health and safety within a DORA; and
2. The continuation or dissolution of a DORA.<sup>4</sup>

## Sales of alcohol in an agency store

The act 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:

1. Allows an agency store to sell beer, wine, mixed beverages, and spirituous liquor for on-premises consumption in the agency store area. Former law specified that an agency store could not sell beer, wine, mixed beverages, and spirituous liquor for on-premises consumption.
2. Limits the 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;
3. Allows an agency store to be issued a D-3 liquor permit to sell spirituous liquor for on-premises consumption if:
  - a. Its contract specifically authorizes the acquisition of that permit; and
  - b. It contains at least 10,000 square feet of sales floor area.
4. Prohibits the transfer of the D-3 permit to a new location;
5. Requires the Division 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; and
7. 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>5</sup>

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<sup>3</sup> R.C. 4301.82(D).

<sup>4</sup> R.C. 4301.82(F)(2), (I)(1), and (J).

<sup>5</sup> R.C. 4301.17.

## Sales of alcoholic ice cream

The act allows a manufacturer of alcoholic ice cream (A-5 liquor permit holder) to do the following:

1. Ship alcoholic ice cream (which contains between 0.5% and 6% of alcohol by volume) 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. If the alcoholic ice cream is sold by a retail liquor permit holder that is a grocery store or convenience store, the manufacturer must include on the ice cream's label the Surgeon General's warning regarding consuming alcohol while pregnant or operating a motor vehicle.

The act 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.

Continuing law authorizes an A-5 permit holder to sell alcoholic ice cream to personal consumers at the permit holder's premises for on- or off-premises consumption.<sup>6</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.

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 a report that includes (1) the name and address of each personal consumer who purchased alcoholic ice cream via shipment, (2) the quantity that the consumer purchased, and (3) any other information requested by the Division.<sup>7</sup>

### Sunday sales of alcoholic ice cream

The act clarifies that an A-5 permit holder may sell alcoholic ice cream on Sunday under a D-6 liquor permit if those sales have been authorized by local option election. Under continuing law, the fee for the D-6 permit is \$500.<sup>8</sup>

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<sup>6</sup> R.C. 4303.051(B).

<sup>7</sup> R.C. 4303.051(C) and (D).

<sup>8</sup> R.C. 4303.182(A) and (M).

## Bottle limits for micro-distilleries

The act 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>9</sup>

## Small wineries exemption

The act revises several conditions under which a small winery (A-2 or A-2f permit holder) is exempt from the requirement to be licensed as a retail food establishment. One of the conditions specifies that a small winery must serve only commercially prepackaged food. The act declares that the prepackaged food must remain unopened prior to service. Prior law required the prepackaged food to be in a form that prevented direct human contact prior to and during service.

Regarding the condition that the winery's sales of the prepackaged food not exceed 5% of the winery's total gross receipts, the act (1) clarifies that, for purposes of the 5% threshold, commercially prepackaged food does not include wine, and (2) requires the 5% threshold to be based on the winery's sales in the previous year.

Finally, the act requires an owner or operator of an exempt winery 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. Former law required an owner or operator to disclose to customers that the establishment was exempt from retail food establishment licensure.<sup>10</sup>

Under continuing 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. For purposes of the law governing retail food establishments, food includes beverages.<sup>11</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>12</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.

<sup>9</sup> R.C. 4303.041(C)(2).

<sup>10</sup> R.C. 3717.22(B)(17).

<sup>11</sup> R.C. 3717.01 and 3717.21, not in the act.

<sup>12</sup> R.C. 4303.021 to 4303.183, 4303.19, 4303.20 to 4303.2010.

Class of liquor permit <sup>12</sup>	Authorized activity
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).
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.

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## 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	06-10-20
Passed Senate (31-1)	06-10-20
House refused to concur in Senate amendments (35-59)	09-01-20
Senate requested conference committee	09-02-20
House acceded to request for conference committee	09-21-20
House agreed to conference report (84-9)	09-23-20
Senate agreed to conference report (32-1)	09-23-20

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