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Office of Research and Drafting

Legislative Budget Office

H.B. 674
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 674's Bill Analysis

Version: As Reported by House Commerce and Labor

Primary Sponsor: Rep. Hillyer

Local Impact Statement Procedure Required: Yes

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Highlights

- Overall, the net fiscal impact of the bill as a whole is unclear, but the major impacts would involve the elimination of certain liquor permit types and the creation of others. Overall, LBO cannot confidently determine if the loss of some permit revenues will be offset by the new permits established under the bill.
- Liquor permit revenue is deposited into the Undivided Liquor Permit Fund (Fund 7066), then distributed to two state funds (65%) and to local governments (35%).
- The bill eliminates the statutory limitations on Sunday sales of alcohol through the elimination of the D-6 permit and local option elections. There are approximately 12,500 active D-6 permit holders. Elimination of this permit would result in a loss of nearly $5.9 million in permit revenue to Fund 7066.
- The bill allows for 24-hour alcohol sales through a newly established "K" permit. Additionally, the bill expands alcohol sales until 4:00 a.m. in certain cases under a new "J" permit. The permit fee for each is $100. A, C, and D permit class holders are eligible for the permits. There are over 43,000 active A, C, and D permit class holders.
- The bill expands the designated outdoor refreshment area (DORA) law by removing the acreage restrictions and limits on the number of DORAs per jurisdiction.
- The bill exempts brewpubs with A-1-A permits from a requirement to obtain a food service establishment license with local boards of health.
- The bill modifies the enforcement ability of the Division of Liquor Control, the Liquor Control Commission, the Department of Health, or any local boards of health with respect to violations committed by liquor permit holders pertaining to COVID-19. Ultimately, this may reduce penalty revenues collected by these entities.

Detailed Analysis

Overview

The bill makes several modifications to liquor laws and declares an emergency. Several of these provisions have substantial fiscal impacts while others have only minimal fiscal impacts. Overall, the net fiscal impact of the bill as a whole is unclear, but the major impacts would involve the elimination of certain permit types and the creation of others. Overall, LBO cannot confidently determine if the loss of some permit revenues will be offset by the new permits established under the bill.

First, the bill eliminates the statutory limitations on Sunday sales of alcohol, primarily through the elimination of the D-6 permit. This would result in a loss of permit revenue to both the Division of Liquor Control within the Department of Commerce, political subdivisions, and the Department of Mental Health and Addiction Services. Secondly, the bill allows for 24-hour alcohol sales for certain permit classes through a newly established "K" permit. This permit, with the new $100 permit fee would potentially create a new revenue stream to the Division of Liquor Control, political subdivisions, and the Department of Mental Health and Addiction Services. Thirdly, the bill creates two new permits, the "J" permit, which expands sales until 4:00 a.m., and the F-11 permit, which allows the sale of beer at events by certain nonprofit organizations. Finally, the bill makes modifications to other various provisions of the liquor law pertaining to enforcement, designated outdoor refreshment areas (DORAs), and food retail permitting.

Sunday sales of alcohol

The bill eliminates the statutory limitations on Sunday sales of alcohol. Along with this change, the bill eliminates the D-6 permit, and local option elections to authorize the Sunday sale of alcohol. However, the bill contains a provision that would retain the prohibition against sales on Sunday in a particular location if the voters of a precinct have previously voted "no" on the sale in the ten years prior to the bill's effective date. The bill also contains a mechanism for such locations by which the voters may subsequently approve Sunday sales of alcohol.

D-6 permits

Based on the approximately 12,500 D-6 permits issued by the Division of Liquor Control as of January 2020, there would be an anticipated revenue loss of approximately $5.9 million under the bill. Depending on the type of permit establishment, the D-6 permit fee is either $400 (C permits applying to retail carryouts) or $500 (A and D permits applying to wineries, breweries, and distilleries, as well as most restaurants, nightclubs, and other venues). Table 1 below summarizes the current number of D-6 permits and fees collected. Over the past two fiscal years, the Department of Commerce has issued 2,155 new D-6 permits. While it is unknown how many new D-6 permits would be issued or how many annual renewals there would be absent the bill, it is reasonable to expect that renewal revenues from these permits would rise based on the growth in the number of establishments seeking permission for Sunday sales of alcohol.

Table 1. D-6 Permits Issued as of January 2020			
Permit Class	Permit Fee	Total Permits	Revenue
A Class	$500	219	$109,500
C Class	$400	3,601	$1,440,400
D Class	$500	8,649	$4,324,500
Total		**12,469**	**$5,874,400**

Distributions from the Undivided Liquor Permit Fund

Liquor permit revenue is deposited into the Undivided Liquor Permit Fund (Fund 7066). From there, 45% of the revenue is distributed to the State Liquor Regulatory Fund (Fund 5LP0), which is used to pay the operating expenses for the Division of Liquor Control and permit adjudication issues handled by the Liquor Control Commission. Next, 20% of the permit revenue goes to the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Mental Health and Addiction Services for statewide addiction treatment and education programs. Finally, municipalities and townships where permit premises are located receive 35% of the revenue, with the proceeds deposited into their general funds. Consequently, the loss of revenue from the removal of D-6 permits will decrease the distributions from Fund 7066 to these entities.

In particular, for municipalities and townships, the loss in D-6 permit revenue distributions from Fund 7066 would depend on the number of D-6 permit establishments within those specific political subdivisions. Municipalities and townships with a larger number of D-6 permit establishments currently would incur greater revenue losses. Based on the approximately $5.9 million in D-6 permit receipts through May 2019, municipalities and townships would see aggregate revenue losses of approximately $2.1 million statewide if the D-6 permit type were eliminated. Table 2 below shows the estimated revenue loss for each of the entities based on the statutory percentage of distributions from the Undivided Liquor Permit Fund.

Table 2. Revenue Losses Attributable to Eliminating the D-6 Permit Based on D-6 Receipts as of January 2020		
Entity	Distribution Percentage	Revenue Loss
State Liquor Regulatory Fund (Fund 5LP0)	45%	$2,643,480
Municipalities and Townships	35%	$2,056,040
Statewide Treatment and Prevention Fund (Fund 4750)	20%	$1,174,880
Total		**$5,874,400**

Local option elections – Sunday sales

Since the bill eliminates the need for communities to hold local option elections concerning Sunday sales of beer or intoxicating liquor, it would yield some small amount of savings for boards of elections. The boards of elections offset some of the cost of administering these local option elections by charging petitioners a fee for lists of street names within the bounds of the local option election area. For the November 6, 2018 general election, there were a total of 210 Sunday sales questions on ballots statewide.

Local option elections for 24-hour sales

The bill authorizes the voters of an election precinct to approve, via a local option election, the sale of beer, wine and mixed beverages, and spirituous liquor 24 hours a day. If the voters approve such a measure, then the Division of Liquor Control must issue a "K" permit, which is newly created under the bill. The "K" permit established under the bill authorizes the sale of beer, wine, mixed beverages, or spirituous beverages 24 hours a day, Monday through Sunday. The type of alcohol that is permitted to be sold will depend on the underlying permit held by the K permit holder.

K permits

The bill requires the Division of Liquor Control to issue a K permit to a liquor permit holder that is located in an area that has authorized 24-hour sales. The bill establishes a $100 fee for the new permit. The type of liquor being sold under the K permit is dictated by the underlying permit held by the K permit holder. These permits, under the bill, would be available to A, C, and D permit class holders. It is unclear how many election precincts would approve a measure to have 24-hour liquor sales. Additionally, it is uncertain how many such current permit holders would elect to apply for a K permit. Any additional revenue generated from this permit would be deposited into Fund 7066.

Table 3. Active Licenses for Eligible Permits

Permit Class	Permit Type	Active Permit
A Class Permits	Breweries/Wineries/Distilleries	1,046
C Class Permits	Retail Carryouts	17,026
D Class Permits	Bars/Clubs/Restaurants	25,197
Total		**43,269**

Sales of alcohol until 4:00 a.m.

The bill specifies that the Division of Liquor Control may issue a "J" permit to a specified liquor permit holder to extend the hours of operation until 4:00 a.m. on Saturday and Sunday. The cost of the J permit is $100. Much like the K permit above, this new permit would be available to the same A, C, and D permit class holders. Furthermore, this new permit revenue would also be deposited into Fund 7066.

F-11 permits

The bill creates a new F-11 permit, which is available for a nonprofit organization of at least 250 members. The permit allows the nonprofit to conduct an event that meets specific criteria, at which the permit holder may sell beer from participating craft breweries. These types of events would include craft brew festivals, for example. The cost of the permit is $60, and these permits expire after 72 hours. It is unclear how frequently such permits would be issued. This permit revenue would also be deposited into Fund 7066.

Amnesty of enforcement actions

The bill alters the enforcement authority of the Department of Health, boards of health, the Division of Liquor Control, or the Liquor Control Commission over violations of COVID-19-related orders committed by liquor permit holders. The bill specifies that these entities must not take action or must cease taking action against a liquor permit holder if the violation occurred prior to June 1, 2020, and the violation was in regard to any executive order related to COVID-19.

Expansion of DORAs

The bill modifies the law governing the creation of designated outdoor refreshment areas (DORAs) allowing for more of them to be created. Specifically, the bill eliminates the limitations on the number of DORAs a municipal corporation or township may create within its borders based on population, requires only two premises within the area to be permitted instead of four as is the case currently, and eliminates the acreage limitations on the area of a DORA. Presumably, these changes would allow for a larger number of DORAs to be formed across the state. As of January 1, 2020, there were 28 DORAs in Ohio.

Food sales by brewpubs

The bill exempts certain brewpubs (A-1-A permits) from the requirement to obtain a retail food establishment license or food service operation license from a board of health. The bill allows these establishments to instead serve prepackaged meals without this license, or to maintain a schedule with a mobile retail food establishment or mobile food service operation. Presumably some local boards of health would see a reduction in license revenue from these A-1-A permit holders who currently have a retail food establishment license and instead elect to use the authority granted in the bill. As of January 2020, there were 326 active A-1-A permits.

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