

As Passed by the Senate

**124th General Assembly
Regular Session
2001-2002**

Sub. H. B. No. 330

REPRESENTATIVE Peterson

A B I L L

To amend sections 4301.17 and 4303.181 of the Revised Code to allow the Division of Liquor Control to base the population quota restrictions for agency stores that sell spirituous liquor on the Division's behalf on state population estimates determined by the Department of Development between federal decennial censuses; to change these population quota restrictions; and to eliminate the restriction against the same person operating or having an interest in more than sixteen agency stores in the state or more than eight agency stores in the same county; to require the Division to adopt rules governing the allocation and equitable distribution of agency store contracts; to allow a restaurant located at an airport operated by a port authority to be issued a D-5d liquor permit; to remove the prohibition against more than one D-5d permit being issued in the same county; and to allow permit holders that sell beer or intoxicating liquor for consumption on the premises to operate an agency store adjacent to the premises.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4301.17 and 4303.181 of the Revised Code be amended to read as follows:

Sec. 4301.17. (A)(1) Subject to local option as provided in sections 4301.32 to 4301.40 of the Revised Code, five state liquor stores or agencies may be established in each county. One additional store may be established in any county for each ~~thirty~~ twenty-five thousand of population of that county or major fraction thereof in excess of the first forty thousand, according to the last preceding federal decennial census or according to the population estimates certified by the department of development between decennial censuses. A person engaged in a mercantile business may act as the agent for the division of liquor control for the sale of spirituous liquor in a municipal corporation, in the unincorporated area of a township ~~of not less than two thousand population~~, or in an area designated and approved as a resort area under section 4303.262 of the Revised Code, ~~provided that not more than one agency contract shall be awarded in the unincorporated area of a county for each fifty thousand population of the county~~. The division shall fix the compensation for such an agent in the manner it considers best, but the compensation shall not exceed seven per cent of the gross sales made by the agent in any one year.

(2) The division shall adopt rules in accordance with Chapter 119. of the Revised Code governing the allocation and equitable distribution of agency store contracts. The division shall comply with the rules when awarding a contract under division (A)(1) of this section.

(3) Except as otherwise provided in this section, no mercantile business that sells beer or intoxicating liquor for consumption on the premises under a permit issued by the division shall operate an agency store at the premises ~~or at any adjacent~~

premises. An agency to which a D-1 permit has been issued may 54
offer for sale tasting samples of beer, an agency to which a D-2 55
permit has been issued may offer for sale tasting samples of wine 56
and mixed beverages, and an agency to which a D-5 permit has been 57
issued may offer for sale tasting samples of beer, wine, and mixed 58
beverages, but not spirituous liquor. A tasting sample shall not 59
be sold for the purpose of general consumption. As used in this 60
section, "tasting sample" means a small amount of beer, wine, or 61
mixed beverages that is provided in not more than four servings of 62
not more than two ounces each to an authorized purchaser and that 63
allows the purchaser to determine, by tasting only, the quality 64
and character of the beverage. 65

(B) When an agency contract is proposed or when an existing 66
agency contract is assigned, before entering into any contract or 67
consenting to any assignment, the division shall notify the 68
legislative authority of the municipal corporation in which the 69
agency store is to be located, or the board of county 70
commissioners and the board of township trustees of the county and 71
the township in which the agency store is to be located if the 72
agency store is to be located outside the corporate limits of a 73
municipal corporation, of the proposed contract or assignment, and 74
an opportunity shall be provided officials or employees of the 75
municipal corporation or county and township for a complete 76
hearing upon the advisability of entering into the contract or 77
consenting to the assignment. When the division sends notice to 78
the legislative authority of the political subdivision, the 79
~~department~~ division shall notify, by certified mail or by personal 80
service, the chief peace officer of the political subdivision, who 81
may appear and testify, either in person or through a 82
representative, at any hearing held on the advisability of 83
entering into the contract or consenting to the assignment. 84

If the proposed agency store would be located within five 85

hundred feet of a school, church, library, public playground, or township park, the division shall not enter into an agency contract until it has provided notice of the proposed contract to the authorities in control of the school, church, library, public playground, or township park and has provided those authorities with an opportunity for a complete hearing upon the advisability of entering into the contract. If an agency store so located is operating under an agency contract, the division may consent to the assignment of that contract to operate an agency store at the same location, but the division shall not consent to an assignment until it has notified the authorities in control of the school, church, library, public playground, or township park and has provided those authorities with an opportunity for a complete hearing upon the advisability of consenting to the assignment.

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Any hearing provided for in this division shall be held in the central office of the division, except that upon written request of the legislative authority of the municipal corporation, the board of county commissioners, ~~or the~~ board of township trustees, or the authorities in control of the school, church, library, public playground, or township park, the hearing shall be held in the county seat of the county where the proposed agency store is to be located.

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(C) All agency contracts entered into by the division pursuant to this section shall be in writing and shall contain a clause providing for the termination of the contract at will by the division upon its giving ninety days' notice in writing to the agent of its intention to do so. Any agency contract may include a clause requiring the agent to report to the appropriate law enforcement agency the name and address of any individual under twenty-one years of age who attempts to make an illegal purchase.

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An agent may engage in the selling of beer, mixed beverages,

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and wine pursuant to permits issued to the agent under Chapter 118
4303. of the Revised Code. 119

The division shall issue a C-1 and C-2 permit to each agent 120
who prior to November 1, 1994, had not been issued both of these 121
permits, notwithstanding the population quota restrictions 122
contained in section 4303.29 of the Revised Code or in any rule of 123
the liquor control commission and notwithstanding the requirements 124
of section 4303.31 of the Revised Code. The location of a C-1 or 125
C-2 permit issued to such an agent shall not be transferred. The 126
division shall revoke any C-1 or C-2 permit issued to an agent 127
under this paragraph if the agent no longer operates an agency 128
store. 129

~~No person shall operate, or have any interest, directly or 130
indirectly, in more than eight state agencies in any one county or 131
more than sixteen state agencies in the state for the sale of 132
spirituous liquor. For purposes of this section, a person has an 133
interest in a state agency if the person is a partner, member, 134
officer, or director of, or a shareholder owning ten per cent or 135
more of the capital stock of, any legal entity with which the 136
department has entered into an agency contract. 137~~

The division may enter into agreements with the department of 138
development to implement a minority loan program to provide 139
low-interest loans to minority business enterprises, as defined in 140
section 122.71 of the Revised Code, that are awarded liquor agency 141
contracts or assignments. 142

(D) If the division closes a state liquor store and replaces 143
that store with an agency store, any employees of the division 144
employed at that state liquor store who lose their jobs at that 145
store as a result shall be given preference by the agent who 146
operates the agency store in filling any vacancies that occur 147
among the agent's employees, if that preference does not conflict 148
with the agent's obligations pursuant to a collective bargaining 149

agreement.

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If the division closes a state liquor store and replaces the store with an agency store, any employees of the division employed at the state liquor store who lose their jobs at that store as a result may displace other employees as provided in sections 124.321 to 124.328 of the Revised Code. If an employee cannot displace other employees and is laid off, the employee shall be reinstated in another job as provided in sections 124.321 to 124.328 of the Revised Code, except that the employee's rights of reinstatement in a job at a state liquor store shall continue for a period of two years after the date of the employee's layoff and shall apply to jobs at state liquor stores located in the employee's layoff jurisdiction and any layoff jurisdiction adjacent to the employee's layoff jurisdiction.

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(E) The division shall require every agent to give bond with surety to the satisfaction of the division, in the amount the division fixes, conditioned for the faithful performance of the agent's duties as prescribed by the division.

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Sec. 4303.181. (A) Permit D-5a may be issued either to the owner or operator of a hotel or motel that is required to be licensed under section 3731.03 of the Revised Code, that contains at least fifty rooms for registered transient guests, and that qualifies under the other requirements of this section, or to the owner or operator of a restaurant specified under this section, to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and to registered guests in their rooms, which may be sold by means of a controlled access alcohol and beverage cabinet in accordance with division (B) of section 4301.21 of the Revised Code; and to sell the same products in the same manner and amounts not for consumption on the premises as may

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be sold by holders of D-1 and D-2 permits. The premises of the 181
hotel or motel shall include a retail food establishment or a food 182
service operation licensed pursuant to Chapter 3717. of the 183
Revised Code that operates as a restaurant for purposes of this 184
chapter and that is affiliated with the hotel or motel and within 185
or contiguous to the hotel or motel, and that serves food within 186
the hotel or motel, but the principal business of the owner or 187
operator of the hotel or motel shall be the accommodation of 188
transient guests. In addition to the privileges authorized in this 189
division, the holder of a D-5a permit may exercise the same 190
privileges as the holder of a D-5 permit. 191

The owner or operator of a hotel, motel, or restaurant who 192
qualified for and held a D-5a permit on August 4, 1976, may, if 193
the owner or operator held another permit before holding a D-5a 194
permit, either retain a D-5a permit or apply for the permit 195
formerly held, and the division of liquor control shall issue the 196
permit for which the owner or operator applies and formerly held, 197
notwithstanding any quota. 198

A D-5a permit shall not be transferred to another location. 199
No quota restriction shall be placed on the number of such permits 200
that may be issued. 201

The fee for this permit is one thousand eight hundred 202
seventy-five dollars. 203

(B) Permit D-5b may be issued to the owner, operator, tenant, 204
lessee, or occupant of an enclosed shopping center to sell beer 205
and intoxicating liquor at retail, only by the individual drink in 206
glass and from the container, for consumption on the premises 207
where sold; and to sell the same products in the same manner and 208
amount not for consumption on the premises as may be sold by 209
holders of D-1 and D-2 permits. In addition to the privileges 210
authorized in this division, the holder of a D-5b permit may 211
exercise the same privileges as a holder of a D-5 permit. 212

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A D-5b permit shall not be transferred to another location.

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One D-5b permit may be issued at an enclosed shopping center containing at least two hundred twenty-five thousand, but less than four hundred thousand, square feet of floor area.

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Two D-5b permits may be issued at an enclosed shopping center containing at least four hundred thousand square feet of floor area. No more than one D-5b permit may be issued at an enclosed shopping center for each additional two hundred thousand square feet of floor area or fraction of that floor area, up to a maximum of five D-5b permits for each enclosed shopping center. The number of D-5b permits that may be issued at an enclosed shopping center shall be determined by subtracting the number of D-3 and D-5 permits issued in the enclosed shopping center from the number of D-5b permits that otherwise may be issued at the enclosed shopping center under the formulas provided in this division. Except as provided in this section, no quota shall be placed on the number of D-5b permits that may be issued. Notwithstanding any quota provided in this section, the holder of any D-5b permit first issued in accordance with this section is entitled to its renewal in accordance with section 4303.271 of the Revised Code.

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The holder of a D-5b permit issued before April 4, 1984, whose tenancy is terminated for a cause other than nonpayment of rent, may return the D-5b permit to the division of liquor control, and the division shall cancel that permit. Upon cancellation of that permit and upon the permit holder's payment of taxes, contributions, premiums, assessments, and other debts owing or accrued upon the date of cancellation to this state and its political subdivisions and a filing with the division of a certification of that payment, the division shall issue to that person either a D-5 permit, or a D-1, a D-2, and a D-3 permit, as

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that person requests. The division shall issue the D-5 permit, or
the D-1, D-2, and D-3 permits, even if the number of D-1, D-2,
D-3, or D-5 permits currently issued in the municipal corporation
or in the unincorporated area of the township where that person's
proposed premises is located equals or exceeds the maximum number
of such permits that can be issued in that municipal corporation
or in the unincorporated area of that township under the
population quota restrictions contained in section 4303.29 of the
Revised Code. Any D-1, D-2, D-3, or D-5 permit so issued shall not
be transferred to another location. If a D-5b permit is canceled
under the provisions of this paragraph, the number of D-5b permits
that may be issued at the enclosed shopping center for which the
D-5b permit was issued, under the formula provided in this
division, shall be reduced by one if the enclosed shopping center
was entitled to more than one D-5b permit under the formula.

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The fee for this permit is one thousand eight hundred
seventy-five dollars.

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(C) Permit D-5c may be issued to the owner or operator of a
retail food establishment or a food service operation licensed
pursuant to Chapter 3717. of the Revised Code that operates as a
restaurant for purposes of this chapter and that qualifies under
the other requirements of this section to sell beer and any
intoxicating liquor at retail, only by the individual drink in
glass and from the container, for consumption on the premises
where sold, and to sell the same products in the same manner and
amounts not for consumption on the premises as may be sold by
holders of D-1 and D-2 permits. In addition to the privileges
authorized in this division, the holder of a D-5c permit may
exercise the same privileges as the holder of a D-5 permit.

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To qualify for a D-5c permit, the owner or operator of a
retail food establishment or a food service operation licensed

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pursuant to Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter, shall have operated the restaurant at the proposed premises for not less than twenty-four consecutive months immediately preceding the filing of the application for the permit, have applied for a D-5 permit no later than December 31, 1988, and appear on the division's quota waiting list for not less than six months immediately preceding the filing of the application for the permit. In addition to these requirements, the proposed D-5c permit premises shall be located within a municipal corporation and further within an election precinct that, at the time of the application, has no more than twenty-five per cent of its total land area zoned for residential use.

A D-5c permit shall not be transferred to another location. No quota restriction shall be placed on the number of such permits that may be issued.

Any person who has held a D-5c permit for at least two years may apply for a D-5 permit, and the division of liquor control shall issue the D-5 permit notwithstanding the quota restrictions contained in section 4303.29 of the Revised Code or in any rule of the liquor control commission.

The fee for this permit is one thousand two hundred fifty dollars.

(D) Permit D-5d may be issued to the owner or operator of a retail food establishment or a food service operation licensed pursuant to Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter and that is located at an airport operated by a board of county commissioners pursuant to section 307.20 of the Revised Code, at an airport operated by a port authority pursuant to Chapter 4582. of the Revised Code, or at an airport operated by a regional airport authority pursuant to Chapter 308. of the Revised Code. ~~Not more than one D-5d permit~~

~~shall be issued in each county.~~ The holder of a D-5d permit may 309
sell beer and any intoxicating liquor at retail, only by the 310
individual drink in glass and from the container, for consumption 311
on the premises where sold, and may sell the same products in the 312
same manner and amounts not for consumption on the premises where 313
sold as may be sold by the holders of D-1 and D-2 permits. In 314
addition to the privileges authorized in this division, the holder 315
of a D-5d permit may exercise the same privileges as the holder of 316
a D-5 permit. 317

A D-5d permit shall not be transferred to another location. 318
~~Except as otherwise provided in this division, no~~ No quota 319
restrictions shall be placed on the number of such permits that 320
may be issued. 321

The fee for this permit is one thousand eight hundred 322
seventy-five dollars. 323

(E) Permit D-5e may be issued to any nonprofit organization 324
that is exempt from federal income taxation under the "Internal 325
Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(c)(3), as 326
amended, or that is a charitable organization under any chapter of 327
the Revised Code, and that owns or operates a riverboat that meets 328
all of the following: 329

(1) Is permanently docked at one location; 330

(2) Is designated as an historical riverboat by the Ohio 331
historical society; 332

(3) Contains not less than fifteen hundred square feet of 333
floor area; 334

(4) Has a seating capacity of fifty or more persons. 335

The holder of a D-5e permit may sell beer and intoxicating 336
liquor at retail, only by the individual drink in glass and from 337
the container, for consumption on the premises where sold. 338

A D-5e permit shall not be transferred to another location. 339
No quota restriction shall be placed on the number of such permits 340
that may be issued. The population quota restrictions contained in 341
section 4303.29 of the Revised Code or in any rule of the liquor 342
control commission shall not apply to this division, and the 343
division shall issue a D-5e permit to any applicant who meets the 344
requirements of this division. However, the division shall not 345
issue a D-5e permit if the permit premises or proposed permit 346
premises are located within an area in which the sale of 347
spirituous liquor by the glass is prohibited. 348

The fee for this permit is nine hundred seventy-five dollars. 349

(F) Permit D-5f may be issued to the owner or operator of a 350
retail food establishment or a food service operation licensed 351
under Chapter 3717. of the Revised Code that operates as a 352
restaurant for purposes of this chapter and that meets all of the 353
following: 354

(1) It contains not less than twenty-five hundred square feet 355
of floor area. 356

(2) It is located on or in, or immediately adjacent to, the 357
shoreline of, a navigable river. 358

(3) It provides docking space for twenty-five boats. 359

(4) It provides entertainment and recreation, provided that 360
not less than fifty per cent of the business on the permit 361
premises shall be preparing and serving meals for a consideration. 362

In addition, each application for a D-5f permit shall be 363
accompanied by a certification from the local legislative 364
authority that the issuance of the D-5f permit is not inconsistent 365
with that political subdivision's comprehensive development plan 366
or other economic development goal as officially established by 367
the local legislative authority. 368

The holder of a D-5f permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold.

A D-5f permit shall not be transferred to another location. No more than fifteen D-5f permits shall be issued by the division of liquor control, and no more than two such permits shall be issued in any county. However, the division shall not issue a D-5f permit if the permit premises or proposed permit premises are located within an area in which the sale of spirituous liquor by the glass is prohibited.

A fee for this permit is one thousand eight hundred seventy-five dollars.

As used in this division, "navigable river" means a river that is also a "navigable water" as defined in the "Federal Power Act," 94 Stat. 770 (1980), 16 U.S.C. 796.

(G) Permit D-5g may be issued to a nonprofit corporation that is either the owner or the operator of a national professional sports museum. The holder of a D-5g permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold. The holder of a D-5g permit shall sell no beer or intoxicating liquor for consumption on the premises where sold after one a.m. A D-5g permit shall not be transferred to another location. No quota restrictions shall be placed on the number of D-5g permits that may be issued. The fee for this permit is one thousand five hundred dollars.

(H) Permit D-5h may be issued to any nonprofit organization that is exempt from federal income taxation under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(c)(3), as amended, that owns or operates a fine arts museum and has no less than five thousand bona fide members possessing full membership

privileges. The holder of a D-5h permit may sell beer and any
intoxicating liquor at retail, only by the individual drink in
glass and from the container, for consumption on the premises
where sold. The holder of a D-5h permit shall sell no beer or
intoxicating liquor for consumption on the premises where sold
after one a.m. A D-5h permit shall not be transferred to another
location. No quota restrictions shall be placed on the number of
D-5h permits that may be issued. The fee for this permit is one
thousand five hundred dollars.

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(I) Permit D-5i may be issued to the owner or operator of a
retail food establishment or a food service operation licensed
under Chapter 3717. of the Revised Code that operates as a
restaurant for purposes of this chapter and that meets all of the
following requirements:

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(1) It is located in a municipal corporation or a township
with a population of fifty thousand or less.

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(2) It has inside seating capacity for at least one hundred
forty persons.

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(3) It has at least four thousand square feet of floor area.

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(4) It offers full-course meals, appetizers, and sandwiches.

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(5) Its receipts from beer and liquor sales do not exceed
twenty-five per cent of its total gross receipts.

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(6) The value of its real and personal property exceeds seven
hundred twenty-five thousand dollars.

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The holder of a D-5i permit shall cause an independent audit
to be performed at the end of one full year of operation following
issuance of the permit in order to verify the requirements of
division (I)(5) of this section. The results of the independent
audit shall be transmitted to the division. Upon determining that

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the receipts of the holder from beer and liquor sales exceeded
twenty-five per cent of its total gross receipts, the division
shall suspend the permit of the permit holder under section
4301.25 of the Revised Code and may allow the permit holder to
elect a forfeiture under section 4301.252 of the Revised Code.

The holder of a D-5i permit may sell beer and any
intoxicating liquor at retail, only by the individual drink in
glass and from the container, for consumption on the premises
where sold, and may sell the same products in the same manner and
amounts not for consumption on the premises where sold as may be
sold by the holders of D-1 and D-2 permits. The holder of a D-5i
permit shall sell no beer or intoxicating liquor for consumption
on the premises where sold after two-thirty a.m. In addition to
the privileges authorized in this division, the holder of a D-5i
permit may exercise the same privileges as the holder of a D-5
permit.

A D-5i permit shall not be transferred to another location.
The division of liquor control shall not renew a D-5i permit
unless the food service operation for which it is issued continues
to meet the requirements described in divisions (I)(1) to (6) of
this section. No quota restrictions shall be placed on the number
of D-5i permits that may be issued. The fee for this permit is one
thousand eight hundred seventy-five dollars.

(J)(1) Permit D-5j may be issued to the owner or the operator
of a retail food establishment or a food service operation
licensed under Chapter 3717. of the Revised Code to sell beer and
intoxicating liquor at retail, only by the individual drink in
glass and from the container, for consumption on the premises
where sold and to sell beer and intoxicating liquor in the same
manner and amounts not for consumption on the premises where sold
as may be sold by the holders of D-1 and D-2 permits. The holder
of a D-5j permit may exercise the same privileges, and shall

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observe the same hours of operation, as the holder of a D-5 462
permit. 463

(2) The D-5j permit shall be issued only within a community 464
entertainment district that is designated under section 4301.80 of 465
the Revised Code and that is located in a municipal corporation 466
with a population of at least one hundred thousand. 467

(3) The location of a D-5j permit may be transferred only 468
within the geographic boundaries of the community entertainment 469
district in which it was issued and shall not be transferred 470
outside the geographic boundaries of that district. 471

(4) Not more than one D-5j permit shall be issued within each 472
community entertainment district for each five acres of land 473
located within the district. Not more than fifteen D-5j permits 474
may be issued within a single community entertainment district. 475
Except as otherwise provided in division (J)(4) of this section, 476
no quota restrictions shall be placed upon the number of D-5j 477
permits that may be issued. 478

(5) The fee for a D-5j permit is one thousand eight hundred 479
seventy-five dollars. 480

Section 2. That existing sections 4301.17 and 4303.181 of the 481
Revised Code are hereby repealed. 482